



Draft Government amendments to draft law No 8177 amending the Law of 19 December 2014 on plant protection products

TEXT OF THE AMENDMENTS

Amendment 1

Article 1 of this draft law is amended as follows:

1. in the second subparagraph of Point 1, a full stop is added after the words "Art. 1";
2. in the second subparagraph of Point 2, the word "European" is inserted before the word "Union";
3. in the third subparagraph of Point 2, the words "as amended" are inserted between the words "Council" and ", hereinafter";
4. in the fourth subparagraph of Point 2, the word "No" is deleted between the word "(EU)" and the reference "2017/625" on two occasions, and the words "(Official Controls Regulation), as amended," shall be inserted between the words "Council," and "hereinafter".
5. the sixth subparagraph of Point 2 is replaced by the following text:
"Regulation (EU) 2022/2379 of the European Parliament and of the Council, of 23 November 2022, on statistics on agricultural input and output, amending Commission Regulation (EC) No 617/2008 and repealing Regulations (EC) No 1165/2008, (EC) No 543/2009 and (EC) No 1185/2009 of the European Parliament and of the Council and Council Directive 96/16/EC, hereinafter referred to as 'Regulation (EU) 2022/2379'"

Amendment 2

Article 3 of the same draft law is replaced by the following:

"Article 2 of the same law is replaced by the following provision:

'Art. 2. - Powers

(1) The department of plant protection of the Administration of Technical Agricultural Services (ASTA), hereinafter referred to as the "department", shall be responsible for managing the tasks provided for in this law and for organising and ensuring all necessary contacts with applicants, the other Member States, the European Commission and the European Food Safety Authority.

(2) The official controls of products covered by this law, at all stages of production, marketing and use, shall be carried out by the department responsible for checking compliance with the provisions of this law.

(3)The Minister responsible for agriculture and viticulture, hereinafter referred to as the 'Minister', may delegate the performance of official controls and other official activities to other administrations or delegated bodies."

Amendment 3

Article 4 of the same draft is replaced by the following: "In the third subparagraph, first indent, of Article 3 of the same law, the word 'four' is replaced by the word 'five'.

Amendment 4

Article 5 of the same draft law is amended as follows:

1. in the heading, a full stop is inserted between the abbreviated form "Art" and the article number "5" ;
2. The ninth subparagraph is deleted.

Amendment 5

Article 6 of the same draft law is amended as follows:

1. in the heading, a full stop is added after the abbreviation "Art" ;
2. in the first subparagraph, the words "In the same law" are deleted and replaced by the words "After Article 4 of the same law," and the word "drafted" is deleted and replaced by the words "new, worded".
3. in the second subparagraph, a full stop is added after the words "Art. 4a";
4. in the fourth subparagraph, a full stop is added after the words "Article 4b";
5. in the fifth subparagraph, the words "as amended" are added between the words "(General Data Protection Regulation)" and the word "and", and the reference to Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data is deleted.
6. In the seventh subparagraph, a full stop is added after the words "Art. 4c";
7. in the last subparagraph, the words "Regulation (EC) No 2017/625" are replaced by the words "Regulation (EU) 2017/625".

Amendment 6

Article 7 of the same draft law is amended as follows:

1. in the heading, a full stop is added after the abbreviation "Art" ;
2. in the first subparagraph, a comma is added after the words "of the same law" and the word "remplacée" ("replaced") corrected to "remplacé" [masculine] in the French version;
3. in the third subparagraph, the words "the examination report and", the Letter 's' and the word "of" are deleted, and the word "of" is added after the number "13".

Amendment 7

In Article 8 of the same draft law, a comma is added after the words "second subparagraph".

Amendment 8

Article 9 of the same draft law is amended as follows:

1. In the heading, a point is added after the abbreviated form "Art";
2. Article 9 of the same draft law is replaced by the following text:

"Article 9 of the same law is amended as follows:

1. Paragraph 1 is subdivided into two paragraphs.
2. The content of the new Paragraph 1 reads as

follows:

"(1) aerial spraying is prohibited.";

3. The content of the new Paragraph 1a, reads as follows:

"(1a) By way of derogation from Paragraph 1, aerial spraying may be authorised if the following conditions are met:

1. there is no viable alternative, or aerial spraying has clear advantages over ground application of plant protection products, in terms of impacts on human and animal health and the environment;
2. the plant protection products used are expressly approved for aerial spraying following specific assessment of the risks associated with aerial spraying;
3. the operator carrying out the aerial spraying holds a certificate referred to in Article 5, Paragraph 2;
4. the undertaking responsible for aerial spraying holds a certificate issued by the Minister for Transport authorising it to use equipment and aircraft for aerial spraying of plant protection products;
5. if the area to be sprayed is in the immediate vicinity of areas open to the public, the authorisation shall include specific risk management measures and provide for compliance with safety distances as laid down by grand-ducal regulation in order to exclude harmful effects on the health of passers-by. The area to be sprayed is not in close proximity to residential areas;
6. if the area to be sprayed is in close proximity to surface water or areas protected under the amended law, of 19 December 2008, on water or the amended law, of 18 July 2018, on the protection of nature and natural resources, the authorisation shall include specific risk management measures as laid down by grand-ducal regulation in order to ensure compliance with the environmental objectives set by these laws;
7. if the area to be sprayed is in close proximity to specific areas or

plots of agricultural land or vineyards cultivated in accordance with Regulation (EU) 2018/848 of the European Parliament and of the Council, of 30 May 2018, on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007, or is restricted or prohibited, a safety distance shall be respected, to be defined by grand-ducal regulation;

8. the aircraft is equipped with accessories constituting state-of-the-art technology for reducing spray drift.";

4. the content of Paragraph 3 reads as follows:

"(3) in circumstances of particular urgency or exceptional situations, the Minister may grant individual authorisations without seeking the opinion of the plant protection products commission, whom they shall inform of their decision.";

5. the content of Paragraph 6 x:

"(6) A grand-ducal regulation shall lay down detailed rules for the application of this article and shall define the area within which the Minister may, on the advice of the Commission, authorise the application of plant protection products using aircraft. That area, known as the "aerial spraying area", is defined according to the topography, the cultivation system, the existence of property and protected areas, as listed in Paragraph 1a), Points 5 and 6, and the existence of dwellings and gardens.

The grand-ducal regulation shall include a graphical section consisting of a series of extracts from the topographical map showing the boundaries of the aerial spraying area."

Amendment 9

In the second subparagraph of Article 10 of the same draft law, a full stop is added after the words "Art. 13".

Amendment 10

Article 12 of the same draft law is replaced by the following:

"After Article 16 of the same law, a new Article 16a is inserted, reading as follows:

'Art. 16a. - Control powers in relation to official controls

(1) The department's agents, as well as those of other administrations and delegated bodies designated in accordance with Article 2, Paragraph 3, shall be authorised to:

1. carry out their duties of monitoring and official controls of the products covered by this law;
2. have free access to operators' premises, facilities, equipment and sites, including their means of transportation;
3. request communication of all registers, entries and documents relating to products covered by this law, to take copies of them and to obtain a translation thereof in one of the three administrative languages;

4. access the data of operators' computer systems within the framework of the official controls provided for in this law;
5. photograph the products, facilities, premises, sites, means of transport and all documents used;
6. take or obtain copies of information, data or documents, regardless of their storage media, including online interfaces;
7. carry out, or have carried out, technical and scientific measurements and examinations of the facilities, premises, sites and means of transport used;
8. take samples, or have samples taken, of the products covered by this law, for examination or analysis. A receipt shall be issued for the samples.

The owner or holder of the samples taken has the right to request a repeat sample and be compensated at the current price of the samples, unless they expressly waive this right;

9. require the operator concerned and their staff to provide all information necessary for them to carry out official controls;
10. purchase or arrange test purchases of goods or services, if necessary anonymously or under a false identity, and inspect, analyse and test the goods and services.

(2) The operator shall be entitled to request a second expert opinion at any time, at its own expense, in accordance with Article 35, Paragraphs 1 and 2, of Regulation (EU) 2017/625.

The request for a second expert opinion made by the operator pursuant to the first subparagraph is without prejudice to the Minister's right to order the administrative measures referred to in Article 19.

In the event of any dispute between the department and the operators in relation to the second expert opinion referred to in the first subparagraph, operators may, at their own expense, request the documentary examination of the initial analysis, test or diagnosis and, where appropriate, another analysis, test or diagnosis by another official laboratory.

The counter-sample shall be taken at the time of sampling at the request of the operator.

(3) In carrying out their monitoring and control tasks, agents of the department shall carry out official controls and announce their presence to the operator or its representative. If this is not possible, it shall be mentioned in the statement.

These agents may be accompanied by:

1. personnel appointed by the competent authority of another Member State 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 shall have the right to accompany the agents of the department, as well as natural persons and bodies designated in accordance with Article 2, Paragraph 3, carrying out official controls during the visit and shall facilitate the control operations that they carry out.

These agents shall have the right to directly request the assistance of the law enforcement authority in carrying out their duties.

(5) A written report shall be made on official control operations, findings, obligations and corrective measures to be implemented within set deadlines, including the withdrawal and recall of products. A copy of the written report shall be issued to the operator."

Amendment 11

Article 13 of the same draft law is amended as follows:

1. in the second subparagraph, a full stop has been added after the words "Art. 17";
2. in the fifth subparagraph, the words "referred to in Paragraph 1 in accordance with the provisions of Articles 79, 81 and 82 of Regulation (EU) No 2017/625" are deleted and replaced with the words "for official controls and other official activities in accordance with the provisions of Articles 79, 80, 81 and 82 of Regulation (EU) 2017/625";
3. the sixth subparagraph is deleted and replaced with the following: "The break-even point for the collection of fees is set at EUR 100, in accordance with the provisions of Article 79, Paragraph 4, of Regulation (EU) 2017/625."

Amendment 12

Article 14 of the same draft law is replaced by the following:

"Article 18 of the same law is replaced by the following provision:

'Art. 18. - Detection of offences, powers and prerogatives

(1) In addition to members of the Grand-Ducal Police, officials and agents of the Customs and Excise Administration from the grade of senior brigadier, the director, officials and agents of processing group A1 and A2, scientific and technical subgroup, and officials and agents of processing group B1, technical subgroup of the Administration of Technical Agricultural Services (ASTA), officials and agents of processing group A1 and A2, scientific and technical subgroup, and officials and agents of the Control Unit of processing group B1, technical subgroup of the Ministry of Agriculture, Food and Viticulture Control unit, officials and agents of processing group A1 and A2, scientific and technical subgroup of the Environment Administration, officials and agents of processing group A1 and A2, scientific and technical subgroup of the Nature and Forest Administration (ANF), the director, deputy director and staff of the superior inspection quarry and officials and agents of processing group A1 and A2, scientific and technical subgroup for the inspection of labour and mines, the director, the deputy director, the doctors and pharmacists of the Health Directorate, the director, the deputy directors and officials and agents of processing group A1 and A2, scientific and technical subgroup, officials and agents of processing group B1, technical subgroup of the Luxembourg Veterinary and Food Administration (ALVA), the director, deputy director and officials and agents of processing group A1 and A2, scientific and technical subgroup of the Water Management Authority,

may be made responsible for detecting offences under this law and of the regulations issued for its implementation.

(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 exercise these functions throughout the territory of the Grand Duchy of Luxembourg. They shall report any offences in written statements that shall serve as evidence in the absence of proof to the contrary.

(3) The officials and agents referred to in Paragraph 1 shall have undertaken a special eight-hour professional training course on the theoretical and practical elements necessary for the performance of their duties.

This training shall include modules on the Criminal Code and the Code of Criminal Procedure, which cover topics such as the role of the public prosecutor's office, the classification of offences, the judicial system and the specific powers of authorised officers, including the detection and recording of offences under this law.

Candidates must validate their training by passing a knowledge assessment covering the general principles of criminal law and criminal procedure, and the relevant aspects of this law. If the mark awarded to the candidate is at least 30 out of 60 points, the candidate is considered to have passed the course.

Should they fail, candidates may register for a future knowledge assessment. The candidate is free to repeat the training. However, should they fail for a second time, they must retake the training course before they can resit the knowledge assessment.

The subject matter and format of the knowledge assessment shall be determined by grand-ducal regulation.

Officials and agents engaged for a fixed period and those serving a probationary period or induction period may not 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 shall be exempted from the training requirements and knowledge testing in this paragraph.

(4) Before taking office, the officials and agents referred to in Paragraph 1 shall take the following oath before the presiding judge of the district court of their domicile, sitting in civil matters: "I swear to perform my duties with integrity, accuracy and impartiality."

(5) Article 458 of the Penal Code shall apply.

(6) The members of the Grand-Ducal Police and the officials and agents referred to in Paragraph 1 may have access by day and night to the operator's facilities, premises, sites and means of transport used, subject to this law and the regulations issued for its implementation, in the event of evidence suggesting a serious violation of this law and its implementing regulations.

They shall announce their presence to the operator concerned. If this is not possible, it shall be mentioned in the statement.

The operator shall have the right to accompany the members of the Grand-Ducal Police and the officials and agents referred to in Paragraph 1 during the visit.

(7) The provisions of Paragraph 6 shall not apply to premises used for residential purposes.

However, and without prejudice to Article 33, Paragraph 1, of the Code of Criminal Procedure, in the event of serious evidence to suggest that the origin of the offence is in the premises intended for residential purposes, a home visit may be made between 6.30 and 20.00 by a judicial police officer, member of the Grand-Ducal Police belonging to the police corps or an official and agent referred to in Paragraph 1, acting under a warrant of the investigating judge.

(8) In the exercise of the powers provided for in Paragraphs 6 and 7, members of the Grand-Ducal Police belonging to the police corps and the officials and agents referred to in Paragraph 1 shall be empowered to:

1. receive copies of all registers, records and documents relating to the products and articles covered by this law;
2. access the data of operators' computer systems within the framework of the official controls provided for in this law;
3. photograph the non-compliance found;
4. carry out, or have carried out, technical and scientific measurements and examinations of the products, facilities, premises, sites and means of transport used subject to this law;
5. take samples, or have samples taken, of the products and items covered by this law, for examination or analysis. A receipt shall be issued for the samples. A part of the sample, sealed or secured, shall be handed over to the operator, unless the operator expressly renounces this right or there are technical reasons for not doing so. The owner or holder of the samples taken shall be compensated at the current value of the samples, unless they expressly renounce this right or in the event of non-conformity;
6. in the event of an offence, seize and, if necessary, sequester the products and items covered by this law and the objects used to commit the offence or which would have been used to commit the offence, as well as the registers, records and documents relating to them;
7. interview the operator concerned and their staff.

(9) The seizure provided for in Paragraph 8, Point 6, may be maintained only if it is validated by order of the investigating judge within eight days, not including Saturdays, Sundays and public holidays.

The discharge of attachment pronounced by order of the investigating judge may in any event be sought, namely:

1. from the council chamber of the district court during the investigation;
2. from the police judge, in the case of a summary offence;
3. from the criminal division of the district court when the case is referred to it by order for reference or by direct summons;
4. from the criminal division of the court of appeal if an appeal has been lodged or if an appeal in the court of cassation has been lodged.

The petition shall be lodged with the registry of the court called to adjudicate. A decision shall be taken as a matter of urgency and at the latest within eight days of the filing, with the public prosecutor and the accused or their defence counsel being heard in their oral explanations or duly summoned.

(10) Any operator subject to the measures provided for in Paragraph 8 shall, if so requisitioned by members of the Grand-Ducal Police and officials and agents referred to in Paragraph 1, facilitate the operations carried out by the latter under this law.

(11) A report of the findings and operations shall be written up. A copy of the report shall be issued to the operator.

(12) The costs incurred as a result of measures taken under this Article shall be included among the legal costs and processed accordingly."

Amendment 13

Article 15 of the same draft law is amended as follows:

1. in the second subparagraph, a full stop is added after the words "Art. 19";
2. in the fifth subparagraph, the words "must remedy" are deleted and replaced by the word "remedies" and the number "6" is deleted and replaced by the word "six";
3. in the seventh subparagraph, the word "European" is inserted between the words "the" and "Union";
4. the 19th subparagraph is amended and replaced with the following paragraph:
"(4) The measures provided for in Paragraph 1 are subject to review by the Administrative Court. This appeal must be brought within three months of notification of the decision or entitlement will lapse."

Amendment 14

Article 16 of the same draft law is replaced by the following:

"After Article 19 of the same law, a new Article 19a is inserted, reading as follows:

'Art. 19a. - Administrative fines

- (1) The Minister may impose an administrative fine on any person who:
 1. has used a plant protection product or adjuvant not authorised under the provisions of Article 4 and Regulation (EC) No 1107/2009;
 2. has used seeds treated with a plant protection product that is not authorised under Regulation (EC) No 1107/2009 for such treatment, or has used seeds treated in violation of the provisions of a decision of the Minister based on Article 4, Paragraph 7, or in violation of the provisions of Articles 6, 20 or 49 of Regulation (EC) No 1107/2009, or in violation of the conditions of use appearing on the label of the treated seeds and in the documents accompanying the treated seeds;
 3. has not made the registration pursuant to Article 4c or who has not

kept the information submitted with the registration up to date;

4. has used plant protection products or adjuvants without complying with the conditions and requirements laid down in Articles 5 and 7 of this law;

5. has not complied with the certification requirements provided for in Article 5, Paragraph 2;

6. has not complied with the requirements applicable to the sale of plant protection products set out in Article 6;

7. has used application equipment that does not comply with the requirements of Article 8;

8. has not complied with the authorisation conditions for aerial spraying provided for in Article 9 or with the conditions and obligations set out in the Minister's authorisation and the grand-ducal regulation referred to in Article 9;

9. has not handled or stored plant protection products or processed their packaging and product residues in accordance with Article 12;

10. has used a basic substance not approved in accordance with Article 23 of Regulation (EC) No 1107/2009 or contrary to the provisions of the approval regulation referred to in Article 13 of Regulation (EC) No 1107/2009;

11. has not complied with the rules on packaging and presentation provided for in Articles 64 and 65 of Regulation (EC) No 1107/2009;

12. has not complied with the provisions of Article 15 on advertising or Article 66 of Regulation (EC) No 1107/2009;

13. has not complied with the record-keeping requirements provided for in Article 67 of Regulation (EC) No 1107/2009;

14. has not communicated the information and data provided for in Article 67, Paragraphs 1 to 3, of Regulation (EC) No 1107/2009;

15. has not paid the fees provided for in Article 17;

16. acting in violation of delegated or implementing regulations adopted by the European Commission, on the basis of the provisions mentioned above.

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

(3) When determining the level of the amount of the administrative fine, the minister shall take into account all relevant circumstances and, where appropriate:

1. the seriousness and duration of the violation;
2. the degree of responsibility of the operator;
3. past breaches committed by the operator.

(4) Administrative fines shall be collected by the Luxembourg Registration

Duties, Estates and VAT Authority (AED) in the same way as registration fines. Administrative fines must be settled within 30 days of the date of notification of the decision. After this period, a reminder is sent by registered mail. If the reminder is sent, interest on arrears is payable, calculated at the legal rate.

(5) Against decisions taken under this article, an application for review is available before the administrative court. This appeal must be brought within three months of notification of the decision or entitlement will lapse."

Amendment 15

Article 17 of the same draft law is replaced by the following:

"Article 20 of the same law is replaced by the following provisions:

Art. 20. Criminal penalties

(1) Any person committing the following shall be liable to a term of imprisonment of between eight days and three years and a fine of between EUR 251 and EUR 250 000, or only one of those two penalties:

1. to have placed on the market a plant protection product or adjuvant not authorised in accordance with Article 4 or in accordance with Article 28, Paragraph 1, of Regulation (EC) No 1107/2009;
2. to have placed on the market a plant protection product for which a parallel trade permit has not been granted in accordance with Article 4, second subparagraph, or Article 52, Paragraph 1, of Regulation (EC) No 1107/2009;
3. to have manufactured or placed on the market a plant protection product or adjuvant, the composition of which does not correspond to the information submitted to obtain the authorisation or parallel trade permit issued by the Minister;
4. to have carried out experiments or tests for the purpose of researching or developing an unauthorised plant protection product without obtaining authorisation from the Minister in accordance with the fifth subparagraph of Article 4, or without complying with the conditions laid down in that authorisation;
5. to have carried out aerial spraying without the authorisation of the Minister provided for in Article 9 or have carried out spraying of areas not covered by that authorisation;
6. to have failed to comply with the measures provided for in Articles 10 and 11 relating to protection of the aquatic environment and water intended for human consumption, and to reduction of the use of plant protection products or of risks in specific areas;
7. as an operator, to refuse or obstruct the operations of the official control referred to in Article 16a;
8. to refuse or obstruct investigations into offences referred to in Article 18, Paragraph 6;
9. not to comply with the measures imposed pursuant to Article 19,

Paragraph 1;

10. to have placed on the market seeds treated with a plant protection product not authorised under Regulation (EC) No 1107/2009 for such treatment, or to have placed on the market seeds treated in violation of the provisions of Articles 6, 20 or 49 of Regulation (EC) No 1107/2009 or a decision of the Minister based on Article 4, seventh subparagraph;

11. to have introduced into a plant protection product an active substance that has not been approved or that does not comply with the conditions and restrictions referred to in Article 6 or 20 of Regulation (EC) No 1107/2009;

12. to have placed a substance on the market as a basic substance not approved in accordance with Article 23 of Regulation (EC) No 1107/2009;

13. to have introduced a safener or synergist into a plant protection product in violation of Article 25 of Regulation (EC) No 1107/2009;

14. to have included an unacceptable co-formulant referred to in Article 27 of Regulation (EC) No 1107/2009 into a plant protection product or adjuvant;

15. not to have complied with its obligation to provide information in accordance with Article 56 of Regulation (EC) No 1107/2009;

16. to have provided false or misleading information concerning the facts on the basis of which the authorisation was granted or the parallel trade permit was issued pursuant to Article 4, first to eighth subparagraphs, and in the cases referred to in Article 44, Paragraph 3, Letter b), of Regulation (EC) No 1107/2009;

17. to have failed to comply with the emergency measures, the measures in cases of extreme urgency and other emergency measures taken pursuant to Articles 69, 70 and 71 respectively of Regulation (EC) No 1107/2009.

(2) The judge shall, where appropriate, order the confiscation of products, equipment, vehicles and instruments used or intended to be used to commit the offence, as well as the vehicles used to commit the offence.

(3) The judge may order a prohibition on the marketing of agricultural products for a period of 3 months to 15 years. This prohibition shall take effect from the day on which the decision pronouncing it acquires the authority of res judicata.

(4) In the event of a second offence within the two-year period, the penalties may be increased to a maximum of double.

(5) In the event of fraud, penalties may be increased to a maximum of twice the amount of the benefit derived from the violation, where that amount can be determined, or to a maximum amount of EUR 1 000 000."

Amendment 16

In the heading of Article 18 of the same draft law, a full stop is added after the abbreviated form "Art".

Amendment 17

The promulgation formula "We mandate and order that this law be entered in the Official Journal of the Grand Duchy of Luxembourg in order to be implemented and observed by all those concerned with the matter." is deleted.