

# BREXIT WHITE PAPER HIGHLIGHTS IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS POST-BREXIT

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Significantly, for those with interests in IP rights, the UK Government's White Paper on Brexit makes encouraging noises about future recognition and security for IP in the UK and in the UK's relationship with the EU, including support for the Unified Patent Court and the UK's role within the new patent system.

The [White Paper](#) (published on 12 July 2018) details the Government's proposals for the future relationship between the United Kingdom and the European Union and includes a limited number of proposals relating to intellectual property:

- The United Kingdom intends to explore staying in the Unified Patent Court (UPC) and Unitary Patent system post-Brexit. The United Kingdom will work with the member states that have signed up to the UPC Agreement to ensure that the agreement can continue on a firm legal basis.
- Arrangements on future co-operation on intellectual property are recognised as important to provide confidence and security to rights holders operating in and between the United Kingdom and the European Union.
- The United Kingdom will establish its own geographical indications (GIs) scheme to provide continuous protection for UK GIs in the United Kingdom and protection for new GIs applied for by UK and non-UK applicants.

## **UPC AND UNITARY PATENT**

Opinions vary on the likelihood of whether the United Kingdom could continue as part of the UPC and Unitary patent system post-Brexit. The foreword to the White Paper by the Prime Minister states that the proposals in the White Paper would end the jurisdiction of the Court of Justice of the European Union in the United Kingdom. It is not clear whether the United Kingdom would nevertheless accept the role of the Court of Justice of the European Union in respect of references from the UPC on matters of European law. The support for the new system offered by the White Paper is however an encouraging start.

## **FUTURE CO-OPERATION ON INTELLECTUAL PROPERTY**

IP rights which are designated as applying across the EU (EU trade marks, Community plant variety rights, Community registered designs and Community unregistered designs) and those, qualification for which involves activity within the EU (such as database rights), are all at risk of termination in relation to the territory of the UK once the definition 'EU' no longer includes the UK. The draft withdrawal agreement of 19 March 2018 (as supplemented by the joint statement on 19 June 2018) set out the text (highlighted in green in the draft) agreed between the Commission and United Kingdom at negotiator level, in relation to the replacement of EU-wide rights with equivalent UK rights, which may indicate that there will be substantive future co-operation. The statement above in the White Paper serves to underline this approach as well as recognising the significance of this issue for rights holders in the UK and across the EU.

## **GEOGRAPHICAL INDICATIONS**

The provisions in the draft withdrawal agreement relating to GIs were not agreed at negotiator level in the March 2018 draft or June 2018 joint statement. However, the White Paper states that the United Kingdom wants equivalence arrangements on a broad range of food policy rules, including GIs, noting that GIs provide legal protection against imitation and misrepresentations about quality or geographical origin for agri-food products that have a strong traditional or cultural connection to a particular geographical area.

The White Paper proposes that the United Kingdom establish its own GI scheme consistent with (and going beyond) the provisions of the WTO [Agreement on Trade-Related Aspects of Intellectual Property](#). The new scheme is to provide a clear and simple set of rules on GIs and continuous protection in the United Kingdom for UK GIs notwithstanding exit from the European Union. The scheme will be open to new applications from both UK and non-UK applicants.

## **EUROPEAN MEDICINES AGENCY**

In line with the UK's objective of ensuring that products only go through one approval mechanism to access both markets, the UK is seeking participation in EU agencies including the European Medicines Agency (EMA), as an active participant, albeit without voting rights, which would involve making an appropriate financial contribution. The UK would want to secure access to relevant IT systems, ensuring the timely transfer of data between UK and EU authorities. In particular, for the EMA, this would involve ensuring that all the current routes to market for human and animal medicine remain available, with UK regulators still able to conduct technical work, including acting as a 'leading authority' for the assessment of medicines, and participating in other activities like ongoing safety monitoring and the incoming clinical trials framework.

## **CYBER SECURITY**

The White Paper also states that the UK and EU will need to continue to co-operate on cyber security to counter cyber threats.

It is proposed that there will be close collaboration between the UK and the Network and Information Security (NIS) Cooperation Group, Computer Security Incident Response Team (CSIRT) Network (created under the NIS directive) and the European Union Agency for Network and Information Security (ENISA). While the UK's desire to remain involved in the EU cyber security apparatus is welcome, no details of the legal mechanisms by which this will be achieved are provided at this stage.

For more on the UK's White Paper, what has been agreed so far at negotiator level between the EU and the UK on the withdrawal agreement, and the impact of Brexit on intellectual property rights - see the [Intellectual Property](#) section of our [Brexit Legal Guide 2018](#).

[Brexit hub](#)

## **KEY CONTACTS**

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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