

Luxembourg, 15 July 2004

**Ministry of Agriculture,
Viticulture
and Rural Development**

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Draft Act

**- regulating the trade in seeds and plants, and
- on the cultivation of genetically modified seeds and plants.**

Chapter 1. Scope

Article 1. The provisions of this Act shall apply to:

- a) any purchase, sale, offer for sale and exchange, imports and exports concerning specific species of seeds of cereals, beets, fodder plants, vegetables, oleaginous and fibrous plants, as well as potato plants, intended to be delivered to users with a view to their cultivation, reproduction or multiplication,
- b) the cultivation of genetically modified seeds and plants.

The species of seeds and plants falling within the scope of this Act are shall be listed in a Grand-Ducal Regulation.

Chapter 2. Trade in seeds and plants

Article 2. Only seeds and plants which meet the following conditions may be marketed as seeds and plants, pursuant to this Act:

1. they must have been recognised in accordance with one of the category designations laid down in Article 4;
2. they must comply with standards on species and varietal purity, varietal identity, germinative capacity and grading, as well as production, selection, storage, packaging, sealing, marking and marketing conditions, to be set by Grand-Ducal Regulation;
3. their varieties must have been entered on the list of varieties laid down in Article 8, insofar as varietal identity is required;
4. they must be accompanied by a label and a note issued by:
 - a) the official inspection body cited in Article 5, in cases where the seeds and plants are produced in the Grand-Duchy of Luxembourg;
 - b) the official inspection body of the exporting country, in cases where the seeds and plants come from a Member State of the European Union;
 - c) the official inspection body of an exporting country that is a not a Member State of the European Union, whose inspection documents and certification conditions have been recognised as equivalent by Community bodies.

By way of derogation to the provisions of paragraph 4 above, standard-category vegetable seeds shall be accompanied by a label from the supplier.

Article 3. The provisions of Article 2 shall not apply to:

1. seeds and plants used for the purposes of testing and selection work or work with a scientific aim;
2. raw seeds and plants supplied by the producer with a view to packaging, provided that the identity of these seeds and plants is guaranteed;
3. seeds and plants selected from generations prior to the basic seeds and plants, subject to provisions to be laid down by Grand-Ducal Regulation.

Article 4. The designations of seeds and plant categories cited in Article 2(1)(1), shall be as follows:

1. basic seeds and plants;
2. certified seeds and plants;
3. commercial seeds;
4. standard seeds;

A Grand-Ducal Regulation shall define the criteria and conditions which must be met by seeds and plant in the above-mentioned categories.

Article 5. The Agricultural Technical Services Administration or professional agricultural bodies to be approved for this purpose by Grand-Ducal Regulation, shall be responsible for the technical inspection, designated “certification”, of seed and plant production, the latter acting under the responsibility of the Agricultural Technical Services Administration. This approval shall, in particular, take account of the professional qualifications and experience of the staff of the body to be approved. The relevant procedures shall be laid down by Grand-Ducal Regulation.

A Grand-Ducal Regulation shall lay down the fees payable by seed and plant producers that subject their crops to inspection, and may delimit cultivation areas for specific species of seeds and plants. The maximum amounts of the above-mentioned fees may not exceed EUR 0.50 per hundred square metres and EUR 10 per 100 kg of seeds or plants.

Article 6. Seeds of cereals, fodder plants, oleaginous and fibrous plants, and vegetables may be marketed in mixtures of different species and varieties of seeds, provided that the constituents of the mixture comply, before mixing, with the marketing conditions applicable to them and that the provisions of Article 7 of this Act are respected.

Article 7. Packaging of seeds and plants placed on the market shall obligatorily bear a label on the outside which meets the requirements to be set by Grand-Ducal Regulation.

The colour of the label shall be:

1. white for basic seeds and plants;
2. blue for certified seeds and plants;
3. red for certified seeds of the second reproduction and subsequent reproductions;
4. brown for commercial seeds;
5. dark yellow for standard seeds;
6. green for seed mixtures.

Packaging shall contain, inside, a notice that complies with the requirements laid down by Grand-Ducal Regulation. The notice shall not be required when these indications are printed indelibly on the packaging. For the marketing of small quantities to end-users or of small packages, a Grand-Ducal Regulation may lay down derogations with regard to presentation, the sealing system and marking.

Article 8. A Grand-Ducal Regulation shall lay down the list of varieties which shall only be admitted for certification and the marketing of seeds and plants, and shall lay down the procedures and criteria for addition to the list, as well as the conditions for removing a variety from the list of varieties.

Any designation of seeds and plants must conform to the designation under which the variety is submitted and entered on to the official list of varieties.

The same Regulation may lay down the amount of the fees for inclusion on the list of varieties, which may not exceed EUR 100 per variety, per year.

Article 9. Use of any indication, any sign, any type of presentation likely to create confusion in the mind of the purchaser as regards the type, species and varietal purity, germinative capacity, origin, health state, grading or weight of the products covered by this Act, shall be prohibited in any form, particularly on containers and packaging, on official documents, on all marketing paperwork and on all publicity notices in general.

Whosoever markets seeds or plants must provide, on request, any justification that can be used to establish the veracity of their declarations to duly qualified agents authorised for this purpose.

Chapter 3. Cultivation of genetically modified seeds and plants

Article 10. (1) A Grand-Ducal Regulation shall lay down the conditions for use and cultivation of genetically modified seeds and plants, particularly with regard to:

1. import of these seeds and plants;
2. the location of plots of land intended to be sown with genetically modified seeds or plants;
3. seeding of leased plots of land;
4. the separation distances between genetically modified crops and non-genetically modified crops and organic crops as well as between genetically modified crops and the areas cited in Article 12.

(2) A Grand-Ducal Regulation may lay down additional conditions regarding cultivation practices during cultivation of genetically modified seeds and plants.

Article 11. A Grand-Ducal Regulation may prohibit, for a given plant species, the cultivation of genetically modified varieties, if, for the plant species in question, accidental proliferation of genetically modified seeds or plants among conventional crops cannot be avoided by other means.

Article 12. A Grand-Ducal Regulation may prohibit the cultivation of genetically modified seeds and plants in areas that are particularly sensitive in terms of the natural environment.

Article 13. Whosoever intends to cultivate genetically modified seeds and plants must sign a civil liability insurance contract, covering any economic damages that the cultivation of genetically modified seeds and plants could cause to neighbouring, non-genetically modified, crops, with an insurance company authorised to cover the risk in question, pursuant to the Act of 6 December 1991 on the insurance sector.

Chapter 4. Penal provisions

Article 14. Infringements of this Act and its implementing regulations shall be investigated and reported by agents of the Grand-Ducal police and agents from the engineering service and technical assistants of the Agricultural Technical Services Administration, plant production service and microbiology and biochemistry service.

In the performance of their duties relating to this Act, agents of the Agricultural Technical Services Administration shall act in the capacity of officers of the Criminal Investigation Department. They shall report infringements by means of reports which shall be deemed true until proved otherwise. Their competences shall extend over the whole territory of the Grand-Duchy.

Before they take on their duties, they shall take the following oath before the court in their district of residence: "I swear to perform my duties with integrity, accuracy and impartiality".

Article 458-4 of the Penal Code shall apply.

The above-mentioned persons may perform inspections by sampling during the certification and marketing of seeds and plants and on cultivation thereof, and take samples including from seeded plots of land. They may also inspect all supporting documents and inspect all premises in which the seeds and plants are usually stored.

Article 15. Infringements of the requirements of this Act and its implementing regulations shall be punishable by imprisonment of between 8 days and 6 months and a fine of between EUR 251 and 750,000 or only of these penalties.

Furthermore, confiscation of the infringing goods and illegal profits may be ordered.

Article 16. The Act of 9 November 1971 regulating the trade in seeds and plants is hereby repealed. However, Grand-Ducal Regulations laid down on the basis of this Act shall remain in force until they are replaced by new measures.

Grand Duchy of Luxembourg

Luxembourg, 15 July 2004

**Ministry of Agriculture,
Viticulture
and Rural Development**

Reference:
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Draft Grand-Ducal Regulation on the cultivation of genetically modified seeds and plants.

Having regard to the Act of ... regulating the trade in seeds and plants and on the cultivation of genetically modified seeds and plants;

Having regard to Directive 2001/18/EC of the Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms, and in particular Article 26a thereof,

Having regard to Commission Recommendation 2003/556/EC of 23 July 2003 on guidelines for the development of national strategies and best practices to ensure the coexistence of genetically modified crops with conventional and organic farming;

Having regard to the opinion of the Chamber of Agriculture;

Having regard to the opinion of the Chamber of Commerce;

Having heard our Council of State;

On the report of our Minister for Agriculture, Viticulture and Rural Development and of our Minister for Justice, and following deliberation by the Government in Council;

We hereby decree:

Article 1 All imports into the Grand-Duchy of Luxembourg of genetically modified seeds and plants must be declared immediately to the plant production service of the Agricultural Technical Services Administration, hereinafter referred to as the ASTA, using the forms made available by the ASTA.

Article 2(1). Any plot of land intended to be cultivated with genetically modified seeds or plants, must be declared to the ASTA's plant production service at least 2 months before sowing, by means of a form made available by the ASTA. This declaration shall also contain information on the designation and characteristics of the genetic modification of the seeds or plants that will be cultivated on the plot in question. This information shall be publicly accessible.

(2) If the declarer is not the owner of the plot of land, prior written agreement of the owner of the plot shall be required before any cultivation of genetically modified seeds or plants. A copy of this agreement shall be attached to the declaration cited in paragraph 1.

Article 3. Cultivation of genetically modified seeds and plants shall be prohibited in the protected area of Community interest and in protected areas of national interest cited in Chapters 5 and 6 of the Act of 19 January 2004 on the protection of nature and natural resources, and in natural parks created pursuant to the Act of 10 August 2003 on natural parks.

Article 4. Genetically modified corn crops must respect a separation distance of 800 metres, genetically modified beet crops must respect a separation distance of 3 kilometres and genetically modified rapeseed crops must respect a separation distance 3 kilometres from conventional crops of the same species, organic crops and the areas cited in Article 3.

Article 5. Our Minister for Agriculture, Viticulture and Rural Development, and our Minister for Justice shall be responsible, each for their own part, for the implementation of this Regulation, which shall be published in the Official Gazette.
