



Draft government amendments to the draft Act on official controls of foodstuffs and materials and articles intended to come into contact with foodstuffs

TEXT OF THE AMENDMENTS

Amendment 1

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

"Draft Act on official controls and other official activities relating to foodstuffs and materials and articles intended to come into contact with foodstuffs".

Amendment 2

The title "Chapter I. Objectives" is modified and replaced as follows:

"Chapter 1 - Objectives".

Amendment 3

Article 1 of the draft Act is amended and reads as follows:

"Art. 1. Purpose and scope of application

(1) This Act lays down the rules concerning the performance of official controls and other official activities relating to foodstuffs and materials and articles intended to come into contact with foodstuffs in accordance with 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 and feed law and rules relating to animal health and welfare, plant health and plant protection products, amending Regulations of the European Parliament and of the Council (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. 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 (Regulation on Official Controls), hereinafter referred to as "Regulation (EU) 2017/625" and lays down the basic rules on foodstuffs in accordance with Regulation (EC) no. 178/2002 of the European Parliament and of the Council, of 28 January 2002, laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, hereinafter referred to as "Regulation (EC) no. 178/2002" and on materials and articles intended to come into contact with food in accordance with Regulation (EC) no. 1935/2004 of the European Parliament and of the Council, of 27 October 2004, on materials and articles intended to come into contact with

food and repealing Directives 80/590/EEC and 89/109/EEC, hereinafter referred to as "Regulation (EC) no. 1935/2004".

(2) This Act shall apply to foodstuffs and to materials and articles intended to come into contact with foodstuffs:

1. products, manufactured, processed or distributed within the territory of the Grand Duchy of Luxembourg, including transactions resulting from purchases made via the internet or other means of distance communication;
2. originating in another Member State of the European Union;
3. originating in a country outside the European Union; or
4. intended for export to non-EU countries.

(3) This Act aims to ensure in general the protection of life and health of persons, the protection of consumer interests, including fair practices in the trade of foodstuffs and materials intended to come into contact with foodstuffs and in particular the safety, integrity and wholesomeness of foodstuffs and materials and articles intended to come into contact with foodstuffs, at every stage of production, manufacture, processing, distribution and use.

It applies to the premises, facilities, equipment, sites of operators and other places under their control, as well as to the means of transport of operators and their online interfaces.

(4) This Act does not apply to primary production intended for private domestic use, nor to the domestic preparation, handling, and storage of foodstuffs or food contact materials and articles for private domestic consumption.

(5) Any natural or legal person who carries out an activity as an operator, importer, exporter, producer, manufacturer, processor, distributor or seller of foodstuffs or of materials and articles intended to come into contact with foodstuffs must comply with the requirements of this Act for the operations arising from their activities, whether these operations are carried out for profit or not.

(6) This Act implements the provisions of the following European regulations:

1. Council Regulation (EEC) no. 315/93, of 8 February 1993, laying down Community procedures relating to contaminants in foodstuffs, hereinafter referred to as "Regulation (EC) no. 315/93";
2. Regulation (EC) no. 1760/2000 of the European Parliament and of the Council, of 17 July 2000, establishing a system for the identification and registration of bovine animals and concerning the labelling of beef and beef products and repealing Council Regulation (EC) no. 820/97, hereinafter referred to as "Regulation (EC) no. 1760/2000";
3. Chapter V of Regulation (EC) no. 999/2001 of the European Parliament and of the Council, of 22 May 2001, laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies, hereinafter referred to as "Regulation (EC) no. 999/2001";
4. Regulation (EC) no. 178/2002;

5. Regulation (EC) no. 2065/2003 of the European Parliament and of the Council, of 10 November 2003, on smoke flavourings used or intended for use in or on foodstuffs, hereinafter referred to as "Regulation (EC) no. 2065/2003";
6. Regulation (EC) no. 1829/2003 of the European Parliament and of the Council, of 22 September 2003, on genetically modified food and feed, hereinafter referred to as "Regulation (EC) no. 1829/2003";
7. Regulation (EC) no. 1830/2003 of the European Parliament and of the Council, of 22 September 2003, on the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms, and amending Directive 2001/18/EC, hereinafter referred to as "Regulation (EC) no. 1830/2003";
8. Regulation (EC) no. 2160/2003 of the European Parliament and of the Council, of 17 November 2003, on the control of Salmonella and other specific zoonotic agents in the food chain, hereinafter referred to as "Regulation (EC) no. 2160/2003";
9. Regulation (EC) no. 1935/2004;
10. Regulation (EC) no. 852/2004 of the European Parliament and of the Council, of 29 April 2004, on the hygiene of foodstuffs, hereinafter referred to as "Regulation (EC) no. 852/2004";
11. Regulation (EC) no. 853/2004 of the European Parliament and of the Council, of 29 April 2004, laying down specific hygiene rules for food of animal origin, hereinafter referred to as "Regulation (EC) no. 853/2004";
12. Regulation (EC) no. 396/2005 of the European Parliament and of the Council, of 23 February 2005, on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC, hereinafter referred to as "Regulation (EC) no. 396/2005";
13. Regulation (EC) no. 1925/2006 of the European Parliament and of the Council, of 20 December 2006, on the addition of vitamins, minerals and certain other substances to foodstuffs, hereinafter referred to as "Regulation (EC) no. 1925/2006";
14. Regulation (EC) no. 1924/2006 of the European Parliament and of the Council, of 20 December 2006, on nutrition and health claims made on foods, hereinafter referred to as "Regulation (EC) no. 1924/2006";
15. Regulation (EC) no. 1333/2008 of the European Parliament and of the Council, of 16 December 2008, on food additives, hereinafter referred to as "Regulation (EC) no. 1333/2008";
16. Regulation (EC) no. 1334/2008 of the European Parliament and of the Council, of 16 December 2008, on flavourings and certain food ingredients with flavouring properties intended for use in and on foodstuffs and amending Council Regulation (EEC) no. 1601/91, Regulations (EC) no. 2232/96 and (EC) no. 110/2008 and Directive 2000/13/EC, hereinafter referred to as "Regulation (EC) no. 1334/2008";
17. Regulation (EC) no. 1332/2008 of the European Parliament and of the Council, of 16 December 2008, on food enzymes and amending Council Directive 83/417/EEC, Council Regulation (EC) no. 1493/1999, Directive 2000/13/EC, Council Directive 2001/112/EC and Regulation (EC) no. 258/97, hereinafter referred to as "Regulation (EC) no. 1332/2008";

18. Regulation (EC) no. 1331/2008 of the European Parliament and of the Council, of 16 December 2008, laying down a uniform authorisation procedure for food additives, enzymes and flavourings, hereinafter referred to as "Regulation (EC) no. 1331/2008";

19. Regulation (EC) no. 470/2009 of the European Parliament and of the Council, of 6 May 2009, laying down Community procedures for the setting of residue limits of pharmacologically active substances in food of animal origin, repealing Council Regulation (EEC) no. 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) no. 726/2004 of the European Parliament and of the Council, hereinafter referred to as "Regulation (EC) no. 470/2009";

20. Regulation (EU) no. 1169/2011 of the European Parliament and of the Council, of 25 October 2011, on the provision of food information to consumers, amending Regulations (EC) no. 1924/2006 and (EC) no. 1925/2006 of the European Parliament and of the Council and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) no. 608/2004, hereinafter referred to as "Regulation (EU) no. 1169/2011";

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

22. Regulation (EU) no. 2015/2283 of the European Parliament and of the Council, of 25 November 2015, on novel foods, amending Regulation (EU) no. 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) no. 258/97 of the European Parliament and of the Council and Commission Regulation (EC) no. 1852/2001, hereinafter referred to as "Regulation (EU) no. 2015/2283".

(7) Grand-Ducal regulations specify, within the limits and conditions set by European legislation:

- the composition and information requirements applicable to certain categories of foodstuffs;
- the requirements applicable to materials and articles intended to come into contact with foodstuffs;
- the methods of analysis and sampling for carrying out official controls in the field of foodstuffs;
- the procedures relating to the use of technological aids in food processing;
- the requirements relating to food manufacturing processes;
- the conditions of use of solvents, their manufacturing practices and the acceptable residual content in foodstuffs.

(8) Grand-Ducal Regulations may specify elements relating to matters not sufficiently specified by the European regulations referred to in paragraphs 1 and 6 of this Article. "

Amendment 4

Article 2 of the draft Act is deleted.

Amendment 5

Article 2 (formerly 3) of the draft Act is amended and reads as follows:

"Art. 2. Definitions

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

1. "ALVA": the Luxembourg Veterinary and Food Administration, which is responsible for carrying out official controls and other official activities under this Act;
2. "foodstuffs": foodstuffs as defined in Article 2 of Regulation (EC) no. 178/2002;
3. "establishment": any unit of a food business, as referred to in Article 2, paragraph 1, letter c), of Regulation (EC) no. 852/2004 of the European Parliament and of the Council, of 29 April 2004, on the hygiene of foodstuffs, as amended;
4. "undertaking": any undertaking referred to in Article 3, point 2, of Regulation (EC) no. 178/2002 and any undertaking within the meaning of Article 2, paragraph 2, letter c), of Regulation (EC) no. 1935/2004;
5. "operator": the food business operator as defined in Article 3, point 3, of Regulation (EC) no. 178/2002 and the business operator as defined in Article 2, paragraph 2, letter d), of Regulation (EC) no. 1935/2004;
6. "fraud" means the substitution, alteration, or misrepresentation of foodstuffs or food contact materials or articles, or any significant related information, as well as any false information or claims relating to foodstuffs or food contact materials or articles intended to come into contact with foodstuffs, when such information or claims are intentionally made with the aim of deceiving the operator or the final consumer and obtaining an economic gain;
7. "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;
8. "materials and articles intended to come into contact with foodstuffs": materials as defined in Article 1 and in Article 2, paragraph 2, letters a), b) and c), of Regulation (EC) no. 1935/2004;
9. "Minister": the Minister responsible for Food. "

Amendment 6

The title of Chapter 2 of the draft Act is amended and reads as follows:

"Chapter 2 – Powers of control regarding official controls"

Amendment 7

Article 4 of the draft Act is deleted.

Amendment 8

Article 3 (formerly 5) of the draft Act is amended and reads as follows:

"Art. 3. Powers of control regarding official controls

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

- 1° carry out their official monitoring and control mission concerning foodstuffs and materials and articles intended;
- 2° have free access to the premises, facilities, equipment, and sites of operators, including the operators' means of transport;
- 3° request communication of all registers, accounting records and documents relating to foodstuffs or materials and articles intended to come into contact with foodstuffs covered by this Act, to take copies of them and to obtain a translation thereof into one of the three administrative languages;
- 4° access data on operators' computer systems as part of the official controls provided for in this Act;
- 5° photograph foodstuffs or materials and articles intended to come into contact with foodstuffs, facilities, premises, sites, means of transport, and all written records used;
- 6° take 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 the facilities, premises, sites, and means of transport used;
- 8° take, or have taken for examination or analysis, samples of foodstuffs or materials and articles intended to come into contact with foodstuffs, with the samples being taken against issuance of an acknowledgement of receipt.

The owner or holder of the samples taken has the right to request a counter-sample and will be compensated at the current market value of these samples, unless they expressly waive this right;

- 9° require the operator concerned and their staff to provide 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 inspect, analyse, and test the goods and services.

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

The operator's request for a second expert opinion submitted under subparagraph 1 does not affect the right of ALVA 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 Act.

In the event of a dispute between ALVA and the operators on the basis of the opinion of a second expert referred to in subparagraph 1 of this paragraph, the operators may request, at their own expense, a documentary review of the initial analysis, test or diagnosis and, where appropriate, another 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, ALVA agents conduct official controls and report their presence to the operator or its 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 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 ALVA agents, as well as natural persons and bodies designated in accordance with Article 2, paragraph 2, of the Act of 8 September 2022, establishing the Luxembourg Veterinary and Food Administration, carrying out official controls during the visit and must facilitate the control operations carried out by them.

These agents have the right to directly request the assistance of Act enforcement for the performance of their duties.

(5) A written report shall be compiled on official control operations, findings, obligations and corrective measures to be implemented within set deadlines, including withdrawals and recalls of foodstuffs and materials and articles intended to come into contact with foodstuffs. A copy of the written report is provided to the operator. "

Amendment 9

The title of Chapter 3 of the draft Act is amended and reads as follows:

"Chapter 3 – Special provisions and notifications"

Amendment 10

Article 6.1 of the draft Act is renumbered "4".

Amendment 11

Article 6.2 of the draft Act is renumbered "5".

Amendment 12

Article 6 (formerly 7) of the draft Act is amended and reads as follows:

"Art. 6. General obligation of conformity for materials and articles intended to come into contact with foodstuffs"

Materials and articles intended to come into contact with foodstuffs shall not be placed on the market if they do not comply with the provisions of this Act, its implementing regulations, and the regulations listed in Article 1. "

Amendment 13

Article 7 (formerly 8.1) of the draft Act is amended and reads as follows:

"Art. 7. Control and notification of the importation of certain foodstuffs or materials and articles intended to come into contact with foodstuffs"

(1) Foodstuffs or materials and articles intended to come into contact with foodstuffs from a third country and that have been identified as being at risk in accordance with Article 44 of Regulation (EU) 2017/625 are presented for importation at border control points.

For this purpose, the importer must submit prior notification to ALVA of these foodstuffs or materials and articles intended to come into contact with foodstuffs.

(2) The arrangements for the notification by the importer of foodstuffs or materials and articles intended to come into contact with foodstuffs referred to in paragraph 1 and their description shall be specified by a Grand-Ducal Regulation. "

Amendment 14

Article 8.2 of the draft Act is renumbered "8".

Amendment 15

Article 9 of the draft Act is amended and reads as follows:

"Art. 9. Registration, approval and register

(1) In accordance with Article 6, paragraph 2, of Regulation (EC) no. 852/2004, Article 4, paragraph 1, of Regulation (EC) no. 853/2004 and Article 15, paragraph 5, of Regulation (EU) 2017/625, every operator shall notify the Minister, for the purpose of registration, of each of the undertakings, establishments and online interfaces for which they are responsible and that carry out any stage of the production or manufacture, processing, storage and distribution of food and of materials and articles intended to come into contact with food.

To this end, the Minister shall establish a register of operators pursuant to Article 10, paragraph 2, of Regulation (EU) 2017/625.

(2) Before commencing operations, the operator referred to in Article 6, paragraph 3, of Regulation (EC) no. 852/2004 must be approved by the Minister, after consulting ALVA.

A Grand-Ducal Regulation shall specify the procedures and arrangements for registration and approval referred to in paragraphs 1 and 2 of this article.

The list of registered establishments, companies, and online interfaces, as well as approved establishments, shall be made publicly available.

(3) The activities and persons referred to in Article 1, paragraph 3, letters c), d) and e), of Regulation (EC) no. 853/2004 are subject to hygiene requirements, technical specifications for the premises and facilities of establishments, and, where applicable, training for persons carrying out the slaughter of animals, which are laid down in a Grand-Ducal Regulation. This training covers the relevant national and European legislation, hygiene procedures, slaughtering and butchering procedures and techniques, and production methods. "

Amendment 16

Article 10 of the draft Act is amended and reads as follows:

"Art. 10. Fees for official controls and other official activities

(1) "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 the fees in accordance with the provisions of Articles 83 and 84 of Regulation (EU) 2017/625.

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

Amendment 17

Article 11 of the draft Act is deleted.

Amendment 18

Article 11 (formerly 12) of the draft Act is amended and reads as follows:

"Art. 11. Emergency measures

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

(2) ALVA can order:

1. all necessary measures to remedy non-conformities and in particular the measures provided for in Article 138 of Regulation (EU) 2017/625, except letter j), in the event of an established breach and where foodstuffs and materials and articles intended to come into contact with foodstuffs 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 purpose of regularising and ceasing violations of European regulations, of this Act and its implementing regulations, in the event of an imminent and serious danger to human 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 human health 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 ALVA has determined that the operator concerned has remedied the non-conformities that were the subject of the measures provided for in paragraphs 1 and 2, these measures are lifted.

(4) The order issued pursuant to paragraphs 1 and 2 is notified to the operator by registered letter with acknowledgement of receipt or delivered by hand. 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 for review before the Administrative Court. This appeal must be lodged, under penalty of forfeiture, within three months of notification of the decision. 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 ALVA. The recovery process is carried out in the same way as in the case of registration. "

Amendment 19

Article 12 (formerly 13) of the draft Act is amended and reads as follows:

"Art. 12. Administrative measures

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

1. grant the operator a period within which they must comply with the conditions set forth in the authorisation, a period not exceeding six months;

2. in the event of non-compliance with the compliance deadline, suspend or withdraw the registration or authorisation, after a formal notice, or close the business, operation, establishment, facility, online interface, premises, or site, in whole or in part, and affix seals.

(2) The measures provided for in paragraph 1 are subject to review by the Administrative Court. This appeal must be lodged, under penalty of forfeiture, within three months of notification of the decision.

(3) As soon as it has been recorded that the non-conformities which were the subject of the measures provided for in paragraph 1 have been stopped, these measures shall be lifted. "

Amendment 20

A new Article 13 is worded as follows:

"Art. 13. Administrative fines

(1) The minister may impose an administrative fine on the operator:

1. acting in violation of the following articles of this Act:

- a) Article 1, paragraphs 7 and 8;
- b) Article 4;
- c) Article 5;
- d) Article 6;
- e) Article 7;
- f) Article 9, paragraph 1, subparagraph 1;
- g) Article 10.

2. acting in violation of the following articles of Regulation (EU) no. 1760/2000:

- a) Article 13, paragraphs 1, 2 and 5;
- b) Article 15;
- c) Article 15a, subparagraphs 1 and 2.

3. acting in violation of the following articles of Regulation (EC) no. 178/2002:

- a) Article 16;
- b) Article 19, paragraph 2.

4. acting in violation of Article 4, paragraph 2, of Regulation (EC) no. 1829/2003.

5. acting in violation of the following articles of Regulation (EC) no. 1830/2003:

- a) Article 4, paragraphs 1 to 4 and 6;
 - b) Article 5, paragraph 1.
6. acting in violation of the following articles of Regulation (EC) no. 852/2004:
- a) Article 3;
 - b) Article 5, paragraphs 1 and 4, letters b) and c);
 - c) Article 6, paragraphs 1, 2 and 3, paragraph 1, letters a), b) and c).
7. acting in violation of the following articles of Regulation (EC) no. 853/2004:
- a) Article 3, paragraph 1;
 - b) Article 4, paragraph 1, letter b), and paragraphs 2 and 3;
 - c) Article 5, paragraphs 1 and 3;
 - d) Article 6;
 - e) Article 7, paragraph 1.
8. acting in violation of the following articles of Regulation (EC) no. 1935/2004:
- a) Article 3, paragraph 2;
 - b) Article 4, paragraphs 3 to 6;
 - c) Article 15, paragraph 1, letters a) and c) to e), paragraphs 2 to 4, and 7 to 9;
 - d) Article 16, paragraph 1;
 - e) Article 17.
9. acting in violation of the following articles of Regulation (EC) no. 1924/2006:
- a) Article 3;
 - b) Article 4, paragraph 3.
10. acting in violation of Article 7, paragraphs 1 to 4, of Regulation (EC) no. 1925/2006.
11. acting in violation of the following articles of Regulation (EC) no. 1332/2008:
- a) Article 10, paragraph 1;
 - b) Article 11, paragraph 1, letters a), b), d) to f) h) and i), paragraphs 2, 3, 4 and 5;
 - c) Article 12.
12. acting in violation of the following articles of Regulation (EC) no. 1333/2008:
- a) Article 21, paragraph 1;
 - b) Article 22, paragraph 1, letters a), b), d) to f) and h);
 - c) Article 23;

- d) Article 24, paragraphs 1 and 2.
13. acting in violation of the following articles of Regulation (EC) no. 1334/2008:
- a) Article 4, letter b);
 - b) Article 14, paragraph 1;
 - c) Article 15, paragraph 1, letters a), b), d) to f) and h), paragraphs 2 and 3;
 - d) Article 16, paragraphs 2 to 6;
 - e) Article 17.
14. acting in violation of the following articles of Regulation (EC) no. 1169/2011:
- a) Article 6;
 - b) Article 7, paragraphs 1, 2 and 4;
 - c) Article 8, paragraphs 6 to 8;
 - d) Article 9, paragraph 1, letters a), b), d), e), h) to k) and paragraph 2;
 - e) Article 10, paragraph 1;
 - f) Article 12, paragraphs 1 and 2;
 - g) Article 13, paragraphs 1 to 3 and 5;
 - h) Article 14;
 - i) Article 15, paragraph 1;
 - j) Article 36, paragraphs 1 and 2.
15. acting in violation of the following articles of Regulation (EU) no. 609/2013:
- a) Article 4, paragraphs 1 and 2;
 - b) Article 10.
16. acting in violation of the following articles of Regulation (EU) 2017/625:
- a) Article 15, paragraphs 1 and 3;
 - b) Article 47, paragraph 5;
 - c) Article 50, paragraphs 1 and 3;
 - d) Article 56, paragraphs 1 and 4.
17. acting in violation of delegated or implementing regulations adopted by the European Commission, based on the provisions mentioned above.
- (2) The amount of the administrative fine is set between 250 and 10,000 euros.
- (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 violation;
2. the degree of responsibility of the operator;
3. of past violations committed by the operator.

(4) Administrative fines are collected by the Registration, Estates and VAT Administration in the same manner as for registration fees. 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. The reminder incurs late payment interest calculated at the legal rate.

(5) An appeal against decisions made under this article may be brought before the Administrative Court. This appeal must be lodged, under penalty of forfeiture, within three months of notification of the decision. "

Amendment 21

Article 14 of the draft Act is amended and reads as follows:

"Art. 14. Investigation and recording of criminal offences

(1) In addition to members of the Grand Ducal Police, who hold the status of judicial police officer or agent, offences against the European regulations mentioned in Article 1, this Act, and its implementing regulations are recorded by officials and agents of the ALVA (Agency for the Fight Against Corruption), belonging to pay grade A, pay groups A1 and A2, pay grade B, pay group B1, and the Customs and Excise Administration from the rank of Senior Brigadier upwards.

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

(3) The officials and agents referred to in paragraph 1 must have completed eight hours of special professional training on the theoretical and practical elements necessary 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 Act.

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 Act.

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 President of the District Court of Luxembourg: "I swear to perform my duties with integrity, accuracy, and impartiality".

Article 458 of the Criminal Code applies to them. "

Amendment 22

Article 15 of the draft Act is amended and reads as follows:

"Art. 15. Powers and prerogatives for investigating and recording criminal offences

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

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

The operator has the right to accompany the members of the Grand Ducal Police and the officials and agents referred to in Article 14, paragraph 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, paragraph 1, of the Code of Criminal Procedure, in cases of serious indications suggesting that the origin of the offence lies in residential premises, a search of the premises 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, paragraph 1, acting under a warrant issued by the investigating judge.

(3) In exercising the powers provided for 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, paragraph 1, are authorised to:

- 1° have free access to the premises, facilities, equipment, sites of the operators, including means of transport;
- 2° request communication of all registers, records and documents relating to foodstuffs or materials and articles intended to come into contact with foodstuffs covered by this Act, take copies of them and obtain a translation into one of the three administrative languages;
- 3° access data on operators' computer systems as part of the official controls provided for in this Act;

- 4° photograph foodstuffs or materials and articles intended to come into contact with foodstuffs, facilities, premises, sites, means of transport, and all written records used;
- 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 the facilities, premises, sites, and means of transport used;
- 7° take, or have taken for examination or analysis, samples of foodstuffs or materials and articles intended to come into contact with foodstuffs, with the samples being taken against issuance of an acknowledgement of receipt.

The owner or holder of the samples taken has the right to request a counter-sample and will be compensated at the current market value of these samples, unless they expressly waive this right;

- 8° 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;
- 9° in the event of an offence, seize and, if necessary, place under seal foodstuffs and materials and articles intended to come into contact with foodstuffs that were used to commit the offence or were intended to be used to commit the offence, as well as registers, records, and documents relating thereto;

10° interview the operator concerned and their staff.

The seizure provided for in point 9 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 the seizure ordered by the investigating judge may be requested at any stage of the proceedings, namely:

1. to the chamber of the district court during the investigation;
2. to the police judge, in the case of a minor offence;
3. to the criminal chamber of the district court when it is seized by the committal order or by the direct summons;
4. to 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 then 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 shall, at the requisitioning of members of the Grand-Ducal Police of the rank of policeman and officials and agents referred to in Article 14, paragraph 1, facilitate the operations carried out by them under this Act.

(5) A report of the findings and operations is drawn up. A copy of the report is given to the operator.

(6) The costs incurred by the measures taken under this article are included in the court costs and follow their allocation. "

Amendment 23

Article 16 of the draft Act is amended and reads as follows:

"Art. 16. Penal penalties

(1) The following shall be punished by imprisonment from eight days to six months and a fine of €251 to €250,000, or by one of these penalties only:

1. acting in violation of the following articles of Regulation (EC) no. 999/2001:

- a) Article 2, subparagraph 1;
- b) Article 8, paragraphs 1 and 2, subparagraphs 1 and 3;
- c) Article 9, paragraphs 1 and 2, subparagraph 1, first sentence;
- d) Article 16, paragraphs 1 and 6.

2. acting in violation of the following articles of Regulation (EC) no. 178/2002:

- a) Article 11;
- b) Article 12, paragraph 1, subparagraph 1;
- c) Article 17, paragraph 1;
- d) Article 18, paragraphs 2 and 3;
- e) Article 19, paragraphs 1 and 4.

3. acting in violation of the following articles of Regulation (EC) no. 2065/2003:

- a) Article 4, paragraph 2;
- b) Article 5, paragraphs 1 and 2;
- c) Article 13, paragraphs 1 and 3.

4. acting in violation of Article 9, paragraphs 1 to 3, of Regulation (EC) no. 2160/2003;

5. acting in violation of Article 4, paragraph 4, of Regulation (EC) no. 853/2004;

6. acting in violation of Article 3, paragraph 1, letters b) and c), of Regulation (EC) no. 1935/2004;

7. acting in violation of the following articles of Regulation (EC) no. 396/2005:

- a) Article 18, paragraph 1;
- b) Article 19;
- c) Article 20, paragraph 1.

8. acting in violation of the following articles of Regulation (EC) no. 1924/2006:

- a) Article 8, paragraph 1;

- b) Article 9;
 - c) Article 10, paragraphs 1 to 3;
 - d) Article 12;
 - e) Article 13, paragraph 1;
 - f) Article 14.
9. acting in violation of the following articles of Regulation (EC) no. 1925/2006:
- a) Article 3, paragraph 1;
 - b) Article 4, subparagraph 1.
10. acting in violation of the following articles of Regulation (EC) no. 1332/2008:
- a) Article 4;
 - b) Article 5;
 - c) Article 11, paragraph 1, letters c), g), j) and k);
 - d) Article 14, paragraphs 1, 2 and 3, first sentence.
11. acting in violation of the following articles of Regulation (EC) no. 1333/2008:
- a) Article 4, paragraphs 1, 2 and 5;
 - b) Article 5;
 - c) Articles 15 to 18;
 - d) Article 22, paragraph 1, letters c), g), i) and j);
 - e) Article 26, paragraphs 1 and 2, first sentence.
12. acting in violation of the following articles of Regulation (EC) no. 1334/2008:
- a) Article 5;
 - b) Article 6, paragraphs 1 and 2;
 - c) Article 7;
 - d) Article 8, paragraph 1;
 - e) Article 10;
 - f) Article 15, paragraph 1, letters c), g), i) and j);
 - g) Article 19, paragraph 1, first sentence, paragraphs 2 and 3.
13. acting in violation of Article 16, paragraph 1, of Regulation (EC) no. 470/2009;
14. acting in violation of the following articles of Regulation (EC) no. 1169/2011:
- a) Article 7, paragraph 3;

- b) Article 8, paragraphs 2, 4 and 5;
- c) Article 9, paragraph 1, letters c), f), g) and l);
- d) Article 44, paragraph 1.

15. acting in violation of the following articles of Regulation (EU) no. 609/2013:

- a) Article 9, paragraphs 3 to 6;
- b) Article 15, paragraphs 1 and 2.

16. acting in violation of the following articles of Regulation (EU) no. 2015/2283:

- a) Article 4, paragraphs 1 and 2;
- b) Article 6, paragraph 2;
- c) Article 25, subparagraph 1.

17. acting in violation of Article 69, paragraph 1, of Regulation (EU) 2017/625;

18. acting in violation of the emergency and administrative measures taken pursuant to Chapter 6 of this Act;

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

(2) The following shall be punishable by imprisonment for six months to three years and a fine of €50,000 to €500,000, or by one of these penalties only, the operator:

1. acting in violation of the following articles of this Act as long as the operator's conduct constitutes harm to health or renders the foodstuffs unfit for human consumption;

- a) Article 1, paragraphs 7 and 8;
- b) Article 5;
- c) Article 6;
- d) Article 7.

2. acting in violation of the following articles of Regulation (EC) no. 178/2002:

- a) Article 12, paragraph 1, subparagraph 2;
- b) Article 14, paragraph 1 and 2, letters a) and b);
- c) Article 19, paragraph 3.

3. acting in violation of Article 3, paragraph 1, letter a), of Regulation (EC) no. 1935/2004;

4. acting in violation of Article 4, paragraphs 1, 2, 3, letters a) and c) to e), of Regulation (EC) no. 852/2004;

5. acting in violation of Article 3, paragraph 2, of Regulation (EC) no. 853/2004;

6. acting in violation of Article 2, paragraph 1, of Regulation (EC) no. 315/93;

7. acting in violation of Article 4, paragraph 1, of Regulation (EC) no. 1829/2003;
8. acting in violation of Article 4, paragraph 1, of Regulation (EC) no. 2065/2003;
9. acting in violation of letter D, paragraphs 1 to 3, and letter E, paragraphs 1 and 3, of Annex II to Regulation (EC) no. 2160/2003;
10. acting in violation of Article 6, paragraph 1, of Regulation (EC) no. 1333/2008;
11. acting in violation of Article 4, letter a), of Regulation (EC) no. 1334/2008;
12. acting in violation of the following articles of Regulation (EC) no. 470/2009:
 - a) Article 14, paragraph 6;
 - b) Article 16, paragraph 2.
13. acting in violation of Article 9, paragraph 2, of Regulation (EU) no. 609/2013;
14. acting in violation of delegated or implementing regulations adopted by the European Commission on the basis of the provisions mentioned above.

(3) The judge shall, where appropriate, order the confiscation of foodstuffs or materials and articles intended to come into contact with foodstuffs, as well as equipment and instruments used or intended to be used to commit the offence.

(4) The judge may impose a ban on placing foodstuffs or materials and articles intended to come into contact with foodstuffs on the market for a period of three months to fifteen years. This prohibition shall take effect from the day on which the decision imposing it becomes final.

(5) In the event of a repeat offence within two years or of fraud, the penalties may be increased to a maximum of double. "

Amendment 24

Article 17 of the draft Act is deleted.

Amendment 25

Chapter 8, entitled "Final Provisions", is amended to read as follows: "Chapter 8 – Final Provision".

Amendment 26

Article 17 (formerly 18) of the draft Act is amended and reads as follows:

"Art. 17. Repealing provision

The amended Act of 28 July 2018, establishing a system of control and sanctions relating to foodstuffs, is repealed. "