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Protection of Craft and Industrial Products in the EU: New Horizons

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Background

Craft and industrial products (CIPs) are a specific category of non-agricultural products originating in a certain geographic area and having a specific reputation for their qualities such as **Bra? stone** or **Murano glass**.



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The Geneva Act of the Lisbon Agreement on Appellations of Origins and Geographical Indications (the Geneva Act) provides an international legal framework for the protection of product designations connected to their place of origin, which is not limited to agricultural products.

The EU acceded to the Geneva Act in November 2019, however so far it has not implemented an EU protection regime for CIPs. In practice, EU's accession to the Geneva Act creates problems for EU Member States wishing to individually join the international system since the EU has the exclusive competence to, *inter alia*, file applications for the international registration of geographical indications (GIs) pertaining to products originating in the EU (see [here](#)).

The EU Commission's **Impact Assessment Report** focusing on the situation of CIPs in the EU published on 13 April 2022 revealed that the absence of an adequate legal regime creates 'a disincentive to investment in traditional crafts in the EU, adding up to increased costs and legal uncertainty for producers'. The Impact Assessment Report further highlighted that the lack of protection for CIPs is linked to a decline in skills related to traditional forms of craftsmanship.

Proposed Independent EU regime for CIPs: Key points

Seeking to address these issues, the Commission considered several policy options including the reformation of the EU trade mark system to allow CIPs' manufacturers to register names guaranteeing a specific product quality linked to a geographical region and the creation of a separate EU system for the protection of CIPs (**Impact Assessment Report**).

The Commission's favourite option is the establishment of an independent two-stage protection system administered by the EUIPO through a yet-to-be created Geographical Indications Division (**Proposal for a Regulation on Geographical Indication Protection for Craft and Industrial Products** (the Proposal)).

Substantive requirements: To qualify for GI protection, CIPs must satisfy the following requirements: (i) they must originate in a specific place, region or country, (ii) their quality, reputation or other characteristic must be essentially attributable to their geographical origin and (iii) at least one of the production steps of the CIP must take place in the defined geographical area (Article 5 of the Proposal).

Product specification: Applications must contain minimum product specification information such as the name to be protected (i.e. either a geographical name of the place of production of a specific CIP, or a name used in trade to describe the CIP in the defined geographical area) and a description of the CIP (Article 7).

Applicants: Applications for registration may be filed only by groups of CIPs producers (Article 6).

Exclusions from registration: The Proposal contains several exclusions from registration including for generic terms (Article 37), previously registered homonymous GIs unless there is sufficient distinction between the conditions of local and traditional usage and the presentation of the two homonymous indications (Article 38) or GIs which could mislead the consumer as to the true identity of the product in the light of a trade mark's reputation and renown (Article 39).

A new sui generis ground for trade mark refusal and invalidation? The Proposal also mentions that the registration of a trade mark the use of which is in conflict with the rights granted to CIP producers shall be rejected if the application for registration of the trade mark is submitted after the application for registration of the GI (Article 42(1)).

Final Remarks

The Commission's Proposal is a welcomed development and has the potential to create incentives for investment in the production of CIPs at the EU level. However, due to their inchoate stage, the legal provisions dealing with, inter alia, exclusions from GI registration and the relationship between GIs for CIPs and trade mark law are unclear. For example Article 37 does not define the meaning of 'generic terms' (a term that does not appear as such in EU trade mark law) but only provides factors to assess when a name may be considered generic. Additionally, Article 39 does not mention if 'reputation and renown' is meant to be the same concept as that of reputation under EU trade mark law, e.g. Articles 8(5), 9(2)c EUTMR. It would be desirable for such apparent issues to be resolved from the outset rather than waiting for authorities and courts and ultimately the CJEU to clarify unclear terms over time.

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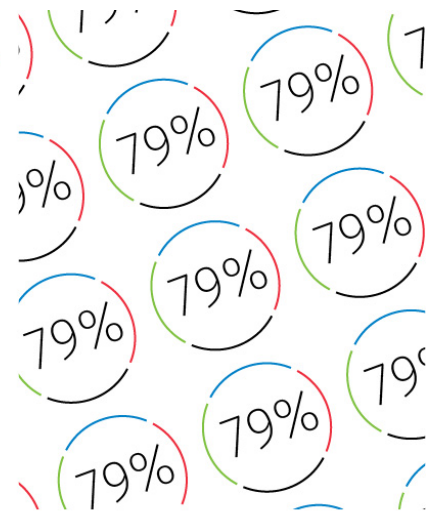
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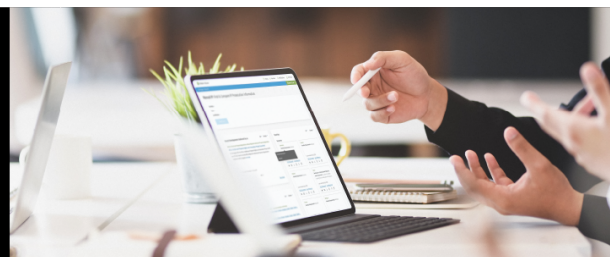


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