

Food Legislation News

No. 6 – December 2022

News from the BfR

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

Health risk assessment of nicotine pouches:

Test results show that at least half of the nicotine that is contained in nicotine pouches can be taken up. The nicotine levels in the blood are in a range that is also reached after the consumption of cigarettes. Significantly higher blood levels were observed when higher-dose products were used. These results indicate a comparable addictive effect as is known for cigarettes.

Currently, nicotine pouches are classified as novel food and have been removed from the market since they exceed the acute reference dose for nicotine (updated Statement No. 023/2022 dated 7 October 2022: <https://www.bfr.bund.de/cm/349/health-risk-assessment-of-nicotine-pouches.pdf>).

Alkaloids from sweet lupins:

Lupins are increasingly being used in dairy cow feed as a substitute for imported feed. It was found in a study that small quantities of alkaloids from sweet lupins can, thereby, pass into the milk (Communication No. 025/2022 dated 17 October 2022: <https://www.bfr.bund.de/cm/349/alkaloids-from-sweet-lupines-pass-into-the-milk-in-small-quantities-when-fed-to-cows.pdf>).

Botulism in dairy cattle:

The BfR assesses the risk of contracting botulism in Germany through the consumption of milk and milk products as very low. Similarly, this assessment applies when the milk of healthy cows is processed, which comes from a farm with acute cases of botulism in the dairy livestock (Statement No. 027/2022 dated 20 October 2022: <https://www.bfr.bund.de/cm/349/acute-botulism-in-german-dairy-herds.pdf>).

Mushrooms: Confusion can be life-threatening:

In their press information 32/2022 dated 6 September 2022, the BfR compiled important information for the recognition of and medical treatment for mushroom poisoning (https://www.bfr.bund.de/en/press_information/2022/32/mushrooms_confusion_can_be_life_threatening-306771.html).

Statements of the ALTS

The working group of experts (ALTS) that deals with the field of food hygiene and food of animal origin made decisions, amongst others, regarding the following subjects at its 89th working conference:

Fruit illustrations for dairy products with a fruit content of 0.1% juice only:

If the characteristic fruit flavour is achieved almost exclusively through aromas, a naturalistic fruit illustration as an eye-catcher is likely to mislead. This misleading can be prevented by placing a similarly prominent notice in the same field of vision stating that the product boasts the respective fruit flavour (No. 2022/89/08).

Designation "boiled ham" for cooked cured products from chicken:

"Chicken (boiled) ham" is made out of chicken breast. For products that are put together, the designation must be amended by „...aus Fleischstücken zusammengefügt“ (put together from pieces of meat). Analogous to pork cooked cured products, there is no addition of sausage meat (No. 2022/89/14).

Temperature requirements on sushi/sashimi for its storage in the retail trade:

For pre-packaged sushi/sashimi made using fresh fishery products, storage at temperatures of melting ice is required for all levels including retail (Regulation (EC) No. 853/2004). However, for products made using thawed raw fishery products, there is no temperature requirement available at the retail level. Due to the hygiene and health risk, ALTS is of the opinion that storage at melting ice temperatures is also necessary for these products at the retail level until they are sold to the consumer (No. 2022/89/19).

QUID for meat products made of meat of different animal species:

When meat products are made of different animal species (e.g. poultry sausages made of chicken and turkey meat, game pie made of deer and wild boar meat) and only "poultry" or "venison" is mentioned in the designation, a summarised quantity statement for the respective ingredient class will suffice (e.g. x% of poultry meat or x% of venison (No. 2022/89/26)).

Defrosting notice for "raw ham dices" from frozen stored raw ham:

When frozen stored ham cuts are processed into ham dices in the frozen state, then the ham dices placed on the market in a chilled and ready packaged form must be marked as "thawed" (No. 2022/89/28).

Designation "...minced meat in the style of a fresh onion "Mettwurst" (German speciality)":

The simultaneous use of the designations "...minced meat" and "...Mettwurst" is contradictory (even with the addition of "in the style of..."). Furthermore, the designation "minced meat" is not customary for a cured product (No. 2022/89/29).

Note:

Statements of the ALTS are not legally binding, but they can be considered as expert opinions. At https://www.bvl.bund.de/EN/Tasks/01_Food/01_tasks/02_OfficialFoodControl/13_ALTS/Im_ALTS_basepage.html you will find further details, a current overview of the statements in German, the statements of the respective current session as well as the archive.

Sentences

Federal Supreme Court (BGH) – General statements about vitamin D in a children's milk product:

General statements about vitamin D in a children's milk product such as "7x mehr brauchst du als ich, wirst groß, gesund – ganz sicherlich" (you need 7 times more than I do, you will grow up and you will be healthy: that's for sure) were assessed as misleading in the court of first instance (District Court of Munich). The Munich Higher Regional Court, as the court of appeal, did not share this view and now the Federal Supreme Court decided that not only individual elements of the advertisement but the overall impression conveyed by the advertisement must be considered. Therefore, the Munich Higher Regional Court needs to deal with this subject again (Federal Supreme Court, 2 June 2022, I ZR 93/21, in

German: <https://openjur.de/u/2448586.html>; lower courts: District Court of Munich I, 5 June 2020-39 O 15946/19; Munich Higher Regional Court, 27 May 2021 – 29 U 3902/20).

Federal Administrative Court (BVerwG) – Ginkgo biloba dry extract:

According to a sentence of the Federal Administrative Court of 24 August 2022, products that contain so-called monograph-compliant Ginkgo biloba dry extract (GbE) as an efficacy-determining ingredient and that specify a consumption recommendation of 100 mg GbE/day are to be classified as medicinal products by function and not as food supplements (Ref. 3 B 36.21, in German: <https://www.bverwg.de/de/240822B3B36.21.0>; see BVL Press Release dated 12 October 2022, https://www.bvl.bund.de/SharedDocs/Pressemitteilungen/01_lebensmittel/2022/2022_PM_Ginkgo-biloba.html).

Unfair imitation of the presentation of a high-quality sparkling wine drink:

According to the Munich Higher Regional Court, the bottle design of the Lidl “Premium Spritz” is an unfair imitation of the bottle design of the “Chandon Garden Spritz” (Munich Higher Regional Court, 12 July 2022, 29 W 739/22; in German: <https://www.gesetze-bayern.de/Content/Document/Y-300-Z-GRURRS-B-2022-N-18455?hl=true>).

Modifications regarding pesticides

Maximum residue levels (MRL):

With Regulation (EU) 2022/1435, the MRL of the pesticide active agents calcium carbonate, carbon dioxide, cyprodinil and potassium hydrogen carbonate were modified.

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).

Further 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:

Residues of disinfectants in whipped cream:

In the restaurant business, cream from automatic creamers is often used. These machines must be rinsed with hot water after cleaning and disinfection. If the rinsing is neglected, residues of cleaning agents and disinfectants can pass into the cream. The BVL points out that, in tests, such residues were found in every fifth sample of whipped cream above the legally stipulated maximum levels (in German: https://www.bvl.bund.de/SharedDocs/Pressemitteilungen/01_lebensmittel/2022/2022_PM_Sahneautomaten.html).

Veterinary drugs:

The BVL published the announcement regarding the approval of veterinary drugs and other official acts as of 23 August 2022 (in German: https://www.bvl.bund.de/SharedDocs/Fachmeldungen/05_tierarzneimittel/2022/2022_09_26_Fa_Bekanntmachung_Zulassung_TA.html).

Report from the RASFF 2021:

On 26 August 2022, the BVL published a report from the European Rapid Alert System for Food and Feed (RASFF) for 2021 (in German:

https://www.bvl.bund.de/SharedDocs/Fachmeldungen/01_lebensmittel/2022/2022_08_26_RASFF_Jahresbericht_2021.html); Source of the BVL: https://food.ec.europa.eu/system/files/2022-07/acn_annual-report_2021-final.pdf).

Miscellaneous

Dioxins and dioxin-like PCBs:

With Regulation (EU) 2022/2002 of the Commission dated 21 October 2022, the maximum contents of dioxins and dioxin-like PCBs in certain foods were modified (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2002>). The Regulation came into force on 13 November 2022 and will apply as from 1 January 2023.

Aromas – Deletion from the Union List:

Through Regulation (EU) 2022/1466 dated 5 September 2022, certain flavouring substances were deleted from the Union List (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1466&qid=1668429411211&from=en>).

Mineral oil hydrocarbons (MOH) – guidance values in foodstuffs:

The Lebensmittelverband Deutschland e.V. (Food Federation Germany) updated the MOH guidance values that were developed together with representatives of the German Federal States working community on consumer protection / working group on foods and consumer goods, wine and cosmetics (Länderarbeitsgemeinschaft Verbraucherschutz (LAV) / Arbeitsgruppe Lebensmittel- und Bedarfsgegenstände, Wein und Kosmetika (ALB)) and extended them to certain vegan/vegetarian products (in German, PDF in English: <https://www.lebensmittelverband.de/de/aktuell/20221012-aktualisierung-moh-orientierungswerte>).

Additives E 300, E 301 and E 302:

For the use of ascorbic acid (E 300), sodium ascorbate (E 301) and calcium ascorbate (E 302) in tuna, a maximum content of 300 mg/kg each was defined (Regulation (EU) 2022/1923 dated 10 October 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1923&from=EN>).

Guidelines of the German Food Code:

The following modifications and one revised version were published in the Federal Gazette:

- Modifications of the guidelines for bread and cookies (in German: <https://www.bundesanzeiger.de/pub/publication/fqMsCrQdJn1nya66dkV/content/fqMsCrQdJn1nya66dkV/BAnz%20AT%2004.10.2022%20B2.pdf?inline>)
- Modifications of the guidelines for meat and meat products (in German: <https://www.bundesanzeiger.de/pub/publication/j6EKNy0faQIJhCM0Gx9/content/j6EKNy0faQIJhCM0Gx9/BAnz%20AT%2004.10.2022%20B3.pdf?inline>)
- Revised version of the guidelines for pasta (in German: <https://www.bundesanzeiger.de/pub/publication/gkFEaRBabBGMgDr4Q5b/content/gkFEaRBabBGMgDr4Q5b/BAnz%20AT%2018.10.2022%20B3.pdf?inline>).

Last update: 26 October 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 2 September and 11 November 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, almonds, apricot kernels (including products)			41
	rice flour, basmati rice, brown rice	Netherlands, Pakistan	B1: up 8.3 µg/kg	4
	mixture of millet and maize	Senegal	B1: 40.85 µg/kg; total: 46.56 µg/kg	1
	mixture of herbs/spices	Pakistan	B1: 17 µg/kg	1
	nutmeg	Indonesia	B1: 9.5 µg/kg; total: 9.5 µg/kg	1
Ochratoxin A	figs	Turkey	up 472 µg/kg	5
	basmati rice, rice	Netherlands, India	up 20 µg/kg	3
	corn flour	Poland	up 7.6 µg/kg	1
	whole grain rye pasta	Poland	up 16.4 µg/kg	1
	Astragalus extract powder	Germany	730 µg/kg	1
Patulin	apple juice	Denmark	74 µg/kg	1
Fumonisin	popcorn	Argentina	3,151 µg/kg	1
Zearalenone	rice crackers	Belgium	up 117 µg/kg	1
Heavy Metals / Other Metals				
Lead	calabash salts	Nigeria	30.6 mg/kg	1
	okra	Jordan	up 0.32 mg/kg	1
	organic wholegrain biscuits for toddlers	Belgium	0.039 mg/kg	1
	turmeric	Bangladesh	2.56 mg/kg	1
	blackberries	Portugal	0.17 mg/kg	1
Cadmium	giant squid arms	Lithuania	up 13.9 mg/kg	1
	small octopus	Italy	2.25 mg/kg	1
	mussels	Chile	up 1.8 mg/kg	2
	horsemeat	Romania	0.25 mg/kg	1
	spinach	Belgium, Poland	up 0.75 mg/kg	2
	carrots	Belgium	0.142 mg/kg	1
	green asparagus	Peru	0.044 mg/kg	1
	mushrooms	Romania	0.836 mg/kg	1
	okra	Jordan	0.020 mg/kg	1

Reason for Notifying	Product	Country of Origin	Notes	Number
Mercury	blue shark, swordfish	Spain, Sri Lanka	up 2.3 mg/kg	6
	organic chlorella tablets	China	0.18 mg/kg	1
Arsenic	calabash salts	Nigeria	1.9 mg/kg	1
Tin	canned pineapple juice	Philippines	150 mg/kg	1
	canned mandarin-oranges	Germany	307.7 mg/kg	1
Other Contaminants / Residues				
Ethylene oxide, 2-Chloroethanol	sesame seeds	Germany		1
	food supplement	Lithuania, USA, India, Russ. Federation		7
	fitness bar	Germany		1
	rice noodles, instant soup with noodles	Vietnam, China		2
	seasoning paste, seasoning sauce, ajwain seeds	India		3
	interlaced sodium carboxymethyl cellulose (E 468)	India		1
Chlorate	frozen strawberries	Morocco	up 0.56 mg/kg	1
Perchlorate	organic mint tea	Austria	up 20 mg/kg	1
Diethylhexylphthalate (DEHP)	pesto sauce	Italy, unknown	up 0.91 mg/kg	4
Benzo(a)pyrene, PAH	smoked pork collar	Latvia	Benzo(a)pyrene: 27.7 µg/kg; PAH: 166.1 µg/kg	1
	smoked catfish	Ukraine	Benzo(a)pyrene: 4.1 µg/kg; PAH: 24.6 µg/kg	1
	dried bay leaves	Bangladesh	Benzo(a)pyrene: 14.1 µg/kg; PAH: 299.2 µg/kg	1
	ginger powder	China	Benzo(a)pyrene: 22.3 µg/kg; PAH: 102.8 µg/kg	1
	palm oil	Togo	Benzo(a)pyrene: 5.8 µg/kg; PAH: 30 µg/kg	1
	coconut oil	Philippines	Benzo(a)pyrene: 8.70 µg/kg; PAH: 97.1 µg/kg	1
Mineral oil	margarine	Belgium	MOSH: 13.1 mg/kg MOAH: 3.4 mg/kg	1
	sunflower oil	Bulgaria	MOSH: 23.5 mg/kg MOAH: 3.9 mg/kg	1
	olive oil	Greece, Italy	MOSH: up 26.5 mg/kg MOAH: up 2.4 mg/kg	2
	coconut milk powder	Thailand	3.6 mg/kg	1
Acrylamide	biscuits	Bosnia and Herzegovina	up 568 µg/kg	2

Reason for Notifying	Product	Country of Origin	Notes	Number
3-Monochlor-1,2-propanediol (3-MCPD)	walnut cookies	Iran	4,326 µg/kg	1
	palm oil	Malaysia	3,425 µg/kg	1
	sunflower oil	Germany	up 2,450 µg/kg	1
Glycidyl esters	palm oil	Indonesia		1
	walnut cookies	Iran	2,561 µg/kg	1
Pyrrolizidine alkaloids (PA)	cumin	Turkey, Spain, India	up 10,118 µg/kg	4
	oregano	Turkey, Greece	up 30,313 µg/kg	4
	oregano, cumin, chamomille tea	Spain and Austria, Vietnam, Germany	1,100 µg/kg	1
Shellfish poisoning toxins (AZP, DSP)	oysters, blue mussels	Ireland	Azaspiracid: up 210 µg/kg	2
	cockles, sea almonds	Portugal	DSP: up 417.5 µg/kg	2
Ergot alkaloids	barley flour	Netherlands	217 µg/kg	1
Histamine	fish, fish products	Netherlands, Morocco, Vietnam, Sri Lanka, Croatia, Albania, UK, Spain, France	up 4,950 mg/kg	12
	raw milk cheese	France	485 mg/kg	1
cyanide	almonds	Italy	58.8 mg/kg	1
	food supplement	Slovakia	66.2 mg/dosage	1
Iodine	dried seaweed	China, South Korea	up 7,241 mg/kg dry matter	3
Pharmacological Active Substances				
1,3-Dimethylamylamine (DMAA), 2-Dimethylaminoethanol (DMAE), Dehydroepiandrosterone (DHEA)	food supplements	unknown (online), Netherlands, UK		3
5-Hydroxytryptophan (5-HTP)	food supplement	UK		1
Hupercine A	food supplement	Sweden, Romania, USA, unknown		4
Cannabidiol (CBD)	CBD oil, CBD products	Switzerland, Poland, Netherlands, Austria, Czech Rep.		5
	sparkling water	France		1
	food supplement	Czech Rep., UK		2
	gummies	France		1
	cosmetic oral care spray	Germany		1
Tetrahydrocannabinol (THC)	CBD oil	Netherlands		1
Malachite green, leukomalachite green	asian sea bass (<i>Lates calcarifer</i>)	Vietnam	205 µg/kg	1
	shrimps (<i>Penaeus monodon</i>)	Bangladesh	>2 µg/kg	2
Nitrofurans metabolites	shrimps	India	>1 µg/kg (AOZ)	1
Ofloxacin	frog legs	Vietnam	up 16.3 µg/kg	1

Reason for Notifying	Product	Country of Origin	Notes	Number
Aminoflubenadazol	pork	Netherlands	679 µg/kg	1
Doxycycline	quail eggs	Lithuania	1,887 µg/kg	1
Levamisole	pig carcasses	Netherlands	918 µg/kg	1
Ciprofloxacin	shrimp skewers	Vietnam	265 µg/kg	1
Sulfonamides, marbofloxacin and meloxicam	beef	Poland		1
Sibutramine	tea	Turkey		1
Sildenafil	food supplement	Bulgaria, Czech Rep.		3
	honey	Netherlands		1
	herbal mixture paste	Turkey		1
Yohimbine	food supplement	UK, Indonesia, Netherlands, USA, unknown		7
Unauthorised Colours				
Sudan I, Sudan Orange G	ground sumac	Turkey		1
Sudan I, III, IV	crushed chilli	Germany		1
Miscellaneous				
Parasitic infestation with Anisakis	fish (<i>Zeus faber</i>)	Morocco		1
Unauthorised irradiation	frog legs	Vietnam		1
	food supplement	Spain		2
GMO, not authorised	rice noodles	Vietnam		1
	papaya	Thailand, Cambodia		2
Foodborne disease outbreak	hamburger patties	Austria		1
	fishcake	Denmark		1
	spinach	Italy		1
Pathogenic Germs				
Salmonella total: 167	meat, meat products (including poultry)			80
	oktopus slices	China		1
	mussels	Spain, Netherlands, France		5
	eggs	Switzerland		1
	raw milk cheese	France		1
	food supplement	Lithuania		1
	mungo bean sprouts	France		1
	sesame seeds, sesame paste	Nigeria, Uganda, India, Ethiopia, Germany, Turkey		61
	halva	Syria, Turkey		6
	thyme, paprika powder, betel leaves	Egypt, Morocco, China, Bangladesh		6
	organic protein chips	Denmark		1
	mushrooms	Vietnam		1
	wafers	Bosnia and Herzegovina		2

Reason for Notifying	Product	Country of Origin	Notes	Number
<i>Listeria monocytogenes</i>	fish, fish products	Netherlands, Poland, Spain, France		8
	meat, meat products (including poultry)	Slovenia, Poland, France, Belgium		8
	spun curd cheese (burrata), cheese, Raclette cheese, raw milk cheese, soft cheese	Italy, Poland, France		5
	yoghurt	Ireland		1
	pancakes chocolate	France		1
Enteropathogenic E.coli	sheep fillet, beef carpaccio	Australia, Czech Rep.		2
Shigatoxin producing E.coli (STEC)	raw milk cheese, goat cream cheese (Faisselle)	Netherlands, France		2
	chivas	Italy		1
	mix of lettuce	Poland		1
<i>Bacillus cereus</i>	ginger, spinach, humus	Turkey, Italy, Serbia		3
<i>Campylobacter</i>	guinea fowl, duck breast, chicken	France, Czech Rep., Hungary		3
<i>Cronobacter spp.</i>	infant formula	Czech Rep.		1
Coagulase-positive Staphylococcus, staphylococcal enterotoxin	raw milk cheese, nems	France		2
	mozzarella	Spain	(enterotoxin)	1
<i>Vibrio cholerae</i> , <i>Vibrio parahaemolyticus</i> , <i>Vibrio vulnificus</i>	shrimps	Vietnam, Venezuela, Ecuador, India		10
<i>Yersinia enterocolitica</i>	smoked chicken/duck breast	Belgium		1
Norovirus	oysters, mussels	France, Italy, Portugal		5
Rotavirus	oysters	France		1

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