



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 29 February 2012

6749/12

**DENLEG 20
AGRI 99**

“I/A” ITEM NOTE

from : General Secretariat
to : Permanent Representatives Committee/Council

No. Cion prop.: 5984/12 DENLEG 9 AGRI 68 + ADD 1

Subject: COMMISSION REGULATION (EU) No .../.. of XXX 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*

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 foods¹ 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 Commission².

¹ OJ L 404, 30.12.2006, p. 9.

² 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 powers³, 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 5 December 2011, 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 27 January 2012, 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 6 February 2012 to indicate until 20 February 2012 their possible opposition to the draft Regulation.

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

The list of health claims is not compatible with the aim or the content of the basic instrument.

³ OJ L 55, 28.2.2011, p. 13.

Denmark is of the opinion that many health claims in the proposed list do not comply with the objective and general principles of the Regulation (EC) No 1924/2006. Several claims on the list do not take account of the principle of consumer understanding (cf. Article 5(3) of the Regulation) and can lead to misunderstanding and misleading of the consumer. Furthermore, the list contains a number of claims that can cause potential safety concern.

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.**