

No. 5 – Oktober 2019

Sentences

■ Designation "Käse-Alternative" (cheese alternative): in its indicative court order, the Higher Regional Court of the city of Celle decided on 6 August 2019 that a vegetable product may be designated as "cheese alternative" (Ref. No. 13 U 35/19). Since the designation does not highlight a similarity to a milk product but explicitly points to the fact that this is *not* cheese, the designation "cheese alternative" – other than the impermissible designations "vegetable cheese", "cashew cheese" or "veggie cheese" – is not considered to be misleading. With this, the Higher Regional Court of the city of Celle confirmed the view of the first instance as of 28 March 2019 (Stade District Court, Ref. No. 13 U 35/19) and the complainant withdrew the appeal.

■ "Kinderwunsch-Tee" (fertility tea) – health-related indication: according to a sentence of the Higher Regional Court of the city of Cologne dated 21 June 2019 (Ref. No. 6 U 181/18), the designation fertility tea ("Kinderwunsch-Tee") for a herbal tea is to be considered as an impermissible health-related indication pursuant to the provisions of the Health Claims Regulation (Regulation (EC) No. 1924/2006), since no generally accepted scientific evidence is available, attesting that the consumption of the tea has a beneficial effect on the conception.

■ Indication of a phone number in the online trade: according to the sentence of the European Court of Justice (ECJ) dated 10 July 2019 (Ref. No. C-649/17), an online platform is not obliged to always provide the consumer with a phone number prior to the conclusion of a contract. Another communication medium (e.g. an electronic contact form, an Internet chat or a call-back system) can be sufficient, provided that this enables a direct and efficient communication between the consumer and the contractor. In addition, the information about these communication media must be available in a clear and comprehensible manner.

■ Allergen labelling for an online delivery service: the Berlin District Court decided on 16 July 2019 that an online delivery service must inform customers *prior* to the ordering of meals and drinks about the contained allergens and additives (Ref. No. 16 O 304/17). The delivery service cannot invoke that only the cooperating restaurants are responsible for the correct declaration of the meals and drinks.

News from the BfR

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

■ Toxic plant seeds: exotic souvenirs can contain toxic plant seeds. A pepper potpourri from Tunisia, for example, also contained toxic seeds from the rosary pea. Amongst others, these seeds are used for jewellery making because of their appearance. In BfR communication No. 024/2019 dated 3 July 2019, details are also given with regard to other decorative plants and seeds with a significant risk of intoxication (in German: <https://www.bfr.bund.de/cm/343/paternostererbsen-rizinus-%26-co-exotische-souvenirs-k%C3%B6nnen-giftige-pflanzensamen-enthalten.pdf>).

■ Aluminium in Matcha tea: due to high contents of aluminium that were ascertained in Matcha tea, the BfR carried out a risk assessment. According to the latter, the TWI (tolerable weekly intake) of 1 mg/kg body weight can be exceeded in the long term regarding adults when Matcha tea is consumed on a regular basis with the highest aluminium content measured (Statement No. 027 dated 25 July 2019; in German: <https://www.bfr.bund.de/cm/343/hohe-aluminiumgehalte-in-einzelnen-matcha-teeproben%20.pdf>).

■ FAQ Genome Editing: the BfR updated the compilation of the most important questions and answers regarding Genome Editing and, in particular, regarding the CRISPR/Cas9 method. "Genome Editing" means new methods in order to carry out interventions in the genetic material of a cell in a targeted manner (in German: https://www.bfr.bund.de/de/fragen_und_antworten_zum_genome_editing_und_crispr_cas9-199684.html).

Note: the Bavarian Health and Food Safety Authority (LGL), Oberschleißheim, Germany, published a brochure on the "Genome Editing" subject in German at https://www.lgl.bayern.de/publikationen/doc/lgl_publication_genome.pdf.

For further information, please refer to www.bfr.bund.de.

Modifications Regarding Pesticides

■ Pesticides with the active agent desmedipham: the approval of the active agent desmedipham will expire on 1 January 2020. The non-renewal of the approval was published on 28 June 2019 in the Official Journal of the European Union (Official Journal L 175, page 17) with the Implementing Regulation (EU) 2019/1100 dated 27 June 2019. The Member States must revoke approvals for pesticides with this active agent at the latest by 1 January 2020, and any limited periods of allowed use will end on 1 July 2020 at the latest. The regulation came into force on 1 July 2019 and directly applies in every Member State.

Note:

extensive information on approved pesticides, revoked and suspended approvals and also 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/04_PlantProtectionProducts/01_ppp_tasks/02_ppp_AuthorisationReviewActSub/01_%20ppps_authorised/ppp_authorised_no_de.html).

■ Maximum residue levels (MRL): with Regulation (EU) 2019/1176 dated 10 July 2019, the MRL of the pesticide active agents 2,5-dichlorobenzoic acid methyl ester, mandipropamid and profoxydim were changed (Official Journal L 185 dated 11 July 2019, page 1). The Regulation came into force on 31 July 2019 and will apply as from 31 January 2020.

Miscellaneous

■ Mineral oil in foods: the Food Federation Germany e.V. (the former German Federation for Food Law and Food Science (Bund für Lebensmittelrecht und Lebensmittelkunde e.V (BLL)) published a "Guideline for the assessment of MOSH/MOAH migration from packaging into food with the aim of minimization". Enterprises are thus

enabled to independently calculate the MOH migration to be expected for their products

(<https://www.lebensmittelverband.de/de/lebensmittel/verpackung/mineraloeluebergaenge/leitlinie-minimierung-mosh-moah>; website in German, pdf in English available).

The first benchmark levels for mineral oil hydrocarbons (MOH) in foods are also available at <https://www.lebensmittelverband.de/de/aktuell/2019/0502-veroeffentlichung-moh-orientierungswerte>; (website in German, pdf download in English).

■ Cannabidiol (CBD) – CVUA Karlsruhe: a publication entitled "Cannabidiol (CBD) – ein Hype mit Gesundheitsrisiko" ("Cannabidiol (CBD) – a hype with a health risk") was provided by the Chemische und Veterinäruntersuchungsamt (CVUA) Karlsruhe (Chemical and Veterinary Investigation Office; in German:

https://www.ua-bw.de/pub/beitrag.asp?subid=2&Thema_ID=2&ID=3021&lang=DE&Pdf=No).

■ Veterinary drugs: the Federal Office of Consumer Protection and Food Safety (BVL) published the notification regarding the approval of veterinary drugs dated 23 July 2019 in German at

https://www.bvl.bund.de/DE/05_Tierarzneimittel/05_Fachmeldungen/2019/2019_08_22_Fa_Bekanntmachung_Zulassung_TA.html.

■ Novel Food - betaine: with the Implementing Regulation (EU) 2019/1294 of the Commission dated 1 August 2019, betaine was included as a novel food in the union list of the approved novel foods (Official Journal L 204 dated 2 August 2019, page 16). The approval for the marketing shall apply for a period of five years only for the initial applicant. The regulation came into force on 22 August 2019.

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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 31 July 2019 and 16 September 2019**.

Source:

https://www.bvl.bund.de/EN/01_Food/01_tasks/04_RapidAlertSystem/01_RASFF_notifications/RASFF_notifications_node.html (extracts of the RASFF, anonymized and shortened by editorial preparation at the BVL)

Reason for Notifying	Product	Country of Origin	Notes	Number
Mycotoxins				
Aflatoxins total: 88	nuts, nut products, figs, apricots, pistachios, peanuts, almonds			64
	basmati rice, rice, brown rice	Netherlands, Myanmar	B1: up 4.09 µg/kg	3
	organic chili, chili	India, UK	B1: up 52.6 µg/kg; total: up 55.3 µg/kg	5

Reason for Notifying	Product	Country of Origin	Notes	Number
	cumin, organic nutmeg, nutmeg	Portugal, Indonesia, Grenada	B1: up 20 µg/kg; total: up 35 µg/kg	7
	tiger nuts	Burkina Faso		6
	sweets	Ukraine	B1: 1.9 µg/kg	2
	coconut oil	India	B1: 8 µg/kg; total: 10 µg/kg	1
Ochratoxin A	organic chili powder, paprika	UK, Spain	30.6 µg/kg	4
	figs, organic raisins, raisins, raisin fruit stuffing	Turkey, Czech Rep.	up 38 µg/kg	10
	peanuts, pistachios	India, Turkey, USA	up 71 µg/kg	3
	instant rye flakes, barley malt flour	Poland, UK		2
	soy product	India		1
	liquorice roots	Azerbaijan		1
	tea	India (raw mat. Croatia)		2
Heavy Metals / Other Metals				
Lead	venison	Spain	9.64 mg/kg	7
	organic ginger	China		5
	wheat product	Jordan	0.69 mg/kg	2
	turmeric powder	India		2
	food supplement	Ukraine	26.7 mg/kg	1
Cadmium	squid, octopus, cuttlefish	Thailand, Vietnam	1.6 mg/kg	9
	crabs	Ireland, Italy	1.6 mg/kg	3
	sardinella, sardines, swordfish fillets	Ecuador, Italy, Spain	up 0.452 mg/kg	5
Mercury	fish / fish products		up 2.28 mg/kg	55
Aluminium	wheat product	Jordan	104 mg/kg	2
Arsenic	brown rice, food supplement, water	Italy, Netherlands, Ireland		5
Chrome	turmeric powder	India		2
Other Contaminants / Residues				
Benzo(a)pyrene, PAH	organic hempseed oil	Czech Rep., Germany		10
	sunflower oil, palm oil	Russ. Federation, Ghana		20
	cocoa powder	Poland, Slovakia	Benzo(a)pyrene: 20.73 µg/kg; PAH: 91.58 µg/kg	2
	bay leaves, parsley	Turkey, Germany, Poland	PAH: 115.2 µg/kg	6
	pork ham	Poland		1
	food supplement	Belgium (raw mat. UK)		1
	chlorella powder	China	PAH: 1,110 µg/kg	1
Radioactivity	chanterelles	Belarus	854 Bq/kg	2
Dioxins	organic eggs	Belgium		4
	cod liver	Poland		6
	tuna	Croatia		1

Reason for Notifying	Product	Country of Origin	Notes	Number
Mineral oil (MOSH, MOAH)	basmati rice	Saudi Arabia	MOSH: 64.5 mg/kg; MOAH: 36.5 mg/kg	1
Chlorate	mango cubes	Vietnam		1
Tropane alkaloids (Atropin, Scopolamin)	organic buckwheat flour	France	Atropin: 47 µg/kg; Scopolamin: 30 µg/kg	5
	porridge	Spain	Atropin: 2.2 µg/kg; Scopolamin: 2.7 µg/kg	3
Morphine	poppy seed	Slovakia, Czech Rep.	up 369 mg/kg	9
Shellfish poisoning toxins (PSP, DSP)	blue mussels	Italy	(PSP)	1
	wedge shell clams	France	(DSP)	1
Ergot (<i>Claviceps purpurea</i>)	rye flour	Belgium	568 µg/kg	1
Histamine	fish / fish products		up 2,600 mg/kg	13
Rum ether	sweets	Spain (raw mat. USA)		1
Hydrocyanic acid	organic apricot kernels, apricot kernels	Uzbekistan, Pakistan, unknown	1944 mg/kg	9
Coumarin	cereal product	Lithuania		1
Iodine	algae	China	up 1,300 mg/kg	14
	algae salad	Spain		1
Pharmacological Active Substances				
3,3-Diindolylmethane (DIM)	food supplement	UK, USA		2
N-Aceylcysteine	food supplement	UK		1
Anthraquinone	tea	Syria		25
Azaperon, Azaperol	beef	USA	Azaperon: 10 µg/kg; Azaperol: 35 µg/kg	2
Cannabidiol (CBD)	food supplement	Austria, Netherlands, Poland, Spain, Switzerland, unknown		20
	hemp seed oil	Germany, unknown		2
	beverage	Czech Republic		3
	organic CBD honey	Croatia	2,733.705 mg/kg	2
	chocolate	Netherlands	155 mg/kg	1
	chewing gum	Netherlands, USA		3
	products	Belgium, Netherlands		3
Tetrahydrocannabinol (THC)	organic CBD honey	Croatia	74,933 mg/kg	2
	CBD oil	Poland	748 mg/kg	3
	green tea	UK		1
	food supplement	Netherlands, Austria, Poland, Spain, Switzerland		5
	chewing gum	Netherlands, USA		3
	chocolate	Netherlands	5.9 mg/kg	1
Huperzine A	food supplement	UK		2
Matrine	black tea	China	0.03 mg/kg	3
Metronidazole	pig carcasses	France		12

Reason for Notifying	Product	Country of Origin	Notes	Number
Nitrofurantol/metabolites	prawns	India	(AOZ)	1
	pig casings	China	(SEM)	1
Nortadafafil	food supplement	Romania	107 mg/kg	1
Salinomycin	quail eggs	Latvia	8.4 µg/kg	1
Sibutramine	herbal tea	Turkey		6
Sildenafil	food supplement	China, Hong Kong, Malaysia, Turkey, UK.		19
Tadalafil	food supplement	Bulgaria, Malaysia, China		8
Tetracyclines	prawns, crustaceans	Vietnam	(Doxycyclin)	2
	crustaceans	Bangladesh	(Oxytetracycline)	2
Tilmicosin	cattle carcasses	Portugal	> 125 µg/kg	2
Yohimbine, Yohimbe extract	food supplement	Spain, UK, Slovakia, USA		5
Unauthorized Colours				
Rhodamine B	beets	Lebanon		1
Sudan IV	palm oil	Ghana		8
Miscellaneous				
Botulinum toxin	tuna, fish	Spain, Netherlands		10
Parasite infestation with anisakis	pike, kingklip, Argentine hake, mackerels, mackerel fillets	Spain, France, Norway		10
Pyrrolizidine alkaloids (PA)	flower pollen	Spain		1
	herb mixture	Austria		1
	herbal tea	Czech Republic	793 µg/kg	2
	oregano	Turkey, unknown	7,590 µg/kg	8
	peppermint	Turkey	17,183 µg/kg	4
	thyme	Turkey		1
	tea	Germany	903 µg/kg	1
Irradiation	paprika powder, chili powder	China, unknown		7
Food dependent disease outbreak	algae salad	China		19
	eggs	Poland		13
	strawberries	Egypt, Poland		18
	Japanese oysters	France		1
	milk products	France		4
	food supplement	Italy (produced in Spain, Germany), Spain		11
	pork preparation	Romania (raw mat. Italy, Belgium)		11
	other food products / mixtures	UK		4
Pathogenic Germs				
Salmonella total: 269	meat / meat products (including poultry)			148
	tuna pieces	Vietnam, unknown		4

Reason for Notifying	Product	Country of Origin	Notes	Number
	raw milk cheese	France		23
	eggs, egg products, egg powder, egg white powder	France, Spain, UK, Ukraine, Czech Rep.		20
	aniseed powder, organic ginger slices, ginger, ginger powder, chili powder, oregano, parsley, pepper, mustard seeds	Spain, Uganda, Nigeria, Italy, India, Turkey, Egypt, Brazil, China, Sudan, Poland		25
	sunflower seeds	Bulgaria		1
	sesame seed	Egypt, India, Nigeria, Sudan, Uganda		20
	almonds, tiger nuts	USA, Spain (raw mat. Niger)		13
	ready meals	UK		2
	Broccoli, fruit mixture, organic elderflowers	Netherlands, Belgium, Albania		10
	betel leaves, organic chlorella powder	Malaysia, India		3
<i>Listeria monocytogenes</i>	meat / meat products (including poultry)	Estonia, Spain, Poland, Italy, Namibia		33
	fish / fish products	Poland		3
	mussels, prawns, king crabs	Netherlands, Spain, France, Chile		6
	ready meal	Netherlands		2
	cheese, Gouda cheese, sheep`s cheese	France (partly processed Sweden), Poland		5
	olives, fruit mixture	Spain, Belgium		2
Shigatoxin producing E.coli	meat / meat products	Argentina, Brazil, Uruguay, Poland, Spain		17
	soft cheese	Belgium		2
Pathogenic Vibrio (<i>Vibrio parahaemolyticus</i>)	Chinese crab, prawns, lobster	China, Ecuador, India, USA		5
Hepatitis A Virus	berries	raw mat. from Ukraine, Lithuania and Romania		1
Norovirus	algae salad	China		2
	raspberries	Morocco		2

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