



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 3 December 2013

17187/13

**DENLEG 143
SAN 498
AGRI 807**

“I/A” ITEM NOTE

from : General Secretariat of the Council
to : Permanent Representatives Committee/Council

No. Cion prop.: 16169/13 DENLEG 127 SAN 446 AGRI 741 + ADD1
16181/13 DENLEG 129 SAN 448 AGRI 743 + ADD1

Subject: COMMISSION REGULATIONS (EU) No .../.. of XXX refusing to authorise certain health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health
– *Decisions not to oppose adoption*

1. Article 18(5) 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 states that, "*where the (European Food Safety) Authority issues an opinion that does not support the inclusion of the claim in the list referred to in paragraph 4, a decision on the application (...) shall be taken in accordance with the regulatory procedure with scrutiny*".
2. 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 powers², the effects of Article 5a of Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission are maintained for the purposes of existing basic acts making reference thereto.

¹ OJ L 404, 30.12.2006, p. 9.

² OJ L 55, 28.2.2011, p. 13.

3. Different applications were submitted to the Commission, in accordance with Article 13(5) of Regulation (EC) No 1924/2006, proposing claims which did not comply with the requirements of the referred Regulation and should therefore not to be authorised.
4. Before adopting the two draft Regulations referred to in documents 1616/13 and 16181/13 in subject 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 4/10/2013, which voted by unanimity in favour of the above draft Regulations.
5. Consequently, the Commission submitted the above draft Regulations to the Council on 8 and 12 November 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 Regulations 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 20 November 2013 to indicate until 29 November 2013 their possible opposition to the draft Regulations. The delegations did not raise any of the above-mentioned grounds for opposition.
9. **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 two draft Regulations referred in documents 16169/13 and 16181/13.** Unless the European Parliament opposes the Regulations within 3 months from its submission, the Commission may adopt them in accordance with the procedure under Article 5a(3)(d) of Council Decision 1999/468/EC.