

Food Legislation News

No. 1 – February 2022

News from the BfR

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

Titanium dioxide (E 171) – update:

The European Food Safety Authority (EFSA) reevaluated the food additive titanium dioxide and published the results on 6 May 2021. The EFSA no longer classifies its use as a food additive as safe (<https://www.efsa.europa.eu/en/efsajournal/pub/6585>). The BfR studied the data regarding genotoxicity that were considered by the EFSA and predominantly arrived at similar conclusions, but in their updated statement, they point to the fact that there are still knowledge gaps impeding a final evaluation (in German: Statement No. 038/2021 dated 8 December 2021: <https://www.bfr.bund.de/cm/343/neubewertung-von-titandioxid-bfr-zieht-aehnliche-schluesse-wie-die-europaeische-behoerde-fuer-lebensmittelsicherheit.pdf>; c.f. Communication No. 014/2021 dated 6 May 2021: <https://www.bfr.bund.de/cm/343/lebensmittelzusatzstoff-titandioxid-e%20-171-auf-dem-pruefstand.pdf>).

Note: From summer 2022, titanium dioxide will be prohibited as a food additive (https://germany.representation.ec.europa.eu/news/titandioxid-lebensmitteln-ab-sommer-2022-verbotten-2022-01-14_de?ettrans=en).

BfR2GO:

The 2/2021 edition of the science magazine of the BfR ("BfR2GO") was released on 14 December 2021 and is available at <https://www.bfr.bund.de/cm/364/bfr-2-go-issue-2-2021.pdf>.

Curcumin in food supplements:

For curcumin as a food additive (E 100), the EFSA determined an acceptable daily intake (ADI) of 3 mg/kg body weight and day. Amongst others, the BfR also took this value as a basis for the assessment of curcumin-enriched food supplements. On the whole, the total curcumin intake via all the curcumin sources (e.g. also from spices and additives) should not exceed this value. As regards curcumin-containing food supplements to which piperine was additionally added in order to improve the bioavailability of curcumin, an overall assessment is impossible. Since such products may strongly vary in their composition, an individual assessment on the basis of the respective product with a known composition is required. In this context, the BfR points to a general demand for further research (Statement No. 040/2021 dated 14 December 2021: <https://www.bfr.bund.de/cm/349/curcumin-in-food-supplements-acceptable-daily-intake-may-be-exceeded.pdf>).

Campylobacter bacteria:

In their Press Release 50/2021 dated 17 December 2021, the BfR describes how foodborne infections with *campylobacter* bacteria can be avoided with a good kitchen hygiene (https://www.bfr.bund.de/en/press_information/2021/50/for_that_fondue_meat_doesnt_make_you_sick-291159.html).

African Swine Fever (ASF):

In their Communication 036/2021 dated 19 November, the BfR revealed that no health risk emanates from direct contact with diseased animals or from the consumption of foods that derive from infected animals (<https://www.bfr.bund.de/cm/349/african-swine-fever-no-hazard-to-humans.pdf>).

COVID-19 – FAQ:

The BfR continuously updates the 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).

Statements of the ALS

The Work Group of Food Chemistry Experts of the States and of the Federal Office of Consumer Protection and Food Safety (Arbeitskreis Lebensmittelchemischer Sachverständiger der Länder und des Bundesamtes für Verbraucherschutz und Lebensmittelsicherheit (ALS)) made a total of 11 decisions at its 117th conference and prepared, amongst others, the following statements:

"Indigenous wheat" labelling for spelt products:

An indication such as "an indigenous type of wheat" can only be accepted when it has been proved that a traditional type of spelt was used exclusively, excluding the targeted crossing with modern common wheat, for example einkorn and emmer (Statement No. 2021/21).

"Slush ice":

Slush ice products cannot be classified with ice cream but must be assigned to soft drinks. "Slush ice" is an established name (Statement No. 2021/22).

Nitrate in baby spinach:

The maximum nitrate level for fresh or preserved spinach of Regulation (EC) No. 1881/2006 also applies to baby spinach (Statement No. 2021/23).

Indication "for my well-being":

The indication "for my well-being" for an alcoholic drink (e.g. fruit wine) with an alcohol content of more than 1.2 vol.-% is judged as an inadmissible health-related indication, analogously to "pleasant" (Statement No. 2021/29, cf. Statement No. 2019/28).

Note:

Statements of the ALS are not legally binding, but they can be considered as expert opinions.

At https://www.bvl.bund.de/DE/Arbeitsbereiche/01_Lebensmittel/01_Aufgaben/11_ALS/ALTS/02_ALS/ALS_node.html (in German) you will find further details, a current overview of the statements, the statements of the respective current session as well as the archive.

Publications of the BVL

Amongst others, the Federal Office of Consumer Protection and Food Safety (BVL) released the following information:

Annual reports 2020 (in German):

On their homepage, the BVL published various annual reports, amongst others regarding the subject of food safety (https://www.bvl.bund.de/DE/Service/01_Infothek/03_berichte/infothek_berichte_node.html).

Within the scope of the zoonosis monitoring 2020, Shiga toxin-producing E.coli (STEC) were detected, for example, in 13.2% of the examined samples of fresh lamb (Press Release dated 11 November 2021, https://www.bvl.bund.de/SharedDocs/Pressemitteilungen/01_lebensmittel/2021/2021_11_Monitoring_STEC-Bakterien.html).

The results of the supervisory authorities from 2020 showed, inter alia, pathogenic germs in cookie dough and lead in game meat (Press release dated 2 December 2021, https://www.bvl.bund.de/SharedDocs/Pressemitteilungen/01_lebensmittel/2021/2021_12_02_PM_Jahrespressekonferenz.html).

The results of the "inspection of the products of the German Food and Feed Code and tobacco products that were traded on the Internet" (G@ZIELT) were also presented (notification issued on 22 December 2021, https://www.bvl.bund.de/SharedDocs/Fachmeldungen/01_lebensmittel/2021/2021_12_22_Gezielt-Jahresbericht-2020.html).

Classification of selenium-containing foods:

The joint expert commission of BVL and BfArM (Federal Institute for Drugs and Medical Devices) prepared a statement regarding the legal classification of selenium-containing products which are marketed as foods. For doses up to 50 µg selenium per day, a nutritional or physiological effect is assumed which will suffice for the maintenance of an adequate selenium supply, even at a very low selenium supply through food (in German: specialist announcement from 22 December 2021, https://www.bvl.bund.de/SharedDocs/Fachmeldungen/01_lebensmittel/2021/2021_12_22-Einstufung-Selen-LM.html).

Veterinary drugs:

The BVL published the announcements regarding the approval of veterinary drugs and other official acts (in German) from October and December 2021

(https://www.bvl.bund.de/SharedDocs/Fachmeldungen/05_tierarzneimittel/2021/2021_11_22_Fa_Bekanntmachung_Zulassung_TA.html;

https://www.bvl.bund.de/SharedDocs/Fachmeldungen/05_tierarzneimittel/2021/2021_12_24_Fa_Bekanntmachung_Zulassung_TA.html);

https://www.bvl.bund.de/SharedDocs/Fachmeldungen/05_tierarzneimittel/2022/2022_01_11_Fa_Bekanntmachung_Zulassung_TA.html).

Modifications regarding pesticides

Maximum residue levels (MRL):

With the Regulations (EU) 2021/1884 and 2021/2202, the MRL of the following pesticide active agents were modified:

Acequinocyl, *Bacillus subtilis* strain IAB/BS03, chlorantraniliprole, emamectin, flutolanil and imazamox.

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 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).

Sentences

ECJ – Nutritional values "per portion" on the front of a muesli package:

On 11 November 2021, the European Court of Justice (ECJ) decided that nutritional values that are indicated "per portion" on the front of a package must be "simple and easily understandable" for the consumer. They must not refer to a special type of preparation when there is no possibility of comparison with the foods of other producers. An absence of comparability can also not be remedied "by indicating the values for one portion elsewhere on the packaging with the values per 100 g of the product at the time of sale". Initially, the Higher Regional Court of Hamm argued that the unsolicited repetitive indication of nutritional values on the front side of the package of crunchy cereals that refers to the prepared portion of the product is considered to be consonant with the Food Information Regulation (Higher Regional Court Hamm, 4 U 130/18, sentence from 13 June 2019). The District Court of Bielefeld, however, as a court of lower instance, still argued in its sentence on 8 August 2018 (Ref. 3 O 80/18) that an indication of the energy value per 100 g of the non-prepared product would also be necessary on the front. The Federal Supreme Court asked the European Court of Justice for clarification in the dispute over the nutrition information in its order for reference dated 23 July 2020 (Federal Supreme Court Ref. I ZR 143/19 and, after the sentence of the ECJ, it is now the turn of the Federal Supreme Court again (BGH Ref. I ZR 143/19, in German: <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=2020&Seite=49&nr=110711&pos=1479&anz=3283>, ECJ, Legal Matter C-388/20, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=249071&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1>).

Indication of the number of items regarding sweets:

The Higher Administrative Court Rhineland-Palatinate in Koblenz decided that, on packages with single wrapped sweets, the number of items must also be indicated in addition to the total net quantity. The appeal to the Federal Administrative Court was approved (Sentence dated 2 November 2021, Ref. 6 A 10695/21. Higher Administrative Court, in German: <https://ovg.justiz.rlp.de/de/startseite/detail/news/News/detail/stueckzahlangebe-auf-suessigkeitenpackung/>).

Advertisement "eggs from chickens proved to be salmonella-free"

From the point of view of the Higher Regional Court of Celle, the indication "eggs from chickens proved to be salmonella-free" on the egg pack is misleading when the respective test is carried out only biweekly (Sentence dated 11 November 2021, Ref. 13 U 84/20, in German: <https://www.rechtsprechung.niedersachsen.de/jportal/portal/page/bsndprod.psml?doc.id=KORE237402021&st=null&showdoccase=1>).

Miscellaneous

Novel Food – Extension of the Union List:

Implementing Regulation (EU) 2017/2470 of the Commission for the creation of the Union List of novel food was modified by further implementing regulations, and the following permissions were granted:

- Dried fruit from *Synsepalum ducificum* (Implementing Regulation (EU) 2021/1974 dated 12 November 2021)
- Vitamin D2 mushroom powder (Implementing Regulation (EU) 2021/2079 dated 26 November 2021)
- Calcium fructoborate (Implementing Regulation (EU) 2021/2129 dated 3 December 2021)
- Fresh plants of the *Wolffia arrhiza* and/or *Wolffia globosa* species as a traditional food from a third country (Implementing Regulation (EU) 2021/2191 dated 10 December 2021)

Opium alkaloids in poppy – maximum levels published:

With Regulation (EU) 2021/2142 dated 3 December 2021, two maximum values for opium alkaloids (morphine + 0.2 codeine) in poppy were introduced:

- Poppy seeds whole or ground: 20 mg/kg
- Pastries containing poppy seeds and/or products thereof: 1.50 mg/kg

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R2142&from=DE>).

Revised version of guidelines of the German Food Code:

On 22 December 2021, the revised version of the guidelines for oilseeds and mixtures thereof and other confectionary was published in the German Federal Gazette (in German: https://www.bmel.de/SharedDocs/Downloads/DE/Ernaehrung/Lebensmittel-Kennzeichnung/LeitsaetzeOelsamen.pdf;jsessionid=0B6FDD0CF368A86D70FE10328B69CB00.live842?__blob=publicationFile&v=3).

Last update: 14 January 2022

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 6 November 2021 and 21 January 2022**.

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_lm_box.html (in German)

Reason for Notifying	Product	Country of Origin	Notes	Number
Mycotoxins				
Aflatoxins total: 123	figs, hazelnuts, pistachios, peanuts, cashew kernels (including products)			105
	spice mix, turmeric powder, ginger, chili	Pakistan, India, Sri Lanka, China	B1: up 36.6 µg/kg; total: up 38.4 µg/kg	8
	nutmeg, organic mace powder	Indonesia, Sri Lanka	B1: up 27 µg/kg; total: up 36 µg/kg	2
	basmati rice, rice	unknown, Sri Lanka	B1: up 6.3 µg/kg; total: up 6.59 µg/kg	2
	organic sesame seeds, millet couscous, millet flour, organic flaxseed meal	Togo, Senegal, Hungary	B1: up 8.2 µg/kg; total: up 11.9 µg/kg	5
	candies	Russ. Federation	B1: 3.16 µg/kg	1

Reason for Notifying	Product	Country of Origin	Notes	Number
Ochratoxin A	licorice powder	Italy	209.8 µg/kg	1
	roasted coffee, instant coffee	Italy, Vietnam	up 17.36 µg/kg	2
	pistachios	Turkey	282.8 µg/kg	1
	organic fruit-oat bar	UK	1.24 µg/kg	1
	date syrup, fig bread	Belgium, Turkey	up 16.5 µg/kg	2
	dried figs, raisins	Turkey, Greece, Uzbekistan	up 157.18 µg/kg	5
	nutmeg, organic mace powder	Indonesia, Sri Lanka	up 51 µg/kg	2
	wholemeal rye flour	Poland	8.2 µg/kg	1
Alternaria toxins	strained tomatoes	Italy	Alternariol: 81.7 µg/kg; Tenuazonic acid: 549.1 µg/kg	1
Patulin	apple juice	Denmark	up 67 µg/kg	1
Heavy Metals / Other Metals				
Lead	pheasant breast fillets	UK	0.674 mg/kg	1
	nettle leaf powder	Albania	36.2 mg/kg	1
Cadmium	squid, octopus, tuna	India, Vietnam, Sri Lanka	up 2.9 mg/kg	4
	smoked herring	Greece	0.151 mg/kg	1
	horsemeat	Romania	0.26 mg/kg	1
	linseed	France	1.1 mg/kg	1
	organic cocoa powder	Ecuador	1.689 mg/kg	1
Mercury	fish / fish products	Spain, Morocco, Rep. of Korea, Indonesia	up 2.5 mg/kg	7
	food supplement	France	up 0.224 mg/kg	1
Aluminium	food supplement	Germany	52.8 g/kg	1
Arsenic	codfish	Russ. Federation	11.2 mg/kg	1
Other Contaminants / Residues				
Ascorbic acid	yellowfin tuna	Italy	6,730 mg/kg	1
Ethylene oxide, 2-Chloroethanol	various food and food additives			61
Fibronil	eggs	Malta	0.018 mg/kg	1
Perchlorate	organic powdered kale, organic moringa leaf powder	UK	up 3.8 mg/kg	2
Paraffin coating	cassava roots	Costa Rica		1
Benzo(a)pyrene, PAH	freekeh	Syria, Turkey	PAH: up 183 µg/kg	2
	spice mix, organic paprika powder	India, Spain	PAH: up 86.8 µg/kg	2
	sausage	Poland	Benzo(a)pyrene: up 4.9 µg/kg; PAH: up 33.6 µg/kg	2
Dioxins and dioxin-like polychlorobiphenyls (dl-PCBs)	goose breast and thighs	Hungary	Dioxins: 3.864 pg TEQ/g; dioxin-like PCBs: 5.3899 pg TEQ/g	1
Nitrosamines	beer	Germany	up 2,43 µg/kg	2

Reason for Notifying	Product	Country of Origin	Notes	Number
Mineral oil	raisins	Iran		1
	hazelnut cocoa spread	Italy	MOAH: 1.5 mg/kg	1
	red lentils	Turkey	MOSH: 4.57 mg/kg; MOAH: 1.43 mg/kg	1
	stock cubes	Germany, Spain, Portugal		3
	avocado oil	France	MOSH: 102.5 mg/kg; MOAH: 32.7 mg/kg	2
	olive oil	unknown		1
Acrylamide	organic spelt biscuits	Belgium	187 µg/kg	1
3-Monochlor-1,2-propanediol (3-MCPD)	palm kernel oil	Netherlands	2.2 mg/kg	1
	sesame oil	China	10,400 µg/kg	1
Glycidyl esters	sesame oil	China	2,600 µg/kg	1
Shellfish poisoning toxins (DSP)	mussels	Italy	161 µg/kg (ocadaic acid)	1
Pyrrolizidine alkaloids (PA)	oregano, chamomile tea	Turkey, Netherlands	up 14,000 µg/kg	2
Tropane alkaloids	organic corn flour	France	Atropine: 25.12 µg/kg; Scopolamine: 6.50 µg/kg	1
	organic flaxseed meal	Hungary	Atropine: up 238.0 µg/kg	1
	herbal infusion	Netherlands	Atropine: 184 µg/kg; Scopolamine: 21 µg/kg	1
Coumarin	cinnamon flavoured corn snack	Poland	201 mg/kg	1
Histamine	fish / fish products	Tunisia, Rep. of Korea, China, UK, Sri Lanka, Netherlands, Thailand	up 990 mg/kg	7
Hydrocyanic acid	apricot kernels	Turkey	43 mg/kg	1
Iodine	dried seaweed	China, UK	up 189 mg/kg	2
	seaweed salad	Germany		1
Radioactivity	mushrooms	Ukraine	Cs-137: 1,540 BQ/kg	1
Pharmacological Active Substances				
Cannabidiol (CBD)	food supplement	France		1
Tetrahydrocannabinol (THC)	flavoured wine	Spain	7,227 µg/l	1
	organic hemp seeds	Netherlands	1,826 µg/kg	1
	hemp oil	Croatia	17 mg/kg	1
	herbal tea mixture with hemp leaves	Germany	118.4 mg/kg	1
	food supplement	Germany	304.5 mg/kg	1
Amoxicillin	chicken meat	Poland		1
Chloramphenicol	pork casings	China		1
Hupercine A	food supplement	Poland		1
Nitrofuran metabolites	pork casings	Albania	0.56 µg/kg (SEM)	1
	frog legs	Vietnam	10 µg/kg (AOZ)	1
Tetracyclines	eggs	Belgium	Doxycycline: 23 µg/kg	1
Tylosin	honey	Ukraine	2.6 µg/kg	1

Reason for Notifying	Product	Country of Origin	Notes	Number
Synephrine	food supplement	USA		3
Sildenafil	food paste	Turkey		1
Tadalafil	food supplement	Netherlands, Portugal, unknown		3
Yohimbine	food supplement	USA, unknown		5
Unauthorised Colours				
Sulforhodamine B and cochineal red A	pickled cucumber and eggplant	Japan		1
Sudan III, IV	palm oil	Ghana		2
Sudan blue II	icecream	Netherlands (raw material Belgium)		1
Miscellaneous				
Parasitic infestation with Anisakis	hake carcasses, fish	Argentina, Morocco		3
Irradiation, not authorised	organic ashwaganda powder	India		1
GMO, not authorised	food enzyme	China		2
Foodborne disease outbreak	organic raw milk cheddar cheese	Ireland		1
	chicken meat	Spain		1
	dried sausage	France		1
Pathogenic Germs				
Salmonella total: 164	meat / meat products (including poultry)			82
	mussels	Italy, Turkey, Spain		5
	black pepper, pepper	Brazil		63
	chili, dried dill	Kenya, Egypt		2
	sesame seeds, sesame products	Uganda, India		5
	trio hummus, organic nettle seeds, pumpkin seeds, quinoa salad, waterleaves and eru, okok	Netherlands, Germany, China, Belgium, Cameroon		6
	organic ashwaganda capsules	Slovenia		1
<i>Listeria monocytogenes</i>	meat / meat products (including poultry)	Czech Rep., Denmark, Poland, Romania, Serbia, Belgium, Lithuania, France, Bulgaria		17
	fish / fish products	Poland, Italy		3
	red smear from cheese, cheese, gorgonzola, raw milk cheese, sheep's milk cheese, goat's cheese, raw goat's milk cheese	Germany, Spain, Netherlands, France, Italy, Belgium		9
	noodles	Germany		1
Enteropathogenic E. coli	China Rose sprouts	Netherlands		1
Shigatoxin producing E.coli (STEC)	lamb plucks, beef	New Zealand, Belgium, Brazil		3
	baking mixture	Germany		1
	raw milk cheese	France, Italy		3

Reason for Notifying	Product	Country of Origin	Notes	Number
<i>Bacillus cereus</i>	food supplement, organic barley grass powder, organic sesame seeds	UK, Hungary, Togo		3
<i>Vibrio cholerae</i>	prawns	Ecuador		1
Norovirus	oysters	France, Netherlands		2

Created:

Susanne Ermert-Knauf
Eurofins Analytik GmbH
Neuländer Kamp 1
D-21079 Hamburg
phone +49-40-49294-1741
SusanneErmert-Knauf@eurofins.de

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