



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 21 June 2013**

**11326/13**

**DENLEG 68  
AGRI 414**

**“I/A” ITEM NOTE**

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from : General Secretariat  
to : Permanent Representatives Committee/Council

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No. Cion prop.: 10126/13 DENLEG 52 AGRI 339

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Subject: COMMISSION DIRECTIVE ../.../EU of XXX amending Directive 2006/141/EC  
with regard to protein requirements for infant formulae and follow-on formulae  
– *Decision not to oppose adoption*

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1. According to Article 4(1) of Directive 2009/39/EC of the European Parliament and of the Council of 6 May 2009 on foodstuffs intended for particular nutritional uses<sup>1</sup> compositional rules for infant formulae and follow-on formulae should be adopted by the Commission 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 124, 20.5.2009, p. 21.

<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 29 April 2013, which voted by unanimity in favour of the above draft Directive.
5. Consequently, the Commission submitted the above draft Directive to the Council on 21 May 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 Directive 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 5 June 2013 to indicate until 14 June 2013 their possible opposition to the draft Directive. The delegations did not raise any of the above-mentioned grounds for opposition.
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 Directive in subject. Unless the European Parliament opposes the Directive 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.**

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