

COMMISSION IMPLEMENTING REGULATION (EU) 2023/7

of 3 January 2023

authorising the placing on the market of Lacto-N-tetraose produced by derivative strains of *Escherichia coli* BL21(DE3) as a novel food and amending Implementing Regulation (EU) 2017/2470

(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(1) 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) Commission Implementing Regulation (EU) 2020/484 ⁽³⁾ authorised the placing on the Union market of Lacto-N-tetraose obtained by microbial fermentation using the genetically modified strain K12 DH1 of *Escherichia coli* ('*E. coli*') as a novel food under Regulation (EU) 2015/2283.
- (4) On 22 May 2020, the company Chr. Hansen A/S ('the applicant') submitted an application for an authorisation to the Commission in accordance with Article 10(1) of Regulation (EU) 2015/2283 to place lacto-N-tetraose ('LNT'), obtained by microbial fermentation using two genetically modified strains (a production strain and an optional degradation strain) derived from the host strain *E. coli* BL21(DE3), on the Union market as a novel food. The applicant requested for LNT to be used in infant formula and follow-on formula as defined in Regulation (EU) No 609/2013 of the European Parliament and of the Council ⁽⁴⁾, processed cereal-based food for infants and young children and baby food for infants and young children as defined in Regulation (EU) No 609/2013, foods for infants and young children for special medical purposes as defined in Regulation (EU) No 609/2013, foods for special medical purposes as defined in Regulation (EU) No 609/2013 excluding foods for infants and young children, in milk-based drinks and similar products intended for young children, and in food supplements as defined in Directive 2002/46/EC of the European Parliament and of the Council ⁽⁵⁾ intended for the general population. The applicant also proposed that food supplements containing LNT should not be used if breast milk which naturally contains LNT and/or other foods with added LNT, are consumed the same day. Subsequently, on 17 June 2022, the applicant modified the initial request in the application on the use of LNT in food supplements to exclude infants and young children.

⁽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⁾ Commission Implementing Regulation (EU) 2020/484 of 2 April 2020 authorising the placing on the market of lacto-N-tetraose as a novel food under Regulation (EU) 2015/2283 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) 2017/2470 (OJ L 103, 3.4.2020, p. 3).

⁽⁴⁾ Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009 (OJ L 181, 29.6.2013, p. 35).

⁽⁵⁾ 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) On 22 May 2020, the applicant also made a request to the Commission for the protection for the protection of proprietary scientific studies and data submitted in support of the application, namely, mass spectrometry ('MS'), nuclear magnetic resonance ('NMR') and a high-performance anion-exchange chromatography with pulsed amperometric detection ('HPAEC-PAD') method validation and the results for the determination of the identity of LNT and of the carbohydrate by-products (lacto-*N*-triose II ('LNT2'), para-lacto-*N*-hexaose ('pLNH'), lactose, and glucose/galactose) present in the novel food ⁽⁶⁾; a description of the genetically modified LNT and lacto-*N*-neotetraose ('LNnT') production and optional degradation strains ⁽⁷⁾; certificates of deposition of genetically modified LNT and LNnT production and optional degradation strains ⁽⁸⁾; real time quantitative polymerase chain reaction ('qPCR') system and method validation reports for the genetically modified LNT and LNnT production and optional degradation strains ⁽⁹⁾; a bacterial reverse mutation test with LNT ⁽¹⁰⁾; an *in vitro* mammalian cell micronucleus test with LNT ⁽¹¹⁾; a 7-day dose range finding oral toxicity study in rats with LNT ⁽¹²⁾; and a 90-day oral toxicity study in rats with LNT ⁽¹³⁾.
- (6) On 27 January 2021, the Commission requested the European Food Safety Authority ('the Authority') to carry out an assessment of LNT obtained by microbial fermentation using two genetically modified strains (a production strain and an optional degradation strain) derived from the host strain *Escherichia coli* ('*E. coli*') BL21(DE3), as a novel food, in accordance with Article 10(3) of Regulation (EU) 2015/2283.
- (7) On 23 March 2022, the Authority adopted its scientific opinion on the 'Safety of lacto-*N*-tetraose (LNT) produced by derivative strains of *Escherichia coli* BL21(DE3) as a novel food pursuant to Regulation (EU) 2015/2283' ⁽¹⁴⁾ in accordance with the requirements of Article 11 of Regulation (EU) 2015/2283.
- (8) In its scientific opinion, the Authority concluded that LNT is safe under the proposed conditions of use for the proposed target populations. Therefore, that scientific opinion gives sufficient grounds to establish that LNT, when used in infant formula and follow-on formula as defined in Regulation (EU) No 609/2013 of the European Parliament and of the Council, processed cereal-based food for infants and young children and baby food for infants and young children as defined in Regulation (EU) No 609/2013, foods for infants and young children for special medical purposes as defined in Regulation (EU) No 609/2013, foods for special medical purposes as defined in Regulation (EU) No 609/2013 excluding foods for infants and young children, in milk-based drinks and similar products intended for young children, and in food supplements as defined in Directive 2002/46/EC of the European Parliament and of the Council, fulfils the conditions for its placing on the market in accordance with Article 12(1) of Regulation (EU) 2015/2283.
- (9) In its scientific opinion, the Authority also noted that its conclusion on the safety of the novel food was based on the scientific studies and data on MS, NMR and HPAEC-PAD method validation and the results for the determination of the identity of LNT and of the carbohydrate by-products LNT2, pLNH, lactose, and glucose/galactose present in the novel food; the description of the genetically modified LNT and LNnT production and optional degradation strains; the certificates of deposition of genetically modified LNT and LNnT production and optional degradation strains; the qPCR system and method validation reports for the genetically modified LNT and LNnT production and

⁽⁶⁾ Chr. Hansen 2019 and 2021 (unpublished).

⁽⁷⁾ Chr. Hansen 2019 and 2021 (unpublished).

⁽⁸⁾ Chr. Hansen 2020 (unpublished).

⁽⁹⁾ Chr. Hansen 2021 (unpublished).

⁽¹⁰⁾ Chr. Hansen 2018 (unpublished) and Parschat K., Oehme A., Leuschner J., Jennewein S., and Parkot J. 2020. A safety evaluation of mixed human milk oligosaccharides in rats. *Food and Chemical Toxicology*, 136, 111118.

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⁽¹⁴⁾ EFSA Journal 2022;20(5):7242.

optional degradation strains; the bacterial reverse mutation test with LNT; the *in vitro* mammalian cell micronucleus test with LNT; the 7-day dose range finding oral toxicity study in rat with LNT; and, the 90-day oral toxicity study in rats with LNT, without which it could not have assessed the novel food and reached its conclusion.

- (10) The Commission requested the applicant to further clarify the justification provided with regard to their proprietary claim over those scientific studies and data, and to clarify their claim to an exclusive right of reference to them in accordance with Article 26(2)(b) of Regulation (EU) 2015/2283.
- (11) The applicant declared that they held proprietary and exclusive rights of reference to the scientific studies and data on MS, NMR and HPAEC-PAD method validation and the results for the determination of the identity of LNT and of the carbohydrate by-products LNT2, pLNH, lactose, and glucose/galactose present in the novel food; the description of the genetically modified LNT and LNnT production and optional degradation strains; the certificates of deposition of genetically modified LNT and LNnT production and optional degradation strains; the qPCR system and method validation reports for the genetically modified LNT and LNnT production and optional degradation strains; the bacterial reverse mutation test with LNT; the *in vitro* mammalian cell micronucleus test with LNT; the 7-day dose range finding oral toxicity study in the rat with LNT; and, the 90-day oral toxicity study in the rat with LNT, under national law at the time they submitted the application and that third parties cannot use or refer to those data and studies.
- (12) The Commission assessed all the information provided by the applicant and considered that the applicant has sufficiently substantiated the fulfilment of the requirements laid down in Article 26(2) of Regulation (EU) 2015/2283. Therefore, the scientific studies and data on MS, NMR and HPAEC-PAD method validation and the results for the determination of the identity of LNT and of the carbohydrate by-products LNT2, pLNH, lactose, and glucose/galactose present in the novel food; the description of the genetically modified LNT and LNnT production and optional degradation strains; the certificates of deposition of genetically modified LNT and LNnT production and optional degradation strains; the qPCR system and method validation reports for the genetically modified LNT and LNnT production and optional degradation strains; the bacterial reverse mutation test with LNT; the *in vitro* mammalian cell micronucleus test with LNT; the 7-day dose range finding oral toxicity study in the rat with LNT; and, the 90-day oral toxicity study in the rat with LNT, should be protected in accordance with Article 27(1) of Regulation (EU) 2015/2283. Accordingly, only the applicant should be authorised to place LNT on the market within the Union during a period of five years from the entry into force of this Regulation.
- (13) However, restricting the authorisation of LNT and the reference to the scientific studies and data contained in the applicant's file for the sole use by them does not prevent subsequent applicants from applying for an authorisation to place on the market the same novel food provided that their application is based on legally obtained information supporting such an authorisation.
- (14) In accordance with the conditions of use of food supplements containing LNT as proposed by the applicant and assessed by the Authority, it is necessary to inform consumers with an appropriate label that food supplements containing LNT should not be used if other foods with added LNT are consumed the same day.
- (15) **It is appropriate that the inclusion of LNT produced with derivative strains of *E. coli* BL21(DE3) as a novel food in the Union list of novel foods contains the information referred to in Article 9(3) of Regulation (EU) 2015/2283.**
- (16) LNT produced with derivative strains of *E. coli* BL21(DE3) should be included in the Union list of novel foods set out in Implementing Regulation (EU) 2017/2470. The Annex to Implementing Regulation (EU) 2017/2470 should therefore be amended accordingly.
- (17) 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

1. Lacto-N-tetraose produced with derivative strains of *E. coli* BL21(DE3) is authorised to be placed on the market within the Union.

Lacto-N-tetraose produced with derivative strains of *E. coli* BL21(DE3) shall be included in the Union list of novel foods set out in Implementing Regulation (EU) 2017/2470.

2. The Annex to Implementing Regulation (EU) 2017/2470 is amended in accordance with the Annex to this Regulation.

Article 2

Only the company Chr. Hansen A/S ⁽¹⁵⁾ is authorised to place on the market within the Union the novel food referred to in Article 1, for a period of five years from 24 January 2023, unless a subsequent applicant obtains an authorisation for that novel food without reference to the scientific data protected pursuant to Article 3 or with the agreement of Chr. Hansen A/S.

Article 3

The scientific data contained in the application file and fulfilling the conditions laid down in Article 26(2) of Regulation (EU) 2015/2283 shall not be used for the benefit of a subsequent applicant for a period of five years from the date of entry into force of this Regulation without the agreement of Chr. Hansen A/S.

Article 4

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, 3 January 2023.

For the Commission
The President
Ursula VON DER LEYEN

⁽¹⁵⁾ Address: Bøge Allé 10-12, 2970 Hørsholm, Denmark.

ANNEX

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

(1) in Table 1 (Authorised novel foods), the following entry is inserted in alphabetical order:

Authorised novel food	Conditions under which the novel food may be used		Additional specific labelling requirements	Other requirements	Data protection
Lacto-N-tetraose ('LNT') (produced by derivative strains of E. coli BL21(DE3))	<i>Specified food category</i>	<i>Maximum levels (expressed as lacto-N-tetraose)</i>	The designation of the novel food on the labelling of the foodstuffs containing it shall be 'lacto-N-tetraose'.		Authorised on 24.1.2023. This inclusion is based on proprietary scientific evidence and scientific data protected in accordance with Article 26 of Regulation (EU) 2015/2283.
	Infant formula as defined under Regulation (EU) No 609/2013	1,82 g/L in the final product ready for use, marketed as such or reconstituted as instructed by the manufacturer	The labelling of food supplements containing lacto-N-tetraose (LNT) shall bear a statement that		Applicant: 'Chr. Hansen A/S', Boege Allé 10-12, 2970 Hoersholm, Denmark. During the period of data protection, the novel food Lacto-N-tetraose is authorised for placing on the market within the Union only by 'Chr. Hansen A/S' unless a subsequent applicant obtains authorisation for the novel food without reference to the proprietary scientific evidence or scientific data protected in accordance with Article 26 of Regulation (EU) 2015/2283 or with the agreement of 'Chr. Hansen A/S'.
	Follow-on formula as defined under Regulation (EU) No 609/2013	1,82 g/L in the final product ready for use, marketed as such or reconstituted as instructed by the manufacturer	(a) they should not be consumed by children under 3 years of age;		End date of the data protection: 24.1.2028.'
	Processed cereal-based foods and baby foods for infants and young children as defined under Regulation (EU) No 609/2013	1,82 g/L or 1,82 g/kg in the final product ready for use, marketed as such or reconstituted as instructed by the manufacturer	(b) they should not be used if other foods containing added lacto-N-tetraose are consumed the same day.		
	Milk based drinks and similar products intended for young children	1,82 g/L in the final product ready for use, marketed as such or reconstituted as instructed by the manufacturer			
Foods for special medical purposes for infants and young children as defined under Regulation (EU) No 609/2013	In accordance with the particular nutritional requirements of the infants and young children for whom the products are intended but in any case not higher than 1,82 g/L or 1,82 g/kg in the final product ready for use, marketed as such or reconstituted as instructed by the manufacturer.				

	Foods for special medical purposes as defined under Regulation (EU) No 609/2013 excluding foods for infants and young children	In accordance with the particular nutritional requirements of the persons for whom the products are intended			
	Food supplements as defined in Directive 2002/46/EC, for the general population, excluding infants and young children	4,6 g/day			

(2) in Table 2 (Specifications), the following entry is inserted in alphabetical order:

Authorised novel food	Specification
<p>'Lacto-N-tetraose ('LNT') (produced by derivative strains of <i>E. coli</i> BL21(DE3))</p>	<p>Description: Lacto-N-tetraose is a purified and concentrated white to off-white powder that is produced by a microbial fermentation process.</p> <p>Definition: Chemical name: β-D-Galactopyranosyl-(1 \rightarrow 3)-2-acetamido-2-deoxy-β-D-glucopyranosyl-(1 \rightarrow 3)-β-D-galactopyranosyl-(1 \rightarrow 4)-D-glucopyranose Chemical formula: $C_{26}H_{45}NO_{21}$ CAS No: 14116-68-8 Molecular mass: 707.63 Da</p> <p>Source: Two genetically modified strains (a production strain and an optional degradation strain) of <i>Escherichia coli</i> BL21(DE3)</p> <p>Characteristics/Composition: Lacto-N-tetraose (% of dry matter): $\geq 75,0$ % (w/w) D-Lactose (% of dry matter): $\leq 5,0$ % (w/w) Lacto-N-triose II (% of dry matter): $\leq 5,0$ % (w/w) <i>Para</i>-lacto-N-hexaose (% of dry matter): $\leq 5,0$ % (w/w) D-galactose and D-glucose (% of dry matter): $\leq 5,0$ % (w/w) Sum of other carbohydrates^a: $\leq 15,0$ % (w/w) Moisture: $\leq 9,0$ % (w/w) Ash: $\leq 1,0$ % (w/w) Residual protein: $\leq 0,01$ % (w/w)</p> <p>Heavy metals and contaminants: Arsenic: $\leq 0,2$ mg/kg Aflatoxin M1: $\leq 0,025$ μg/kg</p>

Microbiological criteria:Standard plate count: $\leq 1\ 000$ CFU/gEnterobacteriaceae: ≤ 10 CFU/g*Salmonella* spp.: Absence in 25 gYeast and mould: ≤ 100 CFU/g*Cronobacter (Enterobacter) sakazaki*: Absence in 10 gResidual endotoxins: ≤ 10 EU/mg^a Sum of other carbohydrates = 100 % (w/w) of dry matter) – quantified carbohydrates (% (w/w) of dry matter) – Ash (% (w/w) of dry matter). CFU: Colony Forming Units; EU: Endotoxin Units'