

ENFORCEMENT OF FOOD LAW IN BELGIUM

THE NEW REGIME EXPLAINED

Applicable as from the 1st of January 2024



DALDEWOLF





COPYRIGHT AND DISCLAIMER

© 2024 DALDEWOLF SRL/BV cabinet d'avocats/advocatenkantoor. The content of this publication is protected by copyright under international conventions.

DALDEWOLF SRL/BV cabinet d'avocats/advocatenkantoor is a limited liability company under Belgian law, with its registered office at Avenue Louise 81, 1050 Brussels, Belgium (RPM-RPR Brussels 0439.842.936). The liability of DALDEWOLF SRL/BV cabinet d'avocats/advocatenkantoor, whether contractual or tortious, covering all lawyers working within DALDEWOLF SRL/BV cabinet d'avocats/advocatenkantoor or on its behalf, for any material or immaterial damage (such as moral harm, loss of clientele, production, time, data, business opportunities, etc.) caused to the client is limited to the amount covered by DALDEWOLF SRL/BV cabinet d'avocats/advocatenkantoor's professional liability insurance.

The information contained in this publication is provided for general information purposes only and does not claim to be exhaustive or to provide legal or other advice. DALDEWOLF SRL/BV cabinet d'avocats/advocatenkantoor accepts no liability for any losses that may result from accessing the information contained in this publication or relying on this information.

INTRODUCTION

Effective since the 1st of January 2024, a stricter system of administrative sanctions grants the Belgian Federal Agency for the Safety of the Food Chain (AFSCA/FAWV) greater coercive powers over food operators.

The new regime is embedded in articles 7/1 to 7/5 of Belgian Royal Decree dd. 22 February 2001 organising the controls carried out by the Federal Agency for the Safety of the Food Chain (as amended by the Act dd. 7 April 2023), and in the Royal Decree dd. 30 August 2023 fixing the rules of procedure and the methods of payment of the administrative fines.

This guide provides you with a comprehensive overview of this new legal framework, which constitutes a game changer for many food business operators active in Belgium.

Key changes - in a nutshell:

- **CLARIFICATION OF THE PRECEDENCE GIVEN TO CRIMINAL PROCEEDINGS OVER ADMINISTRATIVE SANCTIONS**
The Public Prosecutor is given a deadline to decide if it initiates criminal prosecution against the food business operator. Only after this period may the AFSCA/FAWV decide to initiate the administrative sanctions procedure.
- **INCREASED FINES**
The maximum amount of administrative fines has been significantly increased to be in line with the amount of criminal fines. The previous maximum limit of administrative fines was listed to a maximum of 40.000,- EUR. Today, they may reach 240.000,-EUR, depending on the offence at issue.
- **ENFORCEMENT OF FINES**
AFSCA/FAWV is granted with a coercive power to impose administrative fines: previously, they only had the option to propose them in the context of a settlement.
- **RIGHT TO BE HEARD**
The right to be heard is no longer foreseen at the stage of the administrative settlement, but only when the AFSCA/FAWV intends to impose an administrative fine.
- **NEW COMPETENT JURISDICTION**
Appeal against the AFSCA/FAWV's decision to impose an administrative fine must be filed before the civil section of the Brussels court of First Instance, deciding in first and last instance.

HOW DOES THE NEW REGIME LOOK LIKE?

STEP-BY-STEP OVERVIEW

- 1** Identification of a food law infringement.
- 2** Public Prosecutor to decide if it initiates criminal prosecution.
- 3** If the Public Prosecutor decides not to initiate criminal prosecution or fails to take a decision within 30 days, AFSCA/FAVV may propose an administrative settlement to the operator. However, this option is not available in cases where the offence poses a serious danger to public health, animal health, or plant protection.
- 4** If the administrative settlement, which involves the payment of a fine, is not accepted, if the fine is not paid or if the offence poses a serious danger to public health, animal health, or plant protection, AFSCA/FAVV may decide to impose an administrative fine.
- 5** The decision to impose an administrative fine can be appealed to the Brussels Court of First Instance. The initiation of the procedure has a suspensive effect.



1 | Identification of a food law infringement

AFSCA/FAVV's inspectors identify a food law infringement and establish an official statement of offence.

This official statement of offence is then sent to the legal department of AFSCA/FAVV and to the Public Prosecutor. The official statement of offence must be transmitted to the food business operator **within 30 days**, commencing the day following the identification of the infringement by the AFSCA/FAVV.

2 | Criminal prosecution?

The Public Prosecutor decides whether it wants to initiate criminal prosecution. This decision must be taken within 30 days of receipt of the official statement of offence. If criminal prosecution is decided, the administrative procedure is suspended.

At this stage, the operator is not informed about the date on which the official statement of offence has been sent by the AFSCA/FAVV to the Public Prosecutor. Therefore, if the operator wishes to know more about the contacts between the AFSCA/FAVV and the Public Prosecutor, it will have to request access to the administrative file.



3 | Administrative settlement

The AFSCA/FAVV may propose an administrative settlement, which involves the payment of a fine, under the following conditions:

- the Public Prosecutor decides not to initiate criminal prosecution or fails to react within 30 days, and
- the offence does not pose a serious danger to public health, animal health, or plant protection.

The procedural steps for an administrative settlement:

STEP 1

The legal department of the AFSCA/FAVV **proposes an administrative settlement**, which involves the payment of a fine, to the food business operator, through electronic or registered mail.

The settlement proposal must include specific mentions. If any of these mentions are missing, this means, depending on the mention at hand: (1) the settlement proposal is null and void, or (2) the delay for the payment of the administrative settlement is suspended.

The **deadline** to propose a settlement to the operator is **60 days** from the receipt of the official statement of offence *by the legal department of the AFSCA/FAVV*. It is worth noting that in order for the food business operator to ascertain compliance with the deadline, a request to access the administrative file is required.

The new rules have deleted the possibility for the operator to be heard and to present its means of defence, at this stage.

STEP 2

Payment of the amount included in the administrative settlement must occur **within 30 days** to put an end to the public prosecution and the administrative procedure.

If no payment occurs within the deadline, or if the offence poses a serious danger to public health, animal health, or plant protection, the AFSCA/FAVV will need to decide whether to impose an administrative fine or not.



Possible amounts to be paid under an administrative settlement:

One offence	Several offences found during an inspection, but without a link between them	A single act constitutes several offences <i>or</i> different offences constitute the successive and continuous manifestation of the same criminal intent
<p>The amount of the settlement may not be lower than 25% of the minimum amount set by criminal law for the offence, nor exceeding 80% of its maximum.</p>	<p>Each infringement is considered individually and the amount of the settlement cumulates the fines applicable to each infringement.</p> <p>However, the total amount of the settlement may not exceed 80% of the maximum amount of the highest criminal fine.</p>	<p>“Only the highest fine will be applied”</p> <p><i>Interpretation issues:</i> The text does not specify if, in this case, the settlement may include an amount that goes below the maximum amount foreseen for the offence (see lower limit of 25%), nor if the limit of 80% of the maximum the amount set by criminal law for the offence applies.</p>
<p>Example for a producer or importer (legal entity), whether in good or bad faith :</p>		
<p>- Breach of mandatory labelling requirements:</p> <p>Criminal fine foreseen for the infringement ranges between 1.000,- EUR and 96.000,- EUR.</p> <p>Amount of the settlement proposed by the AFSCA/FAVV must range between 250,- EUR (25% of 1.000,- EUR) and 76.800,- EUR (80% of 96.000,- EUR).</p> <p><i>or</i></p> <p>- Use of unauthorised food additive:</p> <p>Criminal fine foreseen for the infringement ranges between 4.000,- EUR and 240.000,- EUR.</p> <p>Amount of the settlement proposed by the AFSCA/FAVV must range between 1.000,- EUR (25% of 4.000,- EUR) and 192.000,- EUR (80% of 240.000,- EUR).</p>	<p>- Breach of mandatory labelling rules <i>and</i> use of unauthorised additive (properly labelled), without any link between both infringements:</p> <p>Amount of the settlement is as follows:</p> <p>Cumulation of the amount of the settlement applicable to a breach of mandatory requirements with the amount of the settlement applicable to the use of an unauthorised food additive, with a global maximum limit of 192.000,- EUR, which corresponds to 80% of the maximum amount of the highest criminal fine (i.e. the fine foreseen in case of use of unauthorised additive).</p>	<p>- Use of unauthorised food additive, leading to mislabelling of the foodstuff:</p> <p>Amount of the settlement proposed by the AFSCA/FAVV must only take into account the fine foreseen in case of use of unauthorised food additive, because a higher amount of the criminal fine is foreseen for this infringement in comparison with the fine applicable to a breach of mandatory labelling requirements.</p>

4 | Imposition of a fine?

The AFSCA/FAVV may decide to impose an administrative fine under the following circumstances:

- the proposed administrative settlement, which involves the payment of a fine, is not paid within the deadline, or
- the offence poses a serious danger to public health, animal health, or plant protection.

Procedural steps

STEP 1: INTENTION OF DECISION

An intention of decision to impose an administrative fine is communicated by the legal department of the AFSCA/FAVV to the food business operator, through registered and ordinary mail (not by e-mail).

The intention of decision must include a certain number of specific mentions. If any of these mentions is lacking, the communication is considered null and void.

STEP 2: RIGHT TO BE HEARD

Within 30 days, the operator may present its means of defence in writing to the legal department of the AFSCA/FAVV, either by electronic or registered mail. Please note that the starting point for this deadline is not set by the law.

STEP 3: ADOPTION OF A DECISION BY THE AFSCA/FAVV

The AFSCA/FAVV's decision to impose or not to impose an administrative fine is communicated to the operator via electronic or registered mail.

If the decision is to impose an administrative fine, it is accompanied by a request to pay the fine within a 60-day period, starting from the dispatch of the decision.

The decision to impose an administrative fine must be communicated to the operator:

- within 180 days of the notification of the intention to impose a fine, and, in any case,
- within 5 years of the infringement. The limitation period is interrupted if criminal prosecution is initiated within 30 days of receipt of the official statement of offence by the Public Prosecutor.

Furthermore, the decision must include a certain number of specific mentions. If any of these mentions is lacking, the communication is considered null and void.

STEP 4: ENFORCEMENT OF THE FINE, THROUGH COERCIVE MEASURES

Unpaid administrative fines may be endorsed through legal means. The enforcement notice is served by a bailiff's writ with a command to pay within 30 days, under penalty of execution by seizure and execution.



Possible administrative fines:

One offence	Several offences found during an inspection, but without a link between them	A single act constitutes several offences <i>or</i> different offences constitute the successive and continuous manifestation of the same criminal intent
<p>The administrative fine may not be lower than 50% of the minimum amount set by criminal law for the offence, nor exceed 100% of its maximum amount.</p>	<p>The amounts of administrative fines, corresponding each to one infringement, are cumulated.</p> <p>However, the total amount of the fine may not exceed 100% of the maximum amount of the highest criminal fine.</p>	<p>“Only the highest fine will be applied”</p> <p><i>Interpretation issues:</i> The text does not specify if, in this case, the fine imposed may go below the maximum amount foreseen for the offence (see lower limit of 50%).</p>
<p>Example for a producer or importer (legal entity), whether in good or bad faith :</p>		
<p>- Breach of mandatory labelling requirements:</p> <p>Criminal fine foreseen for the infringement ranges between 1.000,- EUR and 96.000,- EUR.</p> <p>Amount of the fine imposed by the AFSCA/FAVV must range between 500,- EUR (50% of 1.000,- EUR) and 96.000,- EUR (100% of 96.000,- EUR).</p> <p><i>or</i></p> <p>- Use of unauthorised food additive:</p> <p>Criminal fine foreseen for the infringement ranges between 4.000,- EUR and 240.000,- EUR.</p> <p>Amount of the fine imposed by the AFSCA/FAVV must range between 500,- EUR (50% of 4.000,- EUR) and 240.000,- EUR (100% of 240.000,- EUR).</p>	<p>- Breach of mandatory labelling rules <i>and</i> use of unauthorised additive (properly labelled), without any link between both infringements.</p> <p>Cumulation of the amount of the fine applicable to a breach of mandatory requirements with the amount of the fine applicable to the use of an unauthorised food additive, with a global maximum limit of 240.000,- EUR, which corresponds to 100% of the maximum amount of the highest criminal fine.</p>	<p>- Use of unauthorised food additive, leading to mislabelling of the foodstuff.</p> <p>Amount of the fine imposed by the AFSCA/FAVV must only take into account the fine foreseen in case of use of an unauthorised food additives, because a higher amount of fine is foreseen for this infringement, in comparison with the fine applicable to a breach of mandatory labelling requirements.</p>
<ul style="list-style-type: none"> ○ Mitigating circumstances may lead to a reduced administrative fine, which may not be lower than 25% of the minimum amount foreseen for the offence. ○ Payment can be partially or fully suspended under specific conditions: <ul style="list-style-type: none"> ⇒ No other administrative fine in 3 years <i>before</i> the infringement and ⇒ No second infringement in 3 years <i>after</i> the fine. 		

5 | Appeal before the Brussels Court of First Instance (optional)

The decision of the AFSCA/FAVV to impose an administrative fine may be appealed to the civil section of the Brussels Court of First Instance, via a contradictory application (*'requête contradictoire'* / *'verzoekschrift op tegenspraak'*).

The imperative [deadline](#) for bringing an action before the Court is [60 days](#) from the date when the AFSCA/FAVV's decision to impose an administrative fine is sent to the food business operator.

It is somewhat surprising that the new legislation did not foresee the possibility of submitting the dispute to the court of the operator's headquarters. Consequently, all disputes will be concentrated in Brussels, where the courts already face a huge backlog.

Fortunately for the operators, the initiation of the procedure has a suspensive effect. The fine may therefore not be enforced until a decision is taken by the Court.

The Court rules in first and last instance, meaning that no appeal of the decision on the grounds is possible. However, an appeal to the Supreme Court (*'Cour de cassation'* / *'Hof van cassatie'*) remains possible. The Supreme Court reviews judgments from lower courts to ensure they are in accordance with the law. It does not reexamine the facts of the case but focuses solely on legal issues.

Please note: The Council of State (administrative court) remains the sole jurisdiction competent to suspend or cancel other administrative decisions, such as the decision backing the enforcement of a fine (decision to withdraw or recall products, order to stop production, etc.).



Conclusion

The new system of sanctions for infringements of the provisions of EU and Belgian food law has fundamentally changed the role of the AFSCA/FAVV, as well as the mechanisms that were applied until 31 December 2023.

Previously, the AFSCA/FAVV's authority was primarily based on its role of health police. This role granted the AFSCA/FAVV the authority to investigate and to identify infringements of the food legislation. It also required the AFSCA/FAVV to take all necessary measures to prevent dangerous food products from being placed on the market.

Until 31 December 2023, the AFSCA/FAVV did not have the authority to impose sanctions. In the cases where no criminal prosecution was initiated by the Public Prosecutor, the AFSCA/FAVV might only propose an administrative settlement to the operator, subject to a maximum amount of 40.000,- EUR. If the operator refused the proposed administrative settlement, the AFSCA/FAVV had no coercive power, and it was rare for the Public Prosecutor to reconsider and eventually decide to pursue criminal charges against the operator.

The introduction of an administrative fine system that is enforceable by the AFSCA/FAVV and the amounts of which are aligned with criminal fines, potentially through seizure and execution, is a landmark game changer. In this regard, the new system may appear similar to the one that has been in place for many years within the FPS Economy.

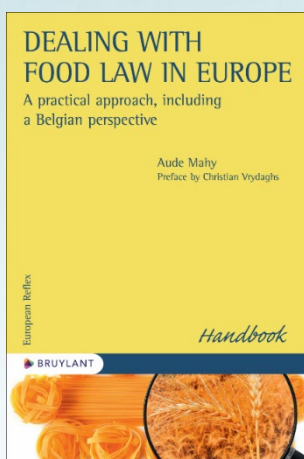
The future will determine whether or not the AFSCA/FAVV will use its new powers with moderation. This will undoubtedly influence the number and complexity of appeals lodged against these fines before the Brussels Court of First Instance. However, the first decisions in this area will not see the light of day for many months, if not years, given the backlog of court cases to date. Fortunately enough for operators, these appeals have a suspensive effect on fine payments.

FOR FURTHER INFORMATION

If you have any questions or need help navigating the new sanctions system, please do not hesitate to contact **Aude MAHY, head of DALDEWOLF's Food & Beverage team**.

Contact : ama@daldewolf.com | t: **+32 476 94 09 52**

To provide her clients and students with a comprehensive work that addresses the subject of food law, both precisely and pragmatically, Aude MAHY has written the first book of its kind in Belgium. This book, available in English and in French, outlines Belgian and European regulations on the matter in a detailed and practical manner, with examples illustrating real-world applications.



Dealing with food law in Europe

by Aude Mahy (Author), Christian Vrydaghs (Preface)

Publisher : Bruylant (22 February 2023)

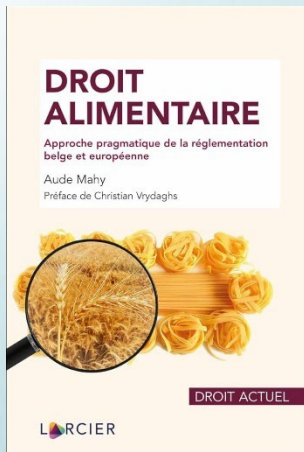
Series name : Réflexe européen

Language : English

Format: Paperback

Number of pages 582 p.

EAN / ISSN 9782802772453 / 9782802773108



Droit alimentaire

de Aude Mahy (Auteur), Christian Vrydaghs (Préface)

Éditeur : Larcier (25 mai 2022)

Langue : Français

Broché : 592 pages

ISBN-10 : 2807924921

ISBN-13 : 978-2807924925

Dimensions : 16.2 x 3.2 x 24.2 cm

www.daldewolf.com