



Council of the
European Union

Brussels, 25 November 2014
(OR. en)

14975/14

DENLEG 165
AGRI 672
SAN 412

"I/A" ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

No. prev. doc.: 14231/14 DENLEG 158 SAN 387 AGRI 629

Subject: COMMISSION REGULATION (EU) No .../.. of XXX amending Commission Regulation (EC) No 282/2008 on recycled plastic materials and articles intended to come into contact with foods
- *Decisions to oppose adoption*

1. For materials and articles intended to come into contact with food, the Commission may adopt or amend specific measures, in accordance with Article 5(1) of Regulation (EC) No 1935/2004 of the European Parliament and of the Council¹. Where the specific measures concern the specific procedural rules referred to in point (n) thereof, the regulatory procedure with scrutiny referred to in Article 23(3) is applicable.

The European Parliament and the Council may oppose to the adoption of such measures within the time-limit of 3 months.

¹ Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC (OJ L 338, 13.11.2004, p. 4).

2. Commission Regulation (EU) No 282/2008² was adopted on the basis of Article 5(1) of Regulation (EC) No 1935/2004.
3. The draft Commission Regulation, based on point (n) of Article 5(1) of Regulation (EC) No 1935/2004, contains an amendment which replaces Article 6(1) of Regulation (EU) No 282/2008 by the following: "*1. In accordance with the procedure referred to in Article 23(2) of Regulation (EC) No 1935/2004, the Commission shall adopt a Decision addressed to the applicant granting or refusing authorisation of the recycling process.*".
4. Article 23(2) of Regulation (EC) No 1935/2004 reads: "*2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof. (...)*". The draft Regulation thus contains a reference to the regulatory procedure enshrined in Article 5 of Decision 1999/468.³
5. According to Article 12 of Regulation (EU) No 182/2011 of the European Parliament and of the Council⁴, Decision 1999/468/EC has been repealed, with the exception of the effects of Article 5a, which are maintained for the purposes of existing basic acts making reference thereto.
6. In accordance with Article 5a(2) of Council Decision 1999/468/EC, the Commission submitted the above draft Regulation to the Standing Committee on Plants, Animals, Food and Feed, on 19 September 2014, which adopted a positive opinion⁵ on the above draft Regulation. Subsequently, the Commission submitted the above draft Regulation to the Council, on 10 October 2014, in accordance with point (a) of Article 5a(3) of Council Decision 1999/468/EC.

² Commission Regulation (EU) No 282/2008 on recycled plastic materials and articles intended to come into contact with foods and amending Regulation (EC) No 2023/2006 (OJ L 12, 15.1.2011, p. 1).

³ Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).

⁴ 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 (OJ L 55, 28.2.2011, p. 13).

⁵ 7 votes against.

7. Under the regulatory procedure with scrutiny, the Council, acting by qualified majority, may oppose the adoption of the draft Regulation by the Commission on the grounds that the draft measure proposed by the Commission:
- exceeds the implementing powers provided for in the basic instrument, or
 - is not compatible with the aim or the content of the basic instrument, or
 - does not respect the principles of subsidiarity or proportionality.
8. On 4 November 2014, the Council Legal Service presented its contribution⁶ to the Working Party on Foodstuffs. On 13 November 2014, following an exchange of views, EL, LT, IE, CY, DK, PL, HU, ES, SE, CZ, FR, SI, PT, DE, FI, RO, AT, EE, UK, MT, NL, LU, IT, representing a qualified majority of the Member States, took the position that the Council should oppose to the adoption of the draft Regulation by the Commission on the ground that the draft Regulation exceeds the implementing powers provided for in the basic instrument.
9. **Based on the above, the Permanent Representatives Committee is therefore invited to recommend to the Council to oppose the adoption of the draft Regulation as an "A" item of its agenda.**

⁶ 14919/14.