



Draft law relating to protective measures against plant pests and to official controls and other official activities in the field of plant health

We, Guillaume, Grand Duke of Luxembourg, Duke of Nassau,

Having regard to Regulation (EU) 2016/2031 of the European Parliament and of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC, as amended;

Having regard to Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities for the enforcement of food law and feed law and rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031, and Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC, as well as Council Decision 92/438/EEC, as amended;

The Council of State having considered the matter;

Having regard to the adoption by the Chamber of Deputies;

Having regard to the decision of the Chamber of Deputies of ... and that of the Council of State of ... stating that a second vote is not required;

Have ordered and do hereby order:

Chapter 1 - Objectives

Article 1. Scope

This law establishes the rules for protection against plant pests and those relating to the performance of official controls and other official activities in the field of plant health, as well as the related penalties, in accordance with:

(1) Regulation (EU) 2016/2031 of the European Parliament and of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC, hereinafter referred to as 'Regulation (EU) 2016/2031';

(2) Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law and rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031, Council Regulations (EC) No 1/2005 and (EC) No Regulation (EU) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC, hereinafter referred to as 'Regulation (EU) 2017/625'.

Article 2. Definitions

For the purposes of this law, the following definitions apply:

- 1° "competent administrations": the Administration of Technical Services of Agriculture, hereinafter referred to as "ASTA" and the Viti-Vinicole Institute, hereinafter referred to as "IVV", each acting within the framework of its respective competence and which are in charge of carrying out official controls and other official activities within the framework of this law;
- 2° "fraud": the substitution, alteration or misrepresentation of plants, plant products and other objects or of any other important information relating thereto, as well as any false information or claims relating to plants, plant products and other objects, of an intentional nature, for the purpose of deceiving the operator or the final consumer of plants, plant products and other objects and of making an economic profit;
- 3° "online interface": any software, including a website, part of a website, or an application, as defined in Article 3, point 15, of Regulation (EU) 2017/2394 of the European Parliament and of the Council, of 12 December 2017, on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004;
- 4° "Minister": the Minister responsible for Agriculture and Viticulture;
- 5° "operator": any person referred to in Article 3, Paragraph 29, of Regulation (EU) 2017/625 and subject to the obligations contained in this law.

Chapter 2 – Official controls and other official activities

Article 3. Powers

(1) Official controls in the field of plant health and other official activities relating to the prevention and control of organisms harmful to plants are carried out by the competent authorities that verify compliance with the provisions of this law.

(2) The competent authorities may, where necessary, delegate certain specific tasks within their remit, as provided for in Articles 28 to 33 of Regulation (EU) 2017/625, subject to the Minister's approval.

Article 4. Powers

(1) The officials of the competent authorities, as well as those of the delegated authorities and bodies, designated in accordance with Article 3, Paragraph 2, are authorised to:

- 1° carry out their duties relating to the official surveillance and control of plants, plant products and other objects;
- 2° have free access to means of transport, sites, land, equipment and premises and to all parts of the operators' facilities;
- 3° request access to all registers, records, and documents relating to plants, plant products, and other objects covered by this law, make copies thereof, and obtain a translation into one of the three administrative languages;
- 4° access the data of operators' computer systems within the framework of the official controls provided for by this law;
- 5° photograph plants, plant products and other objects, as well as facilities, equipment, premises, sites, and means of transport subject to this law;
- 6° make or obtain copies of information, data, or documents, regardless of their storage medium, including online interfaces;
- 7° carry out or have carried out technical and scientific measurements and examinations of plants, plant products, and other objects, facilities, equipment, premises, sites, and means of transport used;
- 8° take, for the purpose of examination or analysis, samples of plants, plant products and other objects covered by this Act. Samples are taken against issuance of an acknowledgement of receipt. A portion of the sample, sealed or stamped, is given to the operator of the facility, equipment, premises, site, or means of transport used, or their representative, unless the latter expressly waives this right or there are technical reasons preventing it.
The owner or holder of the samples taken will be compensated at the current market value of these samples, unless they expressly waive this right or in the event of non-compliance of the plants, plant products, and other objects;
- 9° require from the operator concerned and their staff all the information necessary for carrying out official controls;
- 10° carry out, or have carried out, test purchases of goods or services, if necessary anonymously or under a false identity, and to inspect, analyse, and test the goods and services.

(2) The operator is authorised to request a second expert opinion at any time, at their own expense, in accordance with Article 35(1) of Regulation (EU) 2017/625.

The operator's request for a second expert opinion submitted under the preceding subparagraph does not affect the right of the competent authorities to order the emergency measures referred to in Article 11 or the Minister's right to order the administrative measures referred to in Article 12 of this law.

In the event of a dispute between the competent authorities and the operators based on the opinion of a second expert referred to in the first subparagraph of this Paragraph, the operators may request, at their own expense, a review of the documentation of the initial analysis, test, or diagnosis and, where appropriate, a further analysis, test, or diagnosis by another official laboratory.

The counter-sample is taken during sampling at the operator's request.

(3) In carrying out their monitoring and control duties, the agents referred to in Paragraph 1 of this article conduct official controls and report their presence to the operator or their representative. If this is not possible, it is noted in the official report.

These agents may be accompanied by:

- 1° personnel designated by the competent authority of another Member State of the European Union within the framework of the assistance provided for in Article 104 of Regulation (EU) 2017/625;
- 2° experts from the European Commission or another Member State of the European Union acting within the framework of the controls provided for in Article 116 of Regulation (EU) 2017/625.

(4) The operator has the right to accompany agents from the competent authorities and other delegated administrations and bodies, designated in accordance with Article 3, Paragraph 2, during the control, and must facilitate the control operations carried out by these agents.

These agents have the right to directly request the assistance of law enforcement for the execution of their mission.

(5) A written report is submitted detailing the official control operations, findings, obligations, and corrective measures to be implemented within specified timeframes, including the withdrawal and recall of plants, plant products, and other products. A copy of the written report is provided to the operator.

Chapter 3 – Notifications, emergency plans and specific measures

Article 5. Notification

(1) Any operator shall immediately notify the competent authorities of the existence of an imminent danger relating to quarantine or harmful organisms in accordance with Article 9(3) of Regulation (EU) 2016/2031.

(2) Any person other than an operator shall immediately inform the competent authority of the presence, confirmed or suspected, of a European Union quarantine body, in accordance with the provisions of Article 15(1) of Regulation (EU) 2016/2031.

Article 6. Emergency plans

On the proposal of the competent authorities, the Minister establishes emergency plans in accordance with Article 25 of Regulation (EU) 2016/2031.

Article 7. Specific measures in viticulture

(1) In order to prevent the multiplication and spread of harmful organisms to vineyards in production or recently planted, owners or tenants of abandoned vineyards must destroy the vines present on the plots concerned before 1 May of each year. For this purpose, the vines must be uprooted together with their roots and destroyed on site or removed from the land. The land must then be ploughed or broken up. The regrowth of destroyed vines must be uprooted before 15 June and destroyed on site or removed from the land.

(2) Vineyards are considered abandoned if the operator has not carried out pest control, pruning, tilling and weeding or weed control for two consecutive years.

(3) In the event of non-compliance with these provisions, the uprooting and destruction operation will be carried out automatically and at the expense of the offender.

Chapter 4 – Registration, authorisation, and register of operators

Article 8. Registration and authorisation

(1) In accordance with Article 15(5) of Regulation (EU) 2017/625 and Article 66 of Regulation (EU) 2016/2031, every operator shall notify the Minister, for the purpose of registration, of his activity and of each of the undertakings, establishments and online interfaces for which they are responsible and that relate to plants, plant products or other products.

(2) Without prejudice to the provisions of Paragraph 1, any operator covered by Article 89 of Regulation (EU) 2016/2031 must apply to the Minister for authorisation to issue plant passports.

A Grand-Ducal Regulation specifies the procedures and the registration and application requirements referred to in Paragraphs 1 and 2 of this article.

Article 9. Register

Pursuant to Article 10(2) of Regulation (EU) 2017/625 and Article 65(1), Paragraph 1 of Regulation (EU) 2016/2031, the Minister establishes a register of operators.

Chapter 5 - Fees for official controls and other official activities

Article 10. Fees

A Grand-Ducal Regulation sets the amount of the fees, in accordance with the provisions of Articles 79, 80, 81 and 82 of Regulation (EU) 2017/625, and specifies the procedures for

collecting and paying these fees, in accordance with the provisions of Articles 83 and 84 of Regulation (EU) 2017/625.

The break-even point for collecting the fees is set at EUR 100, in accordance with the provisions of Article 79(4) of Regulation (EU) 2017/625.

Chapter 6 - Measures and Fines

Art. 11. Emergency measures

(1) The competent authorities are authorised to order emergency measures as provided for in Articles 66, 67, 68, 69, 71 and 72 of Regulation (EU) 2017/625.

(2) The relevant authorities may order:

1. all measures necessary to remedy non-conformities and in particular the measures provided for in Article 138 of Regulation (EU) 2017/625, except point (j), in the event of an established breach and where plants, plant products or other objects are produced, manufactured, imported, placed on the market or used in the territory of the Grand Duchy of Luxembourg;

2. all measures necessary for the purpose of remedying and bringing to an end breaches of European regulations, of this law and its implementing regulations, in the event of an imminent and serious risk to plant health.

The emergency measures provided for in this paragraph have a maximum validity period of forty-eight hours. Based on a second control carried out at the expiry of the fixed validity period, they may, where appropriate, be extended for a maximum period of five days in the event that the operator has not stopped the non-conformities or an imminent and serious danger to the health of the plants persists. Within this maximum period of five days, the Minister confirms this extension and makes a possible decision regarding a further extension which may not exceed thirty days, renewable twice.

(3) As soon as the competent authorities have determined that the non-conformities that were the subject of the emergency measures provided for in Paragraphs 1 and 2 have been remedied, these measures shall be lifted.

(4) The order issued pursuant to Paragraphs 1 and 2 of this article shall be notified in writing by registered letter or hand delivery to the operator. It is reasoned, takes effect on the date of its notification and its duration depends on the nature, seriousness and frequency of the non-compliance found. The operator against whom the measures have been taken, heard or summoned.

(5) The orders provided for in this article are subject to appeal before the administrative court. This appeal must be filed within three months of notification of the decision, otherwise it will be inadmissible. The costs incurred as a result of this order shall be borne by the operator, except in the event of the order being overturned by the administrative judge. The registration, domains and VAT administration is responsible for collecting the aforementioned fees which are communicated to it by the director of the competent administration. The recovery process is carried out in the same way as in the case of registration.

Article 12. Administrative measures

(1) In the event of non-compliance with the provisions of this law, the Minister may:

- 1° set the operator a deadline by which they must comply with the conditions set forth in the authorisation, a deadline which may not exceed six months;
- 2° if the compliance deadline is not met, suspend or withdraw the registration or authorisation, after formal notice, or close the business, operation, establishment, facility, equipment, online interface, premises, or site, in whole or in part, and affix seals.

(2) The measures provided for in Paragraph 1 are subject to appeal before the administrative court. This appeal must be filed within three months of notification of the decision, otherwise it will be inadmissible.

(3) As soon as it has been established that the non-conformities addressed by the measures provided for in Paragraph 1 have been remedied, these measures shall be lifted.

Article 13. Administrative fines

(1) The Minister may impose an administrative fine against:

a) anyone acting in breach of the following articles of this law:

- 1° Article 5;
- 2° Article 7;
- 3° Article 8(1);

b) anyone acting in breach of the following articles of Regulation (EU) 2017/625:

- 1° Article 15(1), (3) and (5)
- 2° Article 47(5);
- 3° Article 50(1) and (3)
- 4° Article 56(1) and (4)

c) any person who is not an operator and who acts in breach of the following articles of Regulation (EU) 2016/2031:

- 1° Article 15(1);
- 2° Article 40(1);
- 3° Article 41(1);
- 4° Article 42(2);
- 5° Article 53(1);
- 6° Article 54(1);

d) any operator acting in breach of the following articles of Regulation (EU) 2016/2031:

- 7° Article 66(1), (2), (5) and (6), second subparagraph;
- 8° Article 88(1);
- 9° Article 91(1), point (b).

(2) The amount of the administrative fine is set between EUR 250 and 10,000.

(3) When determining the amount of the administrative fine, the Minister takes into account all relevant circumstances, and where appropriate:

- 1° the seriousness and duration of the breach;
- 2° the degree of responsibility of the persons referred to in Paragraph 1;
- 3° past breaches committed by the persons referred to in Paragraph 1.

(4) Administrative fines shall be collected by the Registration, Estates and VAT Administration in the same manner as for registration matters. Administrative fines must be paid within thirty days of the date of notification of the decision. After this period, a reminder is sent by registered mail.

(5) An appeal for review of decisions taken under this article may be lodged with the Administrative Court. This appeal must be filed within three months of notification of the decision, otherwise it shall be inadmissible.

Chapter 7 – Offences and criminal penalties

Article 14. Investigation and recording of criminal offences

(1) In addition to members of the Grand Ducal Police holding the rank of judicial police officer or agent, officials of the Customs and Excise Administration from the rank of principal brigadier, officials and agents of the competent administrations in pay categories A, pay groups A1 and A2, and pay category B, pay group B1 may be responsible for investigating offences against the European regulations mentioned in Article 1 to this law and its implementing regulations.

(2) In the performance of their duties, the officials and agents referred to in Paragraph 1 shall have the status of judicial police officers. They may perform these functions throughout the territory of the Grand Duchy of Luxembourg. They record offences by issuing official reports that are considered valid until proven otherwise.

(3) The officials and agents referred to in Paragraph 1 must have completed a special eight-hour training course on the theoretical and practical elements required for the execution of their duties. This training includes modules on the Penal Code and the Code of Criminal Procedure which include elements on the role of the public prosecutor's office, the classification of offences, as well as on the judicial organisation and the specific skills of authorised officials and agents, including the detection and recording of offences under this law.

The candidate must validate their training by a knowledge assessment covering the general elements of criminal law and criminal procedure, and the relevant elements of this law.

If the candidate receives a score of at least thirty out of sixty points, the candidate is considered to have successfully completed the training.

In case of failure, the candidate can register for a future knowledge assessment. They are free to participate in the training again. However, in the event of a second failure, they must repeat the training before retaking the knowledge assessment.

The curriculum and the methods of knowledge assessment are determined by Grand-Ducal regulation.

Officials and agents hired for a fixed term and those who are in a period of training or initiation cannot be sworn in as judicial police officers.

Officials and agents already in office and sworn in as judicial police officers at the time of entry into force of this article are exempt from the training requirements and knowledge assessment of this paragraph.

(4) Before taking up their duties, the officials and agents referred to in Paragraph 1 shall take the following oath before the District Court of their place of residence, sitting in civil matters: "I swear to perform my duties with integrity, accuracy, and impartiality."

Article 458 of the Criminal Code applies to them.

Article 15. Powers and prerogatives of control in the recording of criminal offences

(1) Members of the Grand Ducal Police within the police force and the officials and agents referred to in Article 14(1) may access, day and night, the facilities, premises, equipment, sites of operators, and means of transport used, subject to this law and the regulations issued for its implementation, in the event of indications suggesting an offence against this law and its implementing regulations.

They shall report their presence to the operator concerned. If this is not possible, it shall be noted in the official report.

The operator has the right to accompany members of the Grand Ducal Police and the officials and agents referred to in Article 14(1) during the visit.

(2) The provisions of Paragraph 1 do not apply to premises used for residential purposes. However, and without prejudice to Article 33(1) of the Code of Criminal Procedure, in cases of serious indications suggesting that the origin of the offence lies in the residential premises, a home visit may be conducted between 6:30 a.m. and 8:00 p.m. by a judicial police officer, a member of the Grand Ducal Police within the police force, or an official and agent referred to in Article 14(1), acting under a warrant issued by the investigating judge.

(3) In exercising the powers stipulated in Paragraphs 1 and 2, members of the Grand Ducal Police within the police force and the officials and agents referred to in Article 14(1) are authorised to:

- 1° have free access to the premises, facilities, equipment, and sites of operators, including means of transport;
- 2° receive communication of all registers, writings and documents concerning plants, plant products and other objects covered by this law, to photograph them, to make copies of them and to obtain a translation into one of the three administrative languages;
- 3° access data on operators' computer systems within the framework of official controls provided for by this law;
- 4° photograph any non-conformities observed;
- 5° take or obtain copies of information, data, or documents, regardless of their storage medium, including online interfaces;
- 6° carry out or have carried out technical and scientific measurements and examinations of plants, plant products, and other objects, facilities, equipment, premises, sites, and means of transport used;
- 7° take, for the purpose of examination or analysis, samples of plants, plant products and other objects covered by this Act. Samples are taken against issuance of an acknowledgement of receipt. A portion of the sample, sealed or tamper-evident, shall be handed over to the operator of the facility, premises, site, or means of transport used, or to their representative, unless the operator expressly waives this right or it is prevented due to technical reasons. The owner or holder of the samples taken shall

be compensated at the current market value of these samples, unless they expressly waive this right or in the event of non-compliance of the plants, plant products, and other objects;

- 8° in the event of an offence or misdemeanour, seize and, if necessary, place under seal the plants, plant products, and other objects that were used to commit the offence or that were intended to be used to commit the offence, as well as the registers, records, and documents relating thereto;
- 9° question the operator concerned and their staff.

The seizure provided for in Point 8 may only be maintained if it is validated within eight days, excluding Saturdays, Sundays, and public holidays, by order of the investigating judge.

The release of seized property ordered by the investigating judge may be requested at any stage of the proceedings, namely:

- 1° from the chamber of the district court during the investigation;
- 2° from the police judge, in the case of a minor offence;
- 3° from the criminal chamber of the district court when it is seized by the committal order or by direct summons;
- 4° from the criminal chamber of the Court of Appeal if an appeal has been lodged or if an application for review has been filed.

The application is filed with the clerk of the court called upon to rule. A decision is rendered there as a matter of urgency and at the latest within eight days of filing, after the public prosecutor and the accused or their counsel have been heard in their oral submissions or duly summoned.

(4) Any operator subject to the measures provided for in Paragraph 3 is required, upon request by members of the Grand Ducal Police within the police force and by the officials referred to in Article 14(1) to facilitate the operations carried out by them pursuant to this law.

(5) A report of the findings and operations shall be drawn up. A copy of the report shall be given to the person concerned.

(6) The costs incurred by the measures taken pursuant to this article shall be included in the court costs and shall follow their allocation.

Article 16. Criminal penalties

(1) Shall be punishable by imprisonment for eight days to six months and a fine of EUR 251 to 100,000, or by only one of these penalties:

- a) anyone acting in breach of Article 69(1), of Regulation (EU) 2017/625;
- b) anyone acting in breach of the following articles of Regulation (EU) 2016/2031:
 - 1° Article 5(1);
 - 2° Article 8(2);
 - 3° Article 32(2), first subparagraph;
 - 4° Article 33(2);
 - 5° Article 43(1);
 - 6° Article 46(1), (2) and (3),;
 - 7° Article 48(2) and (3);
 - 8° Article 49(2), second subparagraph, point (c);

- 9° Article 52(2);
 - 10° Article 58;
 - 11° Article 59(1);
 - 12° Article 61;
 - 13° Article 64(1);
 - 14° Article 79(1);
 - 15° Article 80(1);
- c) any person who is not an operator and who acts in breach of Article 15(3) of Regulation (EU) 2016/2031;
- d) any person in charge of a quarantine station or containment facility and acting in breach of Article 62 of Regulation (EU) 2016/2031;
- e) any operator acting in breach of the following articles of Regulation (EU) 2016/2031:
- 16° Article 9(3);
 - 17° Article 14(1) and (3) to (7);
 - 18° Article 37(1);
 - 19° Article 40(1);
 - 20° Article 41(1);
 - 21° Article 42(2);
 - 22° Article 47(1);
 - 23° Article 53(1);
 - 24° Article 54(1);
 - 25° Article 69(1), (2), (4) and (6);
 - 26° Article 70;
 - 27° Article 84(1);
 - 28° Article 95(1), (3) and (4);
 - 29° Article 96(1);
 - 30° Article 97(1);
 - 31° Article 98(1), points (a) and (b), and (2).
- f) any postal service operator and any operator acting in breach of the following articles of Regulation (EU) 2016/2031:
- 32° Article 45(1), third subparagraph;
 - 33° Article 55.
- g) any port and airport operator and any international carrier acting in breach of the following articles of Regulation (EU) 2016/2031:
- 34° Article 45(1), first and second subparagraphs;
 - 35° Article 55.
- h) any authorised operator acting in breach of the following articles of Regulation (EU) 2016/2031:
- 36° Article 69(3);
 - 37° Article 84(1) and (3);
 - 38° Article 85;
 - 39° Article 86;
 - 40° Article 87(1) and (3);
 - 41° Article 90;
 - 42° Article 93;

- i) Anyone acting in breach of the emergency and administrative measures taken under Chapter 6 of this law.

(2) The judge shall, where appropriate, order the confiscation of any equipment and instruments used or intended to be used to commit the offence, as well as any vehicles used to commit the offence. This confiscation can also apply to plants, plant products and other objects.

(3) The judge may prohibit the marketing of plants, plant products, or other items for a period of three months to fifteen years. This prohibition shall take effect from the day the judgement imposing it becomes final.

(4) In the event of a repeat offence within two years or of fraud, the penalties may be doubled.

Chapter 8 – Final Provision

Article 17. Repealing provision

The law of 14 July 1971 concerning the protection of plants and plant products against harmful organisms is repealed.