

COMMISSION IMPLEMENTING REGULATION (EU) 2021/80**of 27 January 2021****concerning the non-approval of carbon dioxide as a basic substance in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market****(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 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market ⁽¹⁾, and in particular Article 23(5) in conjunction with Article 13(2)

Whereas:

- (1) On 27 February 2018, the Commission received an application from Dr Knoell Consult GmbH for the approval of food grade carbon dioxide (E 290) as a basic substance (CAS No 124-38-9). The application referred to a use as post-harvest fumigant against insects and mites.
- (2) Carbon dioxide is already approved as an active substance for use in plant protection products since 1 September 2009 ⁽²⁾ and is included in Part A of the Annex to Commission Implementing Regulation (EU) No 540/2011 ⁽³⁾.
- (3) Carbon dioxide is currently authorised and placed on the market as a plant protection product in several Member States. The specification of the substance identity in the application for approval as a basic substance is identical to that of the approved active substance.
- (4) Although the third subparagraph provides that foodstuff is to be considered as a basic substance, Article 23(1)(d) of Regulation (EC) No 1107/2009 excludes the approval of food-grade carbon dioxide, because a substance can, among other criteria, be only approved as a basic substance if it is not placed on the market as a plant protection product. This is, however, currently the case for food-grade carbon dioxide.
- (5) This Regulation is without prejudice to the submission of a new application for the approval of carbon dioxide as a basic substance in accordance with Article 23(3) of Regulation (EC) No 1107/2009 once the existing approval of carbon dioxide as an active substance has expired and once all authorisations for plant protection products consisting of carbon dioxide have been withdrawn or have expired.
- (6) 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

The substance carbon dioxide (E 290) is not approved as a basic substance.

⁽¹⁾ OJ L 309, 24.11.2009, p. 1.⁽²⁾ Commission Directive 2008/127/EC of 18 December 2008 amending Council Directive 91/414/EEC to include several active substances (OJ L 344, 20.12.2008, p. 89).⁽³⁾ Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ L 153, 11.6.2011, p. 1).

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, 27 January 2021.

For the Commission
The President
Ursula VON DER LEYEN
