Commission Regulation (EU) No 438/2013 of 13 May 2013 amending and correcting Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards the use of certain food additives (Text with EEA relevance)

COMMISSION REGULATION (EU) No 438/2013

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(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,

Whereas:

(1) Annex II to Regulation (EC) No 1333/2008 lays down a Union list of food additives approved for use in foods and their conditions of use.

(2) That list may be updated in accordance with the common procedure referred to in Article 3(1) of 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)] either on the initiative of the Commission or following an application.

(3) The Union list of food additives was established based on food additives permitted for use in foods in accordance with European Parliament and Council Directive 94/35/EC of 30 June 1994 on sweeteners for use in foodstuffs[(3)], European Parliament and Council Directive 94/36/EC of 30 June 1994 on colours for use in foodstuffs[(4)] and European Parliament and Council Directive 95/2/EC of 20 February 1995 on food additives other than colours and sweeteners[(5)] and after reviewing their compliance with Articles 6, 7 and 8 of Regulation (EC) No 1333/2008. The Union list set out in Annex II to Regulation (EC) No 1333/2008 lists food additives on the basis of the categories of food to which those additives may be added.

(4) Due to the difficulties encountered during the transfer of food additives to the new categorisation system provided in Annex II to Regulation (EC) No 1333/2008, certain errors have been introduced and should be corrected. In particular, the use of antioxidants in peeled, cut and shredded fruit and vegetables should be restricted to prepacked refrigerated unprocessed fruit and vegetables ready for consumption only. The use of Sorbic acid — sorbates, Benzoic acid — benzoates; p-hydroxybenzoates (E 200-219) should continue to be authorised in heat-treated meat products and the use of Natamycin (E 235) should continue to be authorised in heat-treated dried

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cured sausages. Maximum limits for the use of Curcumine (E 100) in processed fish and fishery products including molluscs and crustaceans should be introduced corresponding to the levels specified in Directive 94/36/EC. The maximum limits for the use of Silicon dioxide — silicates (E 551-559) should be changed to *quantum satis* as specified in Directive 95/2/EC and for the use of Silicon dioxide — silicates (E 551-553) as specified by Commission Regulation (EU) No 380/2012 of 3 May 2012 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards the conditions of use and the use levels for aluminium-containing food additives[(6)].

(5) There are clarifications necessary as regards the use of food additives in certain food categories. In food category 13.1.4 'Other food for young children' conditions of use for the food additives E 332 'Potassium citrates' and E 338 'Phosphoric acid' should be set. In food category 14.2.6 'Spirit drinks as defined in Regulation (EC) No 110/2008' the use of food colours should not be authorised in Geist as defined in Annex II.17 of Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89[(7)]. The use of the food colours Quinoline Yellow (E 104), Sunset Yellow FCF/Orange Yellow S (E 110) and Ponceau 4R, Cochineal Red A (E 124) in certain spirit drinks should be reintroduced as this use is not of safety concern for children. It should be clarified that Caramels (E 150a-d) can be used in all products belonging to food category 14.2.7.1 'Aromatised wines'.

(6) Therefore, the Union list of food additives should be corrected, clarified and completed in order to include all the uses permitted and complying with Articles 6, 7 and 8 of Regulation (EC) No 1333/2008.

(7) 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 the update in question is not liable to have an effect on human health. Since the Union list is amended in order to include uses already permitted in accordance with Directive 94/35/EC, Directive 94/36/EC, and Directive 95/2/EC, 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.

(8) Annex II to Regulation (EC) No 1333/2008 should therefore be amended and corrected accordingly.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health, and neither the European Parliament nor the Council has opposed them,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EC) No 1333/2008 is amended in accordance with the Annex to this Regulation.

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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, 13 May 2013.

For the Commission

The President

José Manuel BARROSO

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ANNEX

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

(1) In food category 01.7.1 ‘Unripened cheese excluding products falling in category 16’, the entry concerning ‘Group I’ is replaced by the following:

	Group I	Additives			except *mozzarella*

(2) In food category 04.1.2 ‘Peeled, cut and shredded fruit and vegetables’, the entries concerning food additives E 300 ‘Ascorbic acid’, E 301 ‘Sodium ascorbate’, E 302 ‘Calcium ascorbate’, E 330 ‘Citric acid’, E 331 ‘Sodium citrates’, E 332 ‘Potassium citrates’ and E 333 ‘Calcium citrates’ are replaced by the following:

	E 300	Ascorbic acid	*quantum satis*		only prepacked refrigerated unprocessed fruit and vegetables ready for consumption and prepacked unprocessed and peeled potatoes
	E 301	Sodium ascorbate	*quantum satis*		only prepacked refrigerated unprocessed fruit and vegetables ready for consumption and prepacked unprocessed and peeled potatoes
	E 302	Calcium ascorbate	*quantum satis*		only prepacked refrigerated unprocessed fruit and vegetables ready for consumption and prepacked unprocessed

					and peeled potatoes
	E 330	Citric acid	*quantum satis*		only prepacked refrigerated unprocessed fruit and vegetables ready for consumption and prepacked unprocessed and peeled potatoes
	E 331	Sodium citrates	*quantum satis*		only prepacked refrigerated unprocessed fruit and vegetables ready for consumption and prepacked unprocessed and peeled potatoes
	E 332	Potassium citrates	*quantum satis*		only prepacked refrigerated unprocessed fruit and vegetables ready for consumption and prepacked unprocessed and peeled potatoes
	E 333	Calcium citrates	*quantum satis*		only prepacked refrigerated unprocessed fruit and vegetables ready for consumption and prepacked