NOTE TO THE STANDING COMMITTEE ON FOOD CHAIN AND ANIMAL HEALTH, 

toxicology section

Subject: Interpretation of Article 16(4) of Regulation (EC) No 1334/2008 on 
flavourings – assessment of the "95/5-ratio"

1. ISSUE

The Commission services have received an interpretation question from the 
European Flavour Association (EFFA) concerning the interpretation of Article 16(4) 
of Regulation (EC) No 1334/2008 on flavourings, in particular concerning the 
assessment of the so called "95/5-ratio". The request has been presented to the 
Commission working group of governmental experts on flavourings on 9 November 
2012.

2. BACKGROUND

Article 16(4) of Regulation (EC) No 1334/2008 refers to the use of the term 
"natural" in combination with a reference to the source material of the flavouring. If 
the flavouring component has been obtained exclusively or by at least 95/5 by w/w 
from the source material referred to, the term "natural" may be combined with a 
reference to the source material of the flavouring, e.g. "natural strawberry 
flavouring".

Article 16(2) of the said Regulation describes "flavouring component" comprising 
of "flavouring preparations" and/or "natural flavouring substances". Article 3(d) 
defines "flavouring preparation" as "a product, other than a flavouring substance, 
obtained from:

(i) food by appropriate physical, enzymatic or microbiological processes either in 
the raw state of the material or after processing for human consumption by one or 
more of the traditional food preparation processes listed in Annex II;

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on flavourings and certain food ingredients with flavouring properties for use in and on foods 
and/or

(ii) material of vegetable, animal or microbiological origin, other than food, by appropriate physical, enzymatic or microbiological processes, the material being taken as such or prepared by one or more of the traditional food preparation processes listed in Annex II.

3. QUESTION

EFFA is seeking confirmation on their understanding that the term **flavouring component** refers to the flavouring categories as defined in Article 3 of the Regulation and that when assessing the "95/5-ratio" of a flavouring component, if flavouring preparations are contained in the flavouring component, the entire flavouring preparation should be included in the calculation of the ratio.

4. THE COMMISSION SERVICES' CONSIDERATION

The term 'flavouring component' is not specifically defined in Article 3 of the Regulation. However, it is clear from Article 16(2) that for the purpose of Article 16 'flavouring component' refers to 'natural flavouring substances' and 'flavouring preparation. These categories are defined respectively in Article 3(2)(c) and 3(2)(d) of the Regulation. The purpose of having definitions in Article 3 is that the terms used in the Regulation are interpreted in a consistent manner throughout the text.

In Article 3(2)(d) the definition of 'flavouring preparation' refers to a product, other than flavouring substance, obtained in a certain manner from food or natural sources. The definition does not refer solely to the substances (flavouring molecules) that are included in the flavouring preparation and contribute to flavour. Due to the way they are prepared flavouring preparations are complex mixtures containing more than defined volatile flavouring molecules. These would be considered as 'flavouring substances' and not 'flavouring preparations'. In addition the Regulation recognises 'flavouring preparations' as a separate category of flavourings and furthermore emphasises that flavouring preparations are products other than flavouring substances. Flavouring preparations must be prepared by appropriate processes, as indicated in Article 3(2)(d) and 3(2)(k), and in accordance with good manufacturing practise so as not to mislead the consumer on their nature.

5. CONCLUSION

Based on the above elements the Commission services consider that when assessing the "95/5-ratio" of a "flavouring component", it is necessary to take into account the amount of "flavouring preparations" and "natural flavouring substances" from the labelled source compared to the total of amount of flavouring component. For the purpose of this measurement the entire flavouring preparation from the labelled source should be included.

Ultimately it is for the Court of Justice of the European Union to provide legally binding interpretation of the provisions of the Regulation.