



Draft Government amendments to draft law 8300 on official controls and other official activities concerning transmissible animal diseases

TEXT OF THE AMENDMENTS

Article 1

The title of the draft law is amended and replaced as follows:

'Draft law on official controls and other official activities concerning transmissible animal diseases'.

Amendment 2

In the heading of Chapter 1, preceding Article 1, the letters 'er' are inserted after the number 1 in the French text, in superscript, to read 'Chapitre 1^{er}'.

Amendment 3

The following amendments are made to Article 1:

- in (2), point 3., Article 1, a space is added between the numbered point and its text;
- in (2), point 4., the abbreviation 'No' preceding European Regulations 1069/2009 and 1774/2002 is replaced by the abbreviation 'n^o' in the French text and at the end of point 4., the words 'as amended' are added;
- in the introductory sentence of (4), the words 'the provisions the European regulations' are replaced by the words 'the provisions of the European regulations';
- in (4), point 1., the words 'Regulation (EU) No 999/2001' are replaced by the words 'Regulation (EC) No 999/2001';
- in (4), point 3., the terminal semicolon is replaced with a full stop.

Amendment 4

Article 2 of the draft law is deleted.

Amendment 5

Article 2 (formerly 3) of the draft law is amended to read as follows:

Article 2. Definitions

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

1. 'ALVA': the Luxembourg Veterinary and Food Administration, which is responsible for the implementation of animal health legislation, as well as for the performance of official controls and other official activities relating to transmissible animal diseases;
2. 'fraud': the substitution, modification or misuse of an animal or product of animal origin or of any important information in relation to the animal or product of animal origin, as well as any erroneous information or allegations relating to the animal or

product of animal origin that is intentional in nature, for the purpose of deceiving and making an economic profit;

3. 'Minister': the Minister for Agriculture;

4. 'online interface': any software, including a website, part of a website or an application, as defined in Article 3(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;

5. 'operator': any person referred to in Article 3(29) of Regulation (EU) 2017/625 and subject to compliance with the obligations set out in this law;

6. 'germinal products' means products within the meaning of Article 4(28) of Regulation (EU) 2016/429;

7. 'products of animal origin' means products within the meaning of Article 4(29) of Regulation (EU) 2016/429;

8. 'animal by-products' means products within the meaning of Article 4(30) of Regulation (EU) 2016/429;

9. 'products': all products as defined in points 6., 7. and 8. of this Article.

Amendment 6

The heading 'Chapter 2 – Official controls' is replaced by the heading 'Chapter 2 – Control powers in relation to official controls'.

Amendment 7

Article 4 of the draft law is deleted.

Amendment 8

Article 3 (formerly 5) of the draft law is amended to read as follows:

'Article 3. Control powers in relation to official controls

(1) ALVA agents, as well as natural persons and delegated bodies designated in accordance with Article 2(2) of the Law of 8 September 2022 establishing the Luxembourg Veterinary and Food Administration, are authorised to:

1. Carry out their official control and surveillance tasks relating to the prevention of animal diseases transmissible to animals and humans respectively, in the context of combating such animal diseases.

2. Request communication of all registers, entries, documents and other information relating to the animals and to products of animal origin covered by this law, to take copies of them and to obtain a translation thereof in one of the three administrative languages.

3. Access the data of operators' computer systems within the framework of the official controls provided for in this law.

4. Have free access to operators' premises, facilities, equipment, sites, public and private land, and means of transport.

5. Take or obtain copies of information, data or documents, regardless of their storage media, including online interfaces.

6. Photograph the animals, products of animal origin, facilities, premises, sites and means of transport subject to this law.

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 from animals and products for the purposes of examination or analysis. A receipt shall be issued for the samples. Part of the sample, sealed or secured, shall be returned to the operator of the facility, premises, site or means of transport used, or to their representative, 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.

9. Require the operator concerned and their staff to provide all information necessary for them to carry out official controls.

10. Make test purchases of the products, if necessary anonymously or under a false identity, and inspect, analyse and test the products.

11. Control the transport of animals on public highways.

(2) The operator shall be entitled to request a second expert opinion at any time, at its own expense, in accordance with Article 35(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 right of ALVA to order the emergency measures referred to in Article 10 of this law or the right of the Minister to order the administrative measures referred to in Article 11 of this law.

In the event of any dispute between ALVA and the operators in relation to the second expert opinion referred to in the first subparagraph of this paragraph, 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 duties, ALVA agents 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 officials may be accompanied by:

1. staff 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 ALVA agents during the visit, as well as natural persons and bodies designated in accordance with Article 2(2) of the Law of 8 September 2022 establishing the Luxembourg Veterinary and Food Administration who are carrying out official controls, and must facilitate the control operations that they carry out.

(5) Should ALVA agents encounter difficulties in carrying out their duties, they have the right to directly request the assistance of law enforcement, who will provide them with support or technical assistance.

(6) A written report shall be made on official control operations, findings, obligations and corrective measures to be implemented within set deadlines. A copy of the written report shall be issued to the operator.'

Amendment 9

Article 6 of the draft law is deleted.

Amendment 10

Article 7 of the draft law is deleted.

Amendment 11

The former Article 8 'Notifications of animal diseases' is renumbered '4'.

In paragraph 1, the word 'points' is deleted and replaced by the word 'letters' and a comma is added after the parenthesis containing the letter 'b'.

In paragraph 2, the word 'point' is deleted and replaced by the word 'letter' and a comma is added after the parenthesis containing the letter 'c'.

Amendment 12

Article 5 (formerly 9) of the draft law is amended to read as follows:

Article 5. Animal disease surveillance and eradication programmes

(1) On the proposal of ALVA, the Minister shall establish animal disease monitoring and eradication programmes in accordance with Articles 28 to 35 of Regulation (EU) 2016/429 and in accordance with Article 6 of Regulation (EC) No 999/2001.

(2) Grand-ducal regulations shall specify the measures to be taken in the field of animal health pursuant to the preceding paragraph, within the limits and conditions laid down by European legislation.

Amendment 13

Article 7 (formerly 11) of the draft law is amended to read as follows:

Article 7. Registration and approval

(1) The operators and transporters referred to in the first paragraph of Articles 84, 87, 90 and 172 of Regulation (EU) 2016/429 shall notify the Minister for the purposes of registration of their activity. Notification of the activity results in automatic registration of the above-mentioned operators and transporters.

(2) By way of derogation from (1) of this Article, and before being able to carry out their activities, operators of the establishments referred to in Articles 94, 95, 177, 178 and 179 of Regulation (EU) 2016/429 shall be approved by the Minister, with ALVA being consulted for its opinion.

(3) A grand-ducal regulation shall specify the procedures and arrangements for notifying the activity, registering the activity and obtaining, suspending and withdrawing the authorisation referred to in (1) and (2) of this Article.

(4) The list of registered establishments and online interfaces, as well as approved establishments, shall be made available to the public.

Amendment 14

In Article 8 (formerly Article 12) a full stop is added in the French text after indication of the article number, so that it reads 'Art. 8.'

The lettered list 'a), b), c)' is replaced by a numbered list characterised by a number followed by a full stop '.' and taking the form '1., 2., 3.'

The words 'paragraph 1' are replaced by the words 'first paragraph'.

Amendment 15

Article 9 (formerly 13 and 14) of the draft law is amended to read as follows:

'Article 9. Fees for official controls and other official activities

(1) A Grand-Ducal regulation shall determine the amount of the fees, in accordance with the provisions of Articles 79, 80, 81 and 82 of Regulation (EU) 2017/625 and specify the terms for the collection and payment of such fees, in accordance with the provisions of Articles 83 and 84 of Regulation (EU) 2017/625.

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

Amendment 16

Article 14 of the draft law is deleted.

Amendment 17

Article 10 (formerly 15) of the draft law is amended to read as follows:

Article 10 Emergency measures

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

(2) ALVA may order:

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

2. all emergency measures necessary for the purposes of regularising and ceasing breaches of European regulations and of this law and its implementing regulations, in the event of an imminent and serious danger to human and animal health.

The emergency measures provided for in this paragraph shall have a maximum period of validity of 48 hours. On the basis of a second check carried out upon expiry of the fixed period of validity, they may, where appropriate, be extended for a maximum period of five days in the event that the operator has not put an end to the non-compliance or in the event that an imminent and serious danger to human or animal health persists. Within this maximum period of five days, the Minister shall confirm the extension and take any decision needed regarding a further extension, which may not exceed 30 days, renewable twice.

(3) As soon as ALVA has found that the operator concerned has eliminated the non-compliance that was the subject of the measures provided for in (1) and (2), the measures shall be lifted.

(4) The order prescribed under (1) and (2) of this Article shall be notified by registered letter with acknowledgement of receipt or delivered by hand to the operator. It shall be reasoned, take effect on the date of its notification and its duration shall depend on the nature, gravity and frequency of the non-compliance detected, with the operator against whom the measures have been taken being heard or summoned.

(5) The orders provided for in this article may be appealed for review before the administrative court. Appeals must be brought within three months of notification of the decision or entitlement will lapse. The costs incurred as a result of that order shall be borne by the operator, unless the order is annulled by the administrative judge. The Luxembourg Registration Duties, Estates and VAT Authority (AED) shall be responsible for recovering the advance costs communicated to it by the director of ALVA. The collection process is the same as for registration fees.

Amendment 18

Article 11 (formerly 16) of the draft law is amended to read as follows:

'Article 11. Administrative measures

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

1. grant a period within which the operator must comply with the conditions laid down in the approval, which may not exceed six months;
2. in the event of failure to meet the deadline for compliance, suspend or withdraw registration or approval, after serving formal notice, or close the undertaking, operation, establishment, installation, online interface, premises or site, in whole or in part, and affix seals.

(2) The measures provided for in the first paragraph may be appealed for review before the administrative court. Appeals must be brought within three months of notification of the decision or entitlement will lapse.

(3) As soon as it has been found that the non-compliance that was the subject of the measures provided for in (1) has been eliminated, the measures shall be lifted.'

Amendment 19

Article 12 (formerly 17) of the draft law is amended to read as follows:

'Article 12. Administrative Fines

(1) The Minister may impose an administrative fine on any person:

(a) acting in breach of the following sections of this law:

1. Article 3;
2. Article 5(2);
3. Article 7.;
4. Article 4(1) and (2);
5. Article 9.

(b) acting in breach of the following articles of Regulation (EU) 2016/429:

1. Article 10(1), (2), (3) and (5);

2. Article 11(1);
3. Article 12(1) and (3);
4. Article 16(1);
5. Article 17;
6. Article 24;
7. Article 25(1);
8. Article 66;
9. Article 94(2);
10. Article 95(b);
11. Article 96(2);
12. Article 102(1) and (3);
13. Article 103(1) and (3);
14. Article 104(1) and (3);
15. Article 105(1) and (3);
16. Article 112;
17. Article 113(1);
18. Article 114;
19. Article 115;
20. Article 117;
21. Article 121;
22. Article 124;
23. Article 125(1);
24. Article 126;
25. Article 127;
26. Article 128;
27. Article 129;
28. Article 130;
29. Article 132(1);
30. Article 134;
31. Article 136(1);
32. Article 137(1);
33. Article 143;
34. Article 148;
35. Article 151(1) and (2);

36. Article 152;
37. Article 155;
38. Article 157;
39. Article 158;
40. Article 159;
41. Article 161(1), (2), (3) and (5);
42. Article 163(1);
43. Article 164(1);
44. Article 166(1) and (2);
45. Article 167(1), (2) and (4);
46. Article 169(1) and (4);
47. Article 176(3);
48. Article 186(1) and (3);
49. Article 187;
50. Article 188(1) and (3);
51. Article 191;
52. Article 192(1);
53. Article 193(1) and (2);
54. Article 194;
55. Article 195;
56. Article 196(1);
57. Article 197(1) and (2);
58. Article 200(1) and (2);
59. Article 201(1);
60. Article 202(1) and (2);
61. Article 203(1);
62. Article 205(1);
63. Article 208;
64. Article 209(1) and (2);
65. Article 215;
66. Article 218(1) and (2);
67. Article 219;
68. Article 222(1) and (2);
69. Article 223(1), (2), (3) and (5);

70. Article 225(1) and (3);
71. Article 227;
72. Article 229(2);
73. Article 240(1);
74. Article 242(1);
75. Article 243(3);
76. Article 245(2);
77. Article 246(1);
78. Article 247;
79. Article 248(1) and (2);
80. Article 249(1) and (2);
81. Article 250(1) and (2);

(c) acting in breach of the following Articles of Regulation (EU) 2017/625:

1. Article 15(1), (2), (3), (5) and (6);
2. Article 47(5);
3. Article 50(1) and (3);
4. Article 54(1);
5. Article 56(1) and (4);

(d) acting in breach 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 shall be set at between EUR 250 and EUR 10 000.

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 breach;
2. the degree of responsibility of the operator;
3. past breaches committed by the operator.

(3) Administrative fines shall be collected by the Luxembourg Registration Duties, Estates and VAT Authority (AED). 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.

(4) Decisions made under this article may be appealed for review before the administrative court. Appeals must be brought within three months of notification of the decision or entitlement will lapse.'

Amendment 20

Article 13 (formerly 18) of the draft law is amended to read as follows:

‘Article 13. Investigation and detection of criminal offences

(1) In addition to members of the Grand-Ducal Police, acting as an officer or judicial police officer, directors, officials and agents of salary grades A1, A2 and B1 of ALVA and officials of the Customs and Excise Administration from the rank of principal brigadier upwards may be entrusted with the task of reporting infringements of this law and the regulations issued for its implementation.

(2) In the performance of their duties, the officials and agents referred to in (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 (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 officials and agents, 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 (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”.

Article 458 of the Penal Code shall apply to them.’

Amendment 21

Article 14 (formerly 19) of the draft law is amended to read as follows:

‘Article 14. Powers and prerogatives for the investigation and detection of criminal offences

(1) The members of the Grand-Ducal Police and officials and agents referred to in Article 13(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 breach 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 Article 13(1) during the visit.

(2) The provisions of (1) shall not apply to premises used for residential purposes.

However, and without prejudice to Article 33(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 one judicial police officer, a member of the Grand-Ducal Police or an official or agent referred to in Article 13(1), acting under a warrant of the investigating judge.

(3) In the exercise of the powers provided for in (1) and (2), members of the Grand-Ducal Police and the officials and agents referred to in Article 13(1) shall be empowered to:

1. Have free access to operators' premises, facilities, equipment and sites, including their means of transport.
 2. Take or obtain copies of information, data or documents, regardless of their storage media, including online interfaces.
 3. Request communication of all registers, entries and all documents relating to the animals and products of animal origin 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 non-compliance found.
 6. Carry out or have carried out technical and scientific measurements and examinations of the facilities, premises, sites and means of transport used.
 7. Take samples from animals and products of animal origin for the purposes of 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.
8. 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.
 9. Interview the operator concerned and their staff.
 10. Make test purchases of animals and products of animal origin or have them made, if necessary anonymously or under a false identity.

11. Carry out documentary controls, identity checks and physical controls on animals and products of animal origin.

12. Proceed, with the prior authorisation of the public prosecutor to euthanise seized animals that are in a hopeless medical situation and showing significant and constant physical or psychological suffering with no prospect of improvement.

The seizure provided for in point 8. 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 closed session of the district court during the investigation;
2. from the police court, 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 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.

(4) Any operator subject to the measures provided for in (3) above shall, if so requisitioned by the members of the Grand-Ducal Police and officials and agents referred to in Article 13(1), facilitate the operations carried out by the latter under this law.

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

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

Amendment 22

Article 15 (formerly 20) of the draft law is amended to read as follows:

'Article 15. Criminal penalties

(1) the following shall be punished by a fine of between EUR 150 and EUR 2 000:

1. an operator who carries out movements of animals and their products to or from a restricted area without ALVA authorisation or an area subject to movement restrictions pursuant to Regulations (EU) 2016/429 and 2017/625;
2. an operator who carries out movements of animals and their products without the necessary accompanying transport and identification documents pursuant to Regulations (EU) 2016/429 and 2017/625.

This fine has the character of a summary offence.

(2) 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 2 001 and EUR 250 000 or only one of those two penalties:

1. acting in breach of Article 3(1), knowingly preventing or hindering, in any way whatsoever, performance of the duties of the staff referred to in Article 3;
2. acting in breach of Articles 10 and 11, knowingly preventing or obstructing, in any way whatsoever, administrative measures taken by ALVA or the Minister;
3. acting in breach of the following articles of Regulation (EC) No 999/2001:
 - (a) Article 2, first subparagraph;
 - (b) Article 7(1) and (2);
 - (c) Article 8(1) and (3);
 - (d) Article 9(1) and (2);
 - (e) Article 15(1) and (2);
 - (f) Article 16(2) to (6).
4. acting in breach of Article 69(1) of Regulation (EU) No 2017/625.
 - (3) The magistrate shall, where appropriate, order confiscation of the animals, products of animal origin, equipment, machinery and instruments used by the offenders, as well as the vehicles used to commit the offence.
 - (4) In the event of a repeat offence within a period of two years, or fraud, the penalties may be increased to a maximum of double.

Amendment 23

Article 16 (formerly 21) of the draft law is amended as follows:

1. In (1), the reference to Article 17(1) is replaced by a reference to the new Article 15(1).
2. in (2), the figure referring to a period of '45 jours' ('45 days') in the French text is replaced by the figure written in words: 'quarante-cinq jours' ('forty-five days').
3. In (3), point 1., a space is added between the number of said point and its text.

Amendment 24

Chapter 8 (formerly 9) is renamed 'Final Provision'.

Amendment 25

Article 22 of the draft law is deleted.

Amendment 26

Article 23 of the draft law becomes the new Article 17.