

FOCUS IP

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CRAFTED AND INDUSTRIAL PRODUCTS: ANALYSIS OF THE PROPOSED REGULATION OF THE EUROPEAN COMMISSION



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On April 13, 2022, the European Commission published a proposal for a Regulation on geographical indication protection for craft and industrial products (“**GIPCI**”).

This proposal was drafted after several years of discussions between representatives of industrial and craft product producers, European regions, and Members of the European Parliament.

Until now, at the European level, only agricultural products, foodstuffs, wines, and spirits could benefit from protection through geographical indications (“**GI**”).

In France, industrial and craft products have already been protected since the “Hamon Law” of March 17, 2014¹, and several products such as “Charentaise” from Charente-Périgord, Limoges porcelain, and more recently the Laguiole knife have been protected on French territory.

The European Commission's proposal aims to provide a similar level of protection at the European Union level, with the objective of promoting local know-how and fighting against illicit uses².

On May 30, 2023, during a dialogue between the Commission, the Parliament and the Council, the parties agreed on a modified version of the Regulation proposal, which will be presented for the first reading before the European Parliament next September.

Our FOCUS IP outlines the key points of the latest version of the Regulation proposal and provides insight on its content.

¹ French Law No. 2014-344 of March 17, 2014, regarding consumers.

² In 2013, a European study identified 834 craft products potentially eligible for a GI.

1. The scope of GIPCIIP

- ***A broad definition adopted for craft and industrial products***

The Regulation defines **craft products** as products *“produced either totally 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”*.

As a result, if a "direct" manual contribution is required, it is only "one" of the components of a craft product, in order to allow a broader protection of products where manual intervention is just one aspect of its manufacturing process.

As for **industrial products**, they are products *“produced in a standardised way, including a serial production and through the use of machines”*.

- ***The importance of the link between the sign and the origin***

To benefit from protection, the European text sets out three cumulative conditions:

- the product must originate from a specific place;
- the quality of the product, its reputation, or another of its properties must be attributed to its geographical origin;
- at least one of the production stages of the product must take place within the delimited geographical area.

This definition of GI aligns with the provisions at the European level.

The first two conditions are identical to those provided for in the French regime. However, the third condition has been extensively debated as the criteria of only one production stage within the geographical area could potentially grant protection to products that are predominantly manufactured outside of that zone. This may reduce the strength of the origin guarantee provided by the GIPCIIP.

To limit this risk, several associations proposed that the "main" production stages should occur within the protected zone, which was adopted by the Commission Legal Affairs but was ultimately excluded from the final version of the text.

Producers located in non-European Union countries should also be able to benefit from an GIPCIIP as long as they meet the criteria set forth by the Regulation and the geographical indication is protected in their country of origin.

2. The registration procedure

- ***The status of applicant for GIPCIIP***

The applicant must be a **group of producers** of a craft or industrial product. This group should be defined as *“any association, irrespective of its legal form, mainly composed of producers working with the same product”*.

The Regulation proposal distinguishes itself from the French text by adopting a broad definition of the concept of the group, which, while it must be "mainly" composed of producers, can also include other operators in the sector (processors, product packagers, etc.).

Alternatively, a **single producer** may apply if:

- (i) he is the only producer willing to submit the application; and
- (ii) the concerned geographical area is delimited by a specific part of the territory without reference to property boundaries and has characteristics that differ significantly from those of neighbouring areas, or the product's characteristics differ from those of manufactured products in neighbouring areas.

In exceptional cases, **an authority designated by a Member State can also apply for GIPCIIP registration**.

Lastly, the Regulation proposal introduces the use of a document referred to as the "single" document with the aim of simplifying the application process for GIPCIIP applicants.

The single document, which format and presentation will be defined later by the Commission, would include the following elements:

- (i) the key elements of the specifications, including the product's name, a description of the product, and the delimited geographical area;
- (ii) a description of the link between the product and its geographical origin.

- **Requirements for preparation and filing of the specification**

In the same way as for the registration of a GI for agricultural products, the application for GIPCIIP must be submitted based on a product specification that includes several indications, and notably:

- the sign to be protected and a description of the product;
- the definition and delimitation of the geographical area;
- evidence demonstrating that the product originates from the specified geographical area;
- a description of the production methods;
- information about the packaging;
- elements that establish a clear and direct link between the specific characteristics of the product and the geographical area;
- labelling rules.

In France, the National Institute of Industrial Property, which is the authority in charge of applications for GIPCIIP, is particularly vigilant in ensuring that the link between the geographical area and the product's characteristic is well-defined. The French Supreme Court thus rejected the application for GIPCIIP submitted by Marseille's group of soap producers because the product specification target France entire territory without delimiting a specific geographical area associated with the characteristics of the product³.

- **The two-level registration system**

The registration of an GIPCIIP will take place in two successive stages⁴ :

- **The first stage is at the Member State level:** The application for registration is submitted electronically before the competent national authority, which will verify that the product meets the requirements for protection and that all necessary information has been correctly provided (product specification, single document, etc.).

Each Member State will need to appoint an authority to examine GIPCIIP applications unless it opts out and chooses for a direct registration before the European Union Intellectual Property Office ("EUIPO").

In France, the INPI has been designated to grant GIPCIIP at the national level⁵, so it could also be in charge at the EU level.

- **The second stage is before the EUIPO:** After the application has been filed with the national authority, the EUIPO will process the application for EU-wide approval, render a decision on registration, and handle the publication of the GIPCIIP in the Union register for geographical indications for craft and industrial products.

If a Member State may establish registration fees, no fees will be charged by the EUIPO for the examination of applications.

Moreover, to enhance the effectiveness of the system, a maximum 6-month-period is allowed for the EUIPO to complete the examination.

³ French Supreme Court, March 16, 2022, n°19-25.123.

⁴ See GIPCIIP's registration procedure in the annex.

⁵ For agricultural products or wines with PDO/PGI, the INAO (National Institute of Origin and Quality) is in charge of national examination.

○ **Litigation related to registration**

Two opposition procedures are provided:

- **During the first national step**, for a period of at least 2 months from the date of publication, any person with a legitimate interest and residing within the territory of the Member State may submit an opposition.

The competent authority will establish the detailed modalities of the opposition procedure.

- **During the second step before the EUIPO**, for a period of 3 month from the date of publication in the European register. The opponent may be:
 - the competent authority of a Member State or a third country;
 - a legal or natural person with a legitimate interest, regardless of their place of residence, excluding national opponents.

In both opposition procedures, the opponent may invoke the existence of prior identical geographical indications, the generic nature of the applied-for GI, or the infringement on a prior trademark.

Appeals against decisions rendered by the national authority and the EUIPO must also be set up.

3. The protection granted by registration

○ **Authorization of the operator and right to use**

Once the GIPCIIP is registered, any producer marketing a product that complies with the specifications benefits from a right of use, allowing them to use the protected designation on the label and for the promotion of their products.

In practice, the operator should generally apply for authorization from the group of producers, which will accept or refuse the authorization based, in particular, on the compliance of the products manufactured with the specifications.

○ **Rights granted by GIPCIIP**

In order to protect the GIPCIIP and enable producers to oppose abusive or misleading uses, the proposed Regulation grants them four levels of protection:

- **Prohibition of direct or indirect commercial use of the protected designation for products that are not entitled to.**

This protection applies to the products themselves, as well as their packaging and marketing materials.

This provision allows opposing the use of the designation by third parties for products which are identical or similar to the products registered under that GI or where use of the name exploits, weakens, dilutes, or is detrimental to the reputation of, the protected geographical indication.

- **Prohibition of usurping, imitating, or evoking the designation, including using expressions such as "style", "type", "imitation"...**

It has been clarified that this requires a *“sufficiently direct and clear link with the product covered by the registered geographical indication (...) in the mind of the average European consumer who is reasonably well-informed and reasonably observant and circumspect.”*

- **Prohibition of any false or deceptive indication regarding the origin, source, nature, or essential qualities of the product.**
- **Prohibition of any other practice likely to mislead the consumer as to the true origin of the products.**

The proposal thus incorporates the provisions of the Regulations on PDO/PGI for agricultural products, wines, and spirits while providing more accurate definitions.

This protection granted to GIPCIIP applies to all products, regardless of their distribution channel (retail, internet, etc.) and also includes goods entering the customs territory of the EU without being released for free circulation.

- ***GIPCIIP as an enforceable distinctive sign***

The Regulation proposal provides that registered GIPCIIP can be invoked to oppose the registration of a trademark.

They can also be invoked in the context of alternative dispute resolution procedures concerning domain names.

- ***Labelling rules***

The Regulation proposal includes rules for the use of Union symbols and abbreviations on the labelling and advertising of the relevant product.

Specifically, the proposal provides that if the product originates from the EU and is marketed under a registered GIPCIIP, the EU symbol may appear on the labelling and advertising:



GPI logo

This logo can be accompanied by a representation of the relevant geographical area and/or references (text, graphic representation, or symbol) related to the Member State where the geographical area is located.

Furthermore, the proposal allows for the addition of the abbreviation "GPI" on the labelling of products benefiting from an GIPCIIP.

- ***Verification and controls of GIPCIIP***

The proposal provides that Member States must designate one or more competent authorities in charge of controls, which would consist of:

- **Verification that a product designated by an GIPCIIP has been manufactured in compliance with the corresponding specifications.**

This verification is carried out through a self-declaration that the producer must submit to the competent authorities in order to obtain a certificate of authorization for use, renewable every three years.

The competent authorities may also conduct inspections on the products themselves or by appointing a certification agency.

- **Verification of the use of GIPCIIP in the market.** In case of GIPCIIP infringement, the authorities will have the power to take administrative and judicial measures to prevent or stop the unlawful actions.

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The proposed Regulation must now be presented to the EU Parliament in next September, which will have the opportunity to make amendments that will need to be closely monitored.

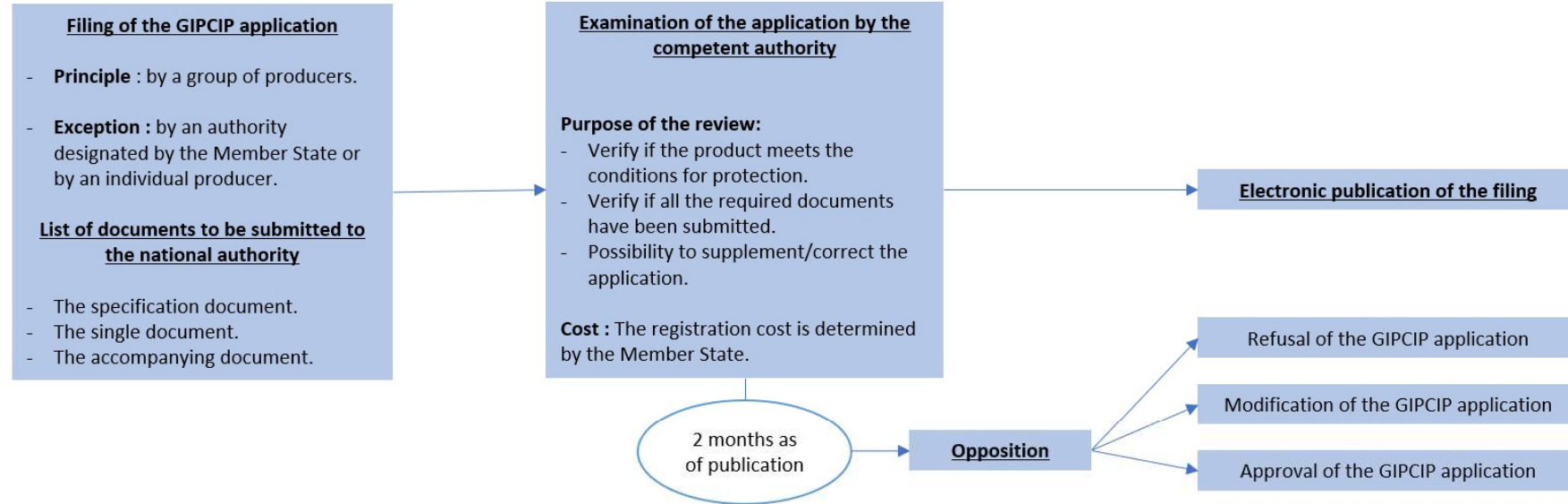
Once adopted, the Regulation will enter into force 20 days after its publication in the EU Official Journal and will be directly applicable in the Member States two years after that date.

It will then be the responsibility of the Member States to transpose the new provisions into their national laws.

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PROCEDURE FOR REGISTERING GIPCIP

STEP 1 – NATIONAL LEVEL



STEP 2 – EU LEVEL *Direct registration before the EUIPO is possible if the Member State does not have jurisdiction.*

