

COMMISSION IMPLEMENTING REGULATION (EU) 2021/426

of 10 March 2021

correcting Implementing Regulation (EU) No 1263/2011 as regards the authorisation of *Lactococcus lactis* (NCIMB 30160) as a feed additive for all animal species

(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 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) The use of the preparation of *Lactococcus lactis* NCIMB 30160 as a feed additive was authorised for all animal species by Commission Implementing Regulation (EU) No 1263/2011 ⁽²⁾ for a 10- year period.
- (2) The authorisation was subsequently modified by Commission Implementing Regulation (EU) 2020/1092 ⁽³⁾ in accordance with Article 13(2) of Regulation (EC) No 1831/2003, as regards the formulation of the additive.
- (3) The intended modification did not concern the period of authorisation laid down in Implementing Regulation (EU) No 1263/2011, which was to run until 26 December 2021. However, in the Annex to Implementing Regulation (EU) 2020/1092, it was mistakenly indicated that the period of authorisation for *Lactococcus lactis* NCIMB 30160 was to run until 16 August 2030. That error was therefore inserted in Implementing Regulation (EU) No 1263/2011 through Implementing Regulation (EU) 2020/1092.
- (4) For reasons of clarity and legal certainty, it is therefore necessary to correct Implementing Regulation (EU) No 1263/2011 as regards the end of period of authorisation for *Lactococcus lactis* NCIMB 30160.
- (5) Implementing Regulation (EU) 2020/1092 provided that the modification to be brought to the terms of the authorisation of the additive *Lactococcus lactis* NCIMB 30160 only concerned the formulation of the additive. No reference was made to the need to modify the period of authorisation of that additive. In addition, Article 9(8) of Regulation (EC) No 1831/2003 prescribes that authorisations are granted for a period of 10 years and such rule may not be derogated from through a modification to the terms of an authorisation. Moreover, the Register of feed additives continued to mention the date of 26 December 2021 as the expiry date of the authorisation of the additive *Lactococcus lactis* NCIMB 30160, even after the adoption of Implementing Regulation (EU) 2020/1092. The absence of retroactive effect of the proposed correction would lead to a breach of the principle of non-discrimination between operators, as the granting of an extended period of authorisation from the date of entry

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ Commission Implementing Regulation (EU) No 1263/2011 of 5 December 2011 concerning the authorisation of *Lactobacillus buchneri* (DSM 16774), *Lactobacillus buchneri* (DSM 12856), *Lactobacillus paracasei* (DSM 16245), *Lactobacillus paracasei* (DSM 16773), *Lactobacillus plantarum* (DSM 12836), *Lactobacillus plantarum* (DSM 12837), *Lactobacillus brevis* (DSM 12835), *Lactobacillus rhamnosus* (NCIMB 30121), *Lactococcus lactis* (DSM 11037), *Lactococcus lactis* (NCIMB 30160), *Pediococcus acidilactici* (DSM 16243) and *Pediococcus pentosaceus* (DSM 12834) as feed additives for all animal species (OJ L 322, 6.12.2011, p. 3).

⁽³⁾ Commission Implementing Regulation (EU) 2020/1092 of 24 July 2020 amending Implementing Regulation (EU) No 1263/2011 as regards the authorisation of *Lactococcus lactis* (NCIMB 30160) as a feed additive for all animal species (OJ L 241, 27.7.2020, p. 10).

into force of Implementing Regulation (EU) 2020/1092 to the additive *Lactococcus lactis* NCIMB 30160 would have only unduly benefited operators marketing or using that additive. Moreover, in this case retroactivity is not considered as affecting the legitimate expectations of the operators concerned. Finally, the proposed correction is brought in a non-criminal context, considering that the erroneous end of authorisation period mentioned in Implementing Regulation (EU) 2020/1092 was the result of a mistake. This Regulation should therefore apply retroactively as from the date of entry into force of Implementing Regulation (EU) 2020/1092.

- (6) In order to preserve the legitimate expectations of the interested parties and due to the retroactive application of the proposed correction, this Regulation should enter into force as a matter of urgency.
- (7) 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 Annex to Implementing Regulation (EU) No 1263/2011 is corrected as set out in the Annex to this Regulation.

Article 2

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

It shall apply from 16 August 2020.

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

Done at Brussels, 10 March 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

In the Annex to Implementing Regulation (EU) No 1263/2011, the entry concerning the additive *Lactococcus lactis* NCIMB 30160 with the identification number 1k2082 is corrected as follows:

In the column 'End of period of authorisation', the date '16.8.2030' is replaced by '26.12.2021'.
