

# Food Law Update

New fines and enforcement rules  
applicable in Belgium

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2024:

A shift in the authority of the  
FASFC over FBOs

# Since the creation of the FASFC

- **FASFC has a role of health police**

- Investigation and identification of infringements to food law: Offence report
- All necessary measures to prevent dangerous food products from being placed on the market

- **Authority to propose administrative settlement**

- If no Public prosecution
- Possibility to submit means of defence
- Between 200,-EUR and 40.000,-EUR
- If not paid: criminal prosecution only upon decision of Public Prosecutor



# Since 1st January 2024

**Health police**

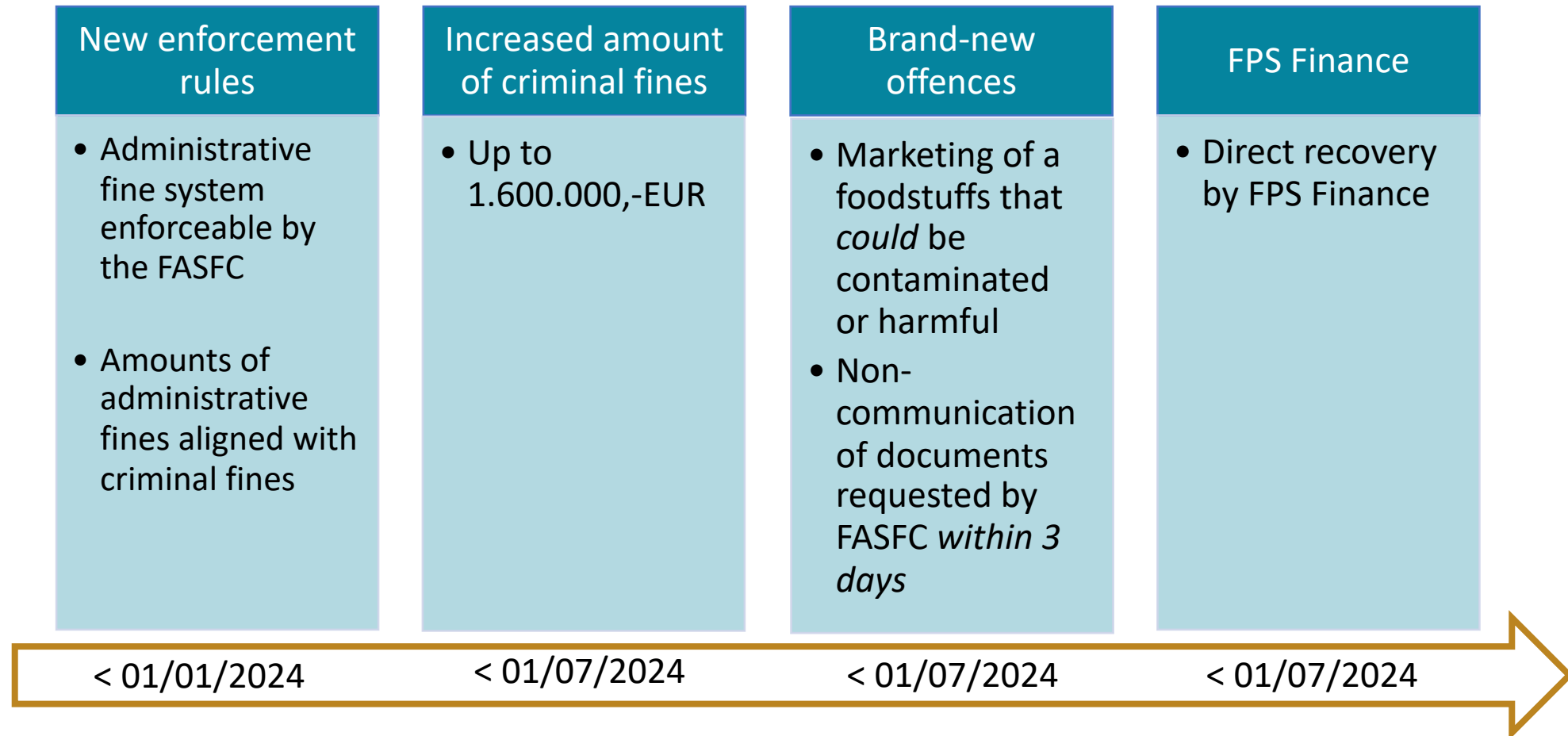


**Sanctioning authority**



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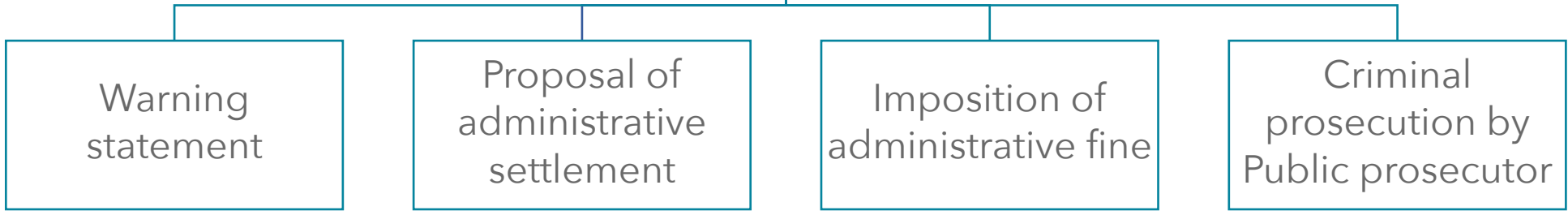
# What's new, in a nutshell?



# II.

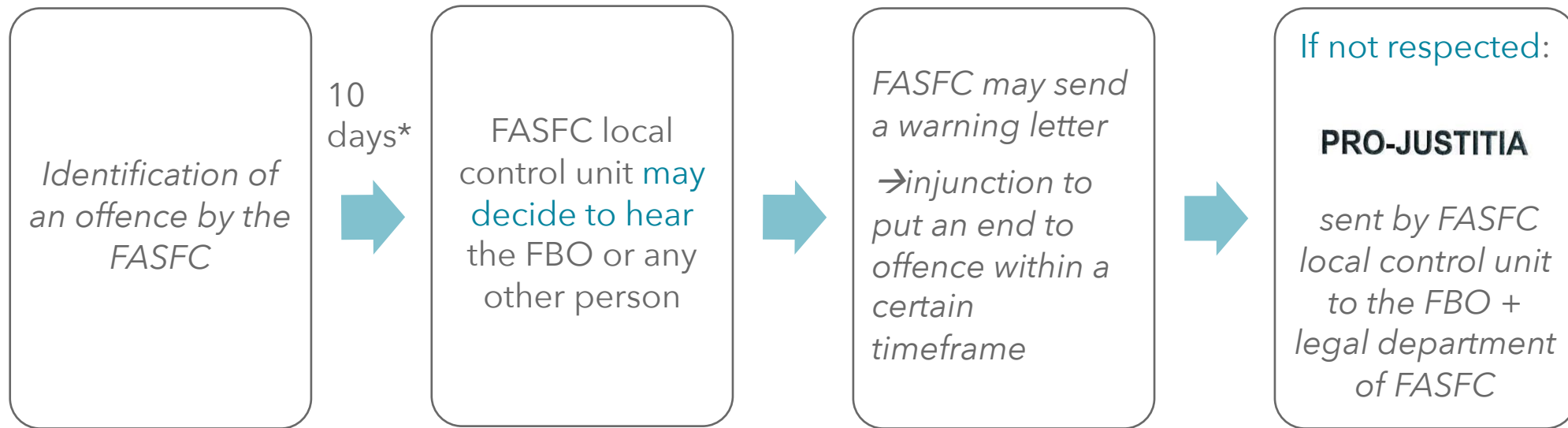
## New enforcement rules

# Identification of an offence by the FASFC



**NEW** Administrative procedure

# 1. Warning letter (*unchanged*)



\* Theoretical delay.  
No sanction if not respected.



## 2. Administrative procedure: Overview

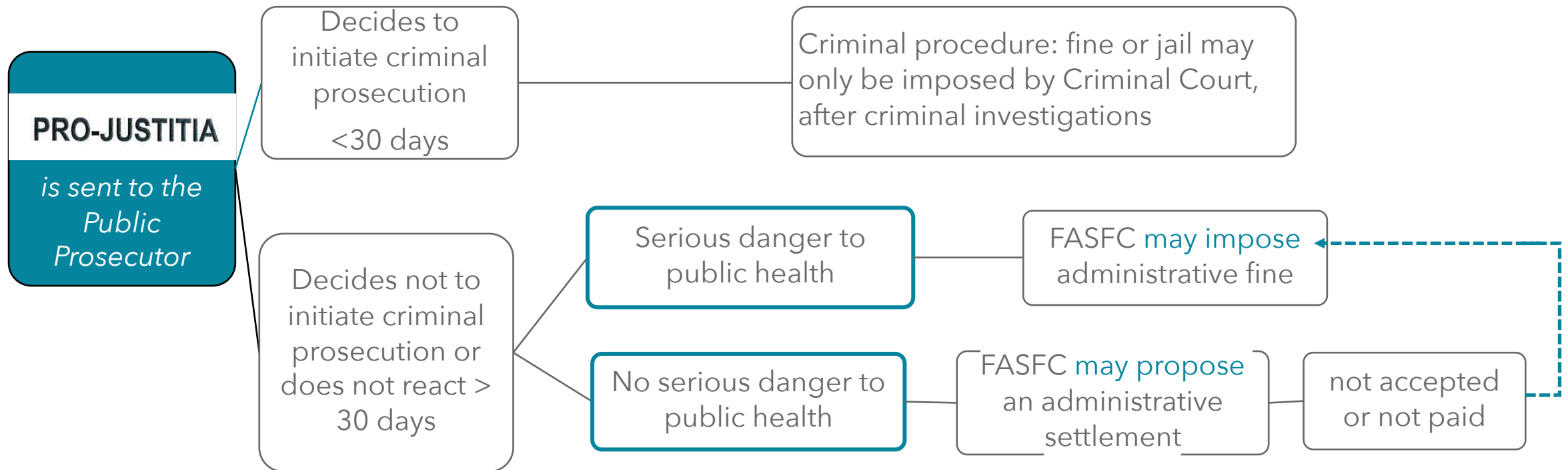
- **STEP 1:** Procedure until official statement of offence  
*(unchanged)*



\* Theoretical delay.  
No sanction if not respected.

## 2. Administrative procedure

- **STEP 2:** Possible ways to handle an official statement of offence (*new*)

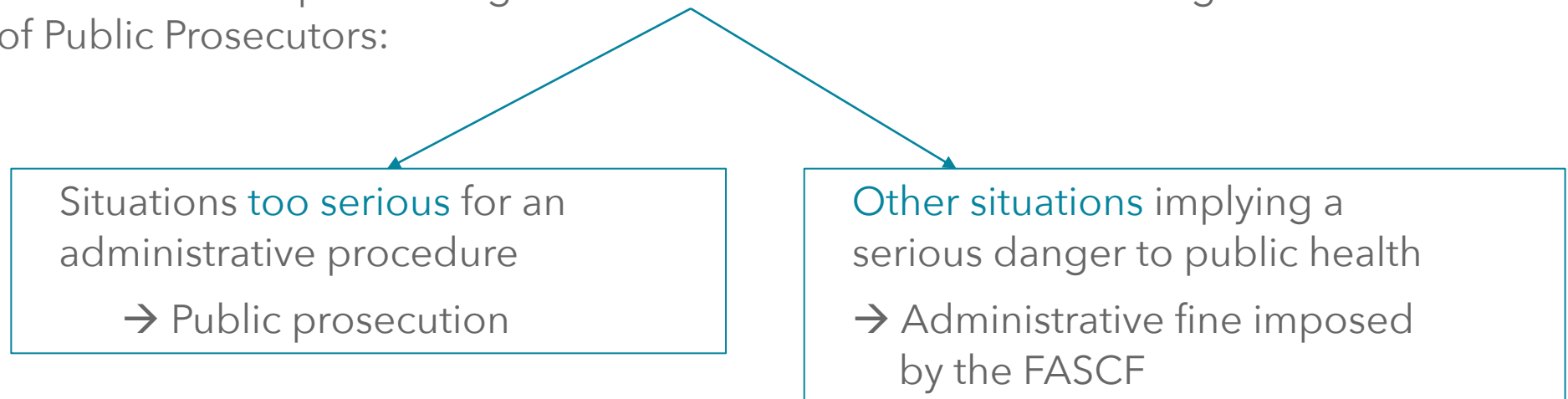


## 2. Administrative procedure

- **Key new elements:**

Administrative settlement not possible in all circumstances

- Offence posing a serious danger to public health never triggers administrative settlement.
- Notion of “serious danger to public health” not defined by law;
- FASFC has set up internal guidance + in coordination with College of Public Prosecutors:



## 2. Administrative procedure

- **Internal guidelines of the FASFC to decide between the procedural options (1):**

**No  
administrative  
procedure:  
case handled  
directly by  
Public  
Prosecutor**

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Official reports drawn up as part of a joint action with other special inspectorates.

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Mixed reports insofar as the infringement of the criminal code is relevant.

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Penalty notices drawn up on behalf of legal entities governed by public law (in cases of food poisoning)poisoning).

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At the request of the official issuing the statement of offence (for a justified reason).

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In the event of a repeat offence (10th statement of offence for the same establishment over a 5-year period).

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At the request of the public prosecutor (after the public prosecutor has been informed of the case by the legal department)legal department).

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In the event of violence against the controller/inspector.

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## 2. Administrative procedure

- **Internal guidelines of the FASFC to decide between the procedural options (2):**

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**Case directly  
subject to  
imposition of  
fine**

Offence has generated significant added value.

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Clandestine activity for a significant period of time.

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Temporary closure due to imminent danger.

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4th official statement of penalty notice attributable to the same establishment within a period of 2-year period.

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Immediate withdrawal of authorisation/approval.

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## 2. Administrative procedure

- **Internal guidelines of the FASFC to decide between the procedural options (3):**

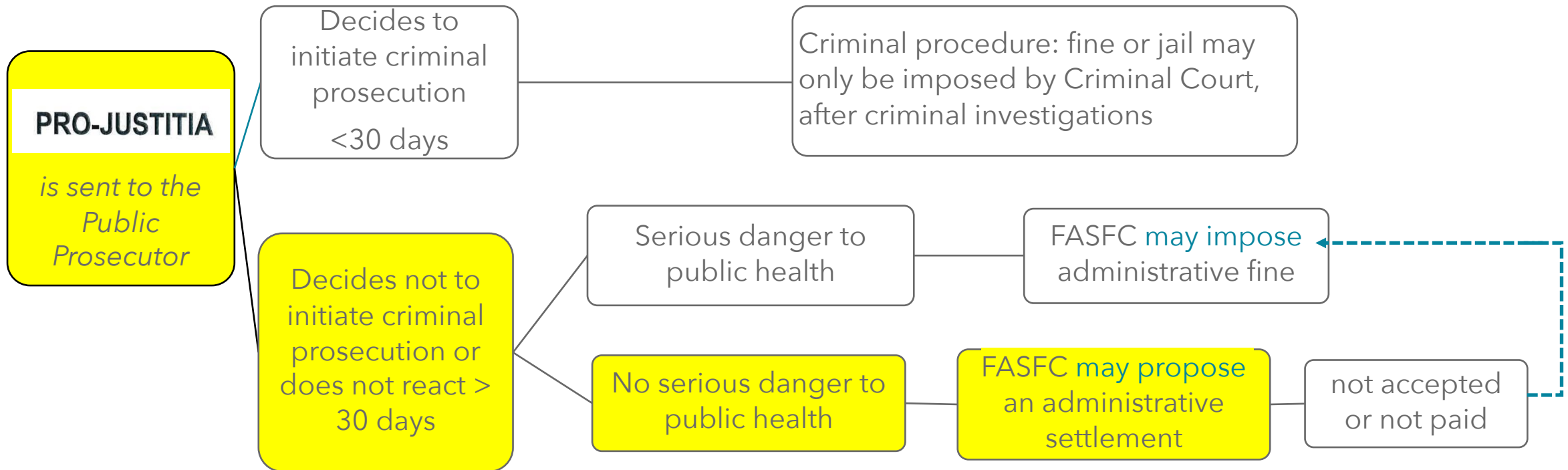
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**Proposition of administrative settlement**

All other cases where an official statement of offence is established (i.e. expect when warning letter).

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# 3. Administrative Settlement



# 3. Administrative settlement

- Increased amount of proposed settlement

**BEFORE**

- Administrative settlement between 200,- EUR and 40.000,-EUR
- No link with the amount of criminal fine

**NOW**

- Proposed settlement = % of the amount set by criminal law for the offence :
  - Not lower than **25%** of the minimum amount set by criminal law for the offence
  - Not higher than **80%** of its maximum

E.g. Breach of mandatory labelling requirements:

- Criminal fine foreseen for the offence: between 1.000,- EUR and 96.000,- EUR.
- Amount of the settlement proposed by the FASFC: between 250,- EUR and 76.800,-EUR



# 3. Administrative settlement

## ■ New procedure

### ➤ High formalism

- Administrative settlement to be proposed **within 60 days** from the receipt of official statement of offence by legal department;
- Lack of specific mentions may imply the nullity of the settlement proposal or suspend the payment delay.

➤ FASFC **does not motivate** the proposal, neither on the grounds nor in facts.

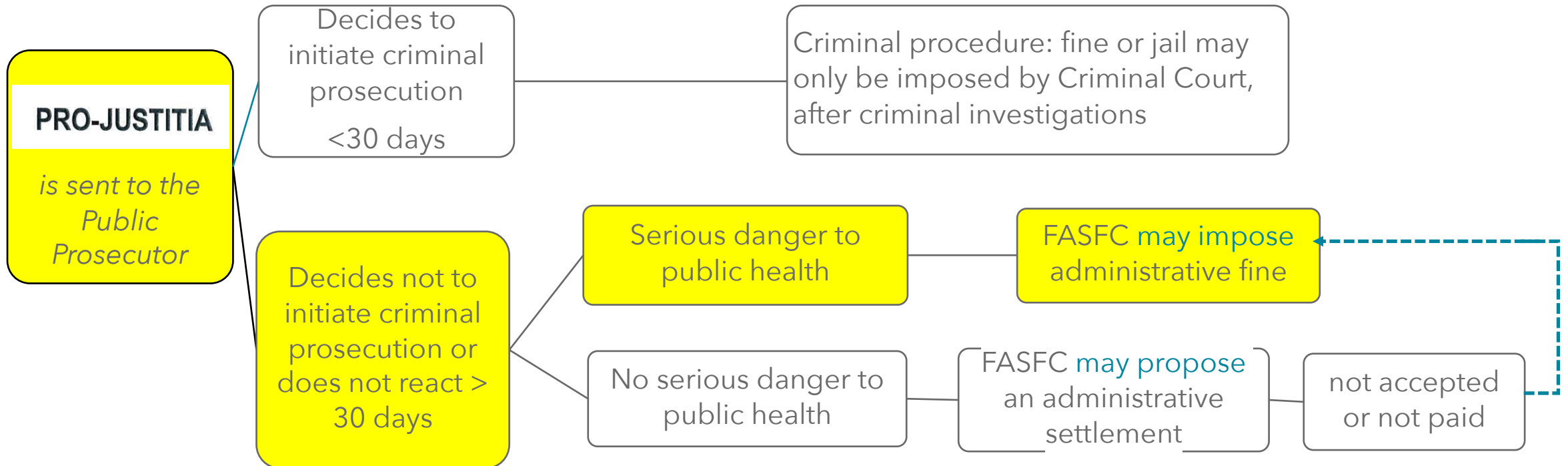
➤ **No right to be heard** nor to communicate means of defence in writing

➤ Payment within 30 days

➤ Payment ≠ recognition of offence

Algemene diensten Juridische Dienst Cel Administratieve Boetes	Correspondent: [REDACTED] E-mail: <a href="mailto:administratieve.boete@favv-afscs.be">administratieve.boete@favv-afscs.be</a> Tel.: 02/211.88.23
<b>VERSTUURD VIA AANGETEKENDE ZENDING EN PER GEWONE BRIEF</b>	Onderwerp: <b>Voorstel tot administratieve minnelijke schikking</b> in toepassing van art. 7/1 van het koninklijk besluit van 22 februari 2001 houdende organisatie van de controles die worden verricht door het Federaal Agentschap voor de Veiligheid van de Voedselketen en tot wijziging van diverse wettelijke bepalingen, bekrachtigd bij wet van 19 juli 2001 (hierna: Controlebesluit van 22 februari 2001)

# 4. Administrative fines



# 4. Administrative fines

## ■ New authority of the FASFC

### ➤ **New authority of the FASFC**

FASFC has now the authority to **impose** a fine

### ➤ **Amount of fine:**

Percentage of the amount set by criminal law for the offence

- Not lower than **50%** of the minimum amount set by criminal law for the offence
- Not higher than **100%** of its maximum

**E.g. Breach of mandatory labelling requirements:**

- Criminal fine foreseen for the offence: between 1.000,- EUR and 96.000,- EUR.
- Amount of the settlement proposed by the FASFC: between 500,- EUR and 96.000,-EUR



# 4. Administrative fines

- Parameters determining the amount of administrative fine
  - Large spectrum between legal minimum and maximum of fine
  - Criteria considered by FASFC (*internally*):
    - Starting amount based on the **nature/size** of the establishment
    - **Severity of infractions** (risk-based weighting in checklists)
    - **FBO's prior history**
    - **Particular circumstances** (incl. behaviours of FBO)
    - **Fraud**
    - **Rectification** of the offence(s)
    - Additional factors applicable to the decision



# 4. Administrative fines

## ■ Mitigating circumstances

Mitigating circumstances may reduce the fine but **not below 25%** of the minimum amount for the offence.

According to FASFC internal policy:

- The offender has **no prior offences and the situation has been rectified** (if the nature of the offense allows it).
- **Financial hardship of the operator** (e.g., debt settlement, judicial reorganization, etc.).
- **Death/serious illness of a family member of the operator** in the 1st or 2nd degree within a period of 3 months prior to the date of the inspection.
- **The inspection only covered a limited number of items** of a specific product.



# 4. Administrative fines

- Suspension of payment

Payment can be **partially or fully suspended** if:

- No other administrative fine in **3 years prior** to the infringement.

and

- No second infringement in **3 years after** the fine.



# 4. Administrative fines

- Procedural steps

**STEP 1: Intention of Decision**

Legal department notifies the operator by registered/ordinary mail.  
If specific legal mentions are missing, communication is void.

**STEP 2: Right to Be Heard.**

Operator has 30 days to submit defense (electronic/registered mail).

**STEP 3: Decision by FASFC**

If FASFC imposes a fin: fine must be paid within 60 days.  
Decision must be communicated within 180 days from the notification of intention of decision (and, in any case, within 5 years of infringement).  
Missing legal mentions render decision void.

**STEP 4: Enforcement of Fine.** Unpaid fines lead to enforcement by FPS Finance (including attachment of goods/ bank accounts).

# 4. Administrative fine

- Possibility to appeal the decision

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**Appeal Process:** Appeal to **Brussels Court of First Instance** (Civil Section) via contradictory application.  
**Deadline:** 60 days from the date of FASFC's decision.

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**Centralization Issue:** Disputes centralized in Brussels due to the absence of venue flexibility for the operator's HQ.  
**Backlog concerns** in Brussels courts.

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**Suspensive Effect:** Appeal **suspends fine enforcement** until the Court's decision.

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**Final Ruling:** Court decision is final with **no appeal** on the grounds.  
Appeal to the **Supreme Court** possible for legal issues only, not case facts.

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**Note:** The **Council of State** (administrative court) is the sole competent jurisdiction to suspend or cancel **other administrative decisions** (e.g., product recalls, production halts).

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# III. Increased criminal sanctions and brand-new offences

# 1. Preliminary remarks for the calculation of the fines

## ■ Fines applicable to legal persons

- Fines foreseen by the law are for natural persons.
- Article 41bis of the criminal code “translates” those amounts when it comes to sanctioning a legal person.
- For legal persons, the fine is **calculated** as follows, when the law provides for an offence with an imprisonment sentence “and/or” a fine :
  - For the **minimum** fine:
    - 500,- EUR multiplied by the number of months corresponding to the minimum imprisonment sentence.
    - The amount cannot be lower than the minimum fine provided for the offence.
  - For the **maximum** fine:
    - 2.000,- EUR multiplied by the number of months corresponding to the maximum imprisonment sentence.
    - The fine cannot be lower than 2x the maximum fine provided for the offence.

# 1. Preliminary remarks for the calculation of the fines

- Application of a multiplying factor
  - For all fines – whether for natural or legal persons
  - **Multiplying factor of 8**
  - « *décimes additionnels* » / « *opdecimenen* » foreseen by Belgian Act of 5 March 1952

## 2. Increased fines for existing offences

- Opposition to visits – inaccurate information
  - Opposition to visits, inspections, seizures, taking of samples or requests for information or documents, or
  - Provision of knowingly inaccurate information or documents



For natural persons	For legal persons
Imprisonment for a term of 8 days to 5 years <b>and/or</b> a fine of 800,-EUR to 8.000,- EUR	Fine of 1.000,- EUR to <b>960.000,- EUR</b>
<b>BEFORE</b> Imprisonment for a term of 8 days to 3 months <b>and/or</b> a fine of 800,- EUR to 8.000,- EUR	<b>BEFORE</b> Fine of 1.000,- EUR to 48.000,- EUR

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## 2. Increased fines for existing offences

- Non-compliance with registration, authorisation and approval
  - Non-compliance with registration, authorization, approval
    - Absence or late mandatory notification



For natural persons	For legal persons
Imprisonment for a term of 8 days to 5 years and/or a fine of 800,- EUR to 8.000,- EUR	Fine of 1.000,- EUR to <b>960.000,- EUR</b>
<b>BEFORE</b> Imprisonment for a term of 8 days to 3 months and/or a fine of 208,- EUR to 2.400,- EUR	<b>BEFORE</b> Fine of 1.000,- EUR to 48.000,- EUR

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## 2. Increased fines for existing offences

- Self-checking system
  - Fraud or absence or deficiencies in self-checking system



For natural persons	For legal persons
Imprisonment for a term of 8 days to 5 years <b>and/or</b> a fine of 208,- EUR to 40.000,- EUR	Fine of 1.000,- EUR to <b>960.000,- EUR</b>
<b>BEFORE</b> Imprisonment for a term of 8 days to 6 months <b>and/or</b> a fine of 208,- EUR to 2.400,- EUR	<b>BEFORE</b> Fine of 1.000,- EUR to 96.000,- EUR

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### 3. Brand-new offences



No communication of documents requested by FASFC within 3 days

No communication of requested documents within 3 days



For natural persons	For legal persons
Fine between 208,- EUR to 4.000,- EUR	Fine between 208,- EUR to 4.000,- EUR

# 3. Brand-new offences



## Knowingly handling (*potential*) non-compliant or harmful food

Knowingly producing, processing, holding, exporting, transporting, or marketing products :

- that do not comply with the regulations governing them.
- that carry harmful organisms or animal diseases, are contaminated, harmful, declared harmful, unfit for human consumption, or dangerous to the safety of the food chain.
- that are likely to carry harmful organisms or animal diseases or are likely to be contaminated.



For natural persons	For legal persons
Imprisonment for a term of 3 months to 5 years <b>and/or</b> a fine of 1.600,- EUR to 800.000,- EUR	Fine between 12.000,- EUR and <b>1.600.000,- EUR</b>



# 3. Brand-new offences



## Knowingly handling (*potential*) non-compliant or harmful food

- New generic offence → What about potential overlaps with existing/ new legislations?
  - E.g. Belgian Act 21 January 1977

# IV. Take Home Messages

- **Expanded AFSCA/FAVV Powers:**

Recent regulatory changes have significantly extended the powers of the Belgian Food Safety Agency and reshaped enforcement procedures. The Agency has now the power to impose fines.

- **New Administrative Fines:**

Since 1 July 2024, fines for food law violations have increased dramatically, (up to €1.6 million). This reflects a substantial escalation in the potential financial consequences for operators.

- **New Offence Introduced:**

A new offence has been created for the marketing of **potentially** contaminated or harmful food products—even if they are not actually contaminated—expanding liability for food businesses.

- **Role of FPS Finance in Fine Recovery:**

The Federal Public Service for Finance now has an active role in recovering these fines, adding an extra layer of enforcement.

- **Impact on Strategic Decisions:**

Food companies must thoroughly understand the new regulations, as they may influence strategic decision-making due to the increased risks and penalties. Appeals to fines are possible and have a suspensive effect, but the backlog of court cases may delay resolutions.

# Legal References

- **Creation of the FASFC**

- Act of 4 February 2000 establishing the FASFC ([link](#))

*Modified by:*

- Act of 25 May 2024 containing various provisions regarding agriculture and animal health ([link](#))

- **Calculation of administrative and criminal sanctions**

- Royal Decree of 22 February 2001 organising the controls carried out by the FASFC and amending various legal provisions, in particular Articles 3, 3bis, 3quater, 4, 4bis, 5, 7, 7/1, 7/2, 7/3 ([link](#))

*Modified by:*

- Act of 7 April 2023 amending Chapter III of the Royal Decree of February 22, 2001, regarding the organization of inspections carried out by the Federal Agency for the Safety of the Food Chain, and amending various legal provisions. ([link](#));
- Act of 25 May 2024 containing various provisions regarding agriculture and animal health ([link](#))
- Royal Decree of 16 December 2002 establishing the procedural rules and payment modalities of administrative fines following inspections carried out in accordance with food safety legislation, and implementing certain provisions of the Royal Decree of 22 February 2001 ([link](#))
- Criminal Code, in particular Article 41 bis ([link](#))
- Act of 5 March 1952, in particular Article 1 ([link](#))

- **For reference: at EU level**

- Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products ([link](#))
- 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 ([link](#))

Thank you for your attention!

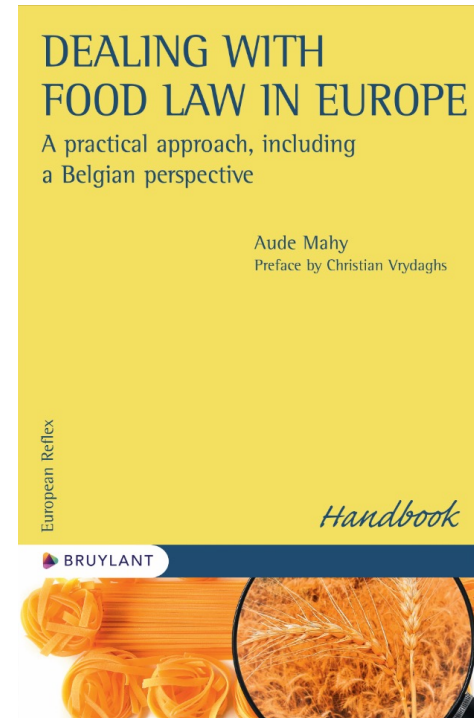


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