

# EUROPEAN UNION GEOGRAPHICAL INDICATIONS FOR CRAFT AND INDUSTRIAL PRODUCTS. A COMPARATIVE LOOK AT GEOGRAPHICAL INDICATIONS FOR OTHER TYPES OF PRODUCTS

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## Abstract

*The geographical indications are part of intellectual property system, and their importance was proven over time both from consumer protection point of view, but also from business point of view. Since almost the end of 2023 we have a new EU Regulation which regulates the GIs for craft and industrial products at EU level and this paper is proposing to present the final legal framework and the provisions implemented regarding the products that will be object of the protection, the registration, opposition and cancellation procedures, the actions against which the registered GIs are protected, the new role of the EUIPO and other novelty aspects in comparison with (1) the legal provisions under the proposal of the EU Regulation, (2) the existing GIs for other types of products and with (3) the new proposal for GIs for wine, spirit drinks and agricultural products.*

**Keywords:** *agricultural products, European Union Intellectual Property Office, coexistence, trademarks, domain name, Romania.*

## 1. Introduction

On October 18, 2023, the European Parliament and the Council adopted the EU Regulation on the protection of geographical indications for craft and industrial products ('EU GI Regulation for craft and industrial products') and it was published in the Official Journal of the EU on October 27, 2023<sup>1</sup> entering into force on November 16, 2023<sup>2</sup>. However, the EU GI Regulation for craft and industrial products will be applicable to EU member states starting with December 1, 2025, except from some

provisions which entered into force on November 16, 2023<sup>3</sup>, namely: (1) derogations from national stage, (2) establishment of an advisory board, (3) adoption by the Commission of implementation acts setting out the IT architecture and presentation of the Union register, (4) IT system, (5) establishment of the Committee for Craft and Industrial Geographical Indications, (6) exercise of the delegation by the Commission, (7) obligation of EU Member States to inform the Commission about their choice to

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<sup>1</sup> 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 published in JOEU Series L dated 27 October 2023.

<sup>2</sup> 20th day as of the publication in JOEU, according to art. 73 of EU GI Regulation for craft and industrial products.

<sup>3</sup> Art. 73 of EU GI Regulation for craft and industrial products.

derogate from the standard registration procedure.

This EU GI Regulation for craft and industrial products is important because the GIs for craft and industrial products could have been registered until its entering into force only at national level and not all EU member states had in their national legislation the possibility for such registration, existing therefore a non unitary legislation. Even if, at EU level existed before a quality scheme for food and wine products, GIs for other products, be they of natural or industrial origin – for instance, Carrara marble or Brussels lace – could not have obtained protection at EU level, but only at national level.

Unlike other authors<sup>4</sup>, we do not think that this system of protection will negatively affect the trade and European competitiveness even if it is protecting traditional ways of doing the products because this system is rather preventing persons without rights to use geographical names for their products which are not originating from that specific area having in view that GIs protect the cultural heritage of a region and protecting the past does not mean standing in the way of innovation. In addition, GIs give a state of comfort to the final consumer in respect to the origin of the product.

Also, this EU Regulation comes to complete the existing quality scheme for food and wine products represented by the protection granted through GIs at EU level which covers:

a) Agricultural products and foodstuffs – based on Regulation (EU) no. 1151/2012

on quality schemes for agricultural products and foodstuff ('EU Regulation no. 1151/2012 for agricultural products and foodstuff')<sup>5</sup>;

b) Spirit drinks – based on Regulation (EU) no. 2019/787 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) no. 110/2008 ('EU Regulation no. 2019/787 for spirit drinks')<sup>6</sup>;

c) Wines – based on Regulation (EU) no. 1308/2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No. 922/72, (EEC) No. 234/79, (EC) No. 1037/2001 and (EC) No. 1234/2007 ('EU Regulation no. 1308/2013 for wines')<sup>7</sup>;

d) Aromatised wines – based on Regulation (EU) no. 251/2014 on the definition, description, presentation, labelling, and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No. 1601/91 ('EU Regulation no. 251/2014 for aromatised wines')<sup>8</sup>.

These quality schemes provide the basis for identifying and, where appropriate, protecting names and terms which, in particular, indicate or describe products with value-added characteristics; or value-added properties.

However, the Commission proposed on March 31, 2022 an EU Regulation on EU

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<sup>4</sup> Christina Wainikka, *A Geographical Indication protection for craft and industrial products will undermine both trade and European competitiveness*, 2022, [https://www.svensktnaringsliv.se/english/a-geographical-indication-protection-for-craft-and-industrial-pro\\_1187360.html](https://www.svensktnaringsliv.se/english/a-geographical-indication-protection-for-craft-and-industrial-pro_1187360.html) (last time accessed on 21.04.2024).

<sup>5</sup> Published in JOEU L 343 dated 14 December 2012.

<sup>6</sup> Published in JOEU L 130 dated 17 May 2019.

<sup>7</sup> Published in JOEU L 347 dated 20 December 2013.

<sup>8</sup> Published in JOEU L 84 dated 20 March 2014.

GIs for wine, spirit drinks and agricultural products ('Proposal of EU Regulation on EU GIs for wine, spirit drinks and agricultural products') whose purpose is to harmonise procedural rules, having as effect the repealing of EU Regulation no. 1151/2012 for agricultural products and foodstuff and amendment of EU Regulation no. 2019/787 for spirit drinks and EU Regulation no. 1308/2013 for wines.

It can be noticed that the European Commission was and still is preoccupied to consolidate the protection of GIs for agricultural products, and to create the system of protection through GIs for non-agricultural products at EU level.

## **2. Registration, protection and cancellation of GIS for craft and industrial products**

### **2.1. General aspects regarding the EU GI Regulation for craft and industrial products**

The interest of the EU Commission in the protection of GIs for craft and industrial products at EU level dates back in 2011 when it mentioned in a communication related to 'A single market for Intellectual Property Rights' that 'geographical indications are a tool for securing the link between a product's quality and its geographical origin' and that the

fragmentation between EU Member States regarding the protection of non-agricultural products through the geographical indications system 'may negatively affect the functioning of the internal market'. Therefore, since that moment, the Commission took the responsibility to launch a study on the issue of geographical indications for non-agricultural and non-food products<sup>9</sup>.

In 2019, the EU signed the Geneva Act of the Lisbon Agreement on Designations of Origin and Geographical Indications which grant protection for all types of geographical indications, therefore for agricultural, foodstuff, wines, spirit drinks, craft, and industrial products and which allows their international registration. If a legal framework would not have been introduced at EU level for craft and industrial products, the EU would not have been able to observe its obligations at international level for all kind of products.

In 2020, the above-mentioned study was released<sup>10</sup> and it revealed that 'the protection of craft and industrial geographical indications would be beneficial overall to both consumers and producers, while also supporting regional development'<sup>11</sup>.

On April 13, 2022 the Commission adopted the Proposal of a Regulation on geographical indication protection for craft and industrial products ('Proposal for the EU Regulation for craft and industrial

<sup>9</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Single Market for Intellectual Property Rights. Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe*, 2011, p. 16, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0287:FIN:en:PDF> (last time accessed on 21.04.2024).

<sup>10</sup> European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, Winkel, A., Taranic, I., Waichman, I. et al., *Economic aspects of geographical indication protection at EU level for non-agricultural products in the EU –*, Publications Office, 2020, <https://data.europa.eu/doi/10.2873/58493> (last time accessed on 21.04.2024).

<sup>11</sup> Eleonora Rosati, *Geographical indications (GIs) for craft and industrial products*, 2022, <https://business.ideaspowered.eu/news/geographical-indications-gis-craft-and-industrial-products> (last time accessed on 21.04.2024).

products’). The Proposal for the EU Regulation was accompanied by the Impact Assessment Report drafted by the Commission<sup>12</sup> which revealed three options for the protection of craft and industrial products, namely: (1) extending the existing protected geographical indications/protected designations of origin schemes to craft and industrial products, (2) self-standing EU Regulation creating sui-generis geographical indication protection and (3) trademark reform. Out of these three options, the Commission finally choose the second option.

On September 9, 2022, the European Economic and Social Committee issued its opinion on the Proposal for the EU Regulation<sup>13</sup>. In its opinion, the Committee mentioned that it would have been better if a single legal framework would have been implemented both for agricultural, food products and for craft and industrial products in order to ‘avoid the further expansion of legislation, procedures and authorities’. We share the Committee’s opinion all the more there are multiple identical provisions for these types of products on the other hand and different deadlines for certain actions on the other hand, as we shall see in the next sections of this paper. The other Committee’s suggestions will be presented in the next sections where we discuss the registration, protection, and cancellation system.

On October 10, 2022, the Committee of the Regions issued its opinion on the Proposal for the EU Regulation<sup>14</sup>. This

Committee had multiple recommendations of amendments and we will analyse them in the next sections where we discuss the registration, protection, and cancellation system.

Between the Council and the EU Parliament there were multiple discussions regarding the final content of the EU GI Regulation for craft and industrial products, discussions which finalized on October 18, 2023 when this regulation was adopted, as mentioned above.

## **2.2. Scope and object of protection by the EU GI Regulation for craft and industrial products**

The EU GI Regulation for craft and industrial products, like the Proposal for the EU Regulation, is structured in eight titles, and it grants protection to craft and industrial products not applying to spirit drinks, wines, agricultural products, and foodstuffs. However, the Proposal for the EU Regulation provided that the craft and industrial products were those listed in Annex no. 1 to Council Regulation no. 2658/87 while the final text represented by the EU GI Regulation for craft and industrial products does not have this indication anymore.

We think that the reason for this deletion is represented by the fact that both European Parliament and Council proposed the deletion of the reference to the products listed in Annex no. 1 to Council Regulation no. 2658/87 and we find it welcomed

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<sup>12</sup> European Commission, *Impact assessment report on geographical indication protection for craft and industrial products*, 2022, [https://single-market-economy.ec.europa.eu/publications/regulation-geographical-indications-craft-and-industrial-products-documents\\_en#files](https://single-market-economy.ec.europa.eu/publications/regulation-geographical-indications-craft-and-industrial-products-documents_en#files) (last time accessed on 21.04.2024).

<sup>13</sup> Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on geographical indication protection for craft and industrial products and amending Regulations (EU) 2017/1001 and (EU) 2019/1753 of the European Parliament and of the Council and Council Decision (EU) 2019/1754, 21.09.2022, published in OJEU C-486 dated 21 December 2022.

<sup>14</sup> Opinion of the European Committee of the Regions — Protecting industrial and craft geographical indications in the European Union (revised), published in OJEU C-498 dated 30 December 2022.

because that annex also included food products and raw materials for foodstuff which could have been confusing.

If the Proposal for the EU Regulation provided for two separate definitions, namely for 'craft products' and for 'industrial products', the EU GI Regulation for craft and industrial products provide a single definition for 'craft and industrial products', the Council being the institution which suggested during discussions a combined definition for the two notions, namely 'craft and industrial products', by amending the initial definitions of each notion and resulting the following definition: 'craft and industrial products' refers to 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 a craft or industrial product to be protected under GI based on both the EU GI Regulation for craft and industrial products and the Proposal for the EU Regulation, it must accomplish the following cumulative requirements: (1) to originate in a specific place, region or country; (2) its given quality, reputation or other characteristics is essentially attributable to its geographical origin and (3) at least one of the productions steps of the product takes place in the defined geographical area.

If we compare this definition with the definition of GIs for other products, we notice that:

a) the condition related to the origin - For agricultural products and foodstuff and spirit drinks it is allowed that the product to bear the name of a country also, however, for wines this is allowed only in exceptional cases;

b) the condition related to the quality, reputation or other characteristics of the products – it is the same for the names of agricultural products and foodstuff, spirit drinks and wines;

c) the condition obliging to have at least one production step into the geographical area – it is the same for the names of agricultural products and foodstuff while for wines it is imposed that all productions steps from the from the harvesting of the grapes to the end of the winemaking process to have place in the geographical area and also for spirit drinks.

Also, it must be mentioned that the European legislator chosen the protection through the more relaxed means, excluding the stricter protection through protected designations of origin which involves that all productions steps to take place in the defined geographical area and that the product to have qualities and characteristics attributable mainly or exclusively to a certain geographic area with own natural and human factors.

The European Economic and Social Committee agreed with the option chosen by the Commission having in view that 'the identity of a craft or industrial product may remain, even if one of production stages originates in another region, as its identity stems from the history or method of production'. In addition, we mention that for craft and industrial products it is not necessary that the environment to have an impact on the product and give it certain characteristics that can be obtained from a certain area only, but it should be enough for the product to have a certain reputation only from the geographical area with only one production step in that area. We may criticize the 'reputation' criteria having in view that it is assessed based on 'subjective elements, such as the consumer appreciation, which are not necessarily

founded on verifiable facts'<sup>15</sup>, but it confers an easier way to establish and maintain such a geographical indication for such a product.

In our opinion, the chosen option does not necessarily determine the increase of workplaces in the designated geographical area since only one step of the production process must take place in the designated geographical area. As such, 'all the raw materials can come from somewhere else; 99% of production steps can take place in Brazil or China, as long as 1% takes place within the defined geographical area.'<sup>16</sup>

However, the European Parliament suggested the amendment of the third condition, replacing 'at least one of the production steps' with 'the main' production steps. We salute the Parliament's suggestion, but unfortunately it was not taken into account even if, from our point of view, the amendment would have ensured a better protection of the local traditions and would have solved the criticisms regarding the low development of employment in the designated geographical area.

The registered geographical indications for craft and industrial products will use the same symbol, indication and abbreviation as the ones for agricultural products and foodstuff.

### **2.3. Names that cannot be protected through the GI system**

The provisions of the EU GI Regulation for craft and industrial products forbid the registration of names as GIs if: (1) the name is or has become a generic term, (2) the name is homonymous with a prior one, with some exceptions, (3) the products for which the GI is seek are contrary to public policy.

The first two cases are stipulated more or less in the same way in the EU Regulations related to GIs for agricultural products and foodstuff, wines and spirit drinks. However, the third case is new, not being stipulated in any of the other existing regulations. However, in the Proposal of EU Regulation on EU GIs for wine, spirit drinks and agricultural products, the Commission introduced this provision also and it completed it with products contrary 'to accepted principles or morality', but only for agricultural products. This is a new approach for the registration of such names having in view that the trademarks can be registered irrespective of the nature of products, and it is forbidden only the registration of the trademark which would contravene to public policy or to accepted principles of morality.

#### **Generic term**

By the notion of 'generic term' it is understood under the EU GI Regulation for craft and industrial products: (a) the name that become the common name of a product within the EU (this situation is identical to the ones specified for agricultural products and foodstuff, wines and spirit drinks) or (b) a common term that describes the type of product, its attributes or (c) a term that does not refer to a specific product. The last two cases are new by reference to the legislation regarding the GIs for other products. The content of this definition was the same in the essential parts in the Proposal for the EU Regulation.

For the generic terms the current Court of Justice of the EU ('CJEU') case law will be applicable. In case no. C-343/07, CJEU established that 'a name becomes generic only if the direct link between, on the one

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<sup>15</sup> Annette Kur, Thomas Dreier, Stefan Luginbuehl, *European Intellectual Property Law. Text, Cases and Materials. Second Edition*, Edward Elgar Publishing, 2019, p. 442.

<sup>16</sup> Christina Wainikka, *op. cit.*

hand, the geographical area of the product and, on the other hand, a specific quality of this product, its notoriety or another characteristic of it that can be attributed to that origin disappears, and the name only describes a genre or type of products<sup>17</sup>.

In the same case, the CJEU established how we appreciate that a name is a generic one. In this regard, the Court showed that ‘in the assessment of the generic character of a name, it must [...] take into account the places where the respective product was produced both inside and outside the member state that obtained the registration of the name in question, the consumption of this product and the way in which this name is perceived by consumers inside and outside the respective Member State, the existence of special national legislation regarding the mentioned product, as well as the way in which this name has been used [...]’<sup>18</sup>

The factors that must be considered when assessing if a term has become or not generic are identical to the ones mentioned by EU Regulations for agricultural products and foodstuff, wines and spirit drinks, namely the existing situation in areas of consumption and the relevant EU or national legal acts.

Another identical provision in all EU normative acts is represented by the fact that protected GIs will not become generic within the EU. Therefore, after their registration, unlike trademarks, they cannot be cancelled on the grounds that they have become the usual commercial designation of the product for which they were registered.

### **Homonymous names**

‘Homonymous names’ are not defined by neither EU Regulation related to GIs for

agricultural products and foodstuff, wines and spirit drinks

However, for GIs for craft and industrial products, during the discussions related to the Proposal for the EU Regulation for craft and industrial products, the European Parliament suggests to add in the recitals that ‘Homonymous indications are spelled or pronounced in the same way, but refer to different geographical areas’. This suggestion was taken into consideration and in Recitals (41) of EU GI Regulation for craft and industrial products, the ‘homonymous names’ received the above-mentioned definition.

As a rule under the EU GI Regulation for craft and industrial products, the subsequent request for registration of a GI which name is a total or partial homonymous name with a prior GI will be rejected.

As an exception, the registration is allowed under the following cumulative conditions:

- a) There is a sufficient distinction in practice between the two homonymous names concerning the conditions of local and traditional usage and their presentation;
- b) The producers concerned receive equitable treatment;
- c) The consumers are not misled as to the true identity or geographical origin of the products. In case the consumers are misled as to the true geographical origin of a product, the GI will not be registered even if the name of the actual territory, region or place of origin of the product in question is accurate.

The above-mentioned rule and exception were stipulated as such also in the Proposal for the EU Regulation for craft and industrial products. They are also stipulated by the EU Regulation no. 1308/2013 for wines, EU Regulation no. 2019/787 for spirit

<sup>17</sup> CJEU, Decision dated 2 July 2009 in case no. C-343/07, pct. 107.

<sup>18</sup> CJEU, Decision dated 2 July 2009 in case no. C-343/07, pct. 101.

drinks and EU Regulation no. 1151/2012 for agricultural products and foodstuff. However, the last EU Regulation does not allow the homonymous neither in case of names of plant variety nor breed of animals.

### **Product contrary to public policy**

As mentioned above, this is a case of refusal to registration of a GI which currently is applied only for craft and industrial products. However, in the Proposal of EU Regulation on EU GIs for wine, spirit drinks and agricultural products, the Commission introduced this provision also and it completed it with products contrary ‘to accepted principles or morality’, but only for agricultural products.

EU GI Regulation for craft and industrial products does not offer much details for this case of refusal, it only specifies in Recital (16) that the need to apply the public policy exception should be assessed on a case-by-case basis and to be in accordance with the Treaty on the Functioning of the European Union (TFEU) and the relevant case law of the Court of Justice of the European Union while the Proposal of EU Regulation on EU GIs for wine, spirit drinks and agricultural products does offer no complementary details.

From our point of view this is approach seems strange having in view that the public policy is applied to the good and not the name of the GI as it happens in case of trademarks.

### **2.4. Applicant**

As a rule, the EU GI Regulation for craft and industrial products stipulates that the applicant for a GI for craft and industrial

products is a producer group. Under the notion of ‘producer group’ are included also a local or regional authority or a private entity designated by a member state, elements which were introduced during consultations at the suggestion of the Committee of the Regions.

As an exception, a single producer can be applicant under the following conditions which must be cumulatively met: (a) such person is the only producer which wants to submit the application for registration and (b) the geographical area is defined by a particular part of the territory without reference to property boundaries and has characteristics that differ appreciably from those of neighbouring geographical areas or the characteristics of the product are different from those produced in the neighbouring geographical areas. These conditions were adopted as such even if during the consultations, the Committee of the Regions recommended the entire replacement of the (b) condition with the specification that the geographical indication remains open to any new producers complying with the product specification<sup>19</sup>.

If the product has its origins in a cross-border geographical area, multiple applicants from different member states or from member states and third states or from third states can submit a common request of registration.

If we compare with other EU Regulations for GIs, we will notice slight differences. For instance, EU Regulation no. 2019/787 for spirit drinks, EU Regulation no. 1151/2012 for agricultural products and foodstuff and EU Regulation no. 1308/2013 for wines stipulate the rule that applicant can be groups that work with the product whose

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<sup>19</sup> In our opinion, this recommendation of amendment is not correct having in view that the applicant is not the owner of the geographical indication, and that all persons complying with the product specification are anyway allowed to use the geographical indication.



name is sought for registration. EU Regulation no. 2019/787 for spirit drinks stipulates that an authority designated by a member state can be considered a group if the producers cannot form a group because of different reasons.

EU Regulation no. 2019/787 for spirit drinks and EU Regulation no. 1151/2012 provide as an exception the situation under which a natural or legal person can be considered a group if two cumulative conditions are met: (a) such person is the only producer which wants to submit the application for registration – which is the same with the one for GIs for craft and industrial products and (b) the defined geographical area possesses characteristics which differ appreciably from those of neighbouring areas, the characteristics of the product are different from those produced in neighbouring areas *or the product has a special quality, reputation or other characteristic which is clearly attributable to its geographical origin* (the part in Italics is applicable only to spirit drinks)– which is slightly different from the one for GIs for craft and industrial products in the sense that for the geographical area in case of GIs for craft and industrial products it is expressly mentioned that it must exceed the limits of a private property.

EU Regulation no. 1308/2013 for wines is not such detailed in exception stating only that in exceptional circumstances and adequately justified, any individual producer can submit a request for registration.

However, like in case of all GIs for other products, it must be mentioned that in case of GIs for craft and industrial products also, the applicant does not have the capacity of owner of the GI and that no property right is granted to it, no one, in fact, having the

capacity of owner<sup>20</sup>. The applicant and other persons and/or entities which are observing the product specifications being entitled to use the geographical indication.

## **2.5. Stages of registration of the GIs for craft and industrial products**

Since the beginning, the Commission proposed a two stages registration in its Proposal for the EU Regulation and it was maintained also in the adopted EU GI Regulation for craft and industrial products.

The first stage is represented by the national stage of the registration and the second by the Union stage of the registration.

Even if the registration of GIs for other products also must go through two stages of the registration, the institutions involved are different, as we will see during the next paragraphs.

### **2.5.1. National stage of the registration**

For craft and industrial products, the national stage involves multiple steps, namely the (1) submission of the application to the national competent authority designated by the EU Member State, (2) its examination, (3) the national opposition and (4) the decision issued by the national competent authority.

This step is quasi-identical to the one related to the registration of GIs for other products.

In relation to the step related to the national opposition, it must be mentioned that EU GI Regulation for craft and industrial products establishes a period of at least two months as of the publication of the request for registration as opposition period,

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<sup>20</sup> For more details on this opinion to which we subscribe, Caroline Le Goffic, *La protection des indications géographiques. France – Union Européenne – Etats-Unis*, LexisNexis Publishing House, Paris, 2010, p. 243-258.

the same being established by the EU Regulation no. 1151/2012 for agricultural products and foodstuff while EU Regulations for spirit drinks and wines leave such deadline entirely to the discretion of member states, mentioning ‘a reasonable period’ as opposition period.

Under all EU Regulations for all kinds of products, the opponent may be any person which meets two cumulative criteria: (1) a legitimate interest and (2) is established or has the residency in the Member State where the national stage takes place.

Regarding the GIs for craft and industrial products, as an exception from the national stage, the European Commission may exempt a Member State from its obligation to designate a competent authority to manage this stage if until November 30, 2024, such Member State submits to the European Commission a request proving that the following two cumulative conditions are met: (1) the respective Member State does not has a national *sui generis* system related to GIs for craft and industrial products and (2) the local interest for the protection of GIs for such products is low.

In such a case, the applicant from a Member State exempted from the obligation to appoint a competent authority to manage the national stage will submit its application following directly the second stage, namely the Union stage, known in this case as ‘direct registration’.

Such derogations from national stage are not recognised for GIs for the other types of products under the other EU Regulations.

### **2.5.2. Union stage of registration**

For craft and industrial products, like for any other products, the second stage, namely the Union stage, starts following the issuance of a favourable decision by the competent authority from the national stage

and it involves multiple steps, namely (1) the Union application, (2) examination of the application, (3) opposition procedure at worldwide level, (4) final decision, (5) publication in the register of GIs for craft and industrial products.

The Union stage for GIs for craft and industrial products starts with the electronic submission of the application by the Member State to the European Union Intellectual Property Office (‘EUIPO’). In case of GIs for craft and industrial products, this is a novelty aspect because in case of the other types of products, the authority involved is the European Commission and not EUIPO.

The EUIPO will have to examine the application in maximum 6 months, however, delays are allowed under the condition to inform in written the application about them. The same is applicable also for GIs for spirit drinks, agricultural products and foodstuff and wines.

In case of GIs for craft and industrial products, exceptions from this deadline are also regulated, namely in case EUIPO receives a notification from the Member State informing that the national decision from the first stage was invalidated or requesting the suspension of the Union examination on the ground that the national decision was challenged in front of national administrative or judicial authorities. Such cases do not exist for GIs for spirit drinks, but they exist for GIs for wines and for agricultural products and foodstuff.

If during the examination, the EUIPO considers that the application is incomplete or incorrect, it will inform the applicant and give it 2 months to complete or correct it. If the application is not completed or corrected within the deadline, EUIPO will reject it. Such deadline is not granted in case of GIs for spirit drinks, agricultural products and foodstuff and wines, the Commission

rejecting directly the non-compliant application.

If the EUIPO solution following the examination of the application is favourable to the applicant, it will be published, and within 3 months as of the publication, any interested person may submit an opposition or notice of comment against the registration of the GI for craft and industrial product. This deadline is also applicable to GIs for spirit drinks, agricultural products and foodstuff and wines. However, for these products it does not exist the possibility of submission of a notice of comment.

This time also, the opponent must meet two cumulative criteria for GIs for all types of products: (1) to have a legitimate interest (this condition is the same as in the national opposition) and (2) to be established or to have the residency in a third country or in another Member State (this condition is slightly different than the one from the national opposition, being allowed an established or residency anywhere in the world).

The opposition against GIs for craft and industrial products will be admitted by EUIPO if it meets two cumulative conditions: (1) the application infringes the following conditions: (a) the proposed GI does not comply with the requirements for protection – same in case of GIs for spirit drinks, but in this case, the EU Regulation no. 2019/787 for spirit drinks is more detailed referring to the product specification and the same is for agricultural products and foodstuff, (b) the registration is envisaging a name of GIs which have become generic term or which are homonymous with prior registered GIs or which are conflicting with prior trademarks with reputation that could mislead the consumers – same in case of GIs for spirit drinks and agricultural products and foodstuff, (c) the registration would affect entirely or partially an identical or similar

name used in commercial trade or of a trademark or products present on the market for at least 5 years prior to the publication of the GI application – such ground is also stipulated for GIs for agricultural products and foodstuff, but not for GIs for spirit drinks. However, the EU Regulation for GIs for spirit drinks include into the list of grounds of opposition also the grounds for cancellation represented by the non-placement on the market of a product under the GI for at least 7 consecutive years and (2) provides reasons drawn up in accordance with the form set out by the EU GI Regulation for craft and industrial products.

If the opposition is admitted by EUIPO, in two months as of the receipt of the opposition, EUIPO must invite the opponent and the applicant to engage in consultations during a period of maximum 3 months, with the possibility of extension with another 3 months - all these deadlines are applicable also for GIs for spirit drinks, agricultural products and foodstuff and wines. If following the consultation, amendments are brought to the application, the EUIPO will make a new examination and it will publish the modified application - same rule applies also in case of GIs for other products.

The grounds for the opposition will be assessed in relation to the EU territory for GIs for spirit drinks, agricultural products and foodstuff.

The final decision on the application is given by EUIPO by taking into consideration multiple aspects such as: any provisional periods, the outcome of the opposition procedure, the notices of comments received and it will be published in the EU register of GIs for craft and industrial products in all official languages of the EU.

As an exception, it is possible that the final decision to be rendered by the EU Commission if such decision may jeopardise

the public interest or the EU's trade or external relations. The EU Commission may intervene in such cases also in the procedure of cancellation and amendment of the product specification. Since in case of GIs for other products the Commission is the authority involved in the Union stage, there is no such provision.

## 2.6. Union register

The Union register of GIs for craft and industrial products will be developed, kept, and maintained by EUIPO. In case of geographical indications for agriculture products and foodstuff, spirit drinks and wines, such register is kept by the EU Commission.

Since the Proposal for the EU Regulation for craft and industrial products until the final text adopted, there were multiple versions of the elements that the Union register must contain. The Proposal for the EU Regulation for craft and industrial products stated that the following information should have to be entered into the register: (1) registered name of the product in its original script (if it is not in Latin characters, it will be transcribed and Latin characters and both versions will be mentioned), (2) class of the product, (3) reference to the instrument registering the name, (4) indication of the country or countries of origin.

The Committee of the Regions suggested amendments to all these four data and insertion of new data as follows: (1) registered protected geographical indication of the product in its original script (if it is not in Latin characters, it will be transcribed and Latin characters and both versions will be mentioned), (2) type of the product, (3) beneficiaries of the protected geographical indication, (4) reference to the instrument

registering the name, (5) indication of the country or countries of origin.

In the end, the elements contained by the Union register are the following: (1) registered protected geographical indication of the product in its original script (if it is not in Latin characters, it will be transcribed and Latin characters and both versions will be mentioned), (2) type of the product, (3) name of the applicant, (4) reference to the decision registering the name, (5) indication of the country or countries of origin.

Therefore, we notice that the suggestions of the Committee of the Regions were taken into account and we consider that these suggestions of amendments were welcomed because they are more accurate. In addition, from our point of view it is good that 'beneficiaries' was replaced with 'applicant' because otherwise it would mean to amend the data in the registry each time a new producer was allowed to use the GI for a certain product.

## 2.7. The protection of the GIs

According to the EU GI Regulation for craft and industrial products, the GIs for craft and industrial products are protected against approximately the same uses as the GIs for the other types of products under the other EU Regulations mentioned earlier. This means that the preliminary rulings of the CJEU in GIs cases will be applicable also for craft and industrial products.

In this regard, we will present few law cases in matters of GIs for food that may be applicable to craft and industrial products and in which the CJEU interpreted the notions of 'evocation', 'false or misleading indication' and 'any other practice liable to mislead the consumer'.

Regarding the notion of 'evocation', in case C-75/15<sup>21</sup> it is stated that the evocation

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<sup>21</sup> CJEU, Decision dated 21 January 2016 in case no. C-75/15, pct. 21.

covers the hypothesis where the term used to designate a product incorporates part of a protected geographical indication, so that, in the presence of the name of the product in question, the consumer is given, as a reference image, the product benefiting from that indication. In addition, it states that it is legitimate to consider that there is an evocation of a protected geographical indication where, in the case of products with visual similarities, the sales names are phonetically and visually similar.

Case C-44/17<sup>22</sup> shows that in order to assess the existence of an 'evocation', it must be ascertained whether, in the presence of the subsequent name, the consumer is being given, as a reference image, the product covered by the protected geographical indication, the consumer being understood to be the average European consumer who is reasonably well informed and reasonably observant and circumspect. Moreover, it is mentioned that the identification of a phonetic and visual similarity of the subsequent name with the protected geographical indication is not a prerequisite for the existence of an 'evocation', so it is not excluded that an 'evocation' can be identified even in the absence of such similarity.

Case C-614/17<sup>23</sup> indicates that the evocation of a registered name may occur through the use of figurative signs and that the use of figurative signs evoking the geographical area with which a geographical indication is associated may constitute an evocation of the geographical indication, including where those figurative signs are used by a producer established in that region but whose products, similar or comparable

to those protected by that geographical indication, are not covered by it.

By way of example, we mention that it was held that the term 'Cambozola' evokes the geographical indication 'Gorgonzola' all the more so since it was used for blue mould cheeses which do not differ in appearance from Gorgonzola, and the fact that the label indicated the true origin of the product does not alter the fact of evocation<sup>24</sup>. The same could happen in a situation in which the name 'Murano' for glass could be evoked by a similar name.

In addition, the EU GI Regulation for craft and industrial products specifies regarding the 'evocation' that it will arise whenever there is a sufficiently direct and clear link with the product covered by the registered GI is created in the mind of the average European consumer who is reasonably well-informed and reasonably observant and circumspect. It may be noticed that with this provision, the European legislator took into consideration the CJEU Case C-44/17 mentioned earlier. Such specification is not provided for the system protecting the other GIs for the other types of products.

The notion of 'false or misleading indication' and the notion 'any other practice liable to mislead the consumer' were analysed by the CJEU in case C-490/19<sup>25</sup> in which it shows that it is clear from the wording of the provisions that registered names for geographical indications are protected against various actions, namely, firstly, direct or indirect commercial use of a registered name, secondly, misuse, imitation or evocation, thirdly, false or misleading mention of the provenance, origin, nature or essential

<sup>22</sup> CJEU, Decision dated 7 June 2018 in case no. C-44/17, pct. 46, 47, 49, 101.

<sup>23</sup> CJEU, Decision dated 7 June 2018 in case no. C-614/17.

<sup>24</sup> CJEU, Decision dated 4 March 1999 in case no. C-87/97, pct. 25, 27.

<sup>25</sup> CJEU, Decision dated 17 December 2020 in case no. C-490/19.

qualities of the product, appearing on the inside or outside packaging, in advertising material or in documents relating to the product in question, and the packaging of the product in such a way as to create an erroneous impression as to its origin and, fourthly, any other practice liable to mislead the consumer as to the true origin of the product. Thus, these provisions contain a graduated list of prohibited actions. While Art. 13 para. (1)(a) of EU Regulation no. 1151/2012 prohibits the direct or indirect use of a registered name for products not covered by the registration in a form identical to that name or remarkably similar in phonetic and/or visual terms, Art. 13 para. (1)(b)-(d) of the same regulation prohibits other types of actions against which registered names are protected and which make neither direct nor indirect use of the names themselves, namely actions which suggest the registered names in such a way that the consumer establishes a sufficient link of proximity with them.

Regarding the notion of ‘false or misleading indication’, this case C-490/19 shows that such actions extend the protected area, including in it, among others, ‘any (other) mention’, namely the information provided to consumers, which appears on the inside or outside of the packaging of the product in question, in the advertising material or documents related to this product, which, although they do not evoke the geographical indication, are qualified as ‘false or misleading’ regarding the links the product has with the latter. The expression ‘any (other) mention’ includes information that may appear in any form on the inner or outer packaging of the product in question, in advertising material or documents relating to this product, in particular in the form of a text, an image or a content likely to inform

about the provenance, origin, nature or essential qualities of this product<sup>26</sup>.

As a novelty, the

EU GI Regulation for craft and industrial products regulates the protection of GIs for craft and industrial products against ‘false or misleading indication’ as to the information provided on websites relating to the products. In our opinion, this should be also added to the protection of the other types of products.

Regarding the notion of ‘any other practice liable to mislead the consumer’, the CJEU show in this case law that the legal provision aims to cover any action not already covered by the other provisions and thus to close the system of protection of registered names. The Court takes this reasoning further and states that the system of protection of GIs aims in particular to provide consumers with clear information on the origin and properties of the product, thus enabling them to make more informed purchasing decisions, as well as to prevent practices that could mislead them. Thus, it is prohibited to reproduce the shape or appearance that characterizes a product covered by a registered name when this reproduction may cause the consumer to believe that the product in question is covered by this registered name. It is necessary to assess whether that reproduction is likely to mislead the European consumer, normally informed and sufficiently attentive and informed, considering all the relevant factors in the case<sup>27</sup>.

In the end, the CJEU states that the legal provisions are not limited to prohibiting the use of the registered name itself, but that its scope is wider, not only prohibiting the use by a third party of the

<sup>26</sup> CJEU, Decision dated 17 December 2020 in case no. C-490/19, pct. 28.

<sup>27</sup> CJEU, Decision dated 17 December 2020 in case no. C-490/19, pct. 29.

registered name<sup>28</sup>. Thus, the key to the actions against which geographical indications are protected is that the consumer should not be misled, geographical indications operating in the relationship between their legitimate users and the consumer, and that both parties should rely on the information provided, the doctrine showing that from this point of view the similarity with trademark law is striking<sup>29</sup>.

We find very strange that the EU GI Regulation for craft and industrial products is listing among the expressions that accompany the actions of misuse, imitation, or evocation also the „flavour’ in the conditions in which art. 2 para. (2) of this EU Regulation is clear and mentions that it does not cover the protection for spirit drinks, wines, agricultural products, and foodstuffs the only ones that can have a flavour. However, during the discussions on the Proposal for the EU Regulation for craft and industrial products, the European Parliament suggested the replacement of „flavour’ with „fragrance’ which seems better having in view that craft or industrial products may have fragrance, such as soaps. Unfortunately, this suggestion was not taken into account.

However, a step forward having in view the digital world in which we live in, is represented by the fact that the EU GI Regulation for craft and industrial products is providing the protection of GIs for craft and industrial products also with regard to the domain names which contain or consist of the registered geographical indication, such provision not existing in case of GIs for other types of products.

## 2.8. Cancellation of the registration of the GIs

The reasons for cancellation of the registration of a GI for craft and industrial products are similar with the ones for the GIs for other types of products, with the exception that EUIPO will manage the procedures instead of the Commission.

The persons and/or entities who may request the cancellation are: EUIPO on its own initiative, a Member State, a producer group, a third country or any natural or legal person with legitimate interest.

The reasons for cancellation are the following: (a) the compliance with the requirement of the product specification is no longer ensured. (b) no product has been placed on the market for at least five consecutive years. This deadline was of seven years in Proposal for the EU Regulation for craft and industrial products and the Committee of the Regions mentioned that the seven years period was „somewhat random’ and proposed a ten-year period while the European Parliament proposed five years instead of seven years.

However, the same term of seven years is provided also in case of GIs for agricultural products and foodstuff, spirit drinks and wines.

In our opinion, it should have been established for GIs for craft and industrial products the same term as the one for the GIs for other types of products, namely the term of seven years in order to have a unitary deadline.

<sup>28</sup> CJEU, Decision dated 17 December 2020 in case no. C-490/19, pct. 30, 31.

<sup>29</sup> Justine Pila, Paul Torremans, *European Intellectual Property Law*, 2<sup>nd</sup> edition, Oxford University Press, 2019, p. 452.

### 3. Conflicts or coexistence of other signs with geographical indications

#### 3.1. Domain names and geographical indications

Like trademarks and geographical indications, domain names have been qualified by the World Intellectual Property Organization („WIPO”) as distinctive signs being able to distinguish between businesses or private individuals and, in addition, they have as well a technical function<sup>30</sup>. Also, domain names may have both a commercial and non-commercial vocation, becoming nowadays signs as important or even more important than trademarks<sup>31</sup>.

We may say that in commerce, we do not exist without domain names that make us „visible’ in the digital world, being therefore an important asset of a business. However, even if domain names are beneficial to the development of a business, they can be just as damaging if they are used by third parties in order to obtain quick and easy material benefits, resulting in misleading consumers.

EU GI Regulation for craft and industrial products comes with another novelty represented by a domain name information and alert system. However, its content is less detailed than the one under Proposal for the EU Regulation for craft and industrial products which stipulated that such system would have been useful in two moments: (a) upon submission of an application for a GI for a craft and industrial product – when it will inform the applicants if the name of the GI is also available as a domain name and (b) during the lifetime of the GI (i.e. after its registration) – when it will inform the holders about the registration

of a domain name which contains an identical or similar name with the name of the geographical indication. This second information would have been made only if the holders opt for it. However, these provisions were deleted from the final text of the adopted EU Regulation and now, it is only mentioned that by June 2, 2026, the Commission shall carry out an evaluation of the feasibility of an information and alert system against the abusive use of GIs for craft and industrial products in the domain name system, and submit a report with its main findings to the European Parliament and the Council.

For this system to work, country-code top-level domain name registries established in the Union shall ensure that any alternative dispute resolution procedures for domain names recognise registered GIs as a right that can be invoked in those procedures.

The Proposal for the EU Regulation was regulating the implementation of such system also for EU trademarks, proposing the inclusion in the EU trademark Regulation of an article similar to the one for GIs for craft and industrial products „in order to ensure coherence’ with the Proposal for the EU Regulation. However, such provision was not kept in the final act even if such provision would have brought a certain relief for holders because they would have been automatically informed about similar or identical, prior, or subsequent, domain names with their GIs name or trademark.

The advantage of such provision is that conflicts between the signs (i.e. between geographical indications and domain names) would be avoided.

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<sup>30</sup> WIPO, *WIPO Internet Domain Name Process, Rapport intérimaire relatif au Processus de l’OMPI sur le Nomes de domaine de l’internet*, 23 December 1998, [https://www.wipo.int/amc/fr/processes/process1/rfc/3/interim2\\_ch1.html](https://www.wipo.int/amc/fr/processes/process1/rfc/3/interim2_ch1.html) (last time accessed on 21.04.2024).

<sup>31</sup> Nathalie Dreyfus, *Marques et internet. Protection, valorisation, défense*, Collection Lamy Axe Droit, Lamy Publishing House, France, 2011, p. 235.



Moreover, in case of a registered domain name which is conflicting with a geographical indication, the Proposal for the EU Regulation provided for the revocation or transfer of that domain name to the producer group following an alternative dispute resolution procedure or judicial procedure under the condition that the said domain name was registered without right or legitimate interest, or it was being used in bad faith. However, the EU GI Regulation for craft and industrial products does not contain such provisions, they will be drawn up and proposed by the EU Commission if it is concluding that an information and alert system against the abusive use of GIs for craft and industrial products in the domain name system is feasible.

### **3.2. Trademarks and geographical indications**

EU GI Regulation for craft and industrial products establishes the rule based on which if a prior GI is registered or applied for registration, the subsequent trademark application will be rejected if it infringes the protection of the GI. In this regard, the EUIPO and the competent national authorities will have to invalidate registered trademarks or applied for registration if they infringe the above-mentioned rule.

Also, the application for registration will be rejected in case the name of the GI would conflict with a trademark's reputation and renown if it could mislead the consumer regarding the true identity of the product.

As an exception, it is allowed a co-existence between the subsequent GI and the prior trademark (registered or applied for registration) even if the latest is infringing the above-mentioned rule, under the following cumulative conditions: (a) the trademark to have been applied for, registered or established in good faith in the

EU and (b) no ground for invalidity or revocation of the trademark exists.

Another exception is referring to guarantee or certification trademarks and to collective trademarks which are allowed to be used on labels, together with the GI.

### **4. Role of EUIPO**

New structures will be created within EUIPO, namely a new department (Geographical Indications Division) and a Geographical Indications Advisory Board.

The Boards of Appeal which already exists within EUIPO will take over also the responsibility of issuing decisions on appeals procedures against the decisions of the Geographical Indications Division.

The Geographical Indications Division shall be responsible to issue decisions for applications for registration, amendment of geographical indications, filed oppositions, entries in the Union register and requests for cancellation of geographical indications.

The Geographical Indications Advisory Board will be composed of one representative of each Member State and one representative of the EU Commission and their alternate representative for mandates of maximum five years, but renewable and will have the role of issuing consultative opinions at the request of Geographical Indications Division and of the Boards of Appeal in the following matters: (a) assessment of the quality criteria, (b) establishment of reputation, (c) determination of generic nature of the name, (d) assessment of the link between a product's characteristics and its geographical origin, (e) the risk of confusing consumers in cases of conflict between geographical indications and trade marks, homonyms or names of existing products that are legally marketed.

## 5. Conclusions

Why is it important to have an EU regulation for craft and industrial products?

Firstly, because not all states have a national system to protect such goods under geographical indications and such goods should be protected in order to pass over the traditions to the next generations and not lose them.

Secondly, because such system will allow the registration of geographical indications at international level.

Thirdly, because once again the geographical indication system, even if it is about craft and industrial products, puts the consumer in the centre of attention, being important that in any way the consumer not to be misled as to the origin of the product.

As such, even producers' associations from Romania could protect their products through this system, example of products that could qualify being Horezu pottery, Bledea pottery, traditional wall carpets, and many other.

However, based on the comparative analysis made above, we consider that it would have been better if the GI system in general (i.e. for all types of products) would be regulated in a single normative act in two parts: (1) GIs with their specificities for each type of product and (2) procedure of registration, cancellation, etc. which should be the same for all GIs in order to simplify it because from the above analysis it can be noticed that there are different deadlines for same procedures.

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