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On 27 October 2023 the Regulation (EU) 2023/2411 of the European Parliament and of the Council of 18 October 2023 on the protection of geographical indications for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753 (“Regulation”) was published. This Regulation introduces a new EU intellectual property right, extending the protection for geographical indications (“GI”) to craft and industrial products. Up to now, only agricultural products, wine and spirit drinks could enjoy EU GI protection, and only a few Member States had provided at national level a specific legal framework for recognizing and protecting GI’s for craft and industrial products.

## SUBJECT MATTER

The Regulation aims to protect GI’s for craft and industrial products with a given quality, reputation or other characteristic linked to their geographical origin (Article 1). Although the provisions are in line with EU Regulations protecting GI’s for agricultural products or foodstuffs (Reg. EU nr. 1151/2012), wine (Reg. EU nr. 1308/2013) or spirit drinks (Reg. EU 2019/787), the overall system is not yet unified.

Under the new Regulation, craft products are defined as products “produced either entirely by hand, or with the aid of manual or digital tools, or by mechanical means, whenever the manual contribution is an important component of the finished product” (Article 4). A craft product, therefore, does not need to be entirely handcrafted: it can also be produced with mechanical means, but it does require a “significant” manual contribution. Industrial products are defined as products “produced in a standardised way, including serial production and by using machines” (Article 4).

For both categories the name of the product can qualify as a GI if the product (Article 6):

- originates in a specific place, region or country;
- has a given quality, reputation or other characteristic essentially attributable to its geographical origin; and
- has at least one of the production steps of the product that takes place in the defined geographical area.

These requirements, inspired by article 22.1 of the TRIPs Agreement, mirror the framework of the broadly defined Protected Geographical Indications (PGI) for food, agricultural products, wine and spirit drinks, rather than the category of Protected Denominations of Origin (PDO) that remain specific to food and wine. Indeed, the quality, reputation or other characteristic of the craft or industrial product shall be essentially, but not exclusively attributable

## PROTECTED GEOGRAPHICAL INDICATIONS

### NEW EU REGULATION FOR CRAFT AND INDUSTRIAL PRODUCTS



to its geographical origin, and unlike PDO, only one production step of the product must take place in the defined geographical area. Only the PGI logo will therefore be applicable to GIs for craft and industrial products (Article 48).

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## REGISTRATION PROCEDURE : NEW COMPETENCES FOR THE EUIPO

The Regulation provides a two-phase registration process for craft or industrial products as geographical indications. In principle, the initiative to submit the application for the registration of a GI belongs to a producer group of the product that will bear the PGI. Producer groups operate in a transparent, open and non-discriminatory manner, allowing new producers to join. The tasks of a producer group are defined in Article 45. The right to use a registered GI does not depend on membership of a producer group, but belongs to any producer of a product that is compliant with the product specification. The GI registrations lead thus to a collective right of use and not to an individual property right.

As applicants determine and file a product specification to start the registration process, many delicate aspects have to be considered at this stage, such as the main product characteristics, production methods, the link with the geographical area, but also the name to be protected that refers to this geographical area, the specification of the defined geographical area referred to, and even specific packaging and labelling issues. Next to the detailed product specification, a “single document” summarizes the main information. During the application process, producer groups can be assisted by local or regional entities.

The registration procedure comprises a national phase organized by the Member States (notwithstanding specific derogations under Article 19) and a phase at Union level.

In the national phase, a Member State’s designated national authority examines the product specification and the GI application (Article 12). In Belgium, the Regions (Flanders, Brussels, Wallonia) are competent for the recognition and protection of GIs. Subsequently, after publication of the application, a national opposition, open to residents of the Member State, and appeal procedure can be launched (Article 15).

Upon conclusion of the national phase, Member States will submit successful applications to the European Union Intellectual Property Office (EUIPO) for the second phase at Union level (Article 22).

Hence, and except in case the Commission decides to take over (Article 30), the EUIPO will have the competence for examining and deciding upon GI’s for craft and industrial goods. A new “Geographical Indications Division” has thereto been created within the EUIPO (Article 23). While the European Commission still remains responsible for this phase as regards agricultural products, wine and spirits, the situation may change in the future if new legislation is passed.

The EUIPO will publish the applications in a Union register for GIs related to craft and industrial products after receiving them and checking the correctness and completeness of the information provided and the single document (Article 22(7)).



It can consult an Advisory Board, composed of one representative from each Member State and the Commission. The Advisory Board's role is to provide opinions on various matters, such as assessing the connection between a product's characteristics and its geographical origin or establishing a product's reputation (Article 35). In specific circumstances, experts may be invited to offer their expertise to the Advisory Board (Article 35(3)).

An opposition procedure before the EUIPO allows, in this second Union phase, other Member States, third countries or their residents to oppose registration on limited grounds (Article 26) or to file a "notice of comments" on other grounds. In case of opposition, the parties will be invited to conduct consultations that will possibly lead to a modified application.

Finally, the EUIPO decides upon the application and on the opposition depending on the outcome of the consultations. Decisions of the EUIPO can be appealed before the EUIPO Boards of appeal (Articles 25 and 33) and thereafter before the General Court, which has the jurisdiction to annul or alter the contested decision (Article 33(6)).

Importantly, the possible grounds for opposition, that would prevent registration of the GI, are restricted, both in the national and in the Union phase of the registration procedure:

- the proposed geographical indication does not comply with the requirements for protection under the Regulation, which means it cannot be considered as a GI;
- the proposed geographical indication is a generic term. Names that are generic terms, i.e. common product names (Article 4(1)) cannot be registered as GI's (Article 42);
- the proposed geographical indication conflicts with a wholly or partly homonymous name that has been applied for or is protected as a geographical indication (Article 43);
- in the light of an existing trademark with a reputation or a well-known mark, when the name proposed as a geographical indication would be liable to mislead the consumer as to the true origin of the product (Article 44(2));
- the registration of the proposed geographical indication would jeopardise the existence of a trademark or an identical or similar name used in the course of trade, or the existence of products that have been legally on the market for at least five years preceding the date of the publication of the application provided for in Article 22(7).

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## USE

Once registered the GI may be used by any producer of products that complies with the product specification. The producers will have to ensure this compliance, including the steps required to take place in the defined geographical area to which the GI refers.

The Union GI symbol as well as adequate indication, abbreviations and references to the concerned geographical area may then be used on the labelling of the product and in advertising material or communication. There is however no obligation to do so.



## SCOPE OF PROTECTION

Article 40(1) of the Regulation provides a scope of protection similar to that of GIs in the sectors of food, agricultural products, wine and spirit drinks. Under this Article, the producer group or any producer that is entitled to use the protected geographical indication (“PGI”) have the right to act in essence against:

- any direct or indirect commercial use of the geographical indication for products not covered by the registration, especially where those products are comparable to the products covered by the registration or where the use of the name affects the reputation of the PGI;
- any misuse, imitation or evocation of the name protected as a geographical indication even if the true origin of the products or services is indicated or if the protected geographical indication is translated or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’, ‘flavour’, ‘fragrance’, ‘like’ or similar;
- any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product used on packaging, advertising materials, documents or information online as well as by packing the product in a container liable to convey a false impression as to its origin;
- any other practice liable to mislead the consumer as to the true origin of the product.

With regard to the concept of “evocation”, the Regulation follows the definition established by the Court of Justice of the European Union (“CJEU”) and provides that *“the evocation of a geographical indication shall be deemed to arise, in particular, where a sufficiently direct and clear link with the product covered by the registered geographical indication is created in the mind of the average European consumer who is reasonably well-informed and reasonably observant and circumspect”*. This is the first time that the concept of “evocation” is taken over by the EU legislator. It is worth noting that the initial proposal included in the definition of evocation a condition of harming the reputation of the GI.

The GI protection for industrial and craft products also extends further than the GI protection for agricultural products, wine or spirit drinks: the Regulation provides that this category of GIs are protected against any use of a domain name that is contrary to the protection set in Article 40(1), and that the producer group or any producer that is entitled to use the protected geographical indication can exercise their rights on goods in transit (Article 40(4)). Furthermore, any alternative dispute resolution procedures for domain names in the Union shall recognise registered geographical indications as a right that can be invoked in those procedures (Article 46). These new additions aim to strengthen the protection of GIs and combat counterfeiting effectively.

As part of the protection, a registered GI shall not become a generic term within the EU (Article 40(7)). While the GI may be used by any producer of products that comply with the product specification, the producer’s group will have to ensure the compliance with the product specification, including the steps required to take place in the defined geographical area to which the GI refers.

With respect to trademarks, a registered GI constitutes a ground for refusal for trademarks falling within the GI’s scope of protection. Any application for the registration of a trademark that, if used, would be in conflict with Article 40, will be



refused if it is submitted after the date when the application for the registration of the GI has been submitted to the EUIPO. If the trademark has been applied for, registered, or established by use in good faith within the Union before the date on which the application for registration of the GI is submitted to the EUIPO, the trademark may continue to be used and renewed notwithstanding the registration of the GI (in this situation, the GI and the relevant trademark may coexist). Conversely, an application for the registration of a GI will be refused, possibly after opposition, where, in the light of a trademark with a reputation or a well-known mark, the name proposed as a GI is liable to mislead the consumer as to the true identity of the product (Article 44).

Noteworthy is the possibility to use the GI together with certification or collective trademarks (Article 40(5)).

Finally, it is permissible to indicate that a product contains, as part or component, a craft or industrial product registered as a GI, if such use is in accordance with honest commercial practices and does not exploit, weaken, or dilute the reputation of the GI. However, the GI cannot be included in the sales designation of that product, unless the applicant, under whose name the geographical indication has been registered, has granted his consent for such use (Article 41). Such requirement of consent is new for GI's, that do not have a "proprietor" and thus, traditionally, no possibility for being licensed. In this respect and by contrast, the CJEU held, regarding the use of "Champagne" in a product name for a food product "Champagner Sorbet" containing "Champagne" as ingredient, that the use of a protected designation of origin as part of the name under which a foodstuff is sold is not problematic if that foodstuff has "a taste attributable primarily to the presence of that ingredient in the composition of the foodstuff, regardless of the consent of the producers' association." (case C-393/16).

Registered GI's can receive an international protection through registration under the Lisbon Agreement on Appellations of Origin and Geographical Indications. In this respect, EU Regulation 2019/1753 is amended to offer the possibility to register GIs for craft and industrial products in the international register.

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## AMENDMENT TO THE PRODUCT SPECIFICATION

Any amendment to the product specification of a registered GI, that is in the hands of a producer group, requires adequate procedures. The Regulation however installs different categories of amendments: Union amendments and standard amendments.

Union amendments concern the protected name or the use of that name as well as amendments that can undermine the link between the product and the geographical area or amendments entailing restrictions on the marketing of the product. They require to go through the same procedure as for the GI protection, including the possibility to oppose these amendments.

Standard amendments can be made through a simplified procedure before the EUIPO.

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## CONTROLS AND ENFORCEMENT

The Regulation installs an effective control system, that includes verification of the compliance with the product specification and monitoring of the correct use of GIs in the market, including on electronic commerce. The system thus



contributes to quality certification. National competent authorities will be designated to organize this in the Member States. The authorities carry out inspections, monitor the market and act against illegal content online. They can rely on certification bodies or specialized natural persons for control tasks.

The users of GIs have to be aware of the duty to file a “self-declaration” of compliance with the product specification, to be submitted to the competent authority prior to placing the product on the market under the GI and to be repeated and updated every three years.

Producer groups also play an important role in ensuring compliance of their members, improving the performance of the GI and taking legal action, notably to combat counterfeit and fraudulent use.

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## CANCELLATION

Once registered, the grounds to cancel a GI registration are limited, but still broader than under existing regimes for foodstuffs, wine and spirits.

A GI's registration shall be cancelled on the same ground that would justify an opposition to its registration (generic term, conflict with homonyms, conflict with trademarks). It may be cancelled when compliance with the product specification cannot be ensured any longer, or when no product has been placed on the market under the geographical indication for a consecutive period of at least five years (Article 32). Finally, it may also be cancelled at the request of the applicant (producer group) in whose name the geographical indication is registered.

A cancellation procedure follows the rules of the registration and amendments procedures.

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## WHAT'S NEXT?

The Regulation has been published on 27 October 2023 and enters into force as from 15 November 2023, but will be applicable only two years thereafter as from **1 December 2025**. Once applicable, craft and industrial products such as jewellery, textiles, lace, glass or porcelain (among others) will be able to benefit from a GI protection.

The next evolution in the EU GI system could be a new Regulation that would lay down, in a single text, rules for GIs for wine, spirit drinks and agricultural products. A proposal has been made by the Commission<sup>1</sup> and triologue negotiations about a new GI Regulation have already started among the Parliament, the Council and the Commission.

1. Proposal for a regulation of the European parliament and of the council on European Union geographical indications for wine, spirit drinks and agricultural products, and quality schemes for agricultural products, amending Regulations (EU) No 1308/2013, (EU) 2017/1001 and (EU) 2019/787 and repealing Regulation (EU) No 1151/2012, COM/2022/134 final/2

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**For any questions or assistance, please reach out to our  
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