



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 19 March 2013**

**7652/13**

**DENLEG 29  
AGRI 190**

**“I/A” ITEM NOTE**

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from : General Secretariat  
to : Permanent Representatives Committee/Council

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No. Cion prop.: 6875/13 DENLEG 18 AGRI 121

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Subject: COMMISSION REGULATION (EU) No .../.. of XXX amending Regulation (EU) No 432/2012 establishing a list of permitted health claims made on foods other than those referring to the reduction of disease risk and to children's development and health  
– *Decision not to oppose adoption*

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1. Article 13(3) of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods<sup>1</sup> provides for the adoption by the Commission of a Community list of permitted claims and of all of the necessary conditions of use of these claims, in accordance with the regulatory procedure with scrutiny.
2. The regulatory procedure with scrutiny was regulated by Article 5a of the Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>2</sup>.

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<sup>1</sup> OJ L 404, 30.12.2006, p. 9.

<sup>2</sup> OJ L 184, 17.7.1999, p. 23.

3. According to the second subparagraph of Article 12 of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers<sup>3</sup>, the effects of Article 5a of Decision 1999/468/EC are maintained for the purposes of existing basic acts making reference thereto.
4. Before adopting the above mentioned measures and in accordance with Article 5a(2) of Council Decision 1999/468/EC, the Commission consulted the Standing Committee on the Food Chain and Animal Health on 4 February 2013, which voted by qualified majority in favour of the above draft Regulation.
5. Consequently, the Commission submitted the above draft Regulation to the Council on 22 February 2013, in accordance with Article 5a(3)(a) of Council Decision 1999/468/EC.
6. Under the regulatory procedure with scrutiny, the Council, acting by qualified majority, may oppose the Commission's adoption of the draft Commission Regulation on the grounds that the draft measures presented by the Commission:
  - exceed the implementing powers provided for in the basic instrument, or
  - are not compatible with the aim or the content of the basic instrument, or
  - do not respect the principles of subsidiarity or proportionality.
7. The delegations were asked on 27 February 2013 to indicate until 15 March 2013 their possible opposition to the draft Regulation.

The Danish delegation has indicated its intention to oppose the adoption of the Regulation on the following grounds:

The proposal authorises the health claim “Consumption of foods containing fructose leads to a lower blood glucose rise compared to foods containing glucose”. Denmark considers that this claim is in conflict with Regulation (EC) No 1924/2006 on nutrition and health claims made on foods and is of the opinion that this claim is not compatible with the aim or the content of the basic instrument. By authorising this claim the Commission exceeds the implementing powers conferred upon the Commission in the basic instrument.

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<sup>3</sup> OJ L 55, 28.2.2011, p. 13.

The reasoning presented by Denmark is the following:

According to the aim of Regulation (EC) No 1924/2006 (whereas clause 18) a nutrition and health claim should not be authorised if it is inconsistent with generally accepted nutrition and health principles or if it encourages or condones excessive consumption of any food or disparages good dietary practice.

It is contrary to dietary advice to increase the consumption of sugars. Authorising a claim regarding the beneficial effect of fructose will potentially increase the consumption of fructose, and therefore this claim is not in line with generally accepted nutrition and health principles. Consequently, this claim will send a confusing message to consumers because it would encourage consumption of a nutrient that according to dietary advice should be reduced. Therefore the claim does not comply with point (a) of the second paragraph of Article 3 of Regulation (EC) No 1924/2006 which foresees that the use of claims shall not be ambiguous or misleading.

Furthermore, a high intake of fructose can have a negative impact on health for certain population groups, including the target group for the claim. The target group is likely to be people suffering from diabetes as they could benefit from achieving a lower blood glucose rise. This particular issue is explained in the scientific opinion of EFSA on the substantiation of health claims related to fructose and reduction of post-prandial glycaemic responses, cf. EFSA Journal 2011;9(6):2223.

Nevertheless, there is no qualified majority of the Member States opposed to the adoption of the draft Regulation.

8. **The Permanent Representatives Committee is therefore invited to recommend to the Council to confirm, as an "A" item of its agenda, that it is not opposed to the draft Regulation in subject. Unless the European Parliament opposes the Regulation within 3 months from its submission, the Commission may adopt it in accordance with the procedure under Article 5a(3)(d) of Council Decision 1999/468/EC.**