

Interpretation note on the use of lithothamnium in organic processed products

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This paper provides an interpretation of the Organic Regulations (EC) No 834/2007¹ and (EC) No 889/2008² in regard to the use of *lithothamnium* in organic products.

Background

In May 2016, a German administrative Court took a decision on the use of *lithothamnium* in organic foodstuffs³. This Court (as well as the Court of Appeal) ruled that it was forbidden to use *lithothamnium* in organic soy drinks.

The Court questioned whether *lithothamnium* was a “wild alga”. “Wild algae” are explicitly listed as a non-organic ingredient authorised in organic foodstuffs in Regulation (EC) No 889/2008. The Court stated that *lithothamnium* was not used as a “substance normally consumed as food”; since its main purpose was rather to supplement the foodstuff with calcium. *Lithothamnium* was used as a supplement. The fact that the product was bearing a claim “source of calcium” reinforced the idea that the main objective of *lithothamnium* in this case was to fortify the food product. Since article 27.1 (f) of Regulation (EC) No 889/2008 forbids fortification unless it is required by EU or national law, the Court judged that the use of *lithothamnium* in organic soy drinks was forbidden.

IFOAM EU Interpretation

***Lithothamnium* is allowed by the EU organic regulation as an ingredient**

Lithothamnium is an alga, as stated by the European Commission in 2009. The use of algae for food as a non-organic ingredient is explicitly permitted by Annex IX of Regulation (EC) No 889/2008, in its “Point 1.3: Miscellaneous: Algae, including seaweed”. The fact that *Lithothamnium* is not listed in Annex VIII of Regulation (EC) No 889/2008 proves that it is neither a food additive, nor a carrier nor a processing aid. Furthermore, in the European Commission novel food catalogue⁴, *Lithothamnium calcareum* is classed as a red alga of the Corallinacea family and its status reads the following: “This

¹ Council Regulation (EC) No 834/2007 on organic production and labelling of organic products

² Commission Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 with regard to organic production, labelling and control

³ The judgement of the Court of Appeal is currently pending at the German Federal Administrative Court (Bundesverwaltungsgericht). A decision is expected at the latest mid-2018. There is the possibility that they refer questions of the interpretation of EU law to the Court of the European Union in Luxembourg.

⁴ Novel food catalogue

product was on the market as a food or food ingredient and consumed to a significant degree before 15 May 1997. Thus, its access to the market is not subject to the Novel Food Regulation (EC) No 258/97". As a result, the use of *lithothamnium* as an ingredient should be allowed.

Lithothamnium has, among others, the technological effect to provide calcium. Many other ingredients have technological effects (e.g. corn starch thickens, cod-liver oil provides vitamin A, wakame provides iodine, etc.) and these technological functions should not be interpreted as the fact that they are not ingredients.

Until the EU Commission decides to remove "algae" from Annex IX of Regulation (EC) No 889/2008, the possibility to use *Lithothamnium* as an ingredient in an organic product should remain.

Importance of nutritional information on foods to consumers

Consumers should be adequately informed as regards the nutrient content of foodstuffs, in order to enable them to make an informed choice. This is stated several times in Regulation (EU) No 1169/2011 on food information to consumers⁵.

"In order to achieve a high level of health protection for consumers and to guarantee their right to information, it should be ensured that consumers are appropriately informed as regards the food they consume, food information shall be accurate, clear and easy to understand" (Recital 3)

"Food labels should be clear and understandable in order to assist consumers who want to make better-informed food and dietary choices". (Recital 26)

"The nutrition declaration for a food concerns information on the presence of energy and certain nutrients in foods. The mandatory provision of nutrition information on packaging should assist nutrition actions as part of public health policies which could involve the provision of scientific recommendations for nutrition education for the public and support informed food choices" (Recital 34)

Consequently, it should be possible to provide nutritional information regarding amounts of calcium in a foodstuff that contains *lithothamnium*.

The calcium content of *lithothamnium* justifies the use of a "calcium claim"

As long as the calcium content of a product that contains *lithothamnium*, represents a significant amount of the daily reference intakes as per Annex XIII of Regulation (EU) No 1169/2011, it is possible for an operator to use the claim "*source of calcium*"/"*high in calcium*", as set up by Regulation (EC) No 1924/2006 on nutrition and health claims⁶. It has to be noted that no article of Regulation (EC) No 1924/2006 forbids the use of claims when the nutritional effect comes from an added nutrient/ingredient. Similarly, it is possible to use any of the relevant permitted health claims listed in Regulation (EU) No 432/2012⁷.

⁵ [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](#)

⁶ [Regulation \(EC\) No 1924/2006 on nutrition and health claims made on foods](#)

⁷ [Regulation \(EU\) No 432/2012 establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health](#)

Conclusion

The alga *lithothamnium* is classified as an ingredient, - as opposed to a food additive or processing aid, according to Regulation (EC) No 889/2008. The use of *lithothamnium* as an ingredient is permitted in organic products. Since no article of Regulation (EC) No 1924/2006 forbids the use of claims when the nutritional effect comes from an added nutrient/ingredient, a claim stating the provision of calcium on a foodstuff containing *lithothamnium* should be permitted.

The question of sustainability

Calcified seaweed beds are relatively scarce and are important habitats which hold impressive levels of biodiversity, harbouring many rare ecologically and commercially valuable species. Owing to their extremely slow growth rate, calcified seaweed beds are very fragile and even limited extraction can lead to deterioration.

IFOAM EU call upon the EU Commission to promote more research on this field and upon the industry to find innovative solutions that meet the needs and expectations of consumers without risking compromising the environment.