



International Federation of
Organic Agriculture Movements –
EU Regional Group

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Working for organic farming in Europe

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Brussels, 08/05/2009

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Flavours in food law

Registered in Sweden,
Uppsala under organisation
number 817606-9436

Dear Mr Hulot,

Thank you again for coming to Avignon! We are very grateful for the exchange of information and for the intensive debate on labelling tasks relevant to the organic market.

During the meeting in Avignon the question arose whether flavours in legal terms can be considered as foods.

We examined the relevant EC regulations and came to the following conclusion;

Regulation (EC) no 834/2007 Article 1 (2) defines:

"b) processed agricultural products for use as food;"

Under the definitions of (EC) no 834/2007 Article 2 j) we find a definition for food which subsequently refers to regulation **(EC) 178/2002**.

In article 2 of (EC) Regulation no 178/2008 we find the following wording;

"Article 2, Definition of "food"

For the purposes of this Regulation, "food" (or "foodstuff") means any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans. "Food" includes drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture, preparation or treatment. It includes water after the point of compliance as defined in Article 6 of Directive 98/83/EC and without prejudice to the requirements of Directives 80/778/EEC and 98/83/EC.

"Food" shall not include:

- (a) feed;*
- (b) live animals unless they are prepared for placing on the market for human consumption;*
- (c) plants prior to harvesting;*
- (d) medicinal products within the meaning of Council Directives 65/65/EEC(21) and 92/73/EEC(22);*
- (e) cosmetics within the meaning of Council Directive*

76/768/EEC(23);

(f) tobacco and tobacco products within the meaning of Council Directive 89/622/EEC(24);

(g) narcotic or psychotropic substances within the meaning of the United Nations Single Convention on Narcotic Drugs, 1961, and the United Nations Convention on Psychotropic Substances, 1971;

(h) residues and contaminants."

These definitions mean that all substances used during the production of food and which are neither processing aids nor substances mentioned under a)-h) of EC regulation 178/2002 Article 2 are "foods". This means "flavours" are "food" in the means of article 2 of EC regulation 178/2002. (The EC regulation on organic farming EC no 834/2007 is referring under definitions article 2 j) consequently to this definition in (EC) no 178/2002).

Our examination of (EC) Regulation 1331/2008 (Evaluation of additives) and the EC regulation 1334/2008 (flavour regulation) revealed no requirements or other limitations, which contradicts this statement.

As stated in our letter of 08/05/2009 we therefore understand even "flavours" produced out of agricultural raw materials to be included in the scope of Article 1 of (EC) Regulation 834/2007.

In the organic regulations EC no 834/2007 and EC no 889/2008 we do not see any requirements that conflicts with this statement.

The counter-argument, which is brought forward sometimes, that Article 27 (2) of EC no 889 excludes flavours from the scope of the Regulation EC no 834/2007 by excluding them from the percentage calculation of agriculture origin is to our opinion not valid; Article 27 (2) states the following:

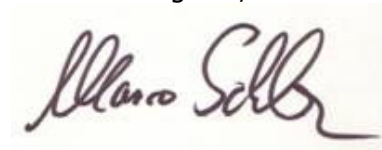
"For the purpose of the calculation referred to in Article 23(4)(a)(ii) of Regulation (EC) No 834/2007... "

This wording clarifies definitively that this article is only relevant for calculation as referred to in Article 23 of EC no 834/2007.

To argue that article 27 (2) of EC no 889 is effecting in any way the scope of the regulation is *not* appropriate and not in line with the inherent logic and hierarchy of the organic regulations.

We hope you will consider our arguments. We remain at your assistance should you want further elaboration of the matter.

With Best Regards,



Marco Schlüter, Director



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Additives in organic quality

Dear Mr J.F. Hulot,

We would like to express our concerns over the rising problems we have experienced with the interpretation of the new organic regulation in regard to ingredients mentioned in article 27 of 889/2008 and Annex VIII thereof.

Some countries have (again) started to interpret the new regulation in a way which excludes ingredients from agricultural origin with mainly technical and sensorial functions (listed in article 27 and annex VIII of EC No 889/2008) from the scope of the Regulation EC No 834/2007.

We would like to remind that we have worked together towards excluding the term "products of non- agricultural origin" from the new organic regulation. The aim to do so was to change the legal system to make it possible to certify products from the former Annex VI as organic if they originate from agricultural raw material produced in line with the organic rules.

During the revision process this problem was identified as a structural problem of the old regulation preventing a needed development of the organic sector, specifically with regards to enhancing the authenticity of processed organic products. The reality on the market is that organic lecithin, organic guar, organic citrus oil (flavour extract), organic starter cultures and organic flavours are available.

These substances are important contributions to the authenticity of organic foods because they are able to replace allowed conventional ingredients. This solves several problems;

- Unclear GMO situation during processing of such conventional ingredients (Lecithin, Tocopherol, etc.)
- Excluding substance from synthetic sources and/or very conventional sources
- Making organic products more organic
- Helping even the ingredient industry to diversify their markets
- Helping to integrate organic markets and offering producers new organic markets.
- At least better use of by-products from organic production and processing

Looking at the scope of (EC) no 834/2007 Article 1 (2) " b) *processed agricultural products for use as food;*" we see two important facts combined:

- First the substances have to come from agriculture and
- secondly have to be used for food.

Taking the legal definition of "food" from legislation EC regulation 178/2002 (see Annex) it is clear that all ingredients having mainly technical and sensorial functions are "food".

We therefore believe that it is absolutely clear from the legal point of view to have these substances (e.g. organic lecithin, organic guar, organic locus bean gum, organic citric oil, organic flavour extracts) certified in accordance to the requirements of EC regulation 834/2007.

We ask you to re-inform the member states at the next SCOF-meeting on this issue. If you do not share our opinion please let us know as soon as possible. In case of further questions please do not hesitate to contact us.

With best wishes,



Marco Schlüter, Director

Annex

Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety

"Article 2 Definition of "food"

For the purposes of this Regulation, "food" (or "foodstuff") means any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans.

"Food" includes drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture, preparation or treatment. It includes water after the point of compliance as defined in Article 6 of Directive 98/83/EC and without prejudice to the requirements of Directives 80/778/EEC and 98/83/EC.

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