

TEA & HERBAL INFUSIONS EUROPE

Formerly: European Tea Committee (ETC) and European Herbal Infusions Association (EHIA)



Version1 | 19th February, 2025

POSITION ON THE PROTECTION OF THE GENERAL PUBLIC'S UNRESTRICTED ACCESS TO HERBAL RAW MATERIALS FOR THE PRODUCTION OF TEA AND HERBAL AND FRUIT INFUSIONS

Background

Tea & Herbal Infusions Europe | THIE is the European association representing the interests of producers and traders of tea (*Camellia sinensis*) and herbal infusions as well as extracts thereof in Europe.

Tea as well as herbal and fruit infusions are agricultural products whose raw materials are cultivated, harvested and pre-processed at origin. Information on the 300 or so plants (and parts of plants) that are commonly used in tea and herbal and fruit infusions is listed in the THIE Inventory List of Herbs Considered as Food. The raw materials are sourced worldwide and, in the case of tea, come partly from large tea gardens, otherwise from smallholder cultivation or wild gathering.

The aim now is to ensure the availability of these 300 or so plants (and plant parts) for the general public also in the future.

Issue

The global free trade in tea and herbal and fruit infusions has a centuries-old tradition. Tea and herbal and fruit infusions are natural and healthy foods. Consumers have been able to benefit extensively from the wide variety of different flavours and products and their positive properties.

Importers and manufacturers currently have unrestricted access to the plants used for the production of tea and herbal and fruit infusions, meaning that the plants could be regarded and used as common property. They were available to all companies for the production of their products.

For some time now, however, there have been tendencies for individual market participants to attempt to restrict and thus monopolise the general availability of plants to their exclusive advantage. To do this, they use legislative provisions that actually have a different objective or protective purpose. Prominent examples are the entry of *Cistus incanus* L. *Pandalis* (Rockrose) in the Union list¹ for the Novel Foods Regulation² and the protection of watercress through its registration in the European Register of Traditional Specialities Guaranteed³.

The first regulation on novel foods serves to ensure the free movement of safe and healthy foods. It is intended to remove barriers that exist as a result of different national legislation when assessing the safety and authorisation of novel foods and to create fair competitive conditions.

¹ COMMISSION IMPLEMENTING REGULATION (EU) 2022/202 of 14 February 2022 correcting Implementing Regulation (EU) 2017/2470 establishing the Union list of novel foods concerning *Cistus incanus* *Pandalis*

² Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods

³ Commission Implementing Regulation (EU) 2022/2000 of 18 October 2022 entering a name in the register of Traditional Specialities Guaranteed 'Watercress' / 'Cresson de Fontaine' / 'Berros de Agua' / 'Agião de Água' / 'Waterkers' / 'Brunnenkresse' (TSG)



The regulation is not intended to restrict public access to plants that are a natural part of the global flora and are generally suitable as food.

It is contrary to this purpose if individual market participants exploit the protection mechanism of the Regulation to permanently secure a monopoly on the commercialisation of such plant products. In the case of *Cistus incanus* L., a plant variety right was registered for these plants by adding the name "Pandalis" in accordance with the European Plant Variety Protection Regulation⁴. Plant variety protection is an exclusive right comparable to a patent and protects the intellectual property of new plant varieties. Plant variety protection thus serves plant breeding and breeding progress in agriculture and horticulture⁵.

In contrast, plant variety protection does not apply to the harvested material obtained from the plants, to which the provisions of food law, including the Novel Food Regulation, apply. In contrast to the plants themselves, which are covered by plant variety protection, the harvested material is accessible to the general public. In the case of *Cistus incanus* L. Pandalis, the regulation for plants was transferred to this foodstuff in order to monopolise the marketing of the harvested material for an unlimited period of time, contrary to the legal system. This interferes with competition and restricts the marketing of the foodstuff in a form not provided for by the Novel Foods Regulation. On the contrary, this regulation aims to make novel foods accessible to all market participants after a certain period of time if the substances are identical. The approach shown in the case of *Cistus incanus* L. Pandalis harbours the risk that the marketing of plant-based foods will be increasingly monopolised in the future and thus restricted at the expense of the general public.

Also, in the case of watercress, a producer group attempted to monopolise the entire species *Nasturtium officinale* - in this case via the regulation on the protection of traditional specialities. In the end, however, protection was restricted to a specific type of cultivation as part of the application procedure, meaning that watercress can in principle continue to be marketed without restriction. The restrictions imposed by the regulation only apply in the case of labelling of the particular cultivation variant. The regulation on the protection of traditional specialities therefore also poses the risk that further experiments will be carried out in future under this regulation with the aim of monopolising the marketing of certain harvested plant products.

In order to maintain unrestricted public access to plant-based foods and avoid monopolisation, it must be ensured that regulations are not applied in a way that is contrary to the system to protect individual market participants and that abusive applications are fended off.

The demands outlined are also in line with the objectives of the Nagoya Protocol, which provides for access to plant resources for all under fair conditions. The traditional knowledge of indigenous peoples relating to genetic resources is recognised through benefit-sharing.

Finally, this is in line with the spirit and objectives of the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge⁶. This treaty aims to improve the effectiveness, transparency and quality of the patent system in relation to genetic resources and associated traditional knowledge. It also aims to prevent patents from being wrongly granted for inventions that are not new or inventive in relation to genetic resources and associated traditional knowledge.

⁴ Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights

⁵ <https://www.bundessortenamt.de/bsa/sorten/sortenschutz> _ last visit: 19/02/2025

⁶ https://www.wipo.int/edocs/mdocs/tk/en/gratk_dc/gratk_dc_7.pdf _ last visit: 19/02/2025