

Food Legislation News

No. 2 – April 2021

Sentences

Federal High Court of Justice – "Schwarzwälder Schinken" (Black Forest ham) (protected geographical indication), place of processing:

The Federal High Court of Justice (BGH) decided on 3 September 2020 that "Schwarzwälder Schinken" ("Black Forest ham") does not have to exclusively be sliced and packed in the Black Forest (Ref. No. I ZB 72/19, published on 16 February 2021). The European Court of Justice (ECJ) had already decided on 19 December 2018 that the slicing and packaging of "Schwarzwälder Schinken" (protected geographical indication) may only under certain conditions be limited to the area of production, in the event that this represents a necessary and proportionate means, e.g. in order to assure the quality or provenance of the ham (Ref. No. C-367/17). In the judgment of the Federal High Court of Justice, it is irrelevant for the ensuring of specification-compliant quality or of the origin of the ham whether or not the latter has been sliced and packed in the area of production or in another area (in German: <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=Aktuell&Sort=9&nr=114817&pos=6&anz=713>).

ECJ – Protected indications of origin:

Under certain conditions, the protection of a protected indication of origin (here: "Morbier" cheese) can also include the form or appearance of the product. It must be checked in the individual case if, otherwise, the consumer can be misled (ECJ, Legal Case C-490/19, Press Release No.168/2020 dated 17 December 2020; <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-12/cp200168en.pdf>).

Indication of origin of fruit and vegetables in the online trade:

The District Court of Munich decided on 14 January 2020 that the origin of fruit and vegetables must also be explicitly indicated in the online trade. Several possible countries of origin must not be indicated, nor must products from countries of origin other than the ones specified in the order be delivered subsequent to ordering (Ref. No. 1 HK O 6852/18). This judgment was now confirmed by the Higher Regional Court of Munich (Ref. No. 29 U 853/20). In their press release as from 19 February 2021, the Federal Office of Consumer Protection and Food Safety (BVL) points to the G@ZIELT Internet control body in this context, where corresponding Internet researches for the supervisory authorities are carried out (in German: https://www.bvl.bund.de/SharedDocs/Pressemitteilungen/01_lebensmittel/2021/2021_02_19_PI_Gleiche_Regeln_beim_Onlinekauf_Lebensmitteln.html).

Differentiation food – joke articles:

A food supplement that was declared as a joke article, whose purpose is human consumption, still remains to be food and is, therefore, subject to the food legislation:

- „L-Arginin + L-Citrullin für Weihnachtsmänner“ (L-arginine + L-citrulline for Santa Claus figures): Administrative Court of Würzburg, Decision as from 8 October 2020, Ref. No. W 8 S 20.1371, <https://openjur.de/u/2302489.html> (in German).
- „Vitamin B-Komplex für Nervenfunktion, Herz & Energiestoffwechsel bei Gartenzwergen“ (Vitamin B complex for the nervous system, the heart and the energy metabolism for garden gnomes): Administrative Court of Würzburg, Decision as from 20 October 2020, Ref. No. W 8 S 20.1494, <https://openjur.de/u/2304937.html> (in German).

„Sägemehl“ (sawdust) is not permissible as a cookie ingredient:

According to a press release dated 21 December 2020, the Karlsruhe Administrative Court banned the sale of so-called "Sägemehlkekse" (sawdust cookies). It is the opinion of the court that cookies produced in this way are not suitable for human consumption (Judgment of 15 October 2020, Ref. No. 3 K 2148/19; in German: <https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=VG%20Karlsruhe&Datum=15.10.2020&Aktenzeichen=3%20K%202148%2F19>).

EFSA publications

Amongst others, the European Food Safety Authority (EFSA) published the following:

Mealworms as a foodstuff:

On 13 January 2021, a first expert opinion regarding the evaluation of edible mealworms as a novel food was published in the EFSA Journal. Here, the safeness of the yellow mealworm is confirmed (<https://www.efsa.europa.eu/en/efsajournal/pub/6343>).

Pectin and amidated pectin:

In their statement regarding the revaluation of pectin and amidated pectin as a food additive, the EFSA states that the permitted maximum amounts may have health effects on infants who are younger than 16 weeks. They, therefore, recommend reducing the corresponding maximum amount (published on 29 January 2021, <https://www.efsa.europa.eu/en/efsajournal/pub/6387>).

News from the BfR

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

Communal facilities:

The leaflet "Safe food" for the protection against foodborne diseases in communal facilities was updated in 2020. It contains recommendations for the safe preparation of meals in facilities where particularly vulnerable groups are regularly catered for (Press Release 05/2021 dated 4 February 2021; https://www.bfr.bund.de/en/press_information/2021/05/safe_food_protecting_against_foodborne_infections_in_communal_facilities-268675.html).

Evaluation of hemp-containing foods:

As a basis for the evaluation of hemp-containing foods, the BfR recommends using the acute reference dose of 1 microgram of tetrahydrocannabinol/kg body weight. For each product to be evaluated, it should be checked in the individual case, whether or not the acute reference dose can be exceeded through the measured THC content at an estimated amount of consumption. As regards the estimated amount of consumption, the BfR refers to the "EFSA Comprehensive European Food Consumption Database" (Statement No. 006/2021 dated 17 February 2021; <https://www.bfr.bund.de/cm/349/the-bfr-recommends-acute-reference-dose-as-basis-for-assessing-hemp-containing-foodstuff.pdf>).

Avian influenza:

Virus transmission (H5N8) through the consumption of food from poultry is unlikely (updated Communication No. 007/2021 dated 23 February 2021; in German: <https://www.bfr.bund.de/cm/343/virusuebertragung-h5n8-durch-den-verzehr-von-lebensmitteln-vom-gefluegel-ist-unwahrscheinlich.pdf>).

Coronavirus – FAQ:

The BfR continuously updates questions and answers regarding the novel coronavirus SARS-CoV-2 (https://www.bfr.bund.de/en/can_the_new_type_of_coronavirus_be_transmitted_via_food_and_objects_-_244090.html).

Modifications regarding pesticides

Maximum residue levels (MRL):

With Regulation (EU) No. 2021/155, the MRL of the following pesticide active agents were modified: chlorpropham, chlorothalonil, dimethoate, ethoprophos, fenamidone, methiocarb, omethoate, propiconazole, pymetrozine and carbon tetrachloride.

Information on pesticides from the BVL:

Extensive information on approved pesticides, revoked and suspended approvals as well as on emergency approvals, for example, can be retrieved 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).

Miscellaneous

General Administrative Act "AVV-RÜb" was revised:

The General Administrative Act on the principles regarding the implementation of the official supervision of compliance with the provisions of the food law, the law on animal by-products, the wine law, the feed law and the tobacco law (General Administrative Act framework supervision (AVV Rahmenüberwachung - AVV RÜb)) was published in the German Federal Gazette as a revised version on 26 January 2021 (in German: <https://www.bundesanzeiger.de/pub/publication/S0OXM3bETLsSyXNNRvG/content/S0OXM3bETLsSyXNNRvG/BAnz%20AT%2026.01.2021%20B6.pdf?inline>).

New ALTS assessment values for allergens:

On 26 January 2021, new ALTS (working group of experts that deals with the field of food hygiene and food of animal origin) assessment values for allergens were published on the website of the Federal Office of Consumer Protection and Food Safety (BVL). These are the orientation values for the official food control (in German: https://www.bvl.bund.de/SharedDocs/Downloads/01_Lebensmittel/ALS_ALTS/Allergene_Beurteilungswerte.pdf?__blob=publicationFile&v=6).

Veterinary drugs:

The BVL published the notice regarding the approval of veterinary drugs and other official acts dated 12 January 2021 (in German: https://www.bvl.bund.de/SharedDocs/Fachmeldungen/05_tierarzneimittel/2021/2021_02_04_Fa_Bekanntmachung_Zulassung_TA.html).

Nutri-Score - FAQ:

Regarding the questions and answers paper on nutri-score in the version dated 26 October 2020 that was published on the website of the Santé publique France, the Federal Ministry of Food and Agriculture (BMEL) published a German translation of it. Since this is an "unofficial" translation, the original version of the Santé publique prevails in case of doubt.

Links:

- BMEL: https://www.bmel.de/SharedDocs/Downloads/DE/Ernaehrung/Lebensmittel-Kennzeichnung/faq-nutri-score-markeninhaber-in-dt-uebersetzung.pdf?__blob=publicationFile&v=4
- Santé publique France: <https://www.santepubliquefrance.fr/determinants-de-sante/nutrition-et-activite-physique/articles/nutri-score>

Last update: 1 March 2021

EC Alert Notifications

Following are notifications chosen from the European Rapid Alert System for Food. Considered were alerts, information and border rejections which arrived **between 20 January and 16 March 2021**.

Source:

<https://webgate.ec.europa.eu/rasff-window/portal/?event=notificationsList&StartRow=1>

Reason for Notifying	Product	Country of Origin	Notes	Number
Mycotoxins				
Aflatoxins total: 63	figs, dates, hazelnuts, pistachios, peanuts, melon kernels (including products)			53
	red chilli sauce	Pakistan	total: 16.1 µg/kg	1
	dried peppers	India	B1: 12.77 µg/kg; total: 13.5 µg/kg	1
	Masala spice mix, spice mix	Pakistan	B1: 19.1 µg/kg; total: 19.8 µg/kg	3
	ground curcuma	Turkey	B1: up 14.9 µg/kg	1
	organic hulled buckwheat	China	B1: 22.6 µg/kg; total: 22.6 µg/kg	1
	rice, basmati rice, organic brown basmati rice	Pakistan	B1: up 9.1 µg/kg	3
Ochratoxin A	figs	Turkey, Italy	up 73.35 µg/kg	2
	organic bread rye	Estonia	up 19.07 µg/kg	1
	organic brown basmati rice	Pakistan	11.2 µg/kg	1
	chillies seasoning	Turkey	32.4 µg/kg	1
Fumonisin	maize flour	Kosovo	1,642 µg/kg	1
Heavy Metals / Other Metals				
Lead	food supplement	India	38 mg/kg	1
	white wine	Italy	0.23 mg/kg	1

Reason for Notifying	Product	Country of Origin	Notes	Number
Cadmium	cuttlefish, squid, squid tentacles	India	up 3 mg/kg	4
	garlic	China	up 0.12 mg/kg	2
	horsemeat	Poland (slaughtered in Italy)	0.27 mg/kg	1
Mercury	fish / fish products	Spain, Morocco, Italy	up 1.85 mg/kg	4
	food supplement	India	3.4 mg/kg	1
Other Contaminants / Residues				
Ethylene oxide	sesame seeds	Serbia, India, Ethiopia, Germany, France	up 24 mg/kg	40
	bakery products, baking mixes, granola	Germany, Italy, India, Netherlands, Spain, France, Denmark, Belgium, Czech Rep.	up 56.1 mg/kg	30
	sesame paste	Greece (raw mat. India)	0.23 mg/kg	1
	hummus	Spain, Belgium		2
	seame oil	France	up 1.1 mg/kg	1
	seeds mix	unknown (used in France)	0.066 mg/kg	1
	spices, spice mixes	India, Turkey, Austria, France	up 183 mg/kg	11
	okra	India	up 0.94 mg/kg	4
	chocolate, nougat	Spain	0.35 mg/kg	2
	sesame dressing, salad dressing	Netherlands, France	0.12 mg/kg	2
	ravioli	France		1
2-Chloroethanol	organic toasted sesame oil	France	up 1.5 mg/kg	1
Benzo(a)pyrene, PAH	turmeric and ginger extract	USA	PAH: 88 µg/kg	1
	organic ground black pepper	Sri Lanka	PAH: 156.3 µg/kg	1
	food supplement	USA	Benzo(a)pyrene: up 26 µg/kg; PAH: 125 µg/kg	2
Bisphenol A	canned coconut milk	Thailand	286 µg/kg	1
Cyclo-di-BADGE	canned coconut milk	Thailand	1020 µ/kg	1
	milk drink	Belgium	0.53 mg/kg	1
Non-dioxin-like polychlorobiphenyls (ndl-PCB)	eels	France	426 ng/g	1

Reason for Notifying	Product	Country of Origin	Notes	Number
Mineral oil	sesame oil	UK	MOSH: 22.4 mg/kg; MOAH: 15.1 mg/kg	1
	olive oil	Italy (raw mat. Greece)	MOSH and MOAH-analogues: 49 mg/kg	1
Glycidyl esters	vegetable ghee	Turkey	up 4,998 µg/kg	2
	multigrain snacks	Philippines	1,763 µg/kg	1
Shellfish poisoning toxins (DSP)	mussels	Spain	247 µg/kg	1
Glycyrrhizin	licorice drink	Syria	23,293 mg/kg	1
Histamine	fish / fish products	Sri Lanka, Thailand, Maldives, India, Italy, Spain	up 1,071 mg/kg	7
Cyanide	almond kernels used in nut mix	Germany (almond kernels from Italy)	27.5 mg/kg	1
	food supplement	Slovakia		3
Nitrate	spinach	Italy	up 6,000 mg/kg	2
Iodine	food supplement	Turkey	47,800 mg/kg	1
Pharmacological Active Substances				
Anthraquinone	green tea	China	0.032 mg/kg	1
	organic caraway seeds	Netherlands	0.109 mg/kg	1
2-Dimethylaminoethanol (DMEA)	food supplement	unknown (online)		2
Cannabidiol (CBD)	CBD coffee and tea, CBD oil, food supplement, various products	UK, Hong Kong, Austria, unknown (online)		6
Tetrahydrocannabinol (THC)	food supplement	Poland, Austria	up 0.16 %	2
	hemp oil	Germany	16.5 mg/kg	1
Huperzine A	food supplement	USA		2
Oxyphenylbutazone, Phenylbutazone	equine carcasses	Ireland		1
Sulfonamides	shrimps (<i>Litopenaeus vannamei</i>)	Vietnam	Sulfamethoxazole: 157 µg/kg	1
Tetracyclines	chicken meat	Netherlands	Doxycycline: 138 µg/kg	1
Tulathromycin	cow carcasses	France	3,350 µg/kg	1
Unauthorised Colours				
Sudan I, Sudan IV	palm oil, spice mix	Ghana, Turkey		2
Orange II	chilli pepper powder	Togo		1

Reason for Notifying	Product	Country of Origin	Notes	Number
Miscellaneous				
Parasitic infestation with Anisakis	hake, silver scabbardfish	Spain, Morocco		4
Pyrrolizidine alkaloids (PA)	cumin	Netherlands, Turkey	up 27,500 µg/kg	2
Irradiation, not authorised	tilapia, catfish, red mullet fillet	Vietnam		4
	grindelia extract	China		1
	food supplement	China		1
GMO, not authorised	rice	China		1
Foodborne disease outbreak	tuna	Vietnam		1
	shrimps	Estonia		1
	bovine carcasses	Germany		1
Pathogenic Germs				
Salmonella total: 75	meat / meat products (including poultry)			35
	mussels	Vietnam, Denmark		2
	shrimps	Netherlands		1
	raw milk cheese	France		1
	wheat flour	Belgium		1
	linden flower infusion	Bulgaria		1
	herbs and spices	France, Brazil, Iran, Uganda, China		26
	food supplement, moringa powder	India, Netherlands		2
	sesame seeds	Brazil, Nigeria, Turkey, Sudan		6
<i>Listeria monocytogenes</i>	meat / meat products	France, Italy, Germany, Belgium (raw mat. Italy)		4
	fish / fish products	Poland, Germany, Italy		3
	cheese, raw milk cheese, soft cheese, brie cheese, sheep cheese, goat's cheese	France, Belgium, Italy, Czech Rep., Austria		8
	shrimp salad	Sweden (raw mat. Bulgaria)		1
	vegetarian soy sausages	Netherlands		1
	beetroot	Netherlands		1
	sweet maize kernels	Hungary		2
Shigatoxin-producing E.coli (STEC)	meat spread, minced meat, filet americain, beef	Belgium, Argentina, Brazil		6
	soft cheese	France		1

Reason for Notifying	Product	Country of Origin	Notes	Number
<i>Vibrio vulnificus</i>	shrimps (<i>Penaeus vannamei</i>)	Guatemala		1
Coagulase-positive <i>Staphylococcus</i> , Staphylococcal enterotoxin	black ham, sheep cheese	Germany, Portugal		2
<i>Bacillus cereus</i>	organic salad	Italy		1
Norovirus	oysters, razor clams	France, Netherlands		4

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