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Draft legislation of the Federal Ministry of Food and Agriculture

Ordinance reorganising provisions of food law on food additives[[1]](#footnote-1))

Оf ...

The Federal Ministry of Food and Agriculture orders the following on the basis of

- § 4(2)(2) and § 4(3)(2); § 7(1)(1) and § 7(2)(1); § 13(1)(2), (5) and (6); § 13(3), first sentence, (1); and § 13(4)(1)(a); § 34, first sentence, (3) and (5); and § 35(1)(b)(aa) of the Food and Feed Code in the version published on 3 June 2013 (Federal Law Gazette I p. 1426), of which § 4(3); § 7(1) and (2); § 13(1) and (4); § 34, first sentence; and § 35 were amended by Article 67 of the Ordinance of 31 August 2015 (Federal Law Gazette I p. 1474), in agreement with the Federal Ministry of Economic Affairs and Energy,

* § 62(1)(1) and § 62(2)(a) of the Food and Feed Code in the version published on 3 June 2013 (Federal Law Gazette I p. 1426), as last amended by Article 97 of the Act of 19 June 2020 (Federal Law Gazette I p. 1328), and

- § 3(1), first sentence of the Milk and Margarine Act of 25 July 1990 (Federal Law Gazette I p. 1471), as last amended by Article 2(2) of the Act of 18 January 2019 (Federal Law Gazette I p. 33), in agreement with the Federal Ministry of Economic Affairs and Energy:

Article 1

Ordinance implementing Union legislation on food additives

(Food Additives Implementing Ordinance)

Scope of application

(1) This Ordinance shall apply by supplementing:

* + - 1. the provisions of Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives (OJ L 354, 31.12.2008, p. 16; L 105, 27.4.2010, p. 114; L 322, 21.11.2012 p. 8; L 123,19.5.2015, p. 122), as last amended by Regulation (EU) 2020/771 (OJ L 184, 12.6.2020, p. 25), and European Union legislation enacted on the basis thereof with respect to:
				1. the use of food additives as defined in Article 3(2)(a) in conjunction with Article 2(2) of Regulation (EC) No 1333/2008, as amended; and
				2. the placing on the market and labelling of food additives and foods containing food additives; and
			2. the provisions of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18; L 331, 18.11.2014, p. 41; L 50 of 21.2.2015, p. 48; L 266, 30.9.2016, p. 7), as last amended by Regulation (EU) 2015/2283 (OJ L 327, 11.12.2015, p. 1), with respect to the labelling of prepacked food within the meaning of Article 2(2)(e) of Regulation (EU) No 1169/2011, as amended, and non-prepacked food intended for supply to:
				1. final consumers within the meaning of Article 3(18) of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1), last amended by Regulation (EU) No 2019/1381 (OJ L 231, 6.9.2019, p. 1), as amended; or
				2. mass caterers within the meaning of Article 2(2) of Regulation (EU) No 1169/2011.
		1. This Ordinance regulates the transport, keeping and storage of nitrites and the requirements for the production of nitrite curing salt.

Definitions

For the purposes of this Ordinance, non-prepacked food is food which is

* + - 1. offered for sale without packaging,
			2. packed on the sale’s premises at the request of the final consumer or mass caterer, or
			3. prepacked with a view to direct sale.

Beer

For the manufacture of beer placed on the market under the description traditional German beer (Bier nach deutschem Reinheitsgebot gebraut) or under synonymous indications, only the following may be used as food additives:

* + - 1. carbon dioxide captured during the production of beer; or
			2. carbon dioxide and nitrogen, provided:
				1. they do not pass into the beer except in technically unavoidable quantities; and
				2. their use does not increase the carbon dioxide content of the beer.

Nitrites and nitrite curing salt

* + 1. Nitrites shall not be introduced into establishments producing food, nor kept or stored in such establishments. This prohibition shall not apply to the introduction of sodium and potassium nitrite into establishments producing mixtures of sodium or potassium nitrite with table salt, iodised table salt or a table salt substitute (nitrite curing salt).
		2. Anyone wishing to produce nitrite curing salt requires the approval of the competent authority. Approval may only be issued if the applicant:
			1. is reliable; and
			2. has the facilities and tools necessary for the proper production of nitrite curing salt.

Nitrite curing salt may only be produced in rooms that are exclusively intended for this purpose.

Labelling

* + 1. Non-prepacked food as defined in § 2(3) which is not offered for self-service, and non-prepacked food as defined in § 2(1) and (2) may only be placed on the market by the person responsible under Article 8(1) or (4), sentence 2 of Regulation (EU) No 1169/2011 with a view to their supply to final consumers or mass caterers or distributed by the person responsible under Article 8(3) of Regulation (EU) No 1169/2011 if the food additives used in their production are labelled with the following information in the manner specified in paragraph 2:
			1. in the case of foods containing colours, the indication ‘contains colours’;
			2. in the case of foods containing food additives used for preservation, the indication ‘contains preservatives’ or ‘preserved’;
			3. in the case of foods containing food additives used as antioxidants, the indication ‘contains antioxidants’;
			4. in the case of foods containing nitrate or nitrite curing salt, the indication provided for in points 2 and 3 may be replaced by the following:
				1. for foods containing nitrite curing salt, the indication ‘contains nitrite curing salt';
				2. for foods containing sodium or potassium nitrate, whether mixed or not, the indication ‘contains nitrate’, and;
				3. for foods containing nitrite curing salt and sodium or potassium nitrate, whether mixed or not in each case, the indication ‘contains nitrite curing salt and nitrate’;
			5. in the case of foods containing food additives used as flavour enhancers, the indication ‘contains flavour enhancer’;
			6. in the case of olives containing ferrous gluconate (E 579) or ferrous lactate (E 585), the indication ‘darkened’;
			7. in the case of fresh fruit and vegetables with food additives with numbers E 445, E 471, E 473, E 474, E 901 to E 905, and E 914 used for surface treatment, the indication ‘waxed’;
			8. in the case of meat products containing food additives with numbers E 338 to E 341, E 343 and E 450 to E 452, the indication ‘contains phosphate’;
			9. in the case of foods containing sweeteners, with the exception of table-top sweeteners, the indication ‘contains sweetener(s)’;
			10. in the case of table-top sweeteners, the notice ‘based on …’, supplemented by the designation of the sweeteners used;
			11. in the case of foods containing aspartame (E 951) or aspartame-acesulfame salt (E 962), the information ‘contains a source of phenylalanine’;
			12. in the case of foods with more than 10 % added polyols with numbers E 420, E 421, E 953 and E 965 to E 968, the indication ‘excessive consumption may induce laxative effects’.
		2. The indications under paragraph 1 shall be provided:
			1. in accordance with Article 12(2) of Regulation (EU) No 1169/2011 or § 4(3) and (4) of the Food Information Implementing Ordinance of 5 July 2017 (Federal Law Gazette I p. 2272), as last amended by Article 1 of the Ordinance of 27 October 2020 (Federal Law Gazette I p. 2268);
			2. where indications are mandatory under § 4(2) of the Food Information Implementing Ordinance, in the same manner via the same medium; and
			3. in the case of non-prepacked foods offered for sale by means of distance communication, in accordance with Article 14(1) of Regulation (EU) No 1169/2011.
		3. The indications under paragraph 1, points 1 to 8 may be omitted:
			1. in the case of food with a list of ingredients complying with the requirements for the indications referred to in Article 9(1)(b) in conjunction with Article 18 of Regulation (EU) No 1169/2011;
			2. in the case of foods where all food additives used in the production of the food are listed in Annex VII, Part C to Regulation (EU) No 1169/2011, with their category designation followed by their specific name or E number on a notice displayed in the sales premises, in a written record or in electronic information packages provided by the food business operator and immediately and easily accessible to the final consumer; the written record or electronic information offers shall be displayed with the food or on a notice; or
			3. in the case of foods containing food additives which, under Article 20 of Regulation (EU) No 1169/2011, are not required to be included in the list of ingredients.
		4. Prepacked table-top sweeteners may only be supplied to final consumers if:
			1. in the case referred to in Article 23(2) of Regulation (EC) No 1333/2008, their designation, also in conjunction with Article 23(5), is accompanied by the indication specified therein; and
			2. in the case referred to in Article 23(3) of Regulation (EC) No 1333/2008, their labelling, also in conjunction with Article 23(5), is accompanied by the indication specified therein.
		5. Paragraph 1(1) to (3) shall apply *mutatis mutandis* to the labelling of prepacked beverages containing more than 1.2 % alcohol by volume, subject to the requirement that the indications in accordance with Article 12(2) of Regulation (EU) No 1169/2011 be provided.
		6. For fresh fruit and vegetables:
			1. that are not prepacked within the meaning of § 2(3) and offered for self-service or which are offered prepacked; and
			2. for which a list of ingredients is not required under Article 19(1)(a) of Regulation (EU) No 1169/2011 and a list of ingredients is not provided voluntarily;

paragraph 1(7) shall apply *mutatis mutandis*, subject to the provision of the indications under Article 12(2) of Regulation (EU) No 1169/2011.

Criminal offences

* + 1. Under § 59(1)(21)(a) of the Food and Feed Code, penalties shall be imposed on anyone who:
			1. introduces, keeps or stores nitrites in contravention of § 4(1), first sentence;
			2. manufactures nitrite curing salt without approval in accordance with the first sentence of § 4(2); or
			3. manufactures nitrite curing salt in contravention of § 4(2), third sentence.
		2. Under § 58(3)(2) and § 58(4) to (6) of the Food and Feed Code, penalties shall be imposed on anyone who, intentionally or negligently, places the following on the market in contravention of Article 5 in conjunction with Article 4(5) in conjunction with Article 14 in conjunction with Annex II, Part A, Section 2(1) of Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives (OJ L 354; 31.12.2008, p. 16; L 105, 27.4.2010, p. 114; L 322, 21.11.2012, p. 8; L 138, 24.5.2013, p. 20; L 123, 19.5.2015, p. 122; L 214, 13.8.2015, p. 30; L 165, 23.6.2016, p. 24; L 282, 19.10.2016, p. 84; L 82, 26.3.2018, p. 18; L 60, 28.2.2019, p. 35), as last amended by Regulation (EU) 2020/771 (OJ L 184, 12.6.2020, p. 25):
			- 1. a food additive which does not comply with the specifications laid down in the Annex to Commission Regulation (EU) No 231/2012 of 9 March 2012 laying down specifications for food additives listed in Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council (OJ L 83, 22.3.2012, p. 1; L 189, 14.7.2016, p. 59; L 292, 27.10.2016, p. 50), as last amended by Regulation (EU) 2020/771 (OJ L 184, 12.6.2020, p. 25);
				2. a food containing a food additive not complying with the specifications laid down in the Annex to Regulation (EU) No 231/2012; or
				3. in conjunction with the note in the Annex to Regulation (EU) No 231/2012:

a food additive which has been sterilised using ethylene oxide; or

a food containing a food additive sterilised using ethylene oxide.

Administrative offences

* + 1. Any person who negligently commits an act referred to in § 6(1) shall be deemed to have committed an administrative offence under § 60(1)(2) of the Food and Feed Code.
		2. Anyone who deliberately or negligently commits the following acts shall be deemed to have committed an administrative offence within the meaning of § 60(2)(26)(a) of the Food and Feed Code:
			1. places on the market or supplies in contravention of § 5(1)(1) to (3), in each case also in conjunction with paragraph 5, in contravention of § 5(1)(4) to (6) or (7), also in conjunction with paragraph 6, or § 5(1)(8) to (12); or
			2. supplies table-top sweeteners in contravention of § 5(4).
		3. Anyone who infringes Regulation (EC) No 1333/2008 by placing on the market a food additive, intentionally or negligently, in contravention of Article 21(1), first sentence, in conjunction with Article 22(1), (2) or (3) or in contravention of Article 23(1) shall be deemed to have committed an administrative offence within the meaning of § 60(4)(2)(a) of the Food and Feed Code.

Article 2

Amendment to the Dietetic Foods Ordinance

The Dietetic Foods Ordinance, in the version published on 28 April 2005 (Federal Law Gazette I p. 1161), last amended by Article 22 of the Ordinance of 5 July 2017 (Federal Law Gazette I p. 2272), is amended as follows:

* + - 1. § 5(1) is worded as follows:
		1. ‘For the exploitation, production and preparation of dietetic foods, substances may only be added in accordance with this Ordinance subject to directly applicable European Community or European Union legislation.’
			1. § 6 is deleted.
			2. In § 25(4), second sentence, the words ‘§ 9 of the Ordinance on the approval of additives’ are replaced by the words ‘§ 5 of the Food Additives Implementing Ordinance’.
			3. In § 26(3), the words ‘§ 6, sentence 3,’ are deleted.

Article 3

Amendment to the Milk Products Ordinance

The Milk Products Ordinance of 15 July 1970 (Federal Law Gazette I p. 1150), as last amended by Article 21 of the Ordinance of 5 July 2017 (Federal Law Gazette I p. 2272), is amended as follows:

* + - 1. § 3(1), sentence 2 is rescinded.
			2. § 5 is worded as follows:
	1. ‘

Use of vitamins

* + 1. The vitamins listed in Annex 2 may be used in the production of milk products for the purposes specified therein. The content of vitamins shall not exceed the maximum levels specified in Annex 2.
		2. Spreadable fat products of milk origin referred to in points 2 and 3 of Annex 2 are dairy spreads as defined in points 2 to 4 of Section A of Appendix II to Annex VII to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671; L 189, 27.6.2014, p. 261; L 130,19.5.2016, p. 18; L 34, 9.2.2017, p. 41; L 106, 6.4.2020, p. 12), as last amended by Regulation (EU) 2017/2393 of the European Parliament and of the Council of 13 December 2017 (OJ L 350, 29.12.2017, p. 15).
		3. The vitamins listed in Annex 2 may also be used in the production of added foods.
		4. By way of derogation from § 16(1), first sentence, of the Food and Feed Code, there is no obligation to indicate the content of vitamins used in accordance with paragraphs 1 and 3. ‘§ 3(2)(3) remains unaffected.’
			1. In § 7(2), the word ‘additives’ is replaced by the word ‘vitamins’.
			2. Annex 2 is amended as follows:
				1. The heading is worded as follows:

‘Annex 2 (regarding § 5(1))

Vitamins’.

* + - * 1. In point 1, the word ‘additives’ is replaced by the word ‘vitamins’.

Article 4

Amendment to the Cheese Ordinance

The Cheese Ordinance, in the version published on 14 April 1986 (Federal Law Gazette I p. 412), as last amended by § 18 of the Ordinance of 5 July 2017 (Federal Law Gazette I p. 2272), is amended as follows:

* + - 1. § 14(1), sentence 2 is rescinded.
			2. § 23, sentence 4 is rescinded.
			3. In Annex 1, Section A, column 3 on the standard varieties Camembert and Brie is amended as follows:

‘matured only with cultures of Penicillium camemberti (Camembert mould) and Geotrichum candidum (geotrichum)’.

Article 5

Amendment to the Butter Ordinance

§ 2(4) and § 5(5) of the Butter Ordinance of 3 February 1997 (Federal Law Gazette I p. 144), as last amended by Article 19 of the Ordinance of 5 July 2017 (Federal Law Gazette I p. 2272), are rescinded.

Article 6

Amendment to the Ordinance implementing the Provisional Beer Act

In § 17(1), sentence 2 of the Ordinance implementing the Provisional Beer Act in the version published on 29 July 1993 (Federal Law Gazette I p. 1422), as last amended by Article 2 of the Ordinance of 8 December 2000 (Federal Law Gazette I p. 1686), the words ‘Ordinance on the approval of additives’ shall be replaced by the words ‘Food Additives Implementing Ordinance’.

Article 7

Amendment to the Ordinance on certain alcoholic beverages

In § 10(6) of the Ordinance on certain alcoholic beverages in the version published on 30 June 2003 (Federal Law Gazette I p. 1255), as last amended by Article 15 of the Ordinance of 5 July 2017 (Federal Law Gazette I p. 2272), the words ‘Ordinance on the approval of additives’ shall be replaced by the words ‘Food Additives Implementing Ordinance’.

Article 8

Entry into force, abrogation

This Ordinance shall enter into force on the day following its promulgation. At the same time, the Ordinance on the approval of additives, in the version published on 29 January 1998 (Federal Law Gazette I p. 130), as last amended by Article 23 of the Ordinance of 5 July 2017 (Federal Law Gazette I p. 2272) and the Ordinance on the marketing of additives of 29 January 1998 (Federal Law Gazette I pp. 230, 269), as last amended by Article 2 of the Ordinance of 28 March 2011 (Federal Law Gazette I p. 530) shall expire.

Approved by the Bundesrat.

Bonn, [date]

The Federal Minister for Nutrition and Agriculture

Julia Klöckner

1. ) The obligations arising from Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codified text, OJ L 241, 17.9.2015, p. 1) have been met. [↑](#footnote-ref-1)