



Council of the
European Union

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SAN 253

"I/A" ITEM NOTE

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

No. Cion doc.: 11325/15 DENLEG 112 AGRI 427 SAN 252 + ADD1

Subject: COMMISSION REGULATION (EU) .../... of XXX amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council as regards the use of Erythritol (E 968) as a flavour enhancer in energy-reduced or with no added sugars flavoured drinks
– *Decision not to oppose adoption*

1. Annex II to Regulation (EC) No 1333/2008¹ lays down the Union list of food additives approved for use in foods and their conditions of use. In accordance with Article 10(3) thereof, those list and conditions of use may be updated in accordance with the common procedure referred to in Article 3(1) of Regulation (EC) No 1331/2008².

The decision on the update should be taken in accordance with the regulatory procedure with scrutiny. When, in accordance with Article 7(5) of Regulation (EC) No 1331/2008, the decision is taken on the grounds of efficiency, the time-limits for the European Parliament and the Council to oppose such decision are curtailed to **two** months.

¹ Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives (OJ L 354, 31.12.2008, p. 16).

² 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 flavourings (OJ L 354, 31.12.2008, p. 1).

2. In accordance with the second subparagraph of Article 12 of Regulation (EU) No 182/2011³, the effects of Article 5a of Council Decision 1999/468/EC⁴ are maintained for the purposes of existing basic acts making reference thereto.
3. Before adopting the draft Regulation referred to in the subject and in accordance with Article 5a(2) of Council Decision 1999/468/EC, the Commission consulted the Standing Committee on Plants, Animals, Food and Feed on 23 June 2015. The Committee voted by unanimity in favour of the draft Regulation.
4. Consequently, the Commission submitted the above draft Regulation to the Council on 28 July 2015 in accordance with Article 5a(3)(a) of Council Decision 1999/468/EC.
5. Under the regulatory procedure with scrutiny with curtailed time-limits for efficiency measures, the Council, acting by qualified majority, may oppose within 2 months the Commission's adoption of the draft 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.
6. The delegations were asked on 30 July 2015 to indicate until 3 September 2015 their possible opposition to the draft Regulation. The delegations did not raise any of the above-mentioned grounds for opposition.
7. **The Permanent Representatives Committee is therefore invited to recommend to the Council to confirm, as "A" item of its agenda, that it is not opposed to the draft Regulation referred to in document 11325/15 + ADD1.** Unless the European Parliament opposes the draft Regulation within 2 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 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).

⁴ Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).