



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate B. Quality, Research & Innovation, Outreach
The Director

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[REDACTED]

Thank you for your e-mail¹ of 28 February 2020 transmitting the note [REDACTED] on the non-concomitance of ingredients in organic and non-organic forms. As you know this subject has been discussed thoroughly in the Committee on Organic Production between September and December 2020.

Please find attached in Annex a note including relevant legal provisions and considerations to take into account for the understanding of the provisions lay down in points 2.1 (b) and 2.1 (c) of Part IV of Annex II to Regulation (EU) 2018/848²: i.e.: “*an organic ingredient shall not be present together with the same ingredient in non-organic form*” and “*an in-conversion ingredient shall not be present together with the same ingredient in organic or non-organic form*”.

The present opinion is provided on the basis of the facts as set out in your e-mail of 28 February 2020 and as expressed during the discussions on this subject in the Committee on Organic Production. It expresses the view of the Commission services and does not commit the European Commission. In the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the European Court of Justice to provide a definitive interpretation of the applicable Union law.

Yours sincerely,

[REDACTED]

Enclosure: Notion of Same Ingredients in Organic Production

c.c.: [REDACTED]

¹ Ares(2020)1293114

² [Regulation \(EU\) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation \(EC\) No 834/2007; OJ L 150, 14.6.2018, p. 1](#)

NOTION OF SAME INGREDIENTS IN ORGANIC PRODUCTION

This note reflects the outcome of the discussion between Commission services and the Member States' Delegates on the above-mentioned subject in order to facilitate a common understanding. This subject was discussed during several Committees on Organic Production (COP) between September and December 2020.

The points 2.1 (b) and 2.1 (c) of Part IV of Annex II to Regulation (EU) 2018/848³ provide the following for the production of processed food: “***an organic ingredient shall not be present together with the same ingredient in non-organic form***” and “***an in-conversion ingredient shall not be present together with the same ingredient in organic or non-organic form***”. Article 19(2) of Regulation (EC) No 834/2007 has an equivalent provision in its point (d).

Such provisions aim at:

- reducing the use of non-organic ingredients in organic food and,
- protecting consumers' trust in organic production by lowering the risk of non-compliance and the possibility of fraud.

Similarly, point 1.2 of Part VII of Annex II to Regulation (EU) 2018/848 provides that “Organic yeast shall not be present in organic food or feed together with non-organic yeast”.

The implementation of such rule need a common understanding for “same ingredient”

Article 3(51) of Regulation (EU) 2018/848 refers to Article 2(2) of Regulation (EU) No 1169/2011⁴ to define ingredient in food: ‘*ingredient*’ means any substance or product, including flavourings, food additives and food enzymes, and any constituent of a compound ingredient, used in the manufacture or preparation of a food and still present

³ [Regulation \(EU\) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation \(EC\) No 834/2007; OJ L 150, 14.6.2018, p. 1](#)

⁴ [Regulation \(EU\) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations \(EC\) No 1924/2006 and \(EC\) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation \(EC\) No 608/2004; OJ L 304 22.11.2011, p. 18](#)

in the finished product, even if in an altered form; residues shall not be considered as 'ingredients';

According to Article 18(2) of Regulation (EU) No 1169/2011, in the list of ingredients, **“Ingredients, shall be designated by their specific name, where applicable, in accordance with the rules laid down in Article 17 and in Annex VI”**.

Article 17 provides in particular: *“The name of the food shall be its **legal name**. In the absence of such a name, the name of the food shall be its **customary name**, or, if there is no customary name or the customary name is not used, a **descriptive name** of the food shall be provided.”*

Annex VI provides in particular: *“The name of the food shall include or **be accompanied by particulars as to the physical condition of the food or the specific treatment which it has undergone** (for example, powdered, refrozen, freeze-dried, quick-frozen, concentrated, smoked) in all cases where omission of such information could mislead the purchaser.”*

These provisions do not exclude that the name of the food includes or be accompanied by particulars as far as it is **not misleading**.

Article 18(4) refers also to the technical rules laid down in Annex VII to Regulation (EU) No 1169/2011. In particular, Part B of this Annex provides the possibility for certain ingredients to be designated by the name of a category rather than a specific name. For example, all starches and starches modified by physical means or by enzymes may be listed as ‘Starch’. Indeed, in processed food, this type of ingredient is normally used for the same purpose without specific characteristics linked to its origin.

An ingredient is characterised in particular by its nature, its origin and its role in the food. Same ingredients should have the same characteristics.

The second and third subparagraphs of Article 30(5) of Regulation (EU) 2018/848 provides that:

“The list of ingredients referred to in points (a), (b) and (c) of the first subparagraph shall indicate which ingredients are organic. The references to organic production may only appear in relation to the organic ingredients.”

“The list of ingredients referred to in points (b) and (c) of the first subparagraph shall include an indication of the total percentage of organic ingredients in proportion to the total quantity of agricultural ingredients”.

Examples:

Ingredient A	Ingredient B	Same ingredient?
Potatoes (undefined variety)	Potatoes (undefined variety)	YES
Potatoes	Starch from potatoes	NO
Starch from maize	Starch from potatoes	NO
Hops variety “Hallertau”	Hops variety “Citra”	YES, unless differentially designated and justified by different characteristics and role in the food
Natural flavouring from orange	Orange	NO
Orange juice	Orange peel	NO
Orange juice from variety “Valencia” in fresh orange juice	Orange juice from variety “Navel” in fresh orange juice	YES, unless differentially designated and justified by different characteristics and role in the food
Wheat flour type 45 (mineral 0.40 - 0.45 %; protein 8.5 – 9.5 %)	Wheat Flour type 65 (mineral 0.60 - 0.65 %; protein 12 – 13.5 %)	YES, unless differentially designated and justified by different characteristics and role in the food
Wheat flour	Rye flour	NO

Therefore:**Ingredients that are used in the same processed food and:**

1. **have the same agricultural origin,**
2. **have similar characteristics,**
3. **have similar role/function in the food, AND**
4. **are listed under the same denomination in the ingredient list**

should be subject to the restriction laid down in points 2.1 (b) and 2.1 (c) of Part IV of Annex II to Regulation (EU) 2018/848.

For ingredients complying with points 1, 2 and 3 but differentially designated in the list of ingredients, operators should be able to justify that the characteristic of the ingredient **and** their roles/functions in the food are not identical.

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