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AGRI 25
SAN 29

"I/A" ITEM NOTE

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

No. Cion doc.: 5197/16 DENLEG 2 AGRI 8 SAN 5 + ADD 1

Subject: COMMISSION REGULATION (EU) .../... amending Annex I to Regulation (EC) No 1334/2008 of the European Parliament and of the Council as regards removal from the Union list of certain flavouring substances
– *Decision not to oppose adoption*

1. Annex I to Regulation (EC) No 1334/2008¹ lays down the Union list of flavourings and source materials approved for use in and on foods and their conditions of use. In accordance with Article 11(3) thereof, that list may be updated in accordance with the common procedure referred to in Regulation (EC) No 1331/2008². Article 7(4) of Regulation (EC) No 1331/2008 states that a substance can be removed from the Union list by a decision adopted in accordance with the regulatory procedure with scrutiny. Furthermore, in accordance with Article 25(3) of Regulation (EC) No 1334/2008, transitional measures can also be adopted by the regulatory procedure with scrutiny.

¹ Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods (OJ L 354, 31.12.2008, p. 34).

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).

The European Parliament and the Council may oppose such decisions within the standard limits of 3 months

2. According to the second subparagraph of Article 12 of Regulation (EU) No 182/2011³, the effects of Article 5a of 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 Decision 1999/468/EC, the Commission consulted the Standing Committee on Plants, Animals, Food and Feed on 25 November 2015. The Committee voted in favour of the draft Regulation mentioned in the subject of this note by unanimity (2 Member States representing a population of 125.258 million, abstained).
4. Consequently, the Commission submitted the above draft Regulation to the Council on 12 January 2016 in accordance with Article 5a(3)(a) of Decision 1999/468/EC.
5. Under the regulatory procedure with scrutiny, the Council, acting by qualified majority, may oppose within 3 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 14 January 2016 to indicate until 26 January 2016 their possible opposition to the draft Regulation. The delegations did not raise any of the above-mentioned grounds for opposition.

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).

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 5197/16 + ADD1.** Unless the European Parliament opposes the draft Regulation within 3 months from its submission, the Commission may adopt it in accordance with the procedure under Article 5a(3)(d) of Decision 1999/468/EC.
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