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COMMISSION IMPLEMENTING REGULATION (EU) 2023/2852

of 20 December 2023

correcting Implementing Regulation (EU) 2023/1581 amending Implementing Regulation (EU) 2017/2470 as regards the conditions of use of the novel food 'astaxanthin-rich oleoresin from *Haematococcus pluvialis* algae'

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001 ([1]), and in particular Article 12 thereof,

Whereas:

(1) Regulation (EU) 2015/2283 provides that only novel foods authorised and included in the Union list of novel foods may be placed on the market within the Union.

(2) Pursuant to Article 8 of Regulation (EU) 2015/2283, Commission Implementing Regulation (EU) 2017/2470 ([2]) has established a Union list of novel foods.

(3) The Union list set out in the Annex to Implementing Regulation (EU) 2017/2470 includes 'astaxanthin-rich oleoresin from *Haematococcus pluvialis* algae' as an authorised novel food.

(4) The novel food 'astaxanthin-rich oleoresin from *Haematococcus pluvialis* algae' has been authorised in accordance with Article 5 of Regulation (EC) No 258/97 of the European Parliament and of the Council ([3]) for use in food supplements as defined in Directive 2002/46/EC of the European Parliament and of the Council ([4]) intended for the general population.

(5) Commission Implementing Regulation (EU) 2023/1581 ([5]) has laid down additional labelling requirements in order to prevent concomitant consumption of food supplements containing ≤ 8,0 mg of astaxanthin.

(6) The Commission has identified an error in Implementing Regulation (EU) 2023/1581 with regard to the transitional measures. A transitional period in Implementing Regulation (EU) 2023/1581 for products complying with the requirements of Commission Implementing Regulation (EU) 2021/1377 ([6]) before the date of entry into force of Regulation (EU) 2023/1581 was erroneously drafted. A correction is needed in order to provide clarity and legal certainty to food business operators and to the Member States' competent authorities, thus providing for the marketing of those novel foods complying with the previous labelling requirements. In order to avoid uncertainty about negative consequences for the concerned food business operators, this correction should enter into force immediately and be applicable retroactively, from the entry into force of the Regulation (EU) 2023/1581.

([1]) OJ L 327, 11.12.2015, p. 1.
([2]) Commission Implementing Regulation (EU) 2017/2470 of 20 December 2017 establishing the Union list of novel foods in accordance with Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods (OJ L 351, 30.12.2017, p. 72).
([3]) Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients (OJ L 43, 14.2.1997, p. 1).
([4]) 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).
([5]) Commission Implementing Regulation (EU) 2023/1581 of 1 August 2023 amending Implementing Regulation (EU) 2017/2470 as regards the conditions of use of the novel food 'astaxanthin-rich oleoresin from *Haematococcus pluvialis* algae' (OJ L 194, 2.8.2023, p. 4).
([6]) Commission Implementing Regulation (EU) 2021/1377 of 19 August 2021 authorising the change of the conditions of use of the novel food astaxanthin-rich oleoresin from Haematococcus pluvialis algae under Regulation (EU) 2015/2283 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) 2017/2470 (OJ L 297, 20.8.2021, p. 20).

(7) Implementing Regulation (EU) 2023/1518 should therefore be corrected accordingly.

(8) 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

Article 2 of Implementing Regulation (EU) 2023/1581 is replaced by the following:

'*Article 2*

Food supplements containing ≤ 8,0 mg astaxanthin intended for the general population older than 14 years of age, complying with the requirements of Implementing Regulation (EU) 2021/1377 may continue to be placed on the market until 1 February 2024 and may be marketed until their date of minimum durability or use by date.'

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 21 August 2023.

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

Done at Brussels, 20 December 2023.

For the Commission
The President
Ursula VON DER LEYEN