



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 19 September 2012

13765/12

**DENLEG 85
AGRI 579**

“I/A” ITEM NOTE

from : General Secretariat
to : Permanent Representatives Committee/Council

No. Cion prop.: 13083/12 DENLEG 77 AGRI 532

Subject: Draft COMMISSION REGULATION (EU) No .../.. of XXX amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards the use of Dimethyl polysiloxane (E 900) as an anti-foaming agent in food supplements
– *Decision not to oppose adoption*

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 additives¹ provide for the Commission to amend the Union list in Annex II 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 354, 31.12.2008, p. 16.

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 11 July 2012, which voted by unanimity in favour of the above draft Regulation.
5. Consequently, the Commission submitted the above draft Regulation to the Council on 30 July 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 7 August 2012 to indicate until 7 September 2012 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.**

³ OJ L 55, 28.2.2011, p. 13.