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Publication of the new Regulation on the protection of European craft and industrial products

Following approval by the Council of the European Union and the European Parliament, the new Regulation on the protection of geographical indications for craft and industrial products was published on October 27, 2023 in the Official Journal of the European Union.

This Regulation marks a significant milestone in the protection of the names of European craft and industrial products as it creates a single system of protection throughout the territory of the European Union.

The new Craft and Industrial Geographical Indication Regulation, known as the CIGI Regulation^[1], is one of the key proposals under the Intellectual Property Action Plan, which was presented by the European Commission in November 2020^[2].

European geographical indication protection has long been established for some agricultural products like Champagne or Prosciutto di Parma. This was not yet the case for craft and industrial products, even though a number of Member States had put in place a system of protection of such products.

This lack of unitary geographical indication protection framework for craft and industrial products in the European Union ("EU") led to variations in legal protection across different EU Member States.

The CIGI Regulation aims to rectify this situation by harmonizing the protection of these valuable European products throughout the territory of the EU.

A unified EU-Wide protection

Names of craft and industrial products that meet the necessary requirements for protection under the new CIGI Regulation will now be safeguarded at the EU level through a single registration that covers the entire EU territory.

Previously, the relevant stakeholders had to register their geographical indication in each EU Member State, if available, to combat infringements.

Under the new CIGI Regulation, craft and industrial producers can now obtain protection in all 27 EU Member States with just one geographical indication registration.

Definition and requirements for a geographical indication

The CIGI Regulation defines “*craft and industrial products*” as products (a) 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, or (b) produced in a standardized way, including serial production and by using machines.

For the name of a craft or industrial product to qualify for protection as a geographical indication, the product must comply with the following requirements:

- The product must originate in a specific place, region, or country;
- The product’s given quality, reputation or other characteristic must be essentially attributable to its geographical origin; and
- at least one of the production steps of the product must take place in the defined geographical area.

Products that are contrary to public policy shall be excluded from geographical indication protection.

Scope of protection

Geographical indications that will be entered in the EU register of geographical indications for craft and industrial products will be protected against:

- Any direct or indirect commercial use of the geographical indication in respect of products not covered by the registration, where those products are comparable to the products covered by the registration or where the use of the name exploits, weakens, dilutes, or is detrimental to, the reputation of the protected geographical indication;

- 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”, “flavor”, “fragrance”, “like” or similar expression;
- Any other false or misleading indication as to the provenance, origin, nature, or essential qualities of the product that is used on the inner or outer packaging, on advertising materials, in documents or information provided on online interfaces relating to the product, as well as the packing of 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.

The protection of geographical indications shall also apply to domain names, goods sold by means of distance selling, such as electronic commerce, goods entering the customs territory of the EU without being released for free circulation within that territory.

Examination of applications for registration of a geographical indication

The examination of applications for registration of a geographical indication will comprise two phases:

- A first phase at the national level: Producers will first file their geographical indication applications to designated Member States’ authorities for examination;
- A second phase at the EU level: The national designated authorities will then submit successful applications for further evaluation and approval to the European Union Intellectual Property Office (“EUIPO”).

It should be noted that a direct application procedure to EUIPO will also be possible for Member States that obtain a derogation from the Commission after having produced evidence that (i) they do not have a national specific protection for geographical indications for craft and industrial products, and (ii) the local interest for protecting geographical indications for craft and industrial products is low.

The European Commission may take over from the EUIPO, at any time before the end of the registration procedure, on its own initiative or at the request of the competent authority of a Member State or of the EUIPO, the power to decide on the application where the registration of the proposed geographical indication might be contrary to public policy, or where such registration or the rejection of the application might jeopardize EU’s trade or external relationships.

The Regulation also specifies the opposition procedures at the national level and at the EU level.

Enforcement and quality control

Member States shall designate one or more competent authorities responsible for the controls. Such authority(ies) must have at their disposal qualified staff and the resources necessary to carry out their

functions efficiently.

The new CIGI Regulation provides for two types of controls:

- Verification that a product designated by a geographical indication complies with the corresponding product specifications;
- Monitoring of the use of geographical indications in the market, including in e-commerce.

For a product designated by a geographical indication and originating in the EU, the verification of compliance with the corresponding product specifications shall be carried out by means of a self-declaration, using a standard form annexed to the CIGI Regulation.

As such, prior to placing the product on the market, producers shall submit a self-declaration to the designated authority. Once the product is on the market, producers shall resubmit a self-declaration every three years to demonstrate continued compliance of the product with the product specification. Where the product specification is amended in a way that affects the relevant product, the self-declaration must be updated without delay.

The designated authority shall check, at least, that the information provided in the self-declaration is complete and consistent. If it has no reservations, it shall issue a certificate of authorization to use the geographical indication for the product concerned or renew the existing certificate.

Under this self-declaration procedure, controls can take place before and after the product has been placed on the market. Such controls shall be carried out, based on a risk analysis and, as the case may be, on notifications by interested producers of products designated by the geographical indication, by the designated authority or by one or more product certification bodies or natural persons to which control tasks have been delegated.

As an alternative to the self-declaration procedure, Member States may provide for the verification of compliance of the product with the corresponding product specifications directly by the designated authority or by one or more product certification bodies or natural persons to which control tasks have been delegated.

With respect to the monitoring of the use of geographical indications, the designated authority shall monitor the use of geographical indications in the market, irrespective of whether the products concerned are in storage or transit, or being distributed or offered for sale at wholesale or retail level, including in electronic commerce.

Where necessary, it shall take appropriate administrative and judicial steps to prevent or stop the use of names on products or services that are produced, provided or marketed in their territory and that contravene the protection of geographical indications.

It should be noted that Member States shall be responsible for determining the applicable penalties in case of

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infringements. Such penalties must be proportionate and dissuasive and aimed at deterring possible fraudulent behavior by producers of products designated by a geographical indication, and discouraging persons from infringing geographical indications.

International Opportunities

The CIGI Regulation will facilitate the internationalization of European craft and industrial products by providing geographical indication protection for EU producers in markets of third countries that are Parties to the World Intellectual Property Organization (WIPO) Geneva Act^[3] and under bilateral trade agreements.

This means that EU craft and industrial producers will have the ability to seek international protection for their products' names, thereby enhancing their global competitiveness.

Third country producers will also be able to seek protection under this new scheme for their well-known craft and industrial products that comply with the EU requirements.

Next Steps

Member States, the EUIPO, the Commission and stakeholders will have two years to prepare for the full application of the new system which is foreseen for December 2025.

Existing national craft and industrial product geographical indications will cease to exist one year after the date of full application of the CIGI Regulation.

[1] Available here: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202302411

[2] The European Commission's communication on the intellectual property action plan to support the EU's recovery and resilience is available here: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52020DC0760>

[3] Available here: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_239.pdf

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