Maastricht Law
Faculty of Law
Research Paper series

01/2025

Geographical indications upgraded: an overview of the recent changes in EU legislation on GI protection

by Anke Moerland

Maastricht University
Faculty of Law

Maastricht University
Institute for Globalisation and International Regulation (IGIR)

Colofon

The Maastricht LAW Research Paper Series publishes articles that have been accepted for (first) publication by a publisher and are either already in print or about to be published. To be published in the series, an author must have a contractual or statutory right of secondary publication. The Maastricht Law Research Paper Series demonstrates the wide range of topics and publications in which the Faculty's staff are involved.

This series is published in collaboration with Maastricht University Press.

Publication date
17.07.2025

DOI
https://doi.org/10.26481/mup.law.rps.2501

Key words
European Union law, wines and spirits, craft and industrial products, geographical origin, geographical provenance, sustainability.

Suggested citation
Moerland, A. (2025), 'Geografische aanduidingen geüpgraded: een overzicht van de recente wijzigingen in de EU-wetgeving inzake GA-bescherming', SEW Tijdschrift voor Europees en economisch recht, 2025/5, p. 181-199.

Geographical indications upgraded: an overview of the recent changes in EU legislation on GI protection

By Anke Moerland[*]

Geographical indications (GIs) do not usually relate to large-scale industries; nevertheless, they are important for culturally relevant, often labour-intensive niche products that are linked to the region from which they originate. The European Union has recently introduced new legislation that protects GIs online, encourages sustainable practices and, perhaps most importantly, expands the group of goods that can benefit from this protection at EU level. Not only wine, beverages and agricultural products can be protected, but now also artisanal and industrial products such as porcelain or textiles. This article introduces the novelties and differences between product groups.

[*] Professor of Intellectual Property, Frontier Technologies and International Trade in the International Law Department, Maastricht University.

1 Introduction

The law on geographical indications in the European Union (EU) has seen interesting times lately. On 13 May 2024, a new Regulation (EU) 2024/1143 on geographical indications for wine, spirit drinks and agricultural (WSA) products[1] entered into force that brings about mainly three things: first, a consolidated framework for these product groups,[2] second, additional protection for GIs online and when used as domain names and third, it stresses the importance of GIs for sustainable development and encourages producers to include sustainable practices in their product specifications.

The more revolutionary change consists in a new EU-wide unitary GI regime for craft and industrial products. On 23 November 2023, the new Regulation on the protection of geographical indications for craft and industrial (CI) products[3] entered into force and will be fully applicable as of 1 December 2025. Such protection did not exist before at EU level; 16 Member States already had some form of *sui generis* protection for those products but they differed considerably in terms of their breadth and depth of protection.[4]

Why this upgrade of GI law, and in particular for craft and industrial products? While not usually concerned with large scale industries, GI law is relevant for culturally sensitive, often labour-intensive niche products that are linked to the region from which they originate. These characteristics are important for rural development and sustainable products, which partly explain the wish to update and strengthen the framework of protection. The regulation at unitary level must also be explained by the international relations the EU undertakes with other countries through the Lisbon Agreement[5] but also in bilateral relations.[6] Third countries often have important non-agricultural origin-related products that they want to protect in all Member States of the EU in a similar way.

This contribution aims at introducing the novelties of each of the two GI regimes (WSA vs. CI products), comparing their differences and highlighting divergences from previous approaches of GI protection in the EU. Five main conclusions can already be emphasized. First, the EU has maintained a broad scope of protection for GIs. As compared to other IP rights, in particular trade marks, GI right holders benefit from a strong protection regime, at the expense of competitors and users.[7] Second, the update of GI law in light of sustainability concerns is rather modest and could have been more impactful. Third, GI

[1] Regulation (EU) 2024/1143 of the European Parliament and of the Council of 11 April 2024 on geographical indications for wine, spirit drinks and agricultural products, as well as traditional specialities guaranteed and optional quality terms for agricultural products, amending Regulations (EU) No 1308/2013, (EU) 2019/787 and (EU) 2019/1753 and repealing Regulation (EU) No 1151/2012, OJ L 2024/1143, 23.4.2024 (hereinafter WSA Regulation).

[2] This Regulation repeals Regulation 1151/2012 for agricultural products and amends those for wines, aromatized wines and spirits. See fn1.

[3] 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, OJ L 2023/2411, 27.10.2023 (hereinafter CIP Regulation).

[4] European Commission, *Commission Staff Working Document. Impact Assessment Report on geographical indication protection for craft and industrial products*, 13.4.2022 (SWD(2022)115final), p. 6 and Annex 8 thereof.

[5] Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 31.10.1958, 923 UNTS 205. The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications entered into force on 26 February 2020 [hereinafter Geneva Act].

[6] The EU currently has 34 bilateral agreements with third countries that address GI protection. See European Commission, *Inception Impact Assessment: EU protection of geographical indications for non-agricultural products*, 27.11.2020 (Ref. Ares(2020)7158775), p. 1

[7] B. Calabrese, 'Geographical indications used as ingredients or components: a proposed reform in 'sharp' contrast with the Circular Economy (to say the least)' *Journal of intellectual Property Law & Practice* 2023/18(5); A. Kur e.a., 'Opinion on the EU Commission's proposals for broader protection in geographical indications law', *Eur. Intell. Prop. Rev*. 2023/45.

law remains segmented along these two product group groups. Several aspects in procedures and substantive protection have not been consolidated for WSA and CI products alike. Four, the EUIPO will fulfil a much more important role in assessing CI applications. Without extensive experience with GI applications yet, it remains to be seen how this new procedure will work out in practice. Fifth, two provisions are worrisome: referential use of GI-protected ingredients or component parts becomes more cumbersome and potentially more limited, and the scope of protection for GIs extends to products in transit, however without the necessary safeguards.

In section 2, I present the most important changes to the wine, spirits and agricultural regime and discuss these changes in light of the previous approach to protecting GIs. Section 3 introduces the development of the new craft and industrial product regime, its economic relevance and the main rules that apply to these products. I focus on the aspects of regulation that differ from the agricultural regime. Finally, section 4 discusses two concerns in relation to the newly included referential use of GI-protected ingredients and component parts and protection for goods in transit.

2 New elements in the GI Regulation for wine, spirit drinks and agricultural products

The regime for the protection of GIs in the European Union (EU) is the most comprehensive and expansive regime as compared to GI regimes of other countries. Not only substantive and enforcement standards in the law are encompassing, also the Court of Justice of the European Union (CJEU) has interpreted them broadly. It is therefore an area of IP law that should not be neglected and may offer interesting perspectives for comparison with other countries but also with other IP regimes within the EU. Knowing which products benefit from this protection and its main features is useful.

While certain GIs are very famous, the general recognition of geographical indications is rather low.[8] Noord-Hollandse Gouda, Edam Holland and jenever (actually part of a transnational registration together with Germany, Belgium and France) may be well-known, others such as Boeren Leidse met sleutels, Geraardbergse mattentaart from Belgium and Miel - Marque nationale du Grand-Duché de Luxembourg may be less so. The e-ambrosia database contains all 76 registrations from the Benelux and other EU countries.[9]

The new WSA Regulation addresses mainly two problems that GI law so far did not address: sufficient protection of GIs online, and using GIs for the purpose of promoting sustainability characteristics. The rules that are supposed to address these concerns will be analyzed in sections 2.1. and 2.2. In section 2.3, several other changes are briefly addressed.

2.1 Protection for GIs online and as domain names

Two improvements regarding online use of GIs have been made in the GI regime for agricultural products, wines and spirits. The same applies to GIs for craft and industrial products. First, protection for GI products sold online is achieved by including GI infringements in the definition of content considered illegal under Article 3(h) of the Digital

[8] European Commission, Ref. Ares(2020)7158775, p. 2.
[9] 'eAmbrosia', ec.europa.eu/agriculture/eambrosia/geographical-indications-register/

Services Act,[10] and hence the basis for taking action on online service providers. The second improvement relates to the prohibition of using GI names as domain names.[11]

GI products are more and more sold via **online marketplaces**. However, so far, the IP policies of important platforms', such as ebay's verified rights owner programme (VeRO) and Amazon, only refer to IP rights, without explicitly including GIs, as the basis for them taking action.[12] In order to remedy this, both Art. 43.1 WSA Regulation and Art. 60.1 CIP Regulation now explicitly state that the definition of illegal content under Art. 3(h) of the DSA includes any information related to advertising, promotion and sale accessible to consumers in the EU and that contravenes the scope of protection of GIs. Online platforms hence cannot anymore shield behind their IP policies not being explicitly applicable to GIs.

The consequence of the explicit application of the DSA is that its full framework, and in particular the **liability rules** thereof, are also applicable to GI infringing goods traded online. In particular, according to Art. 9 DSA, judicial and administrative authorities of the Member States may order online service providers to act against one or more specific items of illegal content. Upon receipt of such an order, online service providers need to inform the authority issuing the order how they have given effect to that order and when.[13] This is particularly important to ensure a functional online network of enforcement.

In addition, and in accordance with Art. 16 DSA, providers of hosting services must put mechanisms in place so that any individual or entity can notify the provider that specific items of information that they consider illegal are present on their service.[14] If such notices are specific enough to identify the illegality of the activity without a detailed legal examination, such notices give rise to actual knowledge or awareness for the purposes of the liability that online platforms may have: they are only barred from liability for such illegal content if, upon obtaining such knowledge or awareness, they 'act[s] expeditiously to remove or to disable access to the illegal content'.[15]

The second improvement of the GI regime relates to the prohibition of using GI names in domain names. According to Art. 26.2 WSA Regulation and 40.3 CIP Regulation, the rights specified for GIs are now fully applicable to domain names. That means, when an application is made for a name of a GI to be registered as a domain name, it will not be registered if that name interferes with a) direct or indirect commercial use of the GI, b) misuse, imitation or evocation thereof, c) false or misleading indications, or d) any other misleading practice.[16] For wine, spirits and agricultural GIs, it also implies that national authorities should be able to take appropriate steps in order to disable access from the territory of the MS to domain names that have been registered in breach of the protection of GIs.[17] This is not explicitly addressed in the CIP Regulation, but could flow from the application of the DSA.

[10] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC, OJ L 277, 27.10.2022 (hereinafter DSA).
[11] Art. 26.2 WSA Regulation; Art. 40.3 CIP Regulation.
[12] P. Montero, 'Towards a core unitary legal regime for Geographical Indications in the European Union digital market', *Journal of intellectual Property Law & Practice* 2021/16(4-5), p. 433.
[13] Art. 9.1 DSA.
[14] Interestingly, only Article 43.3 WSA Regulation refers to this possibility for individuals and entities; Art. 60 CIP Regulation does not mention it explicitly. Nevertheless, from the fact that also the CIP Regulation considers GI-infringing products as illegal content, the entire DSA framework applies to them, and hence the notice and action mechanism of Art. 16 DSA.
[15] Art. 6.1(b) DSA.
[16] See Art. 26.1 WSA Regulation and Art. 40.1 CIP Regulation.
[17] Set out in recital 55 WSA Regulation.

In addition, country-code top-level domain name registries in the EU, like the European Registry for Internet Domains (EURid), must ensure that their **alternative dispute resolution** (ADR) procedures recognize GIs as rights that can be invoked in those procedures.[18] Producers could then start an ADR dispute in order to block the transfer of a claimed domain by the domain holder if they can show an infringement of a geographical indication.[19] Registries established in the EU could furthermore revoke a domain name or transfer it to the relevant producer group. In contrast, the international Uniform domain name dispute resolution policy (UDRP), administered by WIPO, only recognizes earlier trade marks as having the status of earlier rights.[20] Extending the UDRP to GIs so far has been considered premature in view of a lack of global harmonization of international GI norms.[21]

As a new service, the EUIPO is entrusted to establish and manage a domain name information and alert system for wine, spirit and agricultural GIs.[22] This system shall allow the applicant to obtain information about the availability of the GI as a domain name and optionally also about the registration of any domain name identical to their GI. Holders and applicants of a GI products can opt-in to receive such alerts, enabling them to take appropriate action sooner. The same is not (yet) foreseen for CIP GIs, even though in the Impact Assessment of 2022, it was still mentioned as an option. The final CIP Regulation stipulates that the Commission will evaluate the feasibility of establishing such a system in the future.[23]

2.2 Sustainable practices

It is a novelty that sustainability has been incorporated in the new GI regulation for WSA products (and to a marginal degree also in the regulation for CIPs). However, the level of commitment remains rather low in both instruments, making it difficult to judge the actual impact this addition may have for GI products. Since GI products in and of themselves are very closely connected with the region, the environment and its people, there is already a natural impact on the sustainability of the product chain. It would have been a stronger commitment to sustainability if a binding obligation was introduced that required all producers of GI products to employ sustainable production practices. However, this commitment is absent from both Regulations.

The wish to explicitly link sustainability to GI products in the new GI regulation(s) stems from the realization that the intrinsic link between GI products and specific areas, their natural factors and production methods adapted to the area has so far been under-exploited.[24] GI products are in that sense ideally equipped to contribute to the three pillars of sustainability, being environmental, economic and social, and thereby to the circular economy.[25] In addition, society demands 'environmentally and climate-friendly, animal

[18] Art. 46 CIP Regulation and Art. 35.1 WSA Regulation.
[19] W. Theiss, 'Green Deal: New regulation of geographical indications in the EU', www.wolftheiss.com, 13.5.2024, p. 3.
[20] See Section 3.b) xi) 1) Rules for Uniform Domain Name Dispute Resolution Policy 2013, https://www.icann.org/resources/pages/udrp-rules-2015-03-11-en.
[21] See M Blakeney, *The Protection of Geographical Indications*, Cheltenham: Edward Elgar 2019, p. 418.
[22] Art. 35.1 WSA Regulation.
[23] Recital 45 CIP Regulation.
[24] European Commission, *Inception Impact Assessment. Revision of the EU geographical indications (GIs) systems in agricultural products and foodstuffs, wines and spirit drinks,* 28.10.2020 (Ref. Ares(2020)6037950), p. 2.
[25] Recital 3 WSA Regulation.

welfare-ensuring, resource-efficient, socially and ethically responsible production methods.'[26]

Article 7.1 WSA Regulation stipulates that a producer group or a recognized producer group where it exists, may agree on **sustainable practices** that need to be applied in the production of the GI product. Where they decide to make such sustainable practices mandatory for all producers of the product concerned, they shall be included in the product specifications.[27] So where producer groups see value in implementing sustainable production practices, they can take several actions that aim at improving the GI performance in terms of sustainability. This includes carrying out analyses into the economic, social and environmental performance of the GI product, developing collective marketing and advertising campaigns that focus on the sustainable attributes of the GI product, or providing advice and training to producers on how to implement sustainable practices.[28] Gangjee notes that an incentive for producers to do so could be that consumers would reward them when made aware of their commitment.[29]

The WSA Regulation refers to sustainability standards in two ways. Substantively, such practices involve environmental (such as climate change mitigation and adaptation and the conservation and sustainable use of soil, landscape, water and natural resources), social (in particular the improvement of working and employment conditions as well as social protection and safety standards) and economic aspects (stable and fair income and a strong position across the value chain for producers), as well as animal welfare.[30] In terms of the extent of the commitment, Art. 7.1 suggests that the standards to be agreed upon should be higher than those laid down by the Union or national law.

On a voluntary basis, producers can also draw up a **sustainability report** that provides verifiable information on the sustainable practices, how obtaining the product impacts sustainability, the commitments undertaken and how sustainability affects the development, performance and position of the product.[31] Where reports exist, they will be published by the European Commission.

The commitments regarding sustainable practices in the CIP Regulation received less attention than in the WSA Regulation. According to its Art. 45.2.c, producer groups may 'undertake commitments with regard to sustainability, whether or not included in the product specification or as a separate initiative'. There is no further provision that explains what types of commitments (whether in relation to production practices or others) are envisaged, neither the concept of sustainability that lies at the heart of it. Only recital 8 refers to the objective of creating valuable, sustainable and highly skilled jobs in rural and less developed regions, suggesting a focus on economic sustainability over environmental aspects.[32] One can therefore assume that for craft and industrial products, the sustainability commitments are purposefully diluted.[33]

This different approach can be explained by the wish of DG Grow – Internal Market, Industry, Entrepreneurship and SMEs – to not establish additional compliance burden on CIP producers. This has been a consistent theme during the drafting of the CIP Regulation,

[26] Recital 23 WSA Regulation.
[27] Art. 7.3 WSA Regulation.
[28] Art. 32.4.e WSA Regulation.
[29] D.S. Gangjee, 'Threads that Last: Geographical Indications for Textiles', in: D. Tan, J.C. Fromer & D.S. Gangjee (eds.), Fashion and Intellectual Property, Cambridge: Cambridge University Press 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4774945, p. 15.
[30] Art. 7.2 and recital 24 WSA Regulation.
[31] Art. 8 WSA Regulation.
[32] Gangjee 2024, p. 17.
[33] See also Gangjee 2024, p. 16, who also notes a diluted sustainability concept.

given the small-scale nature of craft and industrial production.[34] In fact, 80% of the producers of craft and industrial products constitute small-scale and micro enterprises.[35] This is further supported by the absence of a commitment to provide a sustainability report on the sustainable practices implemented, as included for WSA products.[36] Nevertheless, even if the Regulation does not require CIP producers to do so, they can decide to make binding commitments regarding sustainability practices and to include them in the product specifications and hence in the GI register. It may be attractive for some to make such commitments visible to consumers.

2.3 Other changes

There are several smaller adjustments to the GI framework that concern the visibility of producer information, a new system of recognized GI producer groups and the broadening of the protection standard for GI products.

First, According to Art. 37.5 WSA Regulation, the name of the producer or economic operator must appear on the label in the same vision as the GI. This ensures a higher visibility for producers and provides clearer information to consumers.[37]

Second, an important goal of the WSA Regulation is to empower producer groups to better manage their GI asset.[38] To that end, the Regulation establishes a voluntary system of *recognized GI producer groups*.[39] It thereby maintains current recognition systems already in place in some Member States, but leaves it to Member States' discretion to establish such a system. Recognized producer groups exercise the tasks attributed to producer groups (as set out in Article 32 WSA Regulation) and certain specific tasks (Article 33.3 WSA Regulation) on behalf of all producers producing the product.[40] The advantage of having such a recognized producer group is that in view of competition along the food supply chain, local producers, particularly where they are small or medium sized enterprises, find it difficult to operate against unfair competition practices.[41] Experiences in some Member States show that recognized producer groups can have value in enhancing the collective management and protection of GIs.[42]

A producer group is recognized upon request; it will have to show that a) the group has a legal form, and b) that they either have a minimum share of more than 50% of the producers of the product as members, or they have a minimum share of members and a minimum share of more than 50% of volume or value of marketable production.[43] Only one group fulfilling these criteria will become the recognized producer group for a GI product and hence it will be the only one entitled to exercise the Art. 32 and Art. 33.3 tasks.[44] This does not take away that individual producers can still act to defend their interests.[45]

Third, we have noted a difference with the previous GI regulations in relation to *dilution* of GI names. The scope of protection for protected names under Art. 13.1(a) Regulation

[34] Gangjee 2024, p. 16.
[35] European Commission, SWD(2022)115final, p. 10. This is different in the sectors of lace and embroideries.
[36] Art. 8 WSA Regulation.
[37] European Commission, Ref. Ares(2020)6037950, p. 3.
[38] Ibid, p. 3.
[39] For craft and industrial products, such a system is not foreseen in the CIP Regulation.
[40] Art. 33 WSA Regulation.
[41] Recital 42 WSA Regulation.
[42] Recital 42 WSA Regulation.
[43] Art. 33.2 WSA Regulation. Note that Member States can provide for additional criteria.
[44] Art. 33.3 WSA Regulation.
[45] Art. 33.3.a WSA Regulation

1151/2012 stipulated that registered names are protected against any direct or indirect commercial use of a registered name, 'where using the name *exploits* the reputation' of the name. The new WSA and CIP Regulations specify that the protection extends to the use of the name 'for any product or any service *exploits, weakens, dilutes, or is detrimental* to the reputation of the protected name'.[46]

The addition of weakening, diluting or being detrimental to the reputation is strongly related to the protection standard for reputation marks in the EU, as set out in Art. 9.2.c EUTRM. In relevant case law,[47] the CJEU has used a rather high threshold to establish detrimental effects to the distinctive character or reputation. Accordingly, for harm, consumers must be likely to change their economic behavior as a consequence of the use made of the name. Say, because the term champagne is used in relation to Spanish tapas bars, consumers are likely to buy less GI-protected champagne from France. Providing this type of evidence is rather difficult. Currently, it is unclear whether these concepts in the GI Regulations would be interpreted similarly to the trade mark context. If it was, it could raise the bar for infringement. However, exploiting the reputation of a GI is still kept as a standard, which currently is not assessed using the rather high threshold of 'likely change of economic behaviour'.

3 New GI protection at EU level for craft and industrial products

The real novelty at EU level is a new regulation, and hence a unified EU title, that covers the protection of GIs in the field of craft and industrial products.[48] Historically in Europe, the scheme of appellations of origins and geographical indications was developed in the field of wines, spirits as well as foodstuffs and agricultural products. GI protection for CI products has existed at national level but never was considered as important as for WSA products. From an international perspective, this has always been an anomaly of the European system, as both the TRIPS Agreement as well as the Lisbon Agreement, including its Geneva Act, do not exclude craft and industrial products from the commitments towards GI protection.[49]

Next to the very existence of this Regulation, three features stand out: 1) a new, direct application route for applicants from certain Member States where the interest in GI protection for CI products is rather low; 2) protection via one GI label only instead of two (PDO and PGI) labels; and 3) a self-declaration procedure for compliance. This section will briefly introduce the legislative history and reasoning behind introducing this Regulation, before discussing in more detailed the main features. Other features will also be introduced at the end of the section.

[46] Arts. 26.1.a WSA Regulation and 40.1.a CIP Regulation.
[47] CJEU C-252/07, 27.11.2008, ECLI:EU:C:2008:655 (*Intel Corp Inc v CPM United Kingdom Ltd*) para. 77; CJEU C-383/12P, 14.11.2013, ECLI:EU:C:2013:741 (*Environmental Manufacturing LLP v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*), para. 37.
[48] According to Art. 4 CIP Regulation, craft and industrial products include products a) produced either entirely by hand or with the aid of manual, digital or mechanical tools, whenever the manual contribution is an important component of the finished product, or b) that are produced in a standardized way, including serial production and by using machines.
[49] See Art. 2.1 Lisbon Agreement and Art. 22 Agreement on Trade-Related Aspects of Intellectual Property Rights, 15.4.1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement].

3.1 Background and objectives

The route of arriving at this EU-wide Regulation has been a long one. In 2013, a first external study[50] mapped the legal means and models of protection as well as the markets for non-agricultural products that could potentially qualify for GI protection or that are already protected in EU Member States. The study further investigated the needs and expectations of stakeholders and came to the conclusion that the existing legal protection is insufficient from an internal market perspective.[51] This was followed by a public consultation in 2014. When the EU became a party to the Geneva Act of the Lisbon Agreement in November 2019, the trajectory at EU level continued. A study on the economic aspects of GI protection for non-agricultural products was released in February 2020,[52] providing further economic details on 322 craft and industrial products in the EU that could benefit from an EU-wide GI scheme, and how consumers and producers of authentic geographically rooted products would value such a *sui generis* protection regime.

Concrete steps followed in November 2020, when the European Commission announced that it will consider the 'feasibility of creating an efficient and transparent EU GI protection system for non-agricultural products'[53] and released an inception impact assessment,[54] followed by public consultations between April and July 2021. Ultimately, a 2021 study on the control and enforcement rules for non-agricultural GI products in the EU[55] elaborated the effectiveness, cost-effectiveness and relevance of existing EU and national control and enforcement mechanisms. This paved the way for a proposal for the new Regulation on geographical indication protection for craft and industrial products in April 2022, accompanied by a thorough Impact Assessment Report,[56] detailing the different options that were contemplated in terms of how to regulate the protection and enforcement of CIPs. On 16 November 2023, the new Regulation entered into force and will be fully applicable as of 1 December 2025.

So what types of products will potentially benefit from this new regime? From the 800 products mapped in the internal market study in 2013, most stem from eight sectors: porcelain, ceramics and glassware, apparel, natural stones, lace, jewellery, textiles, furniture and cutlery.[57] In the Benelux, the 2020 Economic study has identified four Dutch products in ceramics and glassware (Delfts blauw, Boerenbont servies, Leerdam kristal, Makkumer) and one in textiles, being Texelwool, that could benefit from the EU-wide GI protection regime. For Belgium, next to diamonds from Antwerp, dentelle de binche for lace, Coticule d'Ardenne for wetstones, Etains de Huy for metal coints, Pierre Bleue de Belgique for blue hardstone and Val Saint Lambert for glasses and crystal has been named as possible products for protection. For Luxemburg, hebben experts Duch vum Séi voor laken, Péckvillchen voor vogels uit keramiek, glas-in-lood en leisteen van Haut-Martelange

[50] Insight Consulting, REDD & OriGIn, 'Geographical indications protection for non-agricultural products in the internal market. Study for Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (European Commission, 2013), DocsRoom - European Commission (europa.eu).
[51] European Commission, SWD(2022)115final, p. 65.
[52] European Commission, 'Economic aspects of geographical indication protection at EU level for non-agricultural products in the EU', 2020 data.europa.eu/doi/10.2873/58493 (hereinafter 2020 Economic study).
[53] European Commission, 'Making the most of the EU's innovative potential An intellectual property action plan to support the EU's recovery and resilience', 25.11.202 (COM/2020/760 final), p. 6
[54] European Commission, Ref. Ares(2020)7158775.
[55] European Commission, 'Study on control and enforcement rules for geographical indication (GI) protection for non-agricultural products in the EU', 2021 data.europa.eu/doi/10.2873/82711
[56] European Commission, SWD(2022)115final.
[57] Ibid, p. 9. Worldwide, craft and industrial products can be searched for in the international compilation of GIs, operated by oriGIn. See Organization for an International Geographical Indications Network, 'GIs Worldwide Compilation', origin-gi.com/worldwide-gi-compilation/.

geidentificeerd. This does not mean that these products will also benefit from GI protection when the Regulation will be applicable. The producer group of each product will have to determine whether they wish to apply and then carry out the different steps in order to comply with the application procedure.[58]

On the European level, there were strong considerations to introduce this framework. One important aspect is the fragmented protection landscape in EU Member States currently available for geographically rooted CI products. From the 322 products identified in the 2020 Economic Study, approximately half are not protected under any regime, almost half of them benefit from trade mark protection (individual, collective or certification) and 12% of these products fall under a *sui generis* protection scheme,[59] with some benefitting from simultaneous *sui generis* and trade mark protection.[60] Protection is often offered horizontally to artisanal and other CI products. For some products and sectors, vertical protection standards have been established, such as for ceramics or Solingen knives. Beyond that, the scope of protection, definitions, procedures, competent authorities, fees and controls differ considerably from one scheme to the other.[61]

This legal uncertainty and the resulting increased costs of seeking protection in individual Member States led to a disincentivisation for artisans and producers to invest in traditional crafts in the EU.[62] In fact, it has already been noted that from the roughly 800 products identified in the 2013 study, many were not produced anymore or lost their geographical roots, with multinational companies moving their presence outside of the region of origin and using trademarks as means of protection. This trend is worrisome also from a cultural heritage perspective. Where companies choose to leave the region of origin, local craftsman skills will decline and negatively impact predominately rural regions with a lower GDP per capita.[63]

Externally, the accession of the EU to the Geneva Act presented a strong incentive to introduce a unitary protection regime for CI products in the EU. In fact, according to the Geneva Act, third countries' geographical indications for CI products must be protected in the whole of the EU.[64] There is discretion in terms of the way this regime offers protection,[65] but not as regards its existence. A fragmented approach dependent on each Member State, ranging from no protection, to protection through trademarks and sometimes to *sui generis* protection, arguably does not correspond with the obligation stemming from the Geneva Act. In addition, not offering EU-wide GI protection for CI products is at odds with the clear proponent role the EU has taken regarding GI protection internationally. Both in multilateral fora like the WTO and WIPO, as well as in free trade agreements with partner countries, the EU has followed a strong agenda of expanding protection for GIs.

At the same time, the four Member States Denmark, Finland, Netherlands and Sweden expressed reluctance towards introducing a new *sui generis* GI protection system at EU level. They feared that the system would be too burdensome for public administration and felt that the current trade mark regime already provides sufficient protection.[66] The

[58] See section 3.2.
[59] 16 countries already have offered sui generis GI protection to (certain) CI products: Belgium, Bulgaria, Croatia, Czechia, Estonia, France, Germany, Hungary, Italy, Latvia, Poland, Portugal, Romania, Spain, Slovakia and Slovenia.
[60] European Commission, SWD(2022)115final, p. 17.
[61] Ibid, p. 16.
[62] Ibid, p. 6.
[63] Ibid, p. 23.
[64] Art. 9 juncto 2.1(i) Geneva Act. See also European Commission, SWD(2022)115final, p. 7.
[65] Art. 10.1 Geneva Act.
[66] European Commission, SWD(2022)115final, p. 8.

benefits of introducing GI protection for industrial and craft products are also questionable for the Benelux countries. The 2020 Economic study only identified a rather short list of potential products (between 4 to 6 per country) as compared to the 40 products in Germany, 40 in Austria, 39 in Spain, 42 in France and 45 in Italy. This indicates that the Benelux countries are not the main beneficiaries of such legislation. They also did not yet have a national tradition of protecting certain CI products under a specific *sui generis* regime. According to the 2022 Impact Assessment, two thirds of the regions where these products are made have a GDP per capita below the EU average and are located outside of urban areas. Mediterranean countries are home to more of these candidate CI products than other EU countries.[67] Overall, it is to be awaited in how far producers will find the protection offered through this framework attractive.

In the following, the most important elements of the new regulation will be presented, in particular as compared to the regime as already in place for wines, spirits and agricultural products. Since the updates of the WSA Regulation were proposed around the same time as the CIP Regulation, one would have expected almost identical rules. However, certain differences remain.

3.2 Flexible application procedures

The CIP Regulation brings about an important change as compared to the WSA regime: applications for GIs must not necessarily be made via the two-stage procedure (starting with a national phase and then moving to the European phase), as it is common for the WSA framework. For CI products, Member States can, under certain conditions, choose to only offer a direct application route, with only one phase of assessment by the European Union Intellectual Property Office (EUIPO). This came out of the pre-legislative process as an agreeable solution for Member States who felt that establishing a new GI regime for CI products would be burdensome and not really relevant to their economy. Arguably, allowing registrations just at EU level could be faster and more efficient.[68] The efficiency increase was ultimately valued higher than the skepticism present during the 2021 public consultation towards EUIPO dealing with GI applications.[69] This leaves Member States with two alternative application procedures.

3.2.1 Two-stage procedure (national – EUIPO)

The standard procedure foreseen by the CIP Regulation remains the two-stage procedure, as we know it from wines, spirits and agricultural GI products. This is evident from the fact that the direct application option is only foreseen for Member States in which no prior *sui generis* protection exists for CI products and where the interest for such protection in the Member State is low.[70] There are clear advantages to two phases, in particular to involving national authorities in the first stage: national competent authorities with local and regional expertise can better assess product specifications.[71] Also for local producers, receiving support in their own language and from bodies they are familiar with facilitates the GI application process. Oftentimes in the past, local authorities have played a crucial role in obtaining a GI registration for a WSA product.

3.2.1.1 National phase

There are no notable differences in the national phase for CIP products as compared to the WSA Regulation. Summarizing the procedure briefly, according to Art. 13.1 CIP

[67] Ibid, p. 10ff.
[68] Ibid, p. 45.
[69] Ibid, p. 47.
[70] Art. 19.1 CIP Regulation.
[71] European Commission, SWD(2022)115final, p. 45.

Regulation, the two-stage procedure starts with the submission of an application for a GI to the competent authority of the Member State in which the product originates. A competent authority is designated by each Member State, or by two or more Member States together.[72] All Member States are bound to inform the Commission of the names and addresses of their competent authorities by 1 December 2025.[73]

The national authorities will then verify the following, on the basis of the provided information and documentation:

- Whether the GI application complies with the **requirements for a geographical indication** as set out in Art. 6 CIP Regulation: 1) the product originates in a specific place, region or country; 2) the product's quality, reputation or other characteristic is essentially attributable to its geographical origin; and 3) at least one of the production steps takes place in the defined geographical area;
- whether the GI application is made by a **legitimate applicant** according to Art. 8 CIP Regulation: by a producer group or, by way of derogation and under certain conditions, by a single producer;
- whether the **product specifications** as set out in Art. 9 CIP Regulation are complete:
    a) the name of the to be protected geographical indication;
    b) the type of product;
    c) a description of the product, including raw materials;
    d) the specification of the defined geographical area;
    e) evidence that the product originates in the defined geographical area;
    f) a description of the production methods;
    g) information concerning packaging;
    h) any specific labelling;
    i) indication of production steps carried out by producers outside of the Member State in which the product originates, and specific provisions for verification of compliance;
    j) other requirements provided for by Member States; and
- whether the **single document** comprises the relevant information as set out in Art. 10 CIP Regulation: next to a) – d) set out in the product specifications, here importantly the link between the product and the defined geographical area needs to be specified, including by reference to specific elements in the product or production method.

Incomplete or incorrect applications can be corrected by the applicant within a given time period, non-compliant applications are rejected.[74] Where national authorities have verified the compliance with the relevant requirements and the completeness of information provided, the application will be published and proceeds to **the national opposition procedure**. According to Art. 15 CIP Regulation, any person with a legitimate interest and established in the Member State of origin may submit to the competent authority, within a period of at least two months from the date of publication,[75] an opposition based on one or more of the following grounds (Art. 15.3):

a) the protection requirements in Art. 6 CIP Regulation are not fulfilled;

[72] Art. 12 CIP Regulation.
[73] For third country GIs that are sought to be registered via the Geneva Act, the competent authority will be the EUIPO. See Art. 64.2.a CIP Regulation.
[74] Art. 14.2 and 14.3 CIP Regulation.
[75] This time period for WSA products varies from one Member State to another.

b) the GI name is considered generic (Art. 42), is wholly or partly homonymous to a previously applied for name and does not fulfil the sufficient distinction criteria (Art. 43), or would be liable to mislead the consumer as to the true identity of the product in light of a previous well-known or reputed mark (Art. 44.2); or
c) the registration would jeopardise the existence of an identical or similar name use in trade, a trade mark or products legally on the market for at least five years preceding the date of publication.

Where an **opposition** is considered admissible, the national opponent and applicant are invited within two months to engage in consultations in order to reach a friendly settlement within a reasonable period not exceeding three months.[76] Whatever the outcome, it will be assessed by the competent authority together with the application and any agreed modifications. The decision by the competent authority will be published, in case of a favourable decision including the product specifications. It will then be submitted to the EUIPO according to Art. 22.1 CIP Regulation.

3.2.1.2 European phase

Then the European phase starts. It is very similar to the European phase for WSA products, with the important exception that the body who carries out the assessment is not DG Agriculture and Rural Development of the Commission, as it is for WSA products,[77] but the EUIPO. During the revision of the WSA Regulation, there were discussions as to whether also for wines, spirits and agricultural products, this authority should be vested in the EUIPO. In fact, DG AGRI has already delegated some of its competences to the EUIPO for some years. However, a shift of competence to the full product assessment of WSA GI applications by the EUIPO led to opposition,[78] expressing a fear that the EUIPO may take on too much of a 'trademark approach'. Whether that fear is legitimate, also for CIP products, will have to be seen. Without a doubt, the EUIPO will have to get used to the realities of GI products in its assessment, which is different from that of trade marks. This is even more relevant for applications reaching them through the direct application procedure, where they will be in contact with producer groups directly.

The European phase begins by the competent authority submitting the required documents (Art. 22.1) to the EUIPO through the digital system for electronic submission of applications:

a) the single document (Art. 10)
b) the accompanying documentation (Art. 11)
c) a declaration confirming that the application meets the conditions for registration; and
d) a reference to the published product specifications.

Within the EUIPO, the Geographical Indication Division for craft and industrial products checks for manifest errors, the completeness of the information provided, and the preciseness and sufficient technicality of the single document; it may also seek supplementary information.[79] This **examination** is carried out within six months of the

[76] At the request of both parties, this period can be extended, see Art. 15.2 CIP Regulation.
[77] Article 14.1 CIP Regulation specifies that the Commission will examine the applications submitted by national authorities. In practice, this has already been the case for agricultural products. DG Agriculture has been fulfilling this task.
[78] A. Kyrylenko, 'European Parliament approves Regulation on Geographical Indications for wines, spirit drinks and agricultural products' *IP Kat blog*, 29.2.2024 ipkitten.blogspot.com/2024/02/european-parliament-approves-regulation.html.
[79] Art. 23 CIP Regulation.

receipt of the application. Incomplete or incorrect applications can be corrected within two months. Where the EUIPO considers that the conditions are fulfilled, it will publish the single document with a reference to the product specification in the Union register, for the purpose of the **Union opposition procedure**.

At Union level, an opposition can be filed with the EUIPO by a competent authority of a Member State or of a third country, as well as by any natural or legal person having a legitimate interest, as long as that person is established or resident in a third country or another Member State from the one where a national opposition procedure has already taken place.[80] The time limit for raising oppositions is three months of the date of publication of the single document. An opposition is admissible if it complies with the standard form for reasoned statement of opposition set out in Annex III.[81] Next to contact details and information about the GI, this requires a specification of the grounds of opposition and for legal and natural persons, a statement explaining the legitimate interest of the opponent. The opposition grounds are the same as in the national opposition phase, as specified in Art. 26.2. Also here, the EUIPO will invite the opponent and applicant to engage in consultations for a reasonable period of time not exceeding three months in order to reach a friendly settlement.

In addition, at any point in the opposition procedure, the Geographical Indications Division can consult a newly established **Advisory Board** for advice. [82] According to Article 35 CIP Regulation, the Advisory Board is composed of representatives from the Member States and the Commission. The Board can invite recognized experts in the field of GIs or in certain product categories to provide expertise. The Advisory Board can be consulted on matters such as assessing the quality criteria, establishing the reputation or a product, determining the generic nature of a name, assessing the link between a product's characteristics and its geographical origin; or on the likelihood of consumers being confused. Its advice is not binding and shall be delivered in panels of three.

On the basis of all information available to the EUIPO, it determines whether the application meets all the requirements. The application will be either registered in the **new Union register**[83] or rejected, depending on the finding:

b) The application does not meet all requirements: the application will be rejected;
c) The application meets all requirements and
    a) no admissible opposition has been received: the GI will be registered;
    b) an admissible opposition has been received and
        i. an agreement has been reached: if the agreement complies with Union law, the GI will be registered
        ii. No agreement has been reached: the EUIPO determines whether the opposition is well-founded and assesses the grounds of opposition, leading to
            - either rejecting the opposition and registering the GI, or
            - rejecting the application.

[80] Art. 25.2 CIP Regulation.
[81] Art. 26.1 CIP Regulation.
[82] The parties involved in a procedure during which the Board is consulted, will be notified thereof. See Art. 25.6 CIP Regulation.
[83] Art. 37 CIP Regulation sets out the establishment of a new register for craft and industrial products. The GIportal is expected to be available at the EUIPO as of December 2025.

3.2.2 Direct application procedure through the EUIPO

3.2.2.1 Need for a derogation and single point of contact

An important new feature of the CIP Regulation is that Member States may apply for a derogation from the two-stage procedure. They will have to do so before 30 November 2024, providing the Commission with the following information:[84]

a) Evidence of the absence of national specific protection for GIs for craft and industrial products in their Member States; and
b) An assessment demonstrating that the local interest for GI protection for craft and industrial products is low.

On the basis of that information (and if necessary additional requested information), the Commission will adopt a decision. What exactly a low local interest is has not been defined. However, looking at the potential products identified as suitable for GI protection in the Netherlands, Belgium and Luxembourg, and bearing in mind that not all of those may wish to apply for protection through a geographical indication, it is quite likely that numbers of around 4 potential applications per country could be considered low. No time frame is stipulated in Article 19.2 CIP Regulation on how fast such decisions by the Commission can be expected.

Importantly, a derogation can be withdrawn under certain conditions. According to 19.4 CIP Regulation, the Commission may withdraw the derogation if the number of direct applications submitted substantially exceeds the estimate given by that Member State. So far, there is no clarity as to what that number could be. But important seems that the application for derogation does provide a realistic assessment of which applications can be expected in order to not run the risk of a withdrawal of the derogation.

Once the derogation has been granted, the Member State has to indicate what their **single point of contact** for technical issues relating to products and applications will be.[85] Since that point of contact has to be independent from applicants and impartial, a public body such as a ministry, similar to the national authority for WSA products, could be chosen. It remains to be seen how well the single points of contact will be able to help the EUIPO with their requests. Arguably, where a Member State has chosen for a direct application procedure for CI products, the ability of the national point of contact to accumulate expertise and knowledge on the national situation in relation to a specific CI product is questionable. Therefore, the support by such national points of contact may strongly depend on the type of information EUIPO would like assistance with, see below. In order to facilitate an accumulation of expertise and knowledge, it could be interesting for the Benelux countries to consider establishing a common point of contact that would assist with applications from the three countries, should they choose to apply for the derogation. More experience present in the national points of contact would also benefit the producer groups that want to apply: experience from GI applications for WSA products has shown that preparing the product specifications and all the documentation can be prohibitive without any support from national bodies.[86]

[84] Art. 19.1 CIP Regulation.
[85] See Art. 19.5 CIP Regulation.
[86] Zappalaglio shows that often, WSA products were applied for by a public body. See A. Zappalaglio, F. Guerrieri, & S. Carls, 'Sui Generis Geographical Indications for the Protection of Non-Agricultural Products in the EU: Can the Quality Schemes Fulfil the Task?' *IIC* 2020/51, p.56.

3.2.2.2 Examination by the EUIPO

For Member States that have been granted a derogation, applicants can directly approach the EUIPO for applications, amendments of product specifications or requests for cancellation.[87] The EUIPO will then carry out the same **assessment** as otherwise the national competent authority would have done:[88] a) verify compliance with the requirements for a GI and the applicant,[89] b) check the completeness of information required in the product specifications, single document and any additional documentation,[90] and c) offer incomplete and incorrect applications an opportunity to correct. It will also check for manifest errors, the completeness of the information provided, and the preciseness and sufficient technicality of the single document; it may also seek supplementary information.[91] In case of favourable decisions, the EUIPO will publish electronically the single document and a reference to the product specifications for the purposes of opposition.[92] Then the same opposition procedure at Union level is followed as under the second phase of the two-stage procedure.[93] In this case, however, national opponents with a legitimate interest are admissible as well.[94]

In order to take a decision regarding a direct application, the EUIPO shall communicate with the applicant and the single point of contact on any technical issues relating to the direct application.[95] The EUIPO can submit a request for **assistance** to the single point of contact in relation to several aspects relevant for the examination of the direct application. In particular, assistance can be sought in relation to examining specific aspects of a direct application, verifying information in the application, issuing declarations concerning such information and replying to other requests for clarification. [96] This potentially entails a broad spectrum of questions and as mentioned above, it will highly depend on the information and expertise that the single points of contact have on GIs in general and a local CI product whether they can be helpful. Such assistance will be more important in the beginning of the establishment of the system, when EUIPO is still building their own expertise, in order to avoid only formally assessed applications, on the completeness of forms.[97] The Impact Assessment of 2022 also suggests the option of allowing the EUIPO to consult with relevant parties or commission independent research.[98] This, however, is not explicitly mentioned in the Regulation, while the option of requesting additional information from the applicant could encompass requiring supporting analysis.

The Regulation suggests the following for a situation in which assistance is not provided by the single point of contact: first, the time limit can be suspended for up to six months; second, the GI Division for craft and industrial products can consult with the Advisory Board.[99] Ultimately, the EUIPO will take a decision following the same steps as in the two-stage procedure and set out in Art. 29 CIP Regulation. One exception to this rule applies: in case a 'proposed geographical indication might be contrary to public policy, or where the registration or rejection of the application might jeopardize the Union's trade or external relations', the Commission may take over from the EUIPO any time before the

[87] See Art. 20.1 CIP Regulation.
[88] See Art. 20 jo 14 CIP Regulation for the required assessment.
[89] See Art. 6 and 8 CIP Regulation.
[90] See Art. 9 – 11 CIP Regulation.
[91] See Art. 23.1 and 23.2 CIP Regulation.
[92] See Art. 23.7 CIP Regulation.
[93] See Art. 25 ff CIP Regulation.
[94] See Art. 20.3 CIP Regulation.
[95] See Art. 20.4 CIP Regulation.
[96] See Art. 20.5 CIP Regulation.
[97] European Commission, SWD(2022)115final, p. 45.
[98] Ibid, p. 45.
[99] See Art. 20.6 CIP Regulation.

end of the registration procedure. [100] It can do so at its own initiative, at the request of a competent authority of a Member State or of the EUIPO itself.

3.2.3 Applications from third countries

For applicants from third countries, the direct application procedure applies. Either the applicant directly or the competent authority of the third country, as applicable under the third country's law, shall submit the same documents as applicants from Member States (product specifications, the single document and accompanying documentation).[101] In addition, they also need to produce legal proof of protection of the geographical indication in the third country of origin and proof of power of attorney where the applicant is represented by an agent.[102] Otherwise, no other rules apply than set out above for the direct application procedure.

Important to note is that not all third country GIs have to go through an application procedure. In fact, most of the third country GIs so far have been granted protection within the EU through free trade agreements or in the context of the multilateral register of the Geneva Act. Having been included in the lists with GIs that were negotiated as part of the free trade agreement, third country GIs will receive automatic protection in the European Union, as they are deemed to fulfil the corresponding criteria and are already protected as a GI in the country of origin. Those GIs will also be included in the Union register.

3.3 Only one type of protection: geographical indications

Next to the direct application procedure, another novelty in the CIP Regulation is the availability of only one origin label, that of geographical indications. Traditionally, geographical indications in the European Union have been distinguished through two labels : the stronger link between the product characteristics and the geographical region is expressed through the label 'protected designation of origin' (PDO) and a slightly weaker link is shown through the label 'protected geographical indication' (PGI). This distinction is still available for wines and agricultural products; it is not for CI products. Article 6.1 CIP Regulation sets out the criteria of protection for geographical indications; those criteria are identical to the ones stipulated for PGIs in the WSA Regulation for agricultural products:[103]

a) 'the product originates in a specific place, region or country;
b) the product's given quality, reputation or other characteristic is essentially attributable to its geographical origin; and
c) at least one of the production steps of the product takes place in the defined geographical area.'

How is this label different from a PDO? In fact, a PDO represents a stronger geographical link between the product and the origin, as the second and the third standard are stricter, requiring substantively a closer link. As to the second standard, for a PDO, the quality or characteristics of the product must be 'essentially or exclusively due to a particular environment with its inherent natural and human factors.'[104] Notably, 'essentially or exclusively due to a particular environment' represents a physical link with the specificities

[100] See Art. 30.1 CIP Regulation.
[101] See Art. 22.3 CIP Regulation.
[102] See Art. 22.3(d) and (e) CIP Regulation.
[103] See Art. 46.2 WSA Regulation and Art. 6 CIP Regulation. See also Art. 3.4 of Regulation 2019/787 for spirits. The definition of geographical indication for wines is different in that it refers to the percentage of grapes that must come exclusively from the geographical area. See Art. 93.1.b Regulation 1308/2013, as amended by Art. 84 WSA Regulation.
[104] See Art. 46.1.b WSA Regulation.

of the local environment and/or other natural characteristics. This combination of physical and human elements is commonly referred to as *terroir*; such a terroir-link is not necessarily required for a geographical indication. For a geographical indication, a softer link of essential attribution to the geographical origin can for example be found in historical and economic ties, know-how and method of production. This is further confirmed by the addition of the product's 'reputation' as a linking factor, next to quality and characteristics. Regarding the third standard, the difference lies in the fact that for PDOs, all production steps must take place in the defined geographical area; for GIs, at least one production step is sufficient. All in all, a stronger link with the territory is required for a PDO.

Hence, when compared to the traditionally developed system of PDO and PGI protection, a certain legal inconsistency is noted. It is therefore worthwhile to elaborate the reasons for this simplification of the system. As expressed in the Impact Assessment of 2022,

> 'Research has shown that the link to a specific place for CI products is predominantly based on the product's history and on its distinctive traditional method of production and not so much on the link to elements of the geographical environment such as soil or weather conditions. There are thus only few products that would qualify for PDO.'[105]

Also research carried out by Zappalaglio, Guerrieri, & Carls showed that from a sample of 112 CI specifications currently under protection in three Member States (Portugal, France and Italy), only 13.1% were based on a terroir-type link.[106] The study therefore concludes that only a very low number of CI products is likely to benefit from a PDO label at EU level. In addition, the 2014 stakeholder consultation identified further arguments in favour of the extension of a GI-only label : a one-label system is less complex and more understandable to consumers, and many third country systems of GI protection also only rely on one GI label in their domestic system.[107]

At the same time, the choice for a GI-only option for CI protection leaves us with an EU GI system that offers different labels for agricultural and wine products as compared to CI products.[108] One may argue that this is not really a problem as the scope of protection conferred to products under both the PDO and PGI labels is identical: there is no difference in the rights and exceptions conferred and hence applicants are not treated differently.[109]

However, this reform of the GI system could have been an opportunity to harmonize over all product groups. One option considered was to extend the current system to CI products and offer both PDO and PGI protection. Due to efficiency reasons, the evidence of a limited amount of CI products fulfilling the PDO-type link and several Member States not in favour of GI protection for CI products at all, this option was not chosen. However, the reform could have been an opportunity to address a problem noted already for several years: the difference of the link between terroir-products and non-terroir products is not sufficiently

[105] European Commission, SWD(2022)115final, p. 42.
[106] The noted terroir-link for these few products mainly existed where the raw material used for the product had to be of local origin, like marbles, stones, metals, wood or textiles. See Zappalaglio, Guerrieri, & Carls 2020, p. 55.
[107] European Commission, 'Results of the public consultation and public conference on the Green Paper Making the most out of Europe's traditional know-how: a possible extension of geographical indication protection of the European Union to non-agricultural products' 2015, referred to by Zappalaglio, Guerrieri, & Carls 2020, p. 63.
[108] It is noted that spirits are also only protected through GIs. However, this product category is rather small in comparison to agricultural products and therefore does not have the same importance as the commonly known and applied agricultural and wine regime. On 26 August 2024, out of the 3885 quality labels registered in the GI register eAmbrosia, only 264 registrations relate to spirit GIs.
[109] See Art. 26 jo 1 WSA Regulation that applies the same rights to both origin labels.

respected in the applications for GI agricultural products. In fact, a blurring of the separating lines between the two labels has been described by different authors.[110] For example, Zappalaglio and others found that among the 1390 agricultural PDOs and PGIs registered until May 2019, 70% of the PDO specifications describe merely a reputational link, as opposed to a terroir link required for a PDO.[111] The reform could have tried to remedy this inconsistent application of the standards for PDOs and PGIs and thereby offer a coherent and diversified system for all GI products, including CI products. This would have done justice to the variety of product links that exists for all products, including CI products.[112] Now, CI products who fulfil the stronger PDO link, cannot express the actual link their product has with the territory from which it originates. Whether in practice consumers note and know the difference between the two labels is a separate, more general problem the EU Commission tries to address.[113] But a different treatment of products groups that are similar in the sense that they all comprise products with diverse links to the geographical area (both physical and more reputational links) remains an odd feature of the new system.

3.4 Flexibility in control and enforcement

The third novelty of the CIP Regulation is a new verification procedure of compliance prior to putting the product on the market. In essence, according to Article 51 CIP Regulation, producers self-declare that they comply with the product specifications; competent authorities carry out controls only where risks or notifications indicate a need. This is much lighter than the procedure in place under the WSA Regulation,[114] which as an alternative, is in fact still offered to Member States under Art. 52 CIP Regulation. According to the 'traditional' procedure, compliance is checked by competent authorities by means of mandatory controls, before and after the product is placed on the market.

The flexibility offered to Member States of following a lighter compliance procedure was deemed necessary in order to reduce compliance costs for producers, who are often small and micro enterprises, and to limit enforcement costs of public authorities, whose CI product markets for GI protection may be very small.115 At the same time, as pointed out in the impact assessment 2022, self-declaration alone may not be sufficient to deter fraud behaviour and reassure consumers' trust in the GI label.116 Whether the controls by competent authorities that are foreseen after the submission of the self-declaration and on the basis of specific indications, can guarantee this additional layer of assurance remains to be seen.

---

[110] M. Crupi, *A Pragmatic Approach to the Link to Origin: EU PDOs and PGIs for registration, innovation, and trade in origin products* (PhD thesis Universidad de Alicante and Maastricht University) 2022, p. 40.
[111] A Zappalaglio e.a., 'Study on the Functioning of the EU GI System' (Max Planck Institute for Innovation and Competition, February 2022) ip.mpg.de/fileadmin/ipmpg/content/forschung/Study_on_the_Functioning_of_the_EU_GI_System.pdf.
[112] Zappalaglio, Guerrieri, & Carls 2020, p. 63.
[113] In the most recent Eurobarometer on Agricultural and Rural Development, consumer awareness of the PGI logo was 22% and the PDO logo 16% among the roughly 26.000 EU citizens who completed the survey. See European Commission, 'Europeans, Agriculture and the CAP. Special Eurobarometer 520 report' 2022 (2665/SP520), p. 134; see also A. Goudis & D. Skuras (2021), 'Consumers' awareness of the EU's protected designations of origin logo' *British Food Journal* 2021/123(13), p. 2.
[114] Art. 39 WSA Regulation.
[115] European Commission, SWD(2022)115final, p. 43.
[116] Ibid, p. 43.

3.4.1 Self-declaration of compliance

Before placing the product on the market, producers submit a **self-declaration** according to the standard form set out in Annex 1 to the competent authority. Producers can choose as to whether they want to add an external product certification layer on top of the self-declaration by producers, but that is not mandatory.[117] When receiving the self-declaration, competent authorities will carry out a rather **formal assessment**[118] of whether the submitted information is complete and consistent. They could engage in further research, i.e. as to whether the information is correct, certainly if they have reservations or reasons to doubt the credibility of the information submitted. However, it does not seem likely they that this will often be the case. If they have no reservations, they will issue a **certificate of authorization** to use the GI on the market.[119] Once the product is on the market, producers must re-submit the self-declaration every three years.

As a back-up to the self-certification procedure, competent authorities or product certification bodies shall carry out **controls** based on a risk analysis and notifications from interested producers of products designated by the geographical indication.[120] They can take place before and after the product is placed on the market. Different from the traditional procedure, such controls are not generally carried out but only where there are indications. Where non-compliance is detected, the authority shall take necessary measures to remedy the situation.[121]

3.4.2 Verification of compliance by competent authorities

As an alternative to the self-declaration by producers, Member States may also provide for the verification of compliance by means of **controls** carried out before and after the product has been placed on the market.[122] These controls are either done by the competent authorities themselves or product certification bodies or natural persons with delegated tasks.[123] This procedure is obligatory for third country GIs.[124]

Controls before placing the product on the market are obligatory; producers will obtain the **certificate of authorization** from the competent authority after compliance has been verified by them or third parties.[125] Controls after placing the product on the market take place based on a risk analysis and, where applicable, notification by interested producers, similarly to the controls under the self-declaration procedure. Also here, in case of non-compliance, the necessary measures shall be taken to remedy the situation.

3.4.3 Monitoring of the use of the GI on the market by competent authorities

In addition to the verification of compliance with the product specifications, the **use of GIs on the market** needs to be monitored. These monitoring tasks are not left to producers but shall be carried out by competent authorities or product certification bodies with delegated tasks.[126] Also here, controls shall be carried out based on a risk analysis and if available on notification by interested producers. Interesting to note is that Art. 42.2

[117] Art. 51.4 CIP Regulation.
[118] Gangjee 2024, p. 17.
[119] Art. 51.3 CIP Regulation.
[120] Art. 51.5 CIP Regulation.
[121] Art. 51.6 CIP Regulation.
[122] See Art. 52.1 CIP Regulation.
[123] See Art. 55 for the delegation of control tasks. Often, these tasks are performed by public bodies under the relevant Ministry. See EUIPO, 'Protection and Control of Geographical Indications for Agricultural Products in the EU Member States' (December 2017), p. 14.
[124] See Art. 53 CIP Regulation.
[125] See Art. 52.2 CIP Regulation. See also Art. 39.3 WSA Regulation.
[126] See Art. 54.1 CIP Regulation

WSA Regulations requires that competent authorities act regularly and with appropriate frequency. That specification of monitoring tasks has not been incorporated in the CIP Regulation, leaving more flexibility to public authorities. Where unlawful use is constituted, competent authorities must take appropriate administrative and judicial steps to prevent or stop the use of names that are produced, provided or marketed in their territory.[127] Effective, proportionate and dissuasive penalties must apply to infringements of the Regulation.[128]

4 Overarching concerns

This paper so far has attempted to discuss the difference between the two new regulations and in comparison to the previous regime for agricultural products. These differences could partly be explained in relation to the differences between the product categories, in particular in relation to market size and the territorial link. Partly the additions reflect an update of the regime to address new challenges, like the online market and sustainability concerns. The following two points have been singled out as they present incoherences that should have been remedied.

4.1 Protection of GIs in ingredients or components of manufactured products

Where a product protected by a geographical indication is used as an ingredient of a processed product, respectively a component part of a manufactured product, the question arises whether the GI can be used in the name of the processed respectively manufactured product. The solution found for CI products differs from the solution for wines and agricultural products.[129] This divergence is difficult to explain and actually both Regulations do not provide satisfactory solutions. As argued in this Opinion, a referential use defense, similar to trade mark law,[130] would have provided flexibility to judge on a case-by-case basis whether a reference to a GI fulfils the standard of fairness and honest practices.[131] The qualifications and conditions that now have been introduced in the CIP and WSA Regulation complicate the matter unnecessarily.

The protection in the new WSA Regulation follows in main lines the CJEU judgment in *CIVC v Aldi*.[132] For wines and agricultural products, Article 27.1 WSA Regulation sets out that a GI designation can be mentioned in 1) the name of a processed product, 2) its labelling or 3) its advertising material where it refers to an ingredient used in the processed product and if certain conditions are met:

a) 'the processed product does not contain any other product comparable to the ingredient designated by the geographical indication;
b) the ingredient designated by the geographical indication is used in sufficient quantities to confer an essential characteristic on the processed product concerned; and
c) the percentage of the ingredient designated by the geographical indication in the processed product is indicated in the label.'

[127] See Art. 54.2 CIP Regulation.
[128] See Art. 61 CIP Regulation.
[129] Spirit drinks are excluded from this provision, see Art. 27.4 WSA Regulation.
[130] See Art. 14.1.c Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark, OJ L 154, 16.6.2017 (hereinafter EUTMR).
[131] See Kur 2023, p. 310.
[132] CJEU C-393/16, 20.12.207, ECLI:EU:C:2017:991 (*Comite Interprofessionnel du Vin de Champagne v Aldi Sud Dienstleistungs-GmbH & Co OHG)*.

This regime in essence allows referential use if the stipulated standard of fairness and honest practices reflected in the conditions, is fulfilled.

The problem with this solution lies in its second paragraph of Art. 27 WSA Regulation: it adds another condition that arguably is not in line with the character of GI-products as non-tradable goods. When producers of a processed product want to mention the GI in the name of the product, including in advertising material, they need to give prior written notification to the recognized producer group of the GI. In the notification, producers of the processed product need to demonstrate to the GI producer group that all conditions of Art. 27.1 are fulfilled.

This procedure in fact allows for negotiations, similar to a situation of obtaining a licensing. This is confirmed by Art. 27.3, which mentions the possibility for GI producer groups and the producer of the processed product to conclude a contractual agreement about the specific technical and visual aspects of representing the GI in the name of the product. In any case, within four months, a written acknowledgment by the GI producer group is required that they have received the request; but even without an answer, the producer of the processed good can start using the GI in the name. The consequence of this regime is that referential use becomes more cumbersome, subject to a time delay and limited in scope where GI producer groups are put in a position to contest.[133]

Such a requirement furthermore goes beyond the conditions endorsed by the CJEU in *CIVC v Aldi* and the regime set up by the Commission in non-binding Guidelines on the labelling of foodstuffs.[134] Arguably, the Commission Guidelines 2010, also reflected in Art. 27.1 WSA Regulation, are based on a framework of good faith and honest commercial practices;[135] it balances protection against unfair exploitation (where similar ingredients are also used and no essential characteristic is linked to the GI ingredient) and competitive freedom to use (where the GI ingredient is characterizing). The additional requirement of paragraph 2 of notifying and negotiating the use of the GI name shifts this balance in favour of GI producer groups.

The CIP Regulation sets out a different solution in relation to indicating GI-protected components in a manufactured product. In the first place, Art. 41.1 CIP Regulation gives the impression of achieving a balance[136] between fairness and harm to the reputation of a GI by allowing producers who are in conformity with Article 47 to use a GI indication for a component of the a manufactured product where

a) 'such use is made in accordance with honest commercial practices', and
b) 'does not exploit, weaken, dilute or is not detrimental to, the reputation of the geographical origin'.

There are three aspects to consider. The most important one is that the Article seems to limit the ability to indicate the GI component of the manufactured product to 'producers in conformity with Article 47'. Article 47 CIP Regulation stipulates that a GI can be used by any producer of a product that is compliant with the product specifications. Calabrese[137] also wonders what exactly is meant with this reference, as it would mean that only

[133] According to Theiss, this provision was meant to strengthen the role of recognized producer associations. See Theiss 2024.
[134] European Commission, 'Guidelines on the Labelling of Foodstuffs using Protected Designations of Origin (PDOs) or Protected Geographical Indications (PGIs) as Ingredients' (2010/C 341/03) (hereinafter 'Commission Guidelines 2010')
[135] See Calabrese 2023, p. 340-1.
[136] Calabrese wonders whether this balance is required, as according to him, use according to honest commercial practices implies that there is no harm to the reputation or dilution. See Calabrese 2023, p. 342.
[137] Calabrese 2023, p. 341.

producers in the area, fulfilling the produce specifications, can label the use of a GI-protected component. That interpretation would be entirely at odds with the purpose of a referential use exception: others should legitimately be able to describe the component parts used in their product; they are not producing the GI product themselves but using it in their manufactured product. The conditions of Article 47 hence should not apply to them.

Assuming that this interpretation was not envisaged by the drafters of the Regulation, a second linguistic aspect is worth pointing out. The provision requires that the use of the GI does not 'exploit, weaken, dilute or is detrimental to, the reputation of the geographical origin'. This formulation is now also part of the scope of protection for GI holders in Art. 40.1.a CIP Regulation. While the standards of dilution and detriment are familiar from the trade mark regime,[138] and exploitation from the previous GI regime, the addition of weakening is not known from another already existing regime. It could refer to the aspect of blurring the distinctive character of the sign, but this remains entirely unclear. A further increase of the scope of protection for GI right holders adds to the shifting balance from legitimate referential use to the protection of GI names.

The third aspect relates to paragraph 2 of Article 41. It comes down to a prohibition of using the GI indication in the name of the product where no consent was given by the GI holder, even if a producer complies with paragraph 1. Paragraph 1 does not specify where the GI indication could be used by the producer of the manufactured products. According to paragraph 2, however, it is clear that a GI for a component part cannot be used in the name without the GI holder's consent. Such a limitation is similar to Art. 27.2 WSA Regulation, but goes beyond that by requiring the consent of the GI producer group. As the Opinion points out,[139] this further empowerment of GI producers limits the flexibility of a fair referential use, comes at the detriment of the competitive freedom of third-party operators[140] and is not in line with the EU Commission's 2020 Circular Economy Action Plan,[141] which aims at facilitating the re-use of existing products.

4.2 Protection for goods in transit

A far reaching new provision has been introduced in relation to the protection of GIs for goods in transit. Both Art. 40.4(a) CIP Regulation and Art. 26.4(a) WSA Regulation extend the scope of protection available for GIs to goods entering the customs territory without being released for free circulation therein.[142] In essence, GI right holders are therefore entitled to submit an application to customs authorities to prevent third parties from bringing infringing goods in transit into the Union, in line with Regulation (EU) No 608/2013.[143] The previous Regulation 1151/2012 for agricultural products and foodstuffs did not yet grant GI right holders such protection.[144]

---

[138] Art. 9.2.c EUTMR.
[139] Calabrese 2023, p. 310.
[140] Calabrese 2023, p. 342.
[141] European Commission, Communication from the Commission to the European Parliament, the Council, the European and Social Committee and the Committee of the Regions, S A new Circular Economy Action Plan For a cleaner and more competitive Europe, COM(2020) 98 final, Brussels, 11.3.2020.
[142] Art. 26.4.c WSA Regulation also adds goods intended for export to third countries. See also fn 145 for relevant case law.
[143] Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 (OJ L 181, 29.6.2013).
[144] Art. 13.3 Regulation 1151/2012 required Member States to take appropriate administrative and judicial steps to prevent unlawful use of GIs, but not for goods in transit. The CJEU in its ruling C-159/20 had interpreted this provision to also cover products intended for export to third parties.

There are essentially two worries related to this provision. First, interfering with the freedom of transit in Art. V GATT must be justified. Transit goods are not destined to the EU market and may constitute legitimate goods in the country of destination. Seizing them therefore should be subject to conditions, such as a substantial risk of fraudulent diversion to EU consumers,[145] and safeguards. An important safeguard lacking in both GI regulations is an equivalent provision to Art. 9.4 EUTMR, which foresees that the seizure of goods in transit shall lapse if during proceedings establishing the infringement of the trade mark, evidence is produced by the declarant or the holder of the goods that the proprietor of the EU trade mark is not entitled to prohibit the placing of the goods on the market in the country of final destination. In other words, what is required for a seizure of in transit goods is an infringement of the trade mark in the country of destination, not only in the EU. The lack of such a provision poses the question whether the new GI regulations foresee measures against goods in transit merely on the basis of an infringement of the GI in the country of transit, being the EU. This interpretation would arguably be at odds with Article V GATT and the interpretation of the CJEU cited above in the trade mark field.

Second, the prohibition does not only target identical signs to the protected GI, but refers to any GI infringement. As a comparison, the equivalent trade mark provision Art. 9.4 EUTMR allows the seizure of transit goods for identical goods only, generally referred to as counterfeit goods.[146] Arguably, determining an infringement of the different forms of GI infringement including misleading use, misleading practices, evocation, use that exploits the reputation, etc., is considerably more difficult than identifying identical signs. It places a severe burden on customs authorities when monitoring infringements. As Cataldo notes, customs officials are no 'experts' in IP and arguably may find it difficult to take decisions about possible infringements.[147]

5 Conclusions

EU law on geographical indications has received an upgrade: the regulations for all GI products have been updated in terms of online GI infringements, the protection of GI names as domain names and sustainability commitments. Most importantly, as of December 2025, craft and industrial products will be protectable by a union-wide title, as a geographical indication. These revisions were necessary in light of our online trading environment, societal concerns and international commitments.

This contribution aimed at highlighting the differences between the old and new regime, and between the regime applicable to WSA products and CI products. Introducing EU-wide protection for CIP products was not without difficulties; after a decade-long process, the new CIP Regulation provides for a GI protection regime that is more modest in its commitments required from Member States as compared to the WSA Regulation, giving

Arguably, this judgment is not equally applicable to customs procedures, as those products were never on the market of a Member State that should hence have taken appropriate measures in that respect. See CJEU C-159/20, 14.07.2022, ECLI:EU:C:2022:561 (*European Commission v Kingdom of Denmark*).

[145] The CJEU doctrine of showing such a substantial risk stems from several judgments, in particular CJEU C-281/05 9.11.2006, ECLI:EU:C:2006:709 (*Montex Holdings Ltd v. Diesel SpA*); CJEU C-446/09 and C-495/09, 1.12.2011, ECLI:EU:C:2011:796 (*Koninklijke Philips Electronics NV v. Lucheng Meijing Industrial Company Ltd, Far East Sourcing Ltd, Roehlig Belgium NV and Nokia Corporation v. Her Majesty's Commissioners of Revenue and Customs*); see V. Cataldo, 'Goods in Transit and Trade Mark Law (and Intellectual Property Law?)' *IIC* 2018/49, p. 440.

[146] See the definition of 'counterfeit trademark goods' in fn.14(a) of the TRIPS Agreement, accompanying art.51 TRIPS Agreement.

[147] See Cataldo 2018, p. 439.

due effect to the often small-scale nature of CI production. This is manifested in three features.

First, a direct application route to the EUIPO was added to the traditional two-stage application procedure, to accommodate Member States where no national GI protection for CI products existed before and the local interest for protecting such products through GI protection is low. It remains to be seen whether the absence of the national phase will result in less local and regional expertise and hence support for applicants from those Member States. The Benelux countries, with roughly five potential CI products per country that could benefit from this protection regime, will probably qualify for this direct application route. If they do, they should consider creating one common point of contact, which will act as the liaison with the EUIPO for assistance in examining the direct application and may be able to accumulate more experience than a single point of contact in each country, which would be beneficial for producer groups.

Second, the label available for CI products is limited to one, that of geographical indications. It simplifies the registration procedure in so far as no differentiation needs to be made between PDOs and PGIs, which is still the applicable standard for WSA products. The decision to abolish the PDO scheme for CI GIs was based on research showing a very low number of CI products that would fulfil this stronger geographical link. At the same time, a certain legal inconsistency has been introduced between the WSA regime and the CI regime. In fact, as argued here, the legislator could also have opted for a coherent and diversified system for all GI products, offering a PDO label also to CI products that present a substantively close link with the territory. It also presented an opportunity to clarify the difference between the link required for territory-based products and for reputation-based products, which has been blurred for several years. The reform has not provided this clarification.

Finally, Article 51 CIP Regulation has introduced a new enforcement route: producers self-declare that they comply with the product specifications; competent authorities carry out controls only where risks or notifications indicate a need. This flexibility of a lighter compliance procedure was deemed necessary in order to reduce compliance costs for producers, who are often small and micro enterprises, and to limit enforcement costs of public authorities, whose CI product markets for GI protection may be very small. While understandable from an economic perspective, it is not entirely clear whether risk-based controls will be sufficient to maintain the quality of GI-protected CI products.

This contribution has also highlighted two concerns that both Regulations do not addressed. The first concern relates to geographical indications used as an ingredient or component part of a product. When producers of a processed WSA product want to mention the GI of an ingredient in the name of the product, including in advertising material, they need to give prior written notification to the recognized producer group of the GI. Similarly for CI products, only producers fulfilling the product specifications are allowed to use the GI of a component part in the name of the product, and only with the consent of the GI holder. These qualifications and conditions complicate the referential use of the GI unnecessarily and come close to a licensing scheme.

The second concern regards the lack of important safeguards in relation to the seizure of GI infringing goods in transit. Accordingly, GI right holders are entitled to prevent third parties from having GI infringing goods in transit within the European Union. However, both GI regulations do not replicate an important safeguard (equivalent to Art. 9.4 EUTMR): only if there is also an infringement in the country of destination can transit goods be seized, and not only if an EUTM is infringed. For GIs, it seems that a GI infringement in the EU would be sufficient. Furthermore, the scope of protection goes beyond that of trade marks in so far as not only identical GIs are covered, but actually all

forms of GI infringement. The latter concerns call for a more critical engagement with GI protection at EU level.