



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 13 December 2013

17465/13

**DENLEG 149
SAN 510
AGRI 825**

“I/A” ITEM NOTE

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

No. Cion prop.: 17256/13 DENLEG 144 SAN 504 AGRI 814
17261/13 DENLEG 146 SAN 502 AGRI 812

Subject: 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 polyvinylpyrrolidone-vinyl acetate copolymer in solid food supplements and the Annex to Commission Regulation (EU) No 231/2012 as regards its specifications

COMMISSION REGULATION (EU) No .../.. of XXX amending Annex II 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 Magnesium dihydrogen diphosphate for use as raising agent and acidity regulator

– Decisions not to oppose adoption

1. Articles 10(3) and 14 of Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives¹ provides for the Community lists in Annex II to be amended in accordance with the common authorisation procedure referred to in 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.

¹ OJ L 354, 31.12.2008, p. 16.

² OJ L 354, 31.12.2008, p. 1

Article 7(5) of Regulation (EC) No 1331/2008 establishes that, on grounds of efficiency, the measures designed to amend non-essential elements of each sectoral law, should be adopted 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 powers³, 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.
3. On 6 October 2009, an application was submitted for authorisation of the use of polyvinylpyrrolidone-vinyl acetate copolymer in solid food supplements as binding/coating agent.

Before adopting the draft Regulation referred to in document 17256/13 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 21/10/2013, which voted by unanimity in favour of the above draft Regulation.

4. On 7 April 2011, an application was submitted for authorisation of the use of Magnesium dihydrogen diphosphate as a raising agent and acidity regulator in certain food categories.

Before adopting the draft Regulation referred to in document 17261/13 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 qualified majority in favour of the above draft Regulation.

5. Consequently, the Commission submitted the above draft Regulations to the Council on 29 November and 2 December 2013, respectively, in accordance with Article 5a(3)(a) of Council Decision 1999/468/EC.

³ OJ L 55, 28.2.2011, p. 13.

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 6 December 2013 to indicate until 12 December 2013 their possible opposition to the draft Regulations. 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 two draft Regulations referred in documents 17256/13 and 17261/13.** Unless the European Parliament opposes the Regulations within 2 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.