



# Capsulas

## Definition of the concept of novel food

*Judgment of the Court of Justice of the European Union of 25 May 2023*

Last May, the Court of Justice of the European Union (CJEU) delivered a judgment in case C-141/22, which arose from a preliminary reference by the Bezirksgericht Gratz (Austria). The judgment concerns the definition of “novel food” in Regulation 2015/2283 on novel foods (Novel Foods Regulation). Novel foods are increasingly present in our diet. This is evidenced by the fact that many food supplements contain novel foods, such as CBD or other cannabinoids applied to food.

A novel food is defined as any food that was not used for human consumption to a significant degree within the EU before 15 May 1997, the date on which the Novel Foods Regulation came into force. In the case of novel foods consisting of plants or their parts, they will not be considered as novel food if (i) the food has a “history of safe food use within the Union” and (ii) the food has been obtained by traditional propagating practices (defined as those in use in the Union before May 1997) or, if obtained by non-traditional propagating practices, where those practices do not result in significant changes in the structure or composition of the food affecting its nutritional value, metabolism or level of undesirable substances.

### Background

The question referred for a preliminary ruling arose out of a dispute between two competing companies which distribute food supplements. One of them brought an action against the other claiming that one of its products was a “novel food” which had not been authorised, contrary to the requirements of the legislation on novel

foods. The product in question was sprouted buckwheat flour with a high content of spermidine, a product derived from plants.

### What does this new judgment bring to the table?

The CJEU examines whether exceptions apply for foods derived from plants, specifically for buckwheat with a high spermidine content, to qualify as novel foods.

Regarding the first exception, the CJEU notes that the Novel Foods Regulation does not contain a definition of the concept of “safe food use within the Union”. However, the Regulation does define the concept of “history of safe food use in a third country”. On this basis, the CJEU states that this definition can be transposed, and that a “safe food use within the Union” will exist if the safety of the food has been confirmed with “compositional data and from experience of continued use for at least 25 years in the customary diet of a significant number of people in at least one country of the European Union”. With regard to the second exception, the CJEU refers the assessment of propagating practices to the national authority.

In a context where the number of novel foods is increasing, this new ruling is very welcome as it not only contributes to a uniform interpretation of the Novel Food Regulation between the different Member States, but also shows that our system is becoming more mature and coherent.