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COMMISSION

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COMMISSION REGULATION (EU) .../...

of **XXX**

**amending Regulation (EC) No 1333/2008 of the European Parliament and of the Council
as regards the use of sorbic acid (E 200) and potassium sorbate (E 202) in non-heat-
treated plant-based mousses**

(Text with EEA relevance)

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amending Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards the use of sorbic acid (E 200) and potassium sorbate (E 202) in non-heat-treated plant-based mousses

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives¹, and in particular Articles 10(3) thereof,

Having regard to Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings², and in particular Article 7(5) thereof,

Whereas:

- (1) Regulation (EC) No 1333/2008 lays down a Union list of food additives approved for use in foods and their conditions of use.
- (2) Pursuant to Article 3(1) of Regulation (EC) No 1331/2008, the Union list of food additives may be updated either on the initiative of the Commission or following an application from a Member State or an interested party.
- (3) In June 2024, an application was submitted to the Commission for the authorisation of use of potassium sorbate (E 202) as a preservative in non-heat-treated plant-based mousses up to a maximum level of 500 mg/kg. The application was subsequently made available to Member States pursuant to Article 4 of Regulation (EC) No 1331/2008.
- (4) Pursuant to Annex II to Regulation (EC) No 1333/2008, sorbic acid (E 200) and potassium sorbate (E 202) are regulated as a group ‘sorbic acid – potassium sorbate (E 200-202)’ and are authorised for a combined use in a wide variety of foods. In food category 16 ‘Desserts excluding products covered in categories 1, 3 and 4’, sorbic acid – potassium sorbate (E 200-202) are authorised for use in non-heat-treated dairy-based desserts at a maximum level of 300 mg/kg, in *frugtgrød*, *rote Grütze* and *pasha*, fruit-flavoured water-based gelatine desserts at 1 000 mg/kg and in *ostkaka* at 2 000 mg/kg.
- (5) Non-heat-treated plant-based mousses are desserts with various flavours (e.g. fruit, chocolate) having a pH between 3,5 and 5,5, which cannot be pasteurised or sterilised as it would destroy their organoleptic characteristics, such as aeration, smoothness and structure. Thus, the use of a preservative is necessary to ensure the microbiological

¹ OJ L 354, 31.12.2008, p. 16, ELI: <http://data.europa.eu/eli/reg/2008/1333/oj>.

² OJ L 354, 31.12.2008, p. 1, ELI: <http://data.europa.eu/eli/reg/2008/1331/oj>.

safety of the product until the end of its shelf-life. Potassium sorbate (E 202) has been identified as a suitable preservative for use in non-heat-treated plant-based mousses up to 500 mg/kg due to its effectiveness at acid pH below 7,4 without having any negative effects on the taste.

- (6) On 1 March 2019, the European Food Safety Authority ('the Authority') issued a scientific opinion on the follow-up of the re-evaluation of sorbic acid (E 200) and potassium sorbate (E 202) as food additives³. Based on new data on reproductive toxicity, the Authority changed the temporary acceptable daily intake value (ADI) to a new group ADI of 11 mg sorbic acid/kg bw per day for sorbic acid (E 200) and its potassium salt (E 202). The exposure estimates were well below the new group ADI for all population groups both at the mean and high levels.
- (7) Pursuant to Article 3(2) of Regulation (EC) No 1331/2008, the Commission has to seek the opinion of the Authority in order to update the Union list of food additives set out in Annex II to Regulation (EC) No 1333/2008, except where the update in question is not liable to have an effect on human health. As sorbic acid (E 200) and potassium sorbate (E 202) are authorised for use in a wide variety of foods by Regulation (EC) No 1333/2008, including in different desserts in food category 16 'Desserts excluding products covered in categories 1, 3 and 4', the proposed use in non-heat-treated plant-based mousses is not expected to have a significant impact on the overall exposure which therefore will remain below the ADI. This is also supported by the estimation provided by the applicant who used the Food Additive Intake Model developed by the Authority. Therefore, the use of sorbic acid (E 200) and potassium sorbate (E 202) in non-heat-treated plant-based mousses is not liable to have an effect on human health and consequently it is not necessary to seek the opinion of the Authority.
- (8) Therefore, it is appropriate to authorise the use of sorbic acid (E 200) and potassium sorbate (E 202) as preservatives in non-heat-treated plant-based mousses at a maximum level of 500 mg/kg.
- (9) Regulation (EC) No 1333/2008 should therefore be amended accordingly.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 1333/2008 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

³ Scientific Opinion on the follow-up of the re-evaluation of sorbic acid (E200) and potassium sorbate (E202) as food additives. *EFSA Journal* 2019;17(3):5625, <https://doi.org/10.2903/j.efsa.2019.5625>.

Done at Brussels,

*For the Commission
The President
Ursula VON DER LEYEN*