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Delegations will find attached document D072048/03.

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COMMISSION REGULATION (EU) …/…

of XXX

amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regard the use of polyols in certain energy-reduced confectionery products

(Text with EEA relevance)

COMMISSION REGULATION (EU) …/…

of XXX

amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regard the use of polyols in certain energy-reduced confectionery products

(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 additives[1], and in particular Article 10(3) thereof,

Whereas:

(1) Annex II to Regulation (EC) No 1333/2008 lays down a Union list of food additives approved for use in food and their conditions of use.

(2) That list may be updated in accordance with the common procedure referred to in Article 3(1) of Regulation (EC) No 1331/2008 of the European Parliament and of the Council[2] either on the initiative of the Commission or following an application.

(3) On 18 December 2018, an application was submitted for the authorisation of the use of polyols as a sweetener in energy-reduced hard confectionery (candies and lollies), soft confectionery (chewing candies, fruit gums and foam sugar products/marshmallows), liquorice, nougat and marzipan; strongly flavoured freshening throat pastilles and breath-freshening micro-sweet. This application was subsequently made available to the Member States pursuant to Article 4 of Regulation (EC) No 1331/2008.

(4) Polyols are low-caloric sweeteners and may be used to partially or totally replace caloric sugars in certain confectionery products. This results in a reduction of their caloric content and in offering consumers energy-reduced products in accordance with Article 7 of Regulation (EC) No 1333/2008. The combined use of polyols and sugars in energy-reduced confectionery provides sweetness to products and the desired functionalities and organoleptic properties which cannot be achieved with other ingredients or by using polyols alone.

(5) A limited use of polyols as sweeteners is considered acceptable in food provided that their laxative action is taken into account[3]. Regulation (EC) No 1333/2008 does generally not allow for the use of polyols in beverages due to their laxative potential. However, when used in solid foods, such as the confectionery products concerned by

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1 OJ L 354, 31.12.2008, p. 16.

2 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 flavourings (OJ L 354, 31.12.2008, p. 1).

3 Report of the scientific Committee for Food (SCF) concerning sweeteners (SCF, 1984), Opinion of the Scientific Committee on Food on Erythritol (opinion of 5 March 2003).

the application, polyols are unlikely to cause any undesirable laxative symptoms below a consumption of 20 g of polyols per day from all sources[4]. Therefore Regulation (EC) No 1333/2008 already allows for their use at quantum satis in food category 05.2 'Other confectionery including breath refreshening microsweets' for, among other purposes, the total replacement of sugars in products with no added sugars. The proposed extension of use concerns only the partial replacement of sugars in the same types of products, and, thus, polyols would be used at level not associated with undesirable laxative symptoms.

(6) Pursuant to Article 3(2) of Regulation (EC) No 1331/2008, the Commission is 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 such update is not liable to have an effect on human health. The authorisation of use of polyols as sweeteners in energy-reduced confectionery, alongside with their already authorised use in confectionery with no added sugars, constitutes an update of that list which is not liable to have an effect on human health. Therefore, it is not necessary to seek the opinion of the Authority. In order to ensure that consumers receive adequate information, the labelling of foods containing more than 10% added polyols authorised pursuant to Annex II of Regulation (EC) No1333/2008 must include the mandatory statement 'excessive consumption may produce laxative effects' in accordance with Annex III to Regulation (EU) No 1169/2011 of the European Parliament and of the Council[5].

(7) As a result, it is appropriate to authorise the use of polyols as a sweetener in certain energy-reduced products referred to in the first sentence of recital (3) in food subcategory 05.2 'Other confectionery including breath freshening microsweets' at *quantum satis*.

(8) Annex II to Regulation (EC) No 1333/2008 should therefore be amended accordingly.

(9) 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*.

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4 Report of the scientific Committee for Food (SCF) concerning sweeteners (Opinion expressed on 11 December 1987 and 10 November 1988)

5 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).

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

Done at Brussels,

For the Commission
The President
Ursula VON DER LEYEN