



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 25 June 2013**

**11189/1/13  
REV 1**

**DENLEG 65  
AGRI 399**

**REVISED “I/A” ITEM NOTE**

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from : General Secretariat  
to : Permanent Representatives Committee/Council

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No. Cion prop.: 10040/13 DENLEG 47 AGRI 332

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Subject: COMMISSION REGULATION (EU) No .../..of XXX amending Annex III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards the use of Sucrose esters of fatty acids (E 473) in flavourings for water based clear flavoured drinks  
– *Decision not to oppose adoption*

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1. Articles 10(3) and 30(5) of Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives<sup>1</sup> provide for the Commission to update Annex III in accordance with the common procedure referred to in Article 7 (5) 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<sup>2</sup>, which involves 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>3</sup>.

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<sup>1</sup> OJ L 354, 31.12.2008, p. 16.

<sup>2</sup> OJ L 354, 31.12.2008, p. 1

<sup>3</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>4</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 17 April 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 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 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 4 June 2013 to indicate until 14 June 2013 their possible opposition to the draft Regulation. Greece is opposed to the adoption of the draft measures on the grounds that they are not compatible with the aim of the basic instrument. However, a qualified majority of the delegations are not opposed the adoption of the draft measures.
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.

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<sup>4</sup> OJ L 55, 28.2.2011, p. 13.