

Food Legislation News

No. 5 – October 2022

Statements of the ALS

The Working Group of Food Chemistry Experts from the Federal States and 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 14 decisions at its 118th conference and prepared, amongst others, the following statements:

Indication of the cocoa content according to Article 3 Section 4 No. 1 of the Cocoa Regulation:

The ALS responded as follows to the question as to whether or not the indication of the cocoa content that is requested in the Cocoa Regulation for certain products also applies to products which only contain these cocoa products as an ingredient:

“The indication of the cocoa content according to Article 3 Section 4 No. 1 of the Cocoa Regulation is only obligatory for products according to Annex 1 No. 2 Part c) and d). This also ensues from the wording of Article 3 No. 3 of Guideline 2000/36/EC.” (Statement No. 2022/01).

Bitterness units of beers with the designation “Pils” or “Pilsener”:

The minimum value of bitterness units is 25 BU. Pils beers that are indicated through a protected geographical indication (PGI) remain untouched (Statement No. 2022/02).

Nutrition labelling of dried mushrooms:

The nutrition declaration is obligatory for dried mushrooms. Exception: dried mushrooms that are marketed as a spice (e.g. mushroom powder) (Statement No. 2022/03).

Labelling “without genetic modification” for individual ingredients:

The claim “without genetic modification” (“ohne Gentechnik”) is also possible for the individual ingredients of a product if the consumer is not misled.

The impression must not be created that the entire food was produced without genetic engineering (Statement No. 2022/05).

Claim “without artificial colouring”:

As regards the evaluation of the claim “without artificial colouring” (“ohne künstliche Farbstoffe”), the ALS distinguishes between three different cases:

- a) The product does not contain colourings or colouring foods: The claim must be tolerated.
- b) The product exclusively contains colouring foods and no colourings: The claim is not misleading. To make it clear to the consumer, a note is recommended, e.g. “with colouring food”.

- c) The product contains colourings in the sense of Regulation (EC) No. 1333/2008. This regulation does not contain a distinction between “artificial” and “non-artificial” colourings. Therefore, the possibility of misleading the consumer needs to be checked in each individual case.

In this context, the ALS points to a sentence of the Administrative Court of Fribourg dated 10 December 2019 (Ref.: 8 K 6149/18; in German: <https://oj.is/2249930>).

(Statement No. 2022/14).

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 can find further details and a current overview of the statements, the statements of the respective current session as well as the archive.

News from the BfR

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

How do cells react to micro- and nanoplastics?

In its Press Release 27/2022 dated 11 July 2022, the BfR refers to the results of a study which was published in the specialist journal “Microplastics and Nanoplastics”. Here, laboratory tests were carried out with cell cultures. The smaller the particles are, the easier they are taken up by cells. The shape, surface and the chemical properties play a role as well (https://www.bfr.bund.de/en/press_information/2022/27/how_do_cells_react_to_micro_and_nanoplastics_-302326.html).

BfR2GO:

The 1/2022 edition of the science magazine of the BfR (“BfR2GO”) was released and is available at <https://www.bfr.bund.de/cm/364/bfr-2-go-issue-1-2022.pdf>.

The use of treated wastewater for agricultural irrigation:

Currently, only limited data are available on the stability and inactivation of viral pathogens, in particular on the human norovirus and hepatitis A virus as well as on their behaviour during wastewater treatment, in the soil etc. The data situation regarding the occurrence of parasites is also limited at present. In the sense of consumer health protection, the BfR recommends abstaining from using treated wastewater for the irrigation of plants growing near the ground which are eaten raw (Statements No. 019/2022 dated 8 July 2022 and No. 021/2022 dated 27 July 2022; Press Release 28/2022 dated 27 July 2022).

Links:

Statement No. 019/2022, 08/07/2022:

<https://www.bfr.bund.de/cm/349/reclaimed-wastewater-preventing-viral-pathogens-on-plant-foods.pdf>;

Statement No. 021/2022, 27/07/2022:

<https://www.bfr.bund.de/cm/349/reclaimed-wastewater-preventing-protozoa-on-plant-foods.pdf>

Press release 28/2022, 02/08/2022:

https://www.bfr.bund.de/en/press_information/2022/28/reclaimed_wastewater_in_agriculture_health_risk_from_pathogens_on_fruit_and_vegetables_-304028.html

Alkenyl benzenes in foods:

The BfR summarised the current state of knowledge regarding the occurrence and toxicity of different alkenyl benzenes in foods and published it in the specialist journal "Foods" (Communication No. 22/2022 of 2 August 2022, <https://www.bfr.bund.de/cm/349/alkenylbenzenes-in-food-how-large-is-the-health-risk.pdf>).

Modifications regarding pesticides

Maximum residue levels (MRL):

With the regulations (EU) 2022/1264, 2022/1290, 2022/1321, 2022/1324, 2022/1343, 2022/1346, 2022/1363 and 2022/1406, the MRL of the following pesticide active agents were modified or determined for the first time:

Acequinocyl, ametoctradin, azoxystrobin, benzovindiflupyr, boscalid, chlorantraniliprole, chlormequat, cyhalofop-butyl, cymoxanil, 2,4-D; 1,4-dimethylnaphthalene, dodine, emamectin, fenazaquin, fenhexamid, flazasulfuron, florasulam, fluazifop-P., fludioxonil, fluoride-ion, flupyradifurone, fluroxypyr, fluxapyroxad, fosetyl-Al, 8-hydroxyquinoline, iprovalicarb, isofetamid, metaflumizone, methoxyfenozide, nicotine, oxyfluorfen, pinoxaden, profenofos, propoxur, pyraclostrobin, pyroxsulam, quinmerac, silthiofam, spinosad, spirotetramat, *Spodoptera exigua* multicapsid-nuclear polyhedrosis virus (SeMNVP), isolate BV-0004; sulfuryl fluoride, thiabendazole, thiram, tolclofos-methyl and valifenalate.

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.htm).

Sentences

ECJ – "Feta":

According to the sentence of the European Court of Justice dated 17 July 2022, the protective designation of origin "Feta" for cheese that is produced in Denmark must not be used even when the cheese is intended for export to third countries (Case C-159/20).

Links:

<https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-07/cp220125en.pdf>

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=262936&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=12565292>

Federal Court of Justice – price indications:

The Federal Court of Justice (BGH) is of the opinion that the basic price is only clearly identifiable when it is placed in the immediate vicinity of the selling price and when it can be perceived at a glance along with the selling price (Federal Court of Justice, Sentence dated 19 May 2022, Ref. I ZR 69/21, in German: <https://openjur.de/u/2434721.html>).

Claim “Himalaya salt”:

The designation „Himalaya Königssalz” is perceived as a geographical indication due to the mention of the word “Himalaya” which suggests that the salt is taken from the Himalaya high-altitude massif. Actually, the salt is taken from the salt mountains in Punjab/Pakistan. In its sentence as of 8 April 2022, the Higher Regional Court of Cologne argued that the indication “Pakistan/Punjab” does not suffice in order to avoid misleading consumers. The court requires a clear delocalising notice from which it appears that the salt mining takes place in a region outside the high-altitude massif (Ref. 6 U 162/21, in German: <https://openjur.de/u/2438606.html>; Court of lower instance: Regional Court of Cologne, Ref. 84 O 118/21; see Federal Court of Justice 31 March 2016, Ref. I ZR 86/13).

Designation “poultry salami”:

When a pre-packaged product is designated as “poultry salami” (“Geflügel-Salami”) on the front and contains – besides turkey meat – also pork bacon, then this is misleading (Higher Administrative Court North Rhine-Westphalia, Sentence dated 15 August 2022, Ref. 9 A 517/20, in German: https://www.ovg.nrw.de/behoerde/presse/pressemitteilungen/43_220816/index.php).

Claim “confirmed”:

With its sentence dated 14 July 2022, the Regional Court of Hamburg barred a producer of food supplements from advertising their product with the note “confirmed” – “fulfils the recommendations of the national centre for nutrition 100 per cent” („Bestätigt – „erfüllt zu 100% die Empfehlungen des Bundeszentrum für Ernährung“). As such a confirmation is not available, this advertising is inadmissible (Ref. 403 HKO 18/22, not legally valid, in German: <https://www.verbraucherzentrale-bawue.de/pressemitteilungen/presse-bw/irrefuehrende-werbung-fuer-adfetal-untersagt-75615>).

Miscellaneous

Monitoring – mercury:

On 28 July 2022, Recommendation (EU) 2022/1342 “on the monitoring of mercury in fish, crustaceans and molluscs” was published in the Official Journal of the European Union (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022H1342&from=EN>).

New maximum levels for contaminants:

With the regulations (EU) 2022/1370, 2022/1364 and 2022/1393, the maximum levels for the following contaminants were modified:

- Ochratoxin A:
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1370&from=EN>
- Hydrocyanic acid:
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1364&from=EN>
- Tetrahydrocannabinol (THC):
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1393&from=EN>

Ethylene oxide – Maximum level in additives:

The maximum level of ethylene oxide was set at 0.1 mg/kg for additives with Regulation (EU) 2022/1396 dated 11 August 2022 (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1396&from=EN>).

Novel Food – extension of the union list:

With Implementing Regulation (EU) 2022/1373 of the Commission dated 5 August 2022, iron hydroxide adipate tartrate was approved as a novel food (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1373&from=EN>).

Guidelines of the German Food Code:

On 28 July 2022, the revised version of the guidelines for meat and meat products was published in the German Federal Gazette (in German: <https://www.bundesanzeiger.de/pub/publication/KCO26oi03c5v82DIgCB/content/KCO26oi03c5v82DIgCB/BAnz%20AT%2028.07.2022%20B1.pdf?inline>).

Last update: 24 August 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 9 July and 1 September 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: 48	peanuts, figs, pistachios, hazelnuts, brazil nuts (including products)			44
	turmeric	India	B1: 10.7 µg/kg	1
	nutmeg	Indonesia, UK	B1: up 22 µg/kg; total: up 24 µg/kg	3
Ochratoxin A	basmati rice	India	4.5 µg/kg	1
	raisins	Uzbekistan, India, Turkey	up 111.1 µg/kg	3
	organic figs, figs	Turkey	up 104.0 µg/kg	3
	organic dates	Tunisia	18 µg/kg	1
	nutmeg	Indonesia, UK	up 94.8 µg/kg	2
	rye flour, wheat flour	Netherlands, Belgium (raw mat. France)	up 12.6 µg/kg	2
	organic cereal based foods for infants	Austria	2.94 µg/kg	1
Patulin	apple sauce	Netherlands	27 µg/kg	1
Alternaria toxins	tomato paste	Italy	Alternariol: 38.69 µg/kg	1

Reason for Notifying	Product	Country of Origin	Notes	Number
Heavy Metals / Other Metals				
Lead	turmeric	Madagascar	2.77 mg/kg	1
	diatomaceous earth	Czech Rep. (raw mat. Poland)	3.6 mg/kg	1
Cadmium	squid	Spain	up 2.0 mg/kg	3
	food supplement	China	2.3 mg/kg	1
	spinach	Italy	0.33 mg/kg	1
	carambola	Malaysia	0.066 mg/kg	1
	avocado	Peru	0.054 mg/kg	1
	pea protein	China	0.114 mg/kg	1
	additive E 120	Ukraine		1
Mercury	swordfish	Spain, Netherlands	up 2.51 mg/kg	2
	additive E 120	Ukraine		1
Arsenic	additive E 120	Ukraine		1
Boron	mineral water	Turkey	8.05 mg/l	1
Other Contaminants / Residues				
Ethylene oxide, 2-Chloroethanol	curry, majoram, sate powder	India, Egypt, France		4
	food supplement	USA, India		2
	organic tea	India		1
	instant noodles	Vietnam		3
	amla powder	India		1
	tikka masala cooking sauce	India		1
	chromium chloride	UK		1
Chlorate	coriander seeds	Russian Federation	0.186 mg/kg	1
	broccoli	Ecuador		1
Diethylhexylphthalate (DEHP)	pesto rosso	Italy	0.180 mg/kg	1
Benzo(a)pyrene, PAH	green tea powder	China	Benzo(a)pyrene: 39.5 µg/kg; PAH: 105.8 µg/kg	1
	organic wild garlic	Bosnia and Herzegovina	PAH: 121 µg/kg	1
Mineral oil	raisins	Slovakia		1
Toluene, xylene, ethylbenzene	green walnut tincture	Moldovia	Toluene: 634 mg/l; Xylene: 3,906 mg/l	1

Reason for Notifying	Product	Country of Origin	Notes	Number
3-Monochlor-1,2-propanediol (3-MCPD)	rice oil	Spain	7,000 µg/kg	1
	cookies	USA	4.85 mg/kg	1
	vegetable ghee	Syria	3,887 µg/kg	1
Glycidyl esters	rice oil	Spain	1,300 µg/kg	1
	infant milk formula	Italy	9.7 µg/kg	1
	chocolate cream biscuits	Saudi Arabia	1,851 µg/kg	1
Pyrrolizidine alkaloids (PA)	cumin	Turkey	1,191.4 µg/kg	1
Tropane alkaloids	organic tortilla chips	Belgium, unknown		2
Ergot alkaloids	rye flour	France	1,680 µg/kg	1
Histamine	fish, fish products	Spain, Peru, Vietnam	up >1,600 mg/kg	3
	frozen tuna pizza	Italy	1,592 mg/kg	1
Pharmacological Active Substances				
1,3-Dimethylamylamine (DMAA)	food supplement	USA		1
5-Hydroxytryptophan (5-HTP)	food supplement	Poland, UK, Lithuania		3
Cannabidiol (CBD)	CBD oil	France, unknown		2
	sparkling water	France		1
	food supplement	Lithuania		1
	hemp chocolate ice cream	Netherlands		1
Tetrahydrocannabinol (THC)	food supplement	Netherlands	829 mg/kg	1
Malachite green, leukomalachite green	pangasius fillet, snake head fish, bighead catfish	Vietnam, Thailand		3
Doxycyclin	chicken meat	Belgium		1
Trimethoprim, oxytetracycline, sulfamethoxazole	sow carcasses, meat and organs	Netherlands		1
Tulathromycin	beef	Italy (breeding France)		1
Sildenafil	food supplement	China, Sweden		2
Tadalafil	food supplement	Hungary		1
Unauthorised Colours				
Orange II	curry powder	Cameroon		1
Orange II, acid yellow36, auramine O	food colouring powder	India		1
Orange II, rocceline, red 2G (E 128)	cinnamon extract	India		1
Sudan I	food colouring powder	India		1

Reason for Notifying	Product	Country of Origin	Notes	Number
Sudan I, IV	pepper, couscous spice mix	China, Lebanon		2
Sudan I, III, IV	palm oil	Cote d'Ivoire		2
Sudan IV	spice preparation	Turkey		2
Miscellaneous				
Carbon C60	almond oil and olive oil, olive oil	Austria, Bulgaria and Ireland, Netherlands, USA		5
	food supplement	USA		1
Parasitic infestation with Anisakis	fish	Denmark, Malta, Morocco		3
GMO, not authorised	rice noodles	Thailand		1
Foodborne disease outbreak	tuna loins	Spain		1
	oysters	France		1
	trout fillets	Turkey		1
	canned fried mushrooms	Spain		1
Pathogenic Germs				
Salmonella total: 93	meat, meat products (including poultry)			46
	crayfish	China		8
	shrimps, mussels	Netherlands, Italy		2
	egg white	France		1
	herbal tea	Germany		1
	black pepper	Brazil		1
	fenugreek leaves, bay leaves, dried parsley	India, Turkey, Egypt		3
	tahini, sesame paste, sesame seeds	Turkey, Syria, Lebanon, India, Ethiopia, Sudan, Nigeria		25
	pistachio kernels	Iran		1
	chocolate products	Belgium		1
	halva	Turkey, Syria		3
	soups	Belgium		1

Reason for Notifying	Product	Country of Origin	Notes	Number
<i>Listeria monocytogenes</i>	fish, fish products, octopus	Morocco, Poland, France		4
	meat, meat products (including poultry)	Thailand, Hungary, Germany, Belgium, France, Italy		7
	soft cheese, gorgonzola, gouda cheese, mozzarella, sheep cheese, goat cheese	Germany, Italy, Luxembourg, France		6
	milk	Netherlands		1
	delicatessen salad	Germany		1
	prepared dishes	Slovakia		1
	pancakes, vegan cheese substitute, hummus	Belgium, France, Netherlands		4
Shigatoxin producing E.coli (STEC)	beef	Belgium, Argentina, Uruguay		4
	minced meat	Belgium (raw mat. Netherlands, UK)		2
	lamb	New Zealand		1
	horsemeat	Italy		1
	mussels	France		1
	spinach and arugola	Netherlands		1
<i>Vibrio parahaemolyticus</i> , <i>Vibrio vulnificus</i>	shrimps	Ecuador		4
Hepatitis A Virus	frozen fruits	Belgium		1
Hepatitis E Virus	seaweed salad	China, Netherlands		2
Norovirus	mussels	Spain		1
	frozen raspberries	France		1

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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