II

*(Non-legislative acts)*

# REGULATIONS

## COMMISSION IMPLEMENTING REGULATION (EU) 2023/937

**of 10 May 2023**

**correcting Implementing Regulation (EU) 2017/2470 as regards the inclusion of 'Phosphated distarch phosphate produced from wheat starch' in the Union list of novel foods**

**(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 8 thereof,

After consulting the Standing Committee on Plants, Animals, Food and Feed,

Whereas:

(1) Pursuant to Article 8 of Regulation (EU) 2015/2283, the Commission was to establish, by 1 January 2018, the Union list of novel foods authorised or notified under Regulation (EC) No 258/97 of the European Parliament and of the Council ([2]).

(2) The Union list of novel foods authorised or notified under Regulation (EC) No 258/97 was established by Commission Implementing Regulation (EU) 2017/2470 ([3]).

(3) The Commission has identified an error in the Annex to Implementing Regulation (EU) 2017/2470. 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 proper implementation and use of the Union list of novel foods.

(4) The novel food 'Phosphated distarch phosphate produced from wheat starch' (phosphated wheat starch) was authorised under certain conditions of use by the United Kingdom competent authority in May 2014 in accordance with Regulation (EC) No 258/97. The novel food was erroneously not included in the Union list when the initial list was established. It is therefore appropriate that 'Phosphated distarch phosphate produced from wheat starch' is added to the Union list of novel foods.

(5) Implementing Regulation (EU) 2017/2470 should therefore be corrected accordingly,

([1]) OJ L 327, 11.12.2015, p. 1.
([2]) 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).
([3]) 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).

HAS ADOPTED THIS REGULATION:

*Article 1*

The Annex to Implementing Regulation (EU) 2017/2470 is corrected 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, 10 May 2023.

*For the Commission*
*The President*
Ursula VON DER LEYEN

*ANNEX*

The Annex to Implementing Regulation (EU) 2017/2470 is corrected as follows:

(a) in Table 1 (Authorised novel foods), the following entry is inserted between the entry for 'Phosphated maize starch' and the entry for 'Phosphatidylserine from fish phospholipids':

| | | | | |
|---|---|---|---|---|
| '**Phosphated wheat starch** | *Specified food category* | *Maximum levels* | The designation of the novel food on the labelling of the foodstuffs containing it shall be "Phosphated wheat starch".' | |
| | Baked bakery products | 15 % | | |
| | Pasta | | | |
| | Breakfast cereals | | | |
| | Cereal bars | | | |

(b) in Table 2 (Specifications), the following entry is inserted between the entry for 'Phosphated maize starch' and the entry for 'Phosphatidylserine from fish phospholipids':

'**Phosphated wheat starch**

**Description:**

Phosphated distarch phosphate produced from wheat starch (phosphated wheat starch) is a chemically modified resistant starch derived from wheat starch by combining chemical treatments to create phosphate cross-links within and between individual starch molecules. The novel food ingredient is a white or near white free flowing powder.

**Characteristic/Composition:**

CAS No: 11120-02-8

Chemical formula: $(C_6H_{10}O_5)_n\ [(C_6H_9O_5)_2PO_2H]_x\ [(C_6H_9O_5)PO_3H_2]_y$

n = number of glucose units; x, y = degrees of substitution

| Parameter | Powder form 1 | Powder form 2 |
|---|---|---|
| Phosphated Distarch Phosphate (Dry basis) | ≥ 85 % | ≥ 75 % |
| Unmodified Wheat Starch (Dry basis) | ≤ 15 % | ≤ 25 % |
| Moisture | 9-12 % | |
| Total dietary fibre (dry matter basis) | ≥ 76,0 % | ≥ 66,0 % |
| Ash | ≤ 3 % | |
| Protein | ≤ 0,5 % | |

| | | | |
|---|---|---|---|
| | Total fat | ≤ 0,50 % | ≤ 0,34 % |
| | Residual bound phosphorus | ≤ 0,4 % (as phosphorus) | |
| | pH (25 % slurry) | 4,5 – 6,5 | |
| | **Heavy metals:**<br>Arsenic: ≤ 1 mg/kg<br>Lead: ≤ 2 mg/kg<br>Mercury: ≤ 0,1 mg/kg<br>**Microbiological criteria:**<br>Total viable aerobic counts: ≤ $10^4$ CFU/g<br>Total yeast and mould count: ≤ 200 CFU/g<br>*Escherichia coli*: Negative to test<br>*Salmonella* spp.: Negative to test<br>CFU: Colony Forming Units' | | |