

COMMISSION REGULATION (EU) 2018/1497**of 8 October 2018****amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards food category 17 and the use of food additives in food supplements****(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,

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 flavourings ⁽²⁾, and in particular Article 7(5) 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) Only food additives included in the Union list in Annex II to Regulation (EC) No 1333/2008 may be placed on the market as such and used in foods under the conditions of use specified therein.
- (3) That list may be updated in accordance with the common procedure referred to in Article 3(1) of Regulation (EC) No 1331/2008, either on the initiative of the Commission or following an application.
- (4) The Union list includes food additives which are listed on the basis of the categories of food to which they may be added. In Part D of that list, food category 17 covers food supplements as defined in Directive 2002/46/EC of the European Parliament and of the Council ⁽³⁾ excluding food supplements for infants and young children. Food category 17 includes three subcategories: 17.1 'Food supplements supplied in a solid form including capsules and tablets and similar forms, excluding chewable forms', 17.2 'Food supplements supplied in a liquid form' and 17.3 'Food supplements supplied in a syrup-type or chewable form'. Part E of the Union list sets out the authorised additives for each of these subcategories and their conditions of use.
- (5) It followed from the discussions with Member States (at the Working Party of Governmental Experts on Additives) that there are difficulties with the implementation of Annex II to Regulation (EC) No 1333/2008 on food additives, in particular for food subcategory 17.3 'Food supplements supplied in a syrup-type or chewable form'. This classification has led to misinterpretation and in order to avoid it, syrup- and chewable-forms should be categorised as liquid and solid forms, respectively.
- (6) Therefore, it is appropriate to delete food subcategory 17.3 and to reword the titles of food subcategories 17.1 and 17.2 to 'Food supplements supplied in a solid form, excluding food supplements for infants and young children' and 'Food supplements supplied in a liquid form, excluding food supplements for infants and young children' respectively. This will better reflect which products are covered by/included in each of the food subcategories. As a result of the deletion of food subcategory 17.3 food additives' entries which were included in that food subcategory should be transferred to either food subcategory 17.1 or 17.2 to ensure that there is transparency and legal certainty regarding the use of food additives in those foods. For clarity and enforcement purposes also the title of food category 17 should be amended to 'Food supplements as defined in Directive 2002/46/EC'.

⁽¹⁾ OJ L 354, 31.12.2008, p. 16.

⁽²⁾ OJ L 354, 31.12.2008, p. 1.

⁽³⁾ Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ L 183, 12.7.2002, p. 51).

- (7) It also followed from the discussions with Member States that it should be clarified whether a maximum (use) level for the food additives in food category 17 applies to the food as marketed or to the food ready for consumption. Therefore, an introduction section should be included referring to certain food additives authorised in that food category. This is in line with the previous entries of those food additives within the Directives of the European Parliament and of the Council 94/35/EC ⁽¹⁾, 94/36/EC ⁽²⁾ and 95/2/EC ⁽³⁾.
- (8) Pursuant to Article 3(2) of Regulation (EC) No 1331/2008, the Commission has to seek the opinion of the European Food Safety Authority ('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. Since the Union list is amended to provide clarification to the current authorised uses of additives, it 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.
- (9) Annex II to 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.

Done at Brussels, 8 October 2018.

For the Commission
The President
Jean-Claude JUNCKER

⁽¹⁾ European Parliament and Council Directive 94/35/EC of 30 June 1994 on sweeteners for use in foodstuffs (OJ L 237, 10.9.1994, p. 3).

⁽²⁾ European Parliament and Council Directive 94/36/EC of 30 June 1994 on colours for use in foodstuffs (OJ L 237, 10.9.1994, p. 13).

⁽³⁾ European Parliament and Council Directive 95/2/EC of 20 February 1995 on food additives other than colours and sweeteners (OJ L 61, 18.3.1995, p. 1).

Annex II to Regulation (EC) No 1333/2008 is amended as follows:

- (1) in Part D, the entries for food category 17. 'Food supplements as defined in Directive 2002/46/EC of the European Parliament and of the Council excluding food supplements for infants and young children' are replaced by the following:

'17.	Food supplements as defined in Directive 2002/46/EC
17.1	Food supplements supplied in a solid form, excluding food supplements for infants and young children
17.2	Food supplements supplied in a liquid form, excluding food supplements for infants and young children'

- (2) Part E is amended as follows:

- (a) the entry for food category 17. 'Food supplements as defined in Directive 2002/46/EC excluding food supplements for infants and young children' is replaced as follows:

'17.	Food supplements as defined in Directive 2002/46/EC
	INTRODUCTION PART, APPLIES TO ALL SUBCATEGORIES
	The maximum levels of use indicated for colours, polyols, sweeteners, and E 200-213, E 338-452, E 405, E 416, E 426, E 432-436, E 459, E 468, E 473-475, E 491-495, E 551-553, E 901-904, E 961, E 1201-1204, E 1505 and E 1521 refer to the food supplements ready for consumption prepared following the instructions of use provided by the manufacturer. The dilution factor for those food supplements that have to be diluted or dissolved has to be communicated together with the instructions of use.'

- (b) the entry for food subcategory 17.1 is amended as follows:

- (i) the title is replaced by the following:

'17.1	Food supplements supplied in a solid form, excluding food supplements for infants and young children'
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- (ii) all the entries therein are replaced by the following entries, inserted in their numerical order:

	'Group I	Additives			E 410, E 412, E 415, E 417 and E 425 may not be used to produce dehydrated food supplements intended to rehydrate on ingestion
	Group II	Colours at <i>quantum satis</i>	<i>quantum satis</i>		Period of application: until 31 July 2014
	Group II	Colours at <i>quantum satis</i>	<i>quantum satis</i>	(69)	Period of application: from 1 August 2014
	Group III	Colours with combined maximum limit	300		Period of application: until 31 July 2014
	Group III	Colours with combined maximum limit	300	(69)	Period of application: from 1 August 2014

	Group IV	Polyols	<i>quantum satis</i>		
	E 104	Quinoline Yellow	35	(61)	Period of application: from 1 January 2014 to 31 July 2014
	E 104	Quinoline Yellow	35	(61)(69)	Period of application: from 1 August 2014 except food supplements in chewable form
	E 104	Quinoline Yellow	10	(61)	Period of application: from 1 January 2014 to 31 July 2014
	E 104	Quinoline Yellow	10	(61)(69)	Period of application: from 1 August 2014 only food supplements in chewable form
	E 110	Sunset Yellow FCF/Orange Yellow S	10	(61)	Period of application: from 1 January 2014 to 31 July 2014
	E 110	Sunset Yellow FCF/Orange Yellow S	10	(61)(69)	Period of application: from 1 August 2014
	E 124	Ponceau 4R, Cochineal Red A	35	(61)	Period of application: from 1 January 2014 to 31 July 2014
	E 124	Ponceau 4R, Cochineal Red A	35	(61)(69)	Period of application: from 1 August 2014 except food supplements in chewable form
	E 124	Ponceau 4R, Cochineal Red A	10	(61)	Period of application: from 1 January 2014 to 31 July 2014
	E 124	Ponceau 4R, Cochineal Red A	10	(61)(69)	Period of application: from 1 August 2014 only food supplements in chewable form
	E 160d	Lycopene	30		
	E 200-213	Sorbic acid — sorbates; Benzoic acid — benzoates	1 000	(1) (2)	only food supplements in dried form and containing preparations of vitamin A and of combinations of vitamins A and D, except in chewable form
	E 310-321	Propyl gallate, TBHQ, BHA and BHT	400	(1)	
	E 338-452	Phosphoric acid — phosphates — di-, tri- and polyphosphates	<i>quantum satis</i>		
	E 392	Extracts of rosemary	400	(46)	
	E 405	Propane-1, 2-diol alginate	1 000		

E 416	Karaya gum	<i>quantum satis</i>		
E 426	Soybean hemicellulose	1 500		
E 432-436	Polysorbates	<i>quantum satis</i>		
E 459	Beta-cyclodextrin	<i>quantum satis</i>		only food supplements in tablet and coated tablet form
E 468	Cross-linked sodium carboxy methyl cellulose	30 000		except food supplements in chewable form
E 473-474	Sucrose esters of fatty acids — sucroglycerides	<i>quantum satis</i>	(1)	
E 475	Polyglycerol esters of fatty acids	<i>quantum satis</i>		
E 491-495	Sorbitan esters	<i>quantum satis</i>	(1)	
E 551-559	Silicon dioxide — silicates	<i>quantum satis</i>		Period of application: until 31 January 2014
E 551-553	Silicon dioxide — silicates	<i>quantum satis</i>		Period of application: from 1 February 2014
E 900	Dimethyl polysiloxane	10	(91)	only food supplements in effervescent tablet form
E 901	Beeswax, white and yellow	<i>quantum satis</i>		
E 902	Candelilla wax	<i>quantum satis</i>		
E 903	Carnauba wax	200		
E 904	Shellac	<i>quantum satis</i>		
E 950	Acesulfame K	500		
E 950	Acesulfame K	2 000		only food supplements in chewable form
E 951	Aspartame	2 000		
E 951	Aspartame	5 500		only food supplements in chewable form
E 952	Cyclamic acid and its Na and Ca salts	500	(51)	
E 952	Cyclamic acid and its Na and Ca salts	1 250	(51)	only food supplements in chewable form

	E 954	Saccharin and its Na, K and Ca salts	500	(52)	
	E 954	Saccharin and its Na, K and Ca salts	1 200	(52)	only food supplements in chewable form
	E 955	Sucralose	800		
	E 955	Sucralose	2 400		only food supplements in chewable form
	E 957	Thaumatococin	400		only food supplements in chewable form
	E 959	Neohesperidine DC	100		
	E 959	Neohesperidine DC	400		only food supplements in chewable form
	E 960	Steviol glycosides	670	(60)	
	E 960	Steviol glycosides	1 800	(60)	only food supplements in chewable form
	E 961	Neotame	60		
	E 961	Neotame	185		only food supplements in chewable form
	E 961	Neotame	2		only as flavour enhancer, except food supplements in chewable form
	E 961	Neotame	2		only vitamins and/or mineral based food supplements in chewable form, as a flavour enhancer
	E 962	Salt of aspartame-acesulfame	500	(11)a (49) (50)	
	E 962	Salt of aspartame-acesulfame	2 000	(11)a (49) (50)	only food supplements in chewable form
	E 969	Advantame	20		
	E 969	Advantame	55		only food supplements in chewable form
	E 1201	Polyvinylpyrrolidone	<i>quantum satis</i>		only food supplements in tablet and coated tablet form
	E 1202	Polyvinylpolypyrrolidone	<i>quantum satis</i>		only food supplements in tablet and coated tablet form
	E 1203	Polyvinyl alcohol (PVA)	18 000		only food supplements in capsule and tablet form

E 1204	Pullulan	<i>quantum satis</i>		only food supplements in capsule and tablet form
E 1205	Basic methacrylate copolymer	100 000		except food supplements in chewable form
E 1206	Neutral methacrylate copolymer	200 000		except food supplements in chewable form
E 1207	Anionic methacrylate copolymer	100 000		except food supplements in chewable form
E 1208	Polyvinylpyrrolidone-vinyl acetate copolymer	100 000		except food supplements in chewable form
E 1209	Polyvinyl alcohol-polyethylene glycol-graft-co-polymer	100 000		except food supplements in chewable form
E 1505	Triethyl citrate	3 500		only food supplements in capsule and tablet form
E 1521	Polyethylene glycol	10 000		only food supplements in capsule and tablet form'

(c) the entry for food subcategory 17.2 is amended as follows:

(i) the title is replaced by the following:

'17.2	Food supplements supplied in a liquid form, excluding food supplements for infants and young children'
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(ii) all the entries therein are replaced by the following entries, inserted in their numerical order:

'Group I	Additives			
Group II	Colours at <i>quantum satis</i>	<i>quantum satis</i>		
Group II	Colours at <i>quantum satis</i>	<i>quantum satis</i>		Period of application: until 31 July 2014
Group II	Colours at <i>quantum satis</i>	<i>quantum satis</i>	(69)	Period of application: from 1 August 2014 only food supplements in syrup form
Group III	Colours with combined maximum limit	100		
Group IV	Polyols	<i>quantum satis</i>		
E 104	Quinoline Yellow	10	(61)	Period of application: from 1 January 2014 to 31 July 2014
E 104	Quinoline Yellow	10	(61)(69)	Period of application: from 1 August 2014

E 110	Sunset Yellow FCF/Orange Yellow S	10	(61)	Period of application: from 1 January 2014 to 31 July 2014
E 110	Sunset Yellow FCF/Orange Yellow S	10	(61)(69)	Period of application: from 1 August 2014
E 124	Ponceau 4R, Cochineal Red A	10	(61)	Period of application: from 1 January 2014 to 31 July 2014
E 124	Ponceau 4R, Cochineal Red A	10	(61)(69)	Period of application: from 1 August 2014
E 160d	Lycopene	30		
E 200-213	Sorbic acid — sorbates; Benzoic acid — benzoates	2 000	(1) (2)	except food supplements in syrup form
E 310-321	Propyl gallate, TBHQ, BHA and BHT	400	(1)	
E 338-452	Phosphoric acid — phosphates — di-, tri- and polyphosphates	<i>quantum satis</i>		
E 392	Extracts of rosemary	400	(46)	
E 405	Propane-1, 2-diol alginate	1 000		
E 416	Karaya gum	<i>quantum satis</i>		
E 426	Soybean hemicellulose	1 500		
E 432-436	Polysorbates	<i>quantum satis</i>		
E 473-474	Sucrose esters of fatty acids — sucroglycerides	<i>quantum satis</i>	(1)	
E 475	Polyglycerol esters of fatty acids	<i>quantum satis</i>		
E 491-495	Sorbitan esters	<i>quantum satis</i>	(1)	
E 551-559	Silicon dioxide — silicates	<i>quantum satis</i>		Period of application: until 31 January 2014
E 551-553	Silicon dioxide — silicates	<i>quantum satis</i>		Period of application: from 1 February 2014
E 950	Acesulfame K	350		
E 950	Acesulfame K	2 000		only food supplements in syrup form
E 951	Aspartame	600		

	E 951	Aspartame	5 500		only food supplements in syrup form
	E 952	Cyclamic acid and its Na and Ca salts	400	(51)	
	E 952	Cyclamic acid and its Na and Ca salts	1 250	(51)	only food supplements in syrup form
	E 954	Saccharin and its Na, K and Ca salts	80	(52)	
	E 954	Saccharin and its Na, K and Ca salts	1 200	(52)	only food supplements in syrup form
	E 955	Sucralose	240		
	E 955	Sucralose	2 400		only food supplements in syrup form
	E 957	Thaumatococcus	400		only food supplements in syrup form
	E 959	Neohesperidine DC	50		
	E 959	Neohesperidine DC	400		only food supplements in syrup form
	E 960	Steviol glycosides	200	(60)	
	E 960	Steviol glycosides	1 800	(60)	only food supplements in syrup form
	E 961	Neotame	20		
	E 961	Neotame	185		only food supplements in syrup form
	E 961	Neotame	2		only as flavour enhancer, except food supplements in syrup form
	E 961	Neotame	2		only vitamins and/or mineral based food supplements in syrup form, as a flavour enhancer
	E 962	Salt of aspartame-acesulfame	350	(11)a (49) (50)	
	E 962	Salt of aspartame-acesulfame	2 000	(11)a (49) (50)	only food supplements in syrup form
	E 969	Advantame	6		
	E 969	Advantame	55		only food supplements in syrup form'