

# UK GOVERNMENT AGREES ELEMENTS OF THE EUROPEAN COMMISSION'S PROPOSALS FOR POST-BREXIT PROTECTION OF EU-WIDE IP RIGHTS IN THE UK

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Legal Briefings - By **Joel Smith** and **Rachel Montagnon**

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In the [latest draft of the Withdrawal Agreement \(19 March 2018\)](#) the UK Government and European Commission negotiators appear to have agreed text providing for the replacement of EU-wide IP rights having effect in the UK with equivalent UK rights at the end of the transition period post-Brexit (until 31 December 2020).

Further, during the transition period, EU-wide rights will still apply to the UK due to the effect of Article 122 which provides that EU law will be applicable to the UK during the transition period and that it will produce the same legal effects in respect of and in the UK as those which is produces within the EU and its Member States and shall be interpreted and applied in accordance with the same methods and general principles, and that during the transition period, any reference to Member States in EU law shall be understood as including the UK.

Other IP related measures include provision for dealing with: exhaustion of rights, pending applications, international registrations designating the EU and the effect of invalidity proceedings that are "on foot" at the end of the transition period, (see Articles 50-57).

Certain provisions (highlighted in green) are now listed as agreed between negotiators, whilst others are still just proposals from the Commission (those un-highlighted) including those on GIs, SPCs and who pays the administration costs involved.

There are still unresolved issues for those who hold IP rights in the EU and those who license (in or out) EU-wide IP rights or have agreements linked to the "EU" as territory which we discuss below.

Despite the areas of current agreement, there remains the possibility of a "no deal" scenario in relation to the whole agreement, in which case none of the areas agreed would stand (although the UK Government could make separate arrangements to create equivalent rights at the moment of Brexit). Anything agreed between the Commission and the UK under the Withdrawal Agreement needs European Council approval and then European Parliament approval. Thus, although a good start has been made on agreeing the post-Brexit fate of EU-wide IP rights currently having effect in the UK, the final arrangements are still far from certain. Indeed, if the Withdrawal Agreement is not accepted then there will be no transition period at all and a "hard" Brexit will come into effect on 30 March 2019, with all that implies for IP rights (see our comments from January 2017 [here](#)).

In summary, the proposals in the revised Withdrawal Agreement, and problems associated with them, are:

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## 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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