

Food Legislation News

No. 1 – February 2023

Publications of the BVL

The Federal Office of Consumer Protection and Food Safety (Bundesamt für Verbraucherschutz und Lebensmittelsicherheit (BVL)) published, amongst others, the following information:

Foodborne outbreaks 2021:

On 27 October 2022, the BVL and the Robert Koch Institute (RKI) have jointly published a report regarding foodborne outbreaks in Germany in 2021 (in German: https://www.bvl.bund.de/SharedDocs/Berichte/10_BELA_lebensmittelbed_Krankheitsausbruechen_Dtl/Jahresbericht2021.pdf?__blob=publicationFile&v=3).

Further annual reports 2021:

On their homepage, the BVL provided reports regarding the food safety subject:

Links:

- Overlook reports (in German):
https://www.bvl.bund.de/DE/Service/01_Infothek/03_berichte/infothek_berichte_node.html
- Monitoring 2021:
https://www.bvl.bund.de/EN/Tasks/01_Food/01_tasks/02_OfficialFoodControl/04_LM_Monitoring_en/LM_Monitoring_EN_node.html
- Zoonoses monitoring:
https://www.bvl.bund.de/EN/Tasks/01_Food/01_tasks/02_OfficialFoodControl/06_ZoonosesMonitoring/ZoonosesMonitoring_node.html?cms_thema=Zoonoses+monitoring

In addition, background information was provided in a press release (in German: https://www.bvl.bund.de/SharedDocs/Pressemitteilungen/01_lebensmittel/2022/2022_PM_Jahrespressekonferenz.html?nn=11019600) in which, amongst others, an account was given on the microbiological contamination of minced beef, prepacked salads, flours and ready-made dough, on acrylamide in vegetable chips and blackened olives as well as on food fraud regarding sushi.

Food fraud:

On 17 November 2022, the BVL published results of Operation OPSON XI against food fraud. In this respect, the German Food Control Authorities examined fish, crustaceans and molluscs for misleading and fraudulent practices, particularly regarding the addition of external water, impermissible or undeclared additives and species substitution (in German: https://www.bvl.bund.de/SharedDocs/Pressemitteilungen/01_lebensmittel/2022/2022_PM_OPSON_XI.html).

Pesticides:

Extensive information on approved pesticides, revoked and suspended approvals as well as on emergency approvals, for example, can be obtained on the homepage of the Federal Office of Consumer Protection and Food Safety (BVL) at www.bvl.bund.de (https://www.bvl.bund.de/EN/Tasks/04_Plant_protection_products/01_ppp_tasks/02_ppp_AuthorisationReviewActSub/01_ppps_authorised/ppp_authorised_node.html).

Veterinary drugs:

On 16 December 2022, the BVL published the announcement regarding the approval of veterinary drugs and other official acts as of 17 October 2022 (in German: https://www.bvl.bund.de/SharedDocs/Fachmeldungen/05_tierarzneimittel/2022/2022_12_15_Fa_Bekanntmachung_Zulassung_TA.html).

Sentences

ECJ – food for special medical purposes (FSMP):

The European Court of Justice (ECJ) is of the opinion that it is not sufficient for a product to be classified as a food for special medical purposes (FSMP) if it merely enables the patient to derive a general benefit from ingestion. The ECJ characterises a product as an FSMP if, due to a disease, there is an increased or specific nutritional need, which is then to be covered by the food. The products assessed here showed corresponding claims (e.g. "for dietary management of nutritionally induced immune deficiencies (e.g. recurrent respiratory infections)"), but did not boast the required specific nutritional properties (ECJ, 27 October 2022, C-418/21 (Orthomol); <https://curia.europa.eu/juris/document/document.jsf?mode=DOC&pageIndex=0&docid=267609&part=1&doclang=EN&text=&dir=&occ=first&cid=2045>).

ECJ – interpretation of the term "product name" within the framework of the so-called "imitation provision" of the Food Information Regulation:

A poultry mini salami contained the addition of palm fat and rapeseed oil as a substitute for animal fat. According to Annex VI Part A No. 4 of the Food Information Regulation (LMIV, Regulation (EU) No. 1169/2011), such a substitution of ingredients must be indicated in the immediate vicinity of the product name. In the present case, this information was given on the back of the pack by the statement "Poultry mini salami with palm fat and rapeseed oil" in addition to the list of ingredients. However, the objecting authority criticised the fact that the reference was not also made on the front with the trade name ("Bifi The Original Turkey") and postulated that the term "name of the product" used in the LMIV also refers to a trade name. The ECJ has now contradicted this view with its sentence. The term "name of the product" is considered to be synonymous with "name of the food" and it, therefore, suffices to indicate the replacement of the ingredients on the back of the product along with the designation (Sentence dated 1 December 2022, C-595/21, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1674658085763&uri=CELEX%3A62021CJ0595>).

Note:

The working group of experts (ALTS) that deals with the field of food hygiene and food of animal origin has dealt with this question at its 80th conference in 2017 and took the view of the objecting authority (ALTS 2017/80/03, in German: https://www.bvl.bund.de/SharedDocs/Downloads/01_Lebensmittel/ALS_ALTS/ALTS_Beschluesse_80_Arbeitstagung_Nov_2017.pdf?__blob=publicationFile&v=4, see Food Legislation News 3/2018).

"Glühbo" – mulled wine or not:

The Higher Regional Court of Munich has prohibited a brew house from calling its two wine-based beverages, which contain bock beer wort, "Glühwein" (mulled wine). The addition of bock beer wort adds too much water to the respective product (District Court of Munich I, 17 November 2022, Ref. 17 HKO 8213/18, not legally effective, Press Release (in German): <https://www.justiz.bayern.de/gerichte-und-behoerden/landgericht/muenchen-1/presse/2022/29.php>).

Gold Bunny – likelihood of confusion:

According to a sentence of the Higher Regional Court of Munich, an Allgäu confectionary must not sell chocolate bunnies with a golden packaging. In the opinion of the court, the gold tone of the bunny is so similar to the tone of the Lindt "Gold Bunny" that there is a likelihood of confusion (Higher Regional Court of Munich, 27 October 2022, not legally effective, Ref. 29 U 6389/19).

"Caramel pudding":

A pudding described as "caramel pudding" must contain caramel and not just caramel flavouring, according to a sentence of the District Court of Munich (District Court of Munich, 11 October 2022, not legally effective, Ref. 33 O 13261/21).

"Power for the immune system":

According to a judgment of the Higher Regional Court of Hamm, the claim "Full power for your immune system" in the case under review is not a "topic heading" but, when presented in direct connection with specific food supplements, it is a health-related indication that violates the provisions of the Health Claims Regulation (Higher Regional Court of Hamm, 11 August 2022; in German: <https://openjur.de/u/2453580.html>).

News from the BfR

Amongst others, the German Federal Institute for Risk Assessment (Bundesinstitut für Risikobewertung (BfR)) published the following:

Risk assessment of sulphur dioxide (E 220) and sulphites (E 221-228):

The European Food Safety Authority (EFSA) sees safety concerns for consumers of larger quantities of foods containing sulphur dioxide or sulphites. At the same time, EFSA points out in its updated opinion that the data situation is not sufficient to derive an Acceptable Daily Intake (ADI). Therefore, the originally time-limited value (temporary ADI) was withdrawn. The BfR agrees with the EFSA's opinion and reiterates the need for improved data.

Links:

- Communication No. 039/2022 dated 20 December 2022, updated on 3 January 2023 (in German): <https://www.bfr.bund.de/cm/343/schwefeldioxid-und-sulfite-efsa-neubewertung-sieht-gesundheitliche-risiken-bei-hohem-verzehr-datenlage-weiterhin-lueckenhaft.pdf>
- EFSA news as of 24 November 2022: <https://www.efsa.europa.eu/en/news/sulfites-safety-concern-high-consumers-data-lacking>

Nickel – estimation of the long-term intake via food:

In its MEAL study, the BfR examined 90% of the foods most commonly consumed in Germany for nickel, among other things. According to this study, the food groups "pulses, nuts, oilseeds and spices" as well as "coffee, cocoa and tea" show the highest average nickel contents. However, due to the relatively high consumption, the foods in the group "cereals and cereal-based products" contribute the most to nickel intake (Communication No. 033/2022 dated 22 November 2022: <https://www.bfr.bund.de/cm/349/nickel-estimate-of-long-term-intake-via-food-based-on-the-bfr-meal-study.pdf>).

Hemp in animal feed, hemp FAQ:

In its Press Release of 14 November 2022, the BfR informs about a study published in the scientific journal "Nature Food", which shows that hemp as animal feed can affect the health of cows (press release 43/2022 (Press Information 43/2022: https://www.bfr.bund.de/en/press_information/2022/43/study_hemp_as_animal_feed_can_affect_the_health_of_cows-308865.html)).

In addition, the BfR updated its catalogue of questions and answers regarding hemp-containing foods and animal feeds on 15 November 2022 (<https://www.bfr.bund.de/cm/349/questions-and-answers-on-the-health-risks-of-food-and-feed-containing-hemp.pdf>).

Baby food with HMO and/or GOS:

From the BfR's point of view, the health advantages of infant formula and follow-on formula with human milk oligosaccharides (HMO) and/or galactooligosaccharides (GOS) are not yet proved (Statement No. 037/2022 dated 6 December 2022 (in German): <https://www.bfr.bund.de/cm/343/gesundheitliche-vorteile-von-saeuglingsanfangs-und-folgenahrung-mit-humanen-milcholigo-und-oder-galaktooligosacchariden-noch-nicht-belegt.pdf>).

Pyrrolizidine alkaloids - FAQ:

On 16 December 2022, the BfR updated its compilation of questions and answers regarding pyrrolizidine alkaloids in foods (in German: https://www.bfr.bund.de/de/fragen_und_antworten_zu_pyrrolizidinalkaloiden_in_lebensmitteln-187302.html).

Genome Editing and CRISPR/Cas9 - FAQ:

The BfR's question and answer catalogue on the subject of genome editing and CRISPR/Cas9 was updated on 27 October 2022 (<https://www.bfr.bund.de/cm/349/faq-on-genome-editing-and-crispr-cas9.pdf>).

Miscellaneous

Food irradiation:

With the amendment to the Food Irradiation Ordinance published on 28 October 2022, the irradiation of shell eggs with UV-C rays was generally permitted (Federal Law Gazette I, No. 39, P. 1879, in German: http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl122s1879.pdf).

Olive oil:

With the Delegated Regulation (EU) 2022/2104 of the Commission, the marketing standards for olive oil were modified. At the same time, Regulations (EEC) No. 2568/91 and (EU) No. 29/2012 were repealed. (Official Journal 284 dated 4 November 2022, P. 1; <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2104&from=EN>).

Provisions on conformity control and methods of analysis for this purpose are laid down in Implementing Regulation (EU) 2022/2105 (Official Journal 284 dated 4 November 2022, P. 23; <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02022R2105-20221104&from=EN>).

Both regulations came into force on 24 November 2022.

Guidelines for delicatessen salads:

The guidelines for delicatessen salads were modified and the new version was published in the German Federal Gazette on 25 November 2022 (in German: <https://www.bundesanzeiger.de/pub/publication/9W3ECjaarZ8vwYs4ZI5/content/9W3ECjaarZ8vwYs4ZI5/BAnz%20AT%2025.11.2022%20B1.pdf?inline>).

Per- and polyfluoroalkylated substance (PFAS):

With Regulation (EU) 2022/2388 of the Commission dated 7 December 2022, maximum levels for certain PFAS were stipulated (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2388&from=EN>).

Additives – guidelines for the description of food categories:

The guideline document for the description of the food categories in Annex II Part E of Regulation (EC) No. 1333/2008 on food additives was updated and published on the homepage of the European Commission in November 2022 (https://food.ec.europa.eu/system/files/2022-12/fs_food-improvement-agents_guidance_1333-2008_annex-2.pdf). The guidelines only serve as a support but they are not legally binding.

Insects – Novel Food:

The Implementing Regulation (EU) 2017/2470 of the Commission for the creation of the Union List of Novel Foods was modified through further implementing regulations and, therefore, the following approvals were granted regarding insects:

- Partially defatted powder from acheta domesticus (house cricket) (Implementing Regulation (EU) 2023/5 dated 3 January 2023)
- Larvae from alphitobius diaperinus (buffalo beetles) in a frozen, paste-like, dried and pulverised form (Implementing Regulation (EU) 2023/58 dated 5 January 2023).

Additional informations: https://food.ec.europa.eu/safety/novel-food/authorisations/approval-insect-novel-food_en

Last update: 11 January 2023

EC Alert Notifications

Following are notifications chosen from the European Rapid Alert System for Food and Feed. Considered were alerts for food, information and border rejections which arrived **between 12 November 2022 and 20 January 2023**.

Source:

https://www.bvl.bund.de/DE/Arbeitsbereiche/01_Lebensmittel/01_Aufgaben/04_Warn_und_Informationssysteme/00_Warn_und_Informationssysteme/01_RASFF/021_aktuelle_rasff_meldungen/aktuelle_meldungen_im_box.html (in German)

Reason for Notifying	Product	Country of Origin	Notes	Number
Mycotoxins				
Aflatoxins total: 60	peanuts, figs, pistachios, hazelnuts, almonds (including products)			55
	maize	France	B1: 5.6 µg/kg	1
	rice	Pakistan	B1: 13 µg/kg; total: 13 µg/kg	1
	halva with pistachios	Turkey	B1: 13.13 µg/kg; total: 15.40 µg/kg	1
	spice mixture (Masala)	Pakistan	B1: 12.6 µg/kg; total: 12.6 µg/kg	1
	nutmeg	Indonesia	B1: 14 µg/kg; total: 19 µg/kg	1
Ochratoxin A	bakery products with olive oil, wheat flour	Spain, France	up 40 µg/kg	2
	raisins, dried figs	Uzbekistan, Turkey	up 99.6 µg/kg	8
	pistachios	Germany, Iran	up 194.9 µg/kg	2
	ground nutmeg	India	132 µg/kg	1

Reason for Notifying	Product	Country of Origin	Notes	Number
Heavy Metals / Other Metals				
Lead	blackberries	Portugal	up 0.68 mg/kg	1
	cardamom	Netherlands	2.237 mg/kg	1
Cadmium	squid	India	5.6 mg/kg	1
	lobster	USA		1
	mussels	Chile	1.65 mg/kg	1
	horse meat	Romania	0.26 mg/kg	1
	avocados, potatoes, rawit pepper, peppers, peas	Dominican Rep., Bosnia and Herzegovina, Morocco, Peru, Ukraine	up 0.165 mg/kg	5
	carrots, cepes	Poland	up 0.93 mg/kg	2
	white sesame seeds	Bolivia	0.26 mg/kg	1
Mercury	fish, fish products	Spain, Mexico, Ecuador, Tunisia	up 1.9 mg/kg	7
	food supplement	China, USA	up 0.309 mg/kg	2
Other Contaminants / Residues				
Ethylene oxide, 2-Chloroethanol	food supplement	Germany (capsules from China)		1
	Boswellia serrata extract	India		1
	ground black pepper, dried rosemary, cardamom fruits	UK, Netherlands, Germany		3
	turmeric powder, chillies, dried shallots, spice mix, nutmeg	India		5
Chlorate	whey powder	France	2.3 mg/kg	1
Diethylhexylphthalate (DEHP)	pesto sauce	Italy, unknown	up 0.34 mg/kg	3
Etylcarbamate	stone fruit spirit	France	4.875 mg/l	1
Disodium Ethylenediaminetetraacetic acid (EDTA – E 386)	alkoholic cocktail drinks, carbonated beverages	Brazil, Lebanon		3
Furan	roasted ground coffee	Germany		1
Benzo(a)pyrene, PAH	smoked sprats	Latvia	Benzo(a)pyrene: 16.84 µg/kg; PAH: 110.64 µg/kg	1
	matcha tea powder	China		1
	dried star anise	Vietnam	Benzo(a)pyrene: 31.61 µg/kg	1
	Guarana powder ground seeds	Poland	PAH: 77.9 µg/kg	1
	ginger extract	China	Benzo(a)pyrene: 19 µg/kg; PAH: 150.7 µg/kg	1
Mineral oil	spelt porridge	Poland		1
Acrylamide	potatoe chips	Croatia	2,035.1 µg/kg	1
	biscuits	Romania	up 964 µg/kg	1

Reason for Notifying	Product	Country of Origin	Notes	Number
3-Monochloro-1,2-propanediol (3-MCPD)	cassave crackers, chips (nacho mexicanos)	Netherlands (partly raw mat. China)	up 5,292 µg/kg	2
	palm oil	Ghana	6,238 µg/kg	1
Glycidyl esters	vegetable fat	Turkey	1,535 µg/kg	1
	chips (nacho mexicanos)	Netherlands (raw mat. China)	2,073 µg/kg	1
Pyrrolizidine alkaloids (PA)	cumin	Belgium, Afghanistan, Turkey	up 23,899 µg/kg	5
	oregano	Turkey	up 13,921 µg/kg	5
	herbal tea	Morocco	11,608.3 µg/kg	1
	black tea	Poland	700 µg/kg	1
	pollen	Poland	1,187 µg/kg	1
Tropane alkaloids	organic hulled millet	Poland	Atropine: 29 µg/kg; Scopolamine: 23 µg/kg	1
Semicarbazide	chilled shrimps	Sri Lanka	0.68 µg/kg	1
	salted pig casings	China	5.5 µg/kg	1
Ergot alkaloids	rye flour	Belgium	1,480 µg/kg	1
	enzymes	Ireland	217 µg/kg	1
Histamine	fish, fish products	Portugal, Vietnam, Spain, Sri Lanka, Czech Rep., Morocco, Poland, Peru	up 3,743 mg/kg	8
Cyanide	apricot kernels	Turkey, Germany, Lithuania, Pakistan	up >150 mg/kg	6
Iodine	dried algae	China	859 mg/kg	1
	food supplement	Sweden		1
Nitrate	baby food	France	302.6 mg/kg	1
	spinach	Italy, Belgium	up 4,465 mg/kg	3
Pharmacological Active Substances				
Aloin	aloe juice	Spain	Aloin A: 1,195.4 µg/kg; Aloin B: 7,116,5 µg/kg	1
Hydroxyanthracene derivatives	food supplement	Monaco, Germany		2
1,3-Dimethylamylamine (DMAA)	food supplement	USA		1
1,3-Dimethylamylamine (DMAA), 1,3-Dimethylbutylamine (nor-DMAA), Synephrine, Octopamine	food supplement	USA		1

Reason for Notifying	Product	Country of Origin	Notes	Number
Enrofloxacin	chicken eggs	Poland	10.2 µg/kg	1
Hupercine A	food supplement	Belgium, Romania		2
Cannabidiol (CBD)	CBD oil	Austria		1
	food supplement	Austria, Netherlands		7
Tetrahydrocannabinol (THC)	hemp seed oil	Italy		1
	herbal tea with hemp	Germany	11.8 mg/kg	1
	food supplement	Czech Rep.	87 mg/kg	1
Malachite green, leukomalachite green	fish	Thailand	59.07 µg/kg	1
	shrimps	Bangladesh	>2 µg/kg	1
Monacolin K	food supplement	Netherlands, Spain		3
Monensin	poultry meat	Poland	12.0 µg/kg	1
Salinomycin	poultry meat	UK		1
Tilmicosin	turkey meat	Poland	187 µg/kg	1
Tetracyclines	pork meat	Poland	Doxycycline: up 2,225 µg/kg	1
Sibutramine	food supplement	Turkey		1
	tea, detox tea	Turkey		2
Sildenafil	food supplement	Turkey, UK, Malaysia		4
	tea, detox tea	Turkey		2
Tadalafil	food supplement	UK, Malaysia		2
Yohimbine	food supplement	Ukraine		1
	yohimbe tea	Bulgaria, Portugal		5
Unauthorised Colours				
Sudan IV	ground sumac	France		1
Sudan III, Sudan IV	palm oil	Ghana		2
Sudan I, IV	roasted paprika	Turkey		1
Sudan I, IV, Rhodamine B	chili powder	Bangladesh		1
Titanium dioxide (E 171)	food colourings, food supplement, surimi	Spain, USA, Thailand		3
Miscellaneous				
Parasitic infestation with Anisakis	fish	Netherlands, Spain, Morocco, Italy		10
GMO, not authorised	rice noodles	Thailand		1
	papaya	Cambodia, unknown		2
Foodborne disease outbreak	smoked mackerel	Czech Rep.		1
	oysters	Ireland, Norway, France		5

Reason for Notifying	Product	Country of Origin	Notes	Number
Pathogenic Germs				
Salmonella total: 111	meat, meat products (including poultry)			73
	eggs	Germany, Sweden		2
	mussels	Italy, Ireland, Spain		3
	sesame, sesame products	Syria, Germany, India, Nigeria, UK		12
	frozen dumplings	Estonia		1
	pistachios	USA		1
	black pepper	Brazil, Germany		11
	rosemary, bay leaves, anise seeds	Egypt, Turkey, Syria		3
	Bio Alfalfa, tiger nut flakes, fruit salad	Netherlands, Germany (partly raw mat. Poland, Netherlands)		3
	black mushrooms	Cote d'Ivoire		1
	dried natural casings	Portugal		1
<i>Listeria monocytogenes</i>	fish, fish products	South Korea, Poland, Spain, France, Denmark, Ireland		13
	meat, meat products (including poultry)	France, Poland, Italy, Netherlands, Hungary, Romania		10
	cheese feta dop, gorgonzola, sheep's cheese, Saint- Nectaire cheese	Greece, Italy, France		4
	yeast	Germany		1
	hummus	Netherlands		3
	ready meal rice	Spain		1
	vegan cheese and foie gras alternative	France		1
	ready to eat salad	Netherlands		1
Shigatoxin producing E.coli (STEC)	beef carpaccio, beef, veal burger, salami	Netherlands, Belgium, Uruguay, New Zealand, Italy		6
	frozen croissants	France		1
	raw milk goat cheese	Belgium		1
<i>Bacillus cereus</i>	prepared dish, ready to eat salad	Slovakia, Netherlands		2
<i>Campylobacter</i>	duck breast, chicken fillets	France, Hungary		2
	meal salad	Netherlands		1
<i>Clostridium perfringens</i>	dried natural casings	Portugal		1

Reason for Notifying	Product	Country of Origin	Notes	Number
Staphylococcal enterotoxin	cold cuts (meat, meat products)	Italy		1
<i>Vibrio cholerae</i>	octopus	Senegal		1
	shrimps	Ecuador, Venezuela		2
<i>Vibrio parahaemolyticus</i>	mussels	Italy (reared Spain)		1
Norovirus	oysters, mussels	France, Spain, Italy		9
	frozen strawberries	Egypt		1

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