



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 24 September 2013

13932/13

DENLEG 114

“I/A” ITEM NOTE

from : General Secretariat
to : Permanent Representatives Committee/Council

No. Cion prop.: 13128/13 DENLEG 98

Subject: COMMISSION REGULATION (EU) No .../..of XXX amending and correcting Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council and the Annex to Commission Regulation (EU) No 231/2012 as regards certain food additives
– *Decision not to oppose adoption*

1. Articles 10(3), 14 and 30(5) of Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives¹ provide for the Commission to update Annexes II and III in accordance with the common procedure referred to in Article 3(1) of Regulation (EC) No 1333/2008, by measures adopted in accordance to the regulatory procedure with scrutiny, as established 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 flavourings².
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 Commission³.

¹ OJ L 354, 31.12.2008, p. 16.

² OJ L 354, 31.12.2008, p. 1

³ 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 powers⁴, 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 measure 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 1 July 2013, which voted by unanimity in favour of the above draft Regulation.
5. Consequently, the Commission submitted the above draft Regulation to the Council on 22 August 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 9 September 2013 to indicate until 17 September 2013 their possible opposition to the draft Regulation. 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 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.**

⁴ OJ L 55, 28.2.2011, p. 13.