

New system of control over food quality and safety introduced in Ukraine

On 4 April 2018, the Law of Ukraine On the State Control over Compliance with Legislation on Food Products, Feeds, Animal By-products, Animal Health and Animal Welfare, passed on 18 May 2017, enters into force. The Law was adopted with the aim of harmonizing Ukrainian legislation in the field of state control over food safety and quality with the EU Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Commission Regulation (EC) No 669/2009 and Council Directive 97/78/EC.

The Law contains a number of changes, in particular, those one regarding the procedure, grounds and documentation of food companies inspections, establishes a mechanism for public control and updates the amounts of and grounds for penalties for violating legislation on food quality and safety.

A major innovation of the Law is the risk-based approach of market operators inspections. That is, the lower the danger of the market operator's activities, the lower the frequency of inspections carried out by the controlling authorities. The companies are inspected depending on the degree of risk of their activities for human life and health. The degree of this risk is to be assessed according to the criteria laid down in a normative act of the Cabinet of Ministers of Ukraine. An example of such a normative act is the Resolution of the Cabinet of Ministers of Ukraine No. 402 of 17 June 2015, approving the criteria for the assessment of the degree of risk of operations subject to state veterinary and phytosanitary control and supervision and determines the frequency of regular inspections by the State Veterinary and Phytosanitary Service of Ukraine.

In contrast to the previous procedure, under which the companies were warned about the inspections beforehand, according to the new law, state inspections will be carried out without a warning (notice) to the market operators, except in cases of audits and in other cases where the warning is a prerequisite for ensuring the state control effectiveness. The Law also requires the use of a state control act when carrying out audits and inspections of market operators. The inspectors of the State Service on Food Safety and Consumer Protection shall carry out inspections in accordance with the said act which will include an exhaustive list of issues and will make it impossible to inspect the issues, not specified therein. At the same time, the state control act shall be made available in advance.

The Law also provides for new sanctions for quality regulations violations. In general, depending on the violation, the fine ranges from 10 to 50 minimum wages (as of 1 April 2018, the minimum wage is UAH 3723) for legal entities and from 6 to 40 minimum wages for individual entrepreneurs. Thus, the inspector shall, when establishing the production factors, posing a threat to human life and health, decide on the temporary cessation of production and circulation of food products. In the event of failure to comply or delay in compliance with the state inspector's decision on the temporary cessation of production and circulation of food products, legal entities must pay a fine of 50 minimum wages and individual entrepreneurs must pay a fine of 40 minimum wages.

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Another innovation of the Law is the inspectors' obligation to issue orders for certain violations to remedy violations of quality regulations instead of imposing fines. For example, should a market operator for the first time in 3 years produce or place on the market food or feed products using non-registered equipment or use non-registered sanitary products, sanitary objects or feed additives, the inspector shall, instead of imposing a fine, issue an order to the market operator to remedy violations of food and feed legislation without drawing up a protocol.