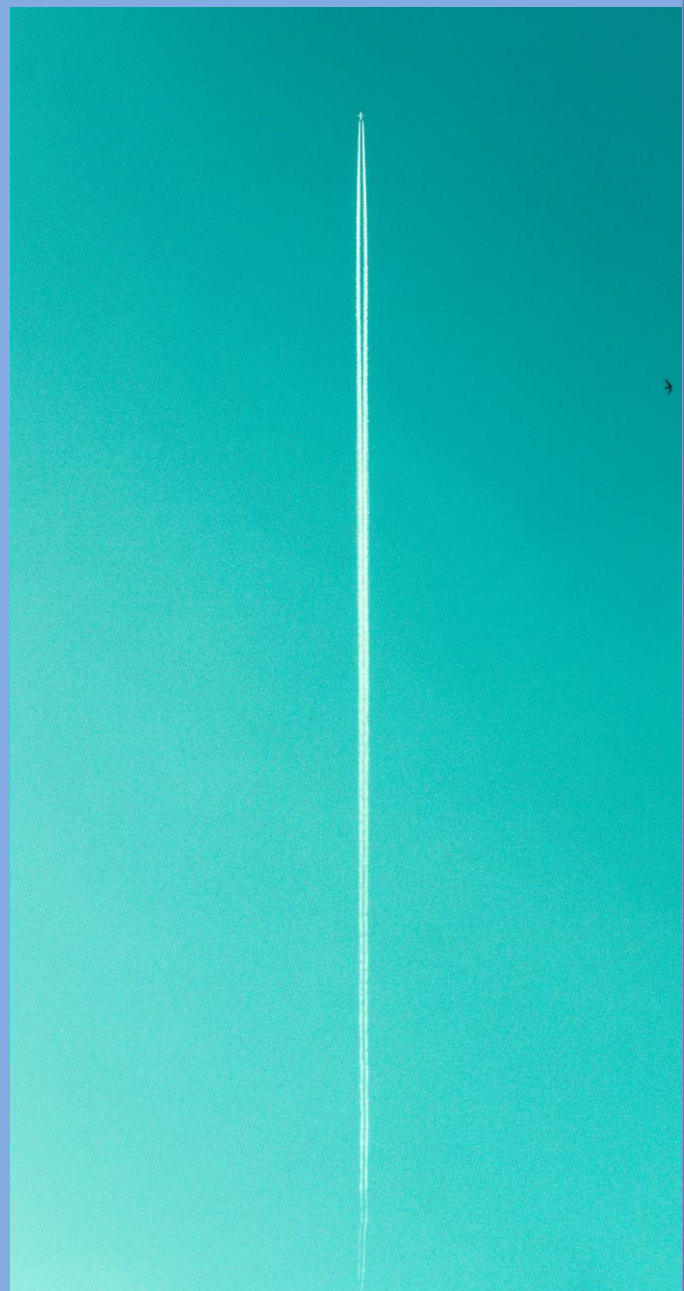


Bird & Bird

The new boundaries of the protection of geographical indications in the European Union

The protection of craft and
industrial products

October 2023



The new boundaries of the protection of geographical indications in the European Union

The protection of craft and industrial products

Following the approval of the European Parliament, on 9 October 2023 the Council of the European Union also finally approved the document entitled '*Regulation of the European Parliament and of the Council on the protection of geographical indications for craft and industrial products, amending the Regulations (EU) 2017/1001 and (EU) 2019/1753 of the European Parliament and of the Council and the Council Decision (EU) 2019/1754*' (hereinafter the '**Regulation**').

The proposal for the Regulation was published by the European Commission on 13 April 2022, at the same time as the proposed revision of the system of protection of geographical indications (GIs) for agricultural products and foodstuffs, wines and spirits.

The aim of the Regulation is to extend the protection of GIs for agricultural products, foodstuff, wines and spirits to non-agri-food products.

The focus is on products such as **Carrara marble, Limoges porcelain, Murano glass, Swiss watches, Solingen knives** and many others, which are an integral part of local identities and which, if properly valorised and protected, can attract tourism and create new jobs by supporting local and EU economies.

Once signed by the President of the European Parliament and of the President of the Council – which, according to a [press release](#) from the European Intellectual Property Office (EUIPO), is expected to take place on **18 October 2023** – the Regulation will be published in the Official Journal of the European Union at the **beginning of November** and will enter into force on the 20th day after publication.

Background

While wines, spirits and agri-food products have long enjoyed extensive protection as GIs at the European level, the same cannot be said for craft and industrial products, for which no harmonised protection existed until now.

In fact, studies commissioned by the Commission showed that as many as 800 products had the characteristics to be protected as GIs.

Only a few Member States - sixteen to be precise - have long provided a specific protection for these products at national level, but local regimes differ in terms of protection and do not offer producers protection beyond their national territory. Other Member States, on the other hand, do not have a specific protection regime at national level, at most protecting these products against acts of unfair competition or granting trademark registration only.

This situation has clearly discouraged investment in the sector, which is dominated by small and medium-sized enterprises, which will now be able to benefit from uniform protection at EU level regarding the fight against counterfeiting and the continuity of traditional production.

In addition, the EU is required to ensure European-level protection of GIs under its commitments at the international level. Indeed, in November 2019, the EU acceded to the Geneva Act of the Lisbon Agreement on Designations of Origin and Geographical Indications, which provides for the protection of non-agri-food products as GIs.

In this context, the European authorities believe that a single system for the protection of craft and industrial products will bring numerous advantages within the Union, including:

- a concrete support for small and medium-sized enterprises and, ultimately, for local economies;
- b increased competitiveness in niche markets, leading to an investment of resources and an improvement in the quality of supply;
- c valorisation of the cultural heritage sector;
- d increased consumer awareness of the authenticity of products;
- e increase in tourism.

Which products are protected?

The Regulation applies to:

- a **“craft products”**, meaning products made entirely by hand or with the aid of manual, digital or even mechanical tools, where the manual contribution is an important component of the finished product;
- b **“industrial products”**, meaning products manufactured in a standardised way, including mass production and the use of machines.

In particular, in order to benefit from protection as a GI, each product must, according to Article 6 (1) of the Regulation:

- originate from a specific place, region or country;
- possess a quality, reputation or other characteristic that is essentially attributable to its geographical origin;
- have undergone at least one stage of production taking place in the defined geographical area.

These are cumulative requirements, similar to those already required for the registration of GIs in relation to agri-food products. However, unlike the latter, however, there will be no distinction between protected designations of origin and protected GIs.

The protection granted

The protection granted to GIs for craft and industrial products is also quite similar to that which has long existed in the agri-food sector.

Some of the main provisions of the Regulation are set out below.

– **The Specification and the Single Document**

As in the case of agri-food products, producer groups (or individual producers) are required to draw up a Single Document and Specification.

According to Article 9 of the Regulation, in addition to the name to be protected and the description of the product (which may include the raw materials used), they must contain, among other things, all of the following information: the type of product; the defined geographical area, the elements establishing the link between the product and a given quality of the same, as well as those that demonstrate the product's origin in relation to the reference area; the methods of production or obtaining the product; the data relating to packaging (if there are sufficient reasons for this stage to take place in defined geographical area); any specific rules concerning the labelling of the product.

– **The GI registration procedure**

According to Article 7 of the Regulation, the registration procedure consists of two stages, one at national level and one at European level.

At the national level, interested parties must submit application for protection to the competent national authority, to which the Specification, the Single Document and all other documentation required by the Regulation will have to be attached. Following examination of the application, if the conditions are met, the

authority will publish the details. This opens a period of at least two months during which interested parties may object to the registration of the GI. If there are no objections or if the objection is overcome, the application for registration is definitively approved at national level.

At the Union level, it will be the national authority itself that must submit the application for protection electronically, together with a declaration that the GI meets the requirements of the Regulation. The application is then published by the EUIPO in a special register and interested parties (including national authorities and third countries) have three months to object to the registration. In the absence of objections or in case they are overcome, the application for registration is then approved at Union level.

There is also a simplified procedure, which does not include the national stage, whereby registration can be requested directly from the EUIPO. For example, Member States that do not have specific national protection of GIs for craft and industrial products may be authorised to '**register directly**'. Similar considerations apply to GIs from third countries.

The aim is to minimise administrative burdens and limit costs, which, if too high, could discourage small and medium-sized enterprises from applying. In addition, to facilitate the registration of GIs for handicrafts and industrial products, the EUIPO will not require an application fee, whereas such a fee may be required at national level.

– **Protection against unlawful use**

Title III of the Regulation deals with protection.

Article 40 (1) of the Regulation provides that non-agricultural GIs are protected against:

- a any direct or indirect commercial use of the indication in relation to comparable products or the exploitation, weakening, dilution or damage to their reputation;
- b any misuse, imitation or evocation of the protected name;
- c the use of false or misleading indications as to the provenance, origin, nature or essential qualities of the product, on packaging, advertising materials, or even with reference to information provided on *online* interfaces,
- d any other practice likely to mislead consumers.

This provision fully reflects Article 103 of Regulation 2013/1308, Article 21 of Regulation 2019/787 and Article 13 of Regulation 2012/1151. Once registered, GIs for craft and industrial products will therefore enjoy the same protection as agricultural products and foodstuffs, wines and spirits.

However, unlike the aforementioned Regulations currently in force in the agri-food sector, **Article 40(2) also provides for an interpretation of the concept of evocation**, which is deemed to exist when a direct and clear link is created in the mind of the reasonably circumspect consumer with the product designated by the geographical indication.

Finally, Article 40 provides for express protection of non-agricultural GIs against any use of domain names contrary to the provisions in question, including in the context of e-commerce, which, as is well known, is now the most common form of commerce.

– **The use of in-scope craft and industrial products subject to in other composite products**

According to Article 41, it will only be possible to indicate that a product contains, as a part or component, a craft or industrial product, provided that such use is in accordance with fair trade practices and does not exploit, weaken or dilute the reputation of the GI.

Therefore, any reference that exploits or even damages the reputation of the GI is prohibited.

Furthermore, in such cases, the non-agricultural GI may only be mentioned in the name of the composite product with the express authorisation of the relevant producers' association.

Compliance with the product specification check

Articles 50 and following of the Regulation provide for **two alternative procedures for verifying the compliance of craft and industrial products** with the relevant Specification.

In particular, **Article 51 allows producers to self-report, to the competent authority the conformity of their product with the Specification** by filling in a standard form attached to the Regulation. This report must be submitted both before the product is placed on the market and subsequently every three years to demonstrate that the product still complies with the Specification.

The authority must at least verify the consistency and completeness of the information provided by the producer and, if the result of the checks are positive, issue a certificate authorising the use of the GI in connection to the product.

Article 52, on the other hand, alternatively provides for compliance checks by the competent authorities themselves, before and after the product is placed on the market. In case of positive outcome before the product is placed on the market, the authority will also issue a certificate authorising the use of the GI.

The following Article 53, which is instead dedicated to craft and industrial products **originating in a Third Country**, only follows the procedure laid down in Article 52 and does not mention the possibility of checking the product after it has been placed on the market.

The Regulation - which, following amendments by the Parliament and the Council, **will only be applicable two years after its entry into force** - responds to the demands of producers and their producers' associations, who have long been calling for the introduction of a specific regulatory framework to protect craft and industrial products.

In fact, despite the applicability of trademark rules, they do not allow producers and craftsmen to certify at EU level the link between the quality of their product and its geographical origin, which is crucial for the protection offered by the new GIs.

The new Regulation will therefore be an important tool to meet the protection needs of producers and craftsmen in the Union.

Contacts



Rita Tardiolo

Partner

+390230356000
rita.tardiolo@twobirds.com



Alessandro Sciarra

Trademark Attorney

+390669667000
alessandro.sciarra@twobirds.com



Francesca Signorini

Associate

+390230356000
francesca.signorini@twobirds.com

twobirds.com

Abu Dhabi • Amsterdam • Beijing • Bratislava • Brussels • Budapest • Casablanca • Copenhagen • Dubai
• Dublin • Dusseldorf • Frankfurt • The Hague • Hamburg • Helsinki • Hong Kong • London
• Luxembourg • Lyon • Madrid • Milan • Munich • Paris • Prague • Rome • San Francisco • Shanghai
• Shenzhen • Singapore • Stockholm • Sydney • Warsaw

The information given in this document concerning technical legal or professional subject matter is for guidance only and does not constitute legal or professional advice. Always consult a suitably qualified lawyer on any specific legal problem or matter. Bird & Bird assumes no responsibility for such information contained in this document and disclaims all liability in respect of such information.

This document is confidential. Bird & Bird is, unless otherwise stated, the owner of copyright of this document and its contents. No part of this document may be published, distributed, extracted, re-utilised, or reproduced in any material form.

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority (SRA) with SRA ID497264. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.