

EFFA Position paper on the application of the non-concomitance rule from the EU Organic Regulation to flavourings

The “non-concomitance rule” of the new EU organic Regulation states that an organic ingredient shall not be present together with the same ingredient in non-organic form [in organic foods]. It is one of the general rules taken over from old Regulation.

A “natural <X> flavouring” is not the same ingredient as the food “X” or food ingredient derived from “X”. Therefore, a food producer may use together a non-organic “natural <X> flavouring” and the organic food “X” resp. an organic food ingredient derived from “X” in an organic foodstuff.

The flavouring part of an organic “natural <X> flavouring”, that is used in an organic food, may contain different and various natural flavouring substances and/or flavouring preparations derived from the same kind of source “X”. Within the conditions allowed by the EU Organic Regulation regarding formulation, some of these may be non-organic.

1. INTRODUCTION

Regulation (EU) No 2018/848 (hereinafter referred to as the “EU Organic Regulation”) was published on 14th June 2018 and entered into force on 17th June 2018. It will apply as of 1st January 2022. EFFA published in June 2019 its Guidance document on the new provisions regarding flavourings¹.

The EU Organic Regulation provides the general provisions regarding organic processed food. One of those is the so-called “non-concomitance rule”. The current paper expresses EFFA’s interpretation regarding the application of this rule to flavourings used in organic foods.

2. NON-CONCOMITANCE RULE

The “non-concomitance rule” is provided by point 2.1(b) of Annex II Part IV of the Regulation (EU) No 2018/848.

2.1. The following conditions shall apply to the composition of processed organic food:

[...]

(b) an organic ingredient shall not be present together with the same ingredient in non-organic form [in organic foods].

This rule with the same wording was also set in Regulation (EC) No 834/2007, i.e. the former Organic Regulation, in Article 19.2(d).

¹ EFFA Guidance Document on the new EU Organic Regulation in relation to flavourings

3. APPLICATION TO FLAVOURINGS

3.1. Application to Flavourings Used in an Organic Foodstuff

The non-concomitance rule applies to organic processed foods including organic foods with added flavourings. In this context the following question was raised:

- Is the joint use of a non-organic “natural <X> flavouring” with the organic food “X” respectively a food ingredient derived from “X” allowed regarding this rule?

Examples: organic lemon soft drink (organic lemon juice + non-organic natural lemon flavouring), organic apricot yoghurt incorporating pieces of organic apricots + non-organic natural apricot flavouring, ...

The Organic Regulation refers to the ingredient definition according to the Food Information to Consumers (FIC) Regulation (EU) No 1169/2011. Processed foodstuffs are usually made of several ingredients as defined by Art. 2.2(f) of the FIC Regulation.

Flavourings, as defined in the “EU Regulation on Flavourings” (Regulation (EC) No 1334/2008), are not intended to be consumed as such.

The flavouring part of a “natural <X> flavouring” is mainly derived from the “source material X” as defined at Art. 3.2(j) of the “EU Regulation on Flavourings”. The non-concomitance rule however refers to an “ingredient” as defined in the FIC Regulation and not to “source material” as defined by the EU Regulation on Flavourings.

Coming back to the example above, an organic lemon soft drink may be made of the following ingredients: water, sugar, lemon juice, natural lemon flavouring, etc ... The lemon juice and the natural lemon flavouring are derived from the same kind of source material i.e. lemon – they are however considered as different ingredients of the soft drink.

A “natural <X> flavouring” is not the same ingredient (within the meaning of the non-concomitance rule) as the food “X” respectively a food ingredient derived from “X”. Therefore, a food producer may use together a non-organic “natural <X> flavouring” and the organic food “X” respectively food ingredient derived from “X” in an organic foodstuff.²

Moreover, the EU Commission clarified³ that within the spirit of the EU Organic Regulation organic suitable “natural <X> flavourings” as well as organic “natural <X> flavourings” are permitted. Therefore, in accordance with the EU Organic Regulation, it is allowed to use a non-organic natural lemon flavouring in an organic lemon soft drink.

3.2. Application to the Flavouring Part of Organic Flavourings

As the non-concomitance rule applies to organic processed foods, it applies also to organic flavourings. The flavouring part of an organic natural <X> flavouring may contain different and various ingredients, i.e. min. 95% natural flavouring substances and/or flavouring preparations, from the same source “X”.

Examples of ingredients of the flavouring part of an organic flavouring: lemon oils, lemon distillate, and natural flavouring substances [e.g. limonene] from lemons

These flavouring preparations and natural flavouring substances are derived from the same kind of source “X”, but they are considered as different ingredients of the “natural <X> flavouring”.

² The joint use of a non-organic “natural <X> flavouring” and the organic ingredient “X” in organic food is allowed as long as the other provisions of the EU Organic Regulation are fulfilled, especially the so-called “min. 95% rule”. (Art. 30(5)(a)(ii) of the EU Organic Regulation)

³ See letter from the EU-Commission (Mrs N. Sauze-Vandevyver, DG AGRI) from 04/03/2019 to EFFA-Secretariat in Annexe of the [EFFA Guidance Document on the new EU Organic Regulation in relation to flavourings](#)

EFFA understands that the reference is the formulation of the organic flavouring and not the formulation of the foodstuff in which it will be used.

Case 1: Natural flavouring substance from X and Flavouring preparation from X

Natural flavouring substance and Flavouring preparation, even from the same source X, are identified differently in the list of ingredients of the flavouring part and in the formulation of the flavouring. In addition, they correspond to different regulatory definitions (respectively Article 3(2)(c) and 3(2)(d) of the Flavouring Regulation (EC) No 1334/2008). Due to different production processes they have different characteristics in terms of compositions (chemical constituents). Their profile and sensory impact are also different.



Case 2: Two flavouring preparations from X

EFFA also considers that two flavouring preparations from X can be regarded as different ingredients based on their manufacturing process and their composition (chemical constituents), having as a consequence different names (i.e. distillate/oleoresin/cold pressed essential oil etc.). Each flavouring preparation is selected for its different sensory characteristics.



Case 3: Two natural flavouring substances from X

Two natural flavouring substances can be obtained from the same source but have a different chemical identity, i.e. different names, CAS number and FL-numbers and have different sensory characteristics.

Accordingly, two flavouring substances with a different name and a different FL-number in the Union List should be considered as different ingredients.



As a conclusion, in order to reflect their difference, EFPA recommends using specific and precise names of the ingredients (i.e. flavouring components) when submitting the formula of the flavouring to the certifying bodies or competent authorities.

In the below example of an organic “natural <X> flavouring”, the peel oil from Sicilian lemon, lemon fruit distillate and terpeneless lemon oil may be organic and the limonene (from lemon) non-organic as they are different ingredients.⁴

Part of the flavouring	Ingredients (Flavouring component and other ingredients)		Quantity / 100g flavouring	Quantity % of the flavouring component	
Flavouring component according to Art. 16(2)	Flavouring preparation	Peel oil from Sicilian lemon *	40,0g	40,0%	97,6% w/w of the flavouring component issued from the named source (lemon)
	Flavouring preparation	Lemon fruit distillate *	33,0g	33,0%	
	Flavouring preparation	Terpeneless lemon oil *	24,4g	24,4%	
	Natural flavouring substance	Limonene from lemon	0,2g	0,2%	
	Flavouring preparation	Orange oil *	0,1g	0,1%	2,4% w/w of the flavouring component from other preparations and substances not issued from the named source (lemon)
	Natural flavouring substances	Linalool Geranyl acetate Geraniol	2,3g	2,3%	
Art. 3(4) ingredients	Solvents and/or carriers	None	0g		

100%

* organic ingredients

Total = 100g

⁴ Without prejudice to the application of the Art. 30(5)(a)(iii) of the EU Organic Regulation regarding the formulation of organic flavourings