

IMPACT OF THE BREXIT
FOR
EU TRADEMARKS AND COMMUNITY DESIGNS HOLDERS

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Introduction

On January 31, 2020, the United Kingdom (UK) and the European Union (EU) signed the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (“Withdrawal Agreement”)¹.

The Withdrawal Agreement entered into force on February 1, 2020. Since that date, the UK has withdrawn from the EU and has become a “third country”. The Withdrawal Agreement provides for a transition period ending on December 31, 2020. Until that date, EU law in its entirety applies to and in the UK.

The EU and the UK are currently negotiating an agreement on a new partnership, providing notably for a free trade area. In this connection, the EU Commission published on March 18, 2020 its proposal called “Draft text of the Agreement on the New Partnership with the United Kingdom” (“Draft Text”)².

However, following some recent political declarations, it is not certain at all whether such an agreement will be concluded and will enter into force at the end of the transition period³. In any event, such an agreement would create a relationship which in terms of market access conditions will be very different from the UK’s participation in the internal market and in the EU Customs Union.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12019W%2FTXT%2802%29>

² <https://ec.europa.eu/info/sites/info/files/200318-draft-agreement-gen.pdf>

³ <https://www.theguardian.com/politics/2020/oct/27/brexit-deal-hangs-in-the-balance-says-eu-council-president>

In all cases, those negotiations do not concern EU trademarks and Community designs, which is quite normal since, on the one hand, the territorial scope of protection of those IP rights are limited to the EU territory and since, on the other, the UK is not anymore an EU Member State.

However, the Withdrawal Agreement of January 31, 2020 contains several articles which will be of interest for the holders of EU trademarks and Community designs, it being said that these articles will still be applicable even if the EU and the UK do not reach an agreement of the Draft Text before December 31, 2020.

In the next developments, we will give some explanations of the legal situation for EU trademark and Community designs holders after the end of the transition period **(1.)**. We will also comment some articles of the Withdrawal Agreement dealing with EU trademarks and Community designs **(2.)**. Finally, we will give some indications on the impact of the Brexit on EU trademark/Community design infringement actions and on customs enforcement of IP rights **(3.)**.

1. What will be the legal situation for EU trademark and Community designs holders after the end of the transition period?

After the end of the transition period, the EU rules in the field of EU trademarks and Community designs shall no longer apply to the UK. This has in particular the following consequences, subject to a possible different interpretation by the Court of Justice of the European Union.

1.1. Territorial scope of protection

After the end of the transition period (December 31, 2020):

- any application for an EU trademark or for a registered Community design **pending at the end of the transition period will no longer cover the UK;**
- any right granted by the European Union Intellectual Property Office (EUIPO) **will only cover the 27 EU remaining Member States;**
- unregistered Community designs made available to the public in the manner provided for in EU law (Regulation (EC) No 6/2002) will only be valid and have effect in the 27 EU Member States;
- holders of international registrations of trademarks and designs having designated the EU **before the end of the transition period** shall consider that, as **from that date**, those international registrations will continue to be valid in the 27 EU Member States only. Where the protection for such international registration designating the EU was obtained in the EU before the end of the transition period, the UK shall ensure its continued protection in its territory (Article 56 of the Withdrawal Agreement)⁴.

⁴ The EU countries are: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

1.2. Maintenance of rights conferred to EU trademarks and proceedings before the EUIPO

Use of the EU trademark **in the UK** does, **as from of the end of the transition period**, not qualify any more as use “in the EU”. Use of the EU trademark in the UK as of the end of the transition period does not count for the purpose of maintaining the rights conferred by the EU trademark. However, use of the EU trademark in the UK before the end of the transition period counts for maintaining the rights conferred by the mark.

Absolute grounds of refusal and invalidity of an EU trademark need to exist with regard to the EU, not with respect to third countries such as the UK as of the end of the transition period. An EU trademark/ EU trademark application filed as of the end of the transition period is thus neither rejected nor invalidated where an absolute ground of refusal **only exists in the UK**.

Distinctiveness acquired through use in the UK is not relevant for EU trademark applications filed as of the end of the transition period. Acquired distinctiveness of a mark needs to be shown **in the part of the EU** affected by the EU trademark application’s lack of inherent distinctiveness.

Earlier rights have to be protected in the EU, either by EU law or by the law of an EU Member State.

As from the end of the transition period, **earlier rights protected only in the UK** can thus not be invoked in proceedings before the EUIPO against EU trademarks or EU trademark applications filed before, on or after the end of the transition period.

This extends to **pending** invalidity and opposition proceedings, which have been initiated before the end of the transition period: earlier rights must continue to produce their effects in the EU at the date on which a decision is taken by the EUIPO on the opposition or on the invalidity request on relative grounds. Therefore, regardless of their procedural status at first instance, actions in proceedings based solely on UK rights that are still pending on January 1, 2021 will be dismissed by the EUIPO for lack of valid basis.

As from the end of the transition period, any pending or new opposition or invalidity request based solely on a UK right will be dismissed.

Evidence relating to the UK can no longer sustain or contribute to the protection of an EU trademark (for example, in the context of proving reputation of an EU trademark under Article 8(5) of the EU Trademark Regulation) as from January 1, 2021, even if that evidence predates that date. **The EUTM must be reputed “in the EU” at the moment of decision taking.**

1.3. Representation before the EUIPO

Natural or legal persons having their domicile or principal place of business or a real and effective industrial or commercial establishment **in a country outside the European Economic Area (EEA) must be represented in all proceedings before the EUIPO, other than the filing of an application for an EU trademark or a registered Community design.**

EEA includes EU countries and also Iceland, Liechtenstein and Norway. It allows them to be part of the EU's single market.

Therefore, after the end of the transition period, natural or legal persons that are domiciled or have a seat in the UK only will have to be represented before the EUIPO in accordance with Article 120(1) of Regulation (EU) 2017/1001 (on the European Union trademark) and Article 78(1) of the Regulation (EC) No 6/2002 (on Community designs) in all proceedings provided for in those two Regulations, other than the filing of an application for a EU trademark or an application for a registered Community design.

See however Section 2.5. of this Article as regards ongoing procedures before the EUIPO.

In order to represent parties before the EUIPO, **legal practitioners** pursuant to Articles 120(1)(a) of Regulation (EU) 2017/1001 and 78(1)(a) of Regulation (EC) No 6/2002 need to (i) be qualified in one of the EEA Member States, and, (ii) be established or have a place of business within the EEA, and (iii) be entitled to act as a representative in trademark or design matters in the Member State of the EEA in which they are qualified. Legal practitioners do not have to be nationals of an EEA Member State.

Consequently, legal practitioners that have their place of business in the UK and/or are qualified and entitled to act as a representative in trademark or design matters before the UK Intellectual Property Office (UKIPO), will no longer be able to represent parties as legal practitioners before the EUIPO as from January 1, 2021.

In order to represent parties before the EUIPO, **professional representatives** pursuant to Articles 120(2) of Regulation (EU) 2017/1001 and Article 78(1) (b) of Regulation (EC) No 6/2002 need to (i) be nationals of an EEA Member State, (ii) have a place of business or employment in the EEA, and (iii) be entitled to act as representative in trademark and design matters in one of the EEA Member States. As in the case of legal practitioners, professional representatives need to have a place of business or employment in any EEA Member State, as long as their qualification and entitlement to act are in the same EEA Member State.

Consequently, professional representatives that (i) are UK nationals, and/or (ii) have a place of business or employment in the UK, and/or (iii) are entitled to act as a representative in trademark and design matters before the UKIPO will no longer be able to represent parties as professional representatives before the EUIPO as from January 1, 2021.

Therefore, if a **Chinese, Japanese, South Korean or US company** files an EU trademark application after January 1, 2021 and if this applicant needs to appoint a representative, for instance because a third party files an opposition against this EU trademark application or because the examiner of the EUIPO raises an objection, this Chinese, Japanese, South Korean or US company will thus need to appoint a representative before the EUIPO.

This representative cannot be a legal practitioner qualified in the UK or a professional representative who is a national of the UK or who works in the UK.

Conversely, this representative can be, for instance, a French or a German lawyer.

The same rule applies:

- to all stages of the registration procedure relating to EU trademarks and registered Community design applications, where representation is mandatory;
- to all applications for the registration of transfers, licenses, rights in rem, levies of execution, insolvency proceedings or similar proceedings, where representation is mandatory.
- in opposition, invalidity and revocation proceedings, where representation is mandatory.

Attention : in all stages of the registration procedure relating to EU trademark and registered Community design applications, including oppositions against EU trademark applications, **where representation is mandatory and the applicant based in the UK or another country outside the EEA has not appointed a professional representative**, the EUIPO will invite that applicant to appoint a representative as part of the formality examination. Where that applicant fails to remedy this deficiency, the EU trademark or registered Community design application **will be refused**.

Similar rules apply to opposition, invalidity and revocation proceedings and to all applications for the registration of transfers, licenses, rights in rem, levies of execution and insolvency proceedings.

2. Comment of the articles of the Withdrawal Agreement relating to EU trademarks and Community designs

2.1. Continued protection in the UK of registered rights

Article 54(1)(a) of the Withdrawal Agreement provides for the continued protection of EU trademarks in the UK. After the end of the transition period, **the holder of a EU trademark registered in accordance with Regulation (EU) 2017/1001 before the end of the transition period** is to, without any re-examination, become the holder of a comparable registered and enforceable trademark in the UK under the law of the UK consisting of the same sign, for the same goods or services, with the following characteristics:

- the corresponding UK trademark shall enjoy the date of filing or the date of priority of the EU trademark and, where appropriate, the seniority of a trademark of the UK claimed under Article 39 or 40 of Regulation (EU) 2017/1001;
- the corresponding UK trademark shall not be liable to revocation on the ground that the corresponding EU trademark had not been put into genuine use in the territory of the UK before the end of the transition period⁵;
- the owner of a EU trademark that has acquired a reputation in the EU shall be entitled to exercise in the UK rights equivalent to those provided for in point (c) of Article 9(2) of Regulation (EU) 2017/1001 and point (a) of Article 5(3) of Directive (EU) 2015/2436 in respect of the corresponding UK trademark on the basis of the reputation acquired in the EU by the end of the transition period and thereafter the continuing reputation of that UK trademark shall be based on the use of the mark in the UK.

Article 54(1)(b) of the Withdrawal Agreement provides for the continued protection of registered Community designs in the UK. After the end of the transition period, **the holder of Community design registered and, where applicable, published following a deferral of publication in accordance with Council Regulation (EC) No 6/2002, before the end of the transition period** is to, without any re-examination, become the holder of a comparable registered and enforceable registered design right in the UK under the law of the UK for the same design, with the following characteristics:

- the term of protection of such registered design right under the law of the UK is to be at least equal to the remaining period of protection under EU law of the corresponding Community registered design right;
- the date of filing or date of priority of such registered design right under the law of the UK will be that of the corresponding Community registered design right.

However, pursuant to Article 54(3) of the Withdrawal Agreement, if a EU trademark or registered Community design is declared invalid or revoked or is cancelled in the EU as the result of an administrative or judicial procedure **which was ongoing on the last day of the transition period**, the **corresponding right** in the UK is also to be declared invalid or revoked or be cancelled.

The date of effect of the declaration or revocation or cancellation in the UK shall be the same as in the EU.

⁵ To address this issue, the new UK law ensures that any use of the mark in the EU, whether inside or outside of the UK, which has been made prior to 1 January 2021, will count as use of the comparable UK right. Where the relevant five-year period includes time prior to 1 January 2021, use in the EU will be considered in assessing whether there has been use of the corresponding UK mark. Where the period includes any time after 1 January 2021, use of the comparable trade mark in the EU (and outside of the UK) within that period will not be taken into account.

A trademark or registered design right which arises in the UK in accordance with point (a) or (b) of Article 54(1) of the Withdrawal Agreement is to have as its first renewal date the renewal date of the corresponding intellectual property right registered in accordance with EU law.

Article 55 of the Withdrawal Agreement provides for the **procedure in view of the registration** of the trademarks or registered design rights referred to in points (a) and (b) of Article 54(1) of the same agreement:

- **the registration of the trademark or of the registered design right is to be carried out free of charge by the relevant entity in the UK, using the data available in the registries of the EUIPO;**
- holders of EU trademarks and of registered Community designs concerned are not to be required to introduce an application or to undertake any particular administrative procedure in the UK;
- holders of the trademarks or registered design rights arising in the UK in accordance with points (a) and (b) of Article 54(1) of the Withdrawal Agreement are not to be required to have a correspondence address in the UK in the 3 years following the end of the transition period;
- holders of the trademarks or registered design rights arising in the UK in accordance with points (a) and (b) of Article 54(1) of the Withdrawal Agreement are not prevented from surrendering such right in the UK in accordance with the relevant procedure under the law of the UK.

2.2. Right of priority with respect to pending applications for EU trademarks and registered Community designs

Article 59(1) of the Withdrawal Agreement provides that, where a person has filed an application for a EU trademark or a Community design in accordance with EU law **before the end of the transition period** and where that application was accorded a date of filing, that person is to have, for the same trademark in respect of goods or services which are identical with or contained within those for which the application has been filed in the EU or for the same design, **the right to file an application in the UK within 9 months from the end of the transition period.**

An application made pursuant to Article 59(1) of the Withdrawal Agreement is to be deemed to have the same filing date and date of priority as the corresponding application filed in the EU and, where appropriate, the seniority of a trademark of the UK claimed under Article 39 or 40 of Regulation (EU) 2017/1001.

2.3. Continued protection in the UK of unregistered rights

Article 57 of the Withdrawal Agreement provides for the continued protection of unregistered Community designs in the UK.

The holder of a right in relation to an unregistered Community design which arose before the end of the transition period in accordance with Regulation (EC) No 6/2002 is in relation to that unregistered Community design *ipso iure* to become the holder of an enforceable intellectual property right in the UK, under the law of the UK, that affords the same level of protection as that provided for in Regulation (EC) No 6/2002.

The term of protection of that right under the law of the UK is to be at least equal to the remaining period of protection of the corresponding unregistered Community design under Article 11(1) of that Regulation.

2.4. Continued protection in the UK of international registrations designating the EU

Article 56 of the Withdrawal Agreement requires the UK to take measures to ensure that natural or legal persons who have obtained protection, **before the end of the transition period, for internationally registered trademarks or designs designating the EU** (pursuant to the Madrid System for the international registration of marks, or pursuant to the Hague System for the international deposit of industrial designs), enjoy protection in the UK for their trademarks or industrial designs in respect of those international registrations.

The Government of the UK has informed the International Bureau of the World Intellectual Property Organization (WIPO) of the steps that it will take to deliver continued protection in the UK to trademarks in international registrations with effect in the EU before the end of the transition period.

International trademark registrations protected in the EU under the Madrid Protocol will no longer enjoy protection in the UK after 1 January 2021.

For all protected international (EU) trademark designations, the UK will create comparable UK trademarks, which will be recorded on the UK register.

To address this, on 1 January 2021 the UK will create a comparable trademark in relation to each international (EU) trademark designation which has protected status immediately before 1 January 2021.

Each new UK right will be treated as if applied for and registered under UK law, and may be challenged, assigned, licensed or renewed separately from the original international registration.

If a company designated the EU in its international application, the filing and registration date of its comparable trademark will correspond to the date of its international registration. This date will also apply for the purposes of future UK renewal.

Comparable trademarks will be created at no cost to the holder of the international trademark.

Regarding pending applications, if a company hold a pending EU designation on 1 January 2021, it will be able to apply to register a UK trademark in the **nine months after the end of the transition period**, this being up to and including 30 September 2021 and retain the earlier filing date of the pending EU designation.

These applications will be treated as a UK trademark application. They will be examined under UK law. In these circumstances, the standard UK fee structure will apply.

Similar rules shall apply to international design registrations designating the EU.

2.5. Representation in ongoing procedures before the EUIPO

As explained in Section 1.3 above, the **general rule** is that as from the end of the transition period, UK representatives are no longer entitled to represent parties in the proceedings before the EUIPO, as they do *ex lege* no longer fulfil the establishment and/or nationality requirements laid down in Article 120 of Regulation (EU) 2017/1001 and Article 78 of Regulation (EC) No 6/2002.

However, Article 97 of the Withdrawal Agreement provides for the **(only) exception from that rule**. UK representatives no longer meeting the requirements of the above-mentioned Regulations as a consequence of the end of the transition period may continue to represent parties (continued representation) **in those procedures which had already been brought before the EUIPO before the end of the transition period (ongoing procedures)**.

For instance, in an ongoing registration procedure, that is where an application for the registration of a EU trademark or registered Community design has been filed at the EUIPO and that EU trademark or registered Community design applied for has not been registered, or rejected by a final decision of the EUIPO, or withdrawn by the applicant, at the end of the transition period, the EUIPO will not invite the applicant to replace his/her UK representative on file at the end of the transition period, provided that the representative was duly appointed to represent the applicant in that ongoing registration procedure.

Please note also that anyone who is adversely affected by a decision of the EUIPO can file an appeal before the Board of Appeals of the EUIPO.

According to a recent communication of the Executive Director of the EUIPO⁶, the appeal procedure, for representation purpose, should be considered as an additional “stage” of the procedure brought before the EUIPO. Therefore, a UK representative should have the right to represent a party before the Board of Appeals in relation with a procedure that has already been brought before the EUIPO before the end of the transition period.

However, according to Article 91 of the Withdrawal Agreement, we think that a UK representative who, before the end of the transition period, represented a party in the appeal proceedings before EUIPO that led to the Board of Appeal decision, which is contested before the EU Courts, **cannot continue to represent that party before the EU Courts (the General Court and the Court of Justice).**

This party, in relation with these court procedures, will have to appoint a new representative, like, for instance, a French or a German lawyer. Indeed, only a lawyer authorised to practise before a court of an EU Member State or of another State which is a party to the Agreement on the EEA may represent or assist a party before the EU Courts.

3. Impact of the Brexit on EU trademark/Community design infringement actions and on customs enforcement of IP rights

3.1. Impact of the Brexit on EU trademark/Community design infringement actions

In all the EU Member States, **there are EU trademark courts which have exclusive jurisdiction** for all infringement actions relating to EU trademarks and for counterclaims for revocation or for a declaration of invalidity of an EU trademark (Article 124 of Regulation (EU) 2017/1001).

Similarly, in all the EU Member States, **there are Community design courts which have exclusive jurisdiction** for infringement actions of Community designs, for actions for a declaration of invalidity of an unregistered Community design and for counterclaims for a declaration of invalidity of a Community design (Article 81 of Council Regulation (EC) No 6/2002).

Until the end of the transition period, the EU trademark court or the Community design court **seating in London** (The High Court of Justice Chancery Division Intellectual Property Enterprise Court in first instance and the Court of Appeal in case of appeal, i.e. “the High Court”) shall have exclusive jurisdiction to judge acts of infringement of an EU trademark or of a Community design **committed by a defendant domiciled in the UK or who has an establishment in the UK** (Article 125 Section 1 of Regulation (EU) 2017/1001 and Article 82 Section 1 of Regulation (EC) No 6/2002).

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https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/communications_president/COM-2-20_en.pdf

Until the end of the transition period, if, on the one hand, the EU trademark holder or the Community design holder is a UK company and if, on the other hand, the defendant is neither domiciled nor has an establishment in any of the EU Member States, such infringement proceedings shall also be brought before the High Court, i.e. **before the courts of the Member State in which the plaintiff is domiciled** (Article 125 Section 2 of Regulation (EU) 2017/1001 and Article 82 Section 2 of Regulation (EC) No 6/2002).

Until the end of the transition period, it is also possible for a EU trademark holder or for a Community design holder, whatever his/her nationality and whatever the place of domicile of the defendant, to bring a EU trademark infringement action or a Community design infringement action **before the High Court** if the acts of infringement alleged against this defendant have been **committed on the UK territory** (Article 125 Section 5 of Regulation (EU) 2017/1001 and Article 82 Section 5 of Regulation (EC) No 6/2002). These provisions ensure that an infringer who is located in an “remote” jurisdiction, or even outside of the EU, who targets consumers or traders within an EU Member State, is not immune from legal proceedings within that Member State.

It seems to result from Article 67 of the Withdrawal Agreement that a **pan-EU injunction granted by the High Court before the end of the transition period will be recognized and enforced by the courts of the 27 EU Member States after January 1, 2021**.

Concerning ongoing infringement proceedings pending before the High Court at the end of the transition period, it is important to recall that on December 31, 2020, EU law will cease to apply in the UK and the High Court will immediately cease to be an EU trademark court or a Community design court. At that point, the High Court can no longer invalidate/revoke EU trademarks/Community designs or award pan-EU relief for infringement.

For EU trademark/Community design infringement proceedings pending before the High Court at the end of the transition period, the proceedings will continue on the basis of the newly created UK equivalent rights derived from the EU trademark/Community design.

The High Court will be able to grant injunctive relief in respect of, or revoke/invalidate, only the equivalent UK right.

Finally, because the High Court will no longer be competent, **as from the end of the transition period**, for taking measures with effect in the EU or as regards the validity of EU trademarks and Community designs, a EU trademark or Community design holder **established in the UK** who wants to obtain a **pan-EU injunction** against, for instance, a **Chinese defendant** (i.e. a defendant who is neither domiciled nor has an establishment in any of the EU Member States) **will have to start its legal action, after January 1, 2021, before the Spanish courts**.

Indeed, Article 125 Section 3 of Regulation (EU) 2017/1001 and Article 82 Section 3 of Regulation (EC) No 6/2002 state that if neither the defendant nor the plaintiff is domiciled or has an establishment in any of the EU Member States, such proceedings shall be brought in the courts of the Member State where the EUIPO has its seat, i.e. **before the Spanish courts (*Juzgados de lo Mercantil de Alicante*)**.

Likewise, a EU trademark or Community design holder established in the UK and with **an ongoing litigation before the High Court** will need to start **new proceedings before the Spanish courts, after the end of the transition period, if he is seeking a pan-EU injunction.**

However, the action for infringement can also be brought before the French courts if the acts of infringement have been committed in France. However, in that case, the French courts will have jurisdiction only in respect of acts committed within the French territory (the French courts will not be able to grant a pan-EU injunction but only an injunction limited to the French territory).

Finally, an EU trademark or Community design holder **established in France** who wants to obtain a **pan-EU injunction** against a **defendant domiciled in the UK** will have to start its legal action, after January 1, 2021, before the **French** courts

Indeed, Article 125 Section 2 of Regulation (EU) 2017/1001 and Article 82 Section 2 of Regulation (EC) No 6/2002 state that *“if the defendant is neither domiciled nor has an establishment in any of the Member States, such proceedings shall be brought in the courts of the Member State in which the plaintiff is domiciled or, if he is not domiciled in any of the Member States, in which he has an establishment.”*

3.2. Impact of the Brexit on the customs enforcement of IP rights

An efficient customs enforcement of EU trademarks and Community designs can sometimes avoid the need to sue alleged infringers before the courts.

Indeed, customs administrations are in the frontline to enforce intellectual property rights at the EU borders. In order to effectively carry out their task, customs need the active cooperation of the right-holders themselves. Thanks to the information provided by these right-holders, customs may identify more easily goods suspected of infringing intellectual property rights and take the necessary actions.

Regulation (EU) No 608/2013 of June 12, 2013 introduced a change to the procedure for **destroying goods** suspected of infringing intellectual property. Such goods can now be **destroyed** by customs control when they are suspected of infringing an IP right, especially a EU trademark and/or a Community design, and without the need to initiate a legal proceeding to determine the existence of an infringement. In the event that a detention is made, the party responsible for the detained goods will often consent to their **destruction** (or such consent will be assumed), meaning that the issue is resolved quickly.

In order to do so, the IP right-holder shall lodge what is called an **application for action** (AFA) with the competent customs department requesting them to take action.

There are two types of AFAs:

If you:

- want customs action at the French (or German, Italian, Spanish, etc.) border only you should complete a **national AFA**;

- hold an EU IP right, such as a EU trademark and/or a Community design, and you want customs action in two or more EU Member States, you should complete an **Union AFA**.

After the end of the transition period, the EU rules on customs enforcement of intellectual property rights, and in particular Regulation (EU) No 608/2013, no longer apply to the UK. This has in particular the following consequences:

Submission of Union AFAs:

After the end of the transition period, Union AFAs can no longer be submitted to the competent customs department of the UK. Union AFAs submitted before the end of the transition period **in one of the EU Member States other than the UK** remain valid in the EU after the end of the transition period even if the customs authorities of the UK are amongst the customs authorities requested to take action. The concerned application will however no longer apply in the UK.

*Decisions concerning **granted** Union AFAs:*

Decisions granting Union AFAs adopted by the competent customs department of the UK are no longer valid in the EU after the end of the transition period.

Those holders of a decision must submit a new Union AFA in one of the EU Members States in order to get a decision granting an application for the Member State(s) selected at the moment of the application.

This means that if the Union AFA has been filed through UK Customs - which is the case for almost all the AFAs filed by UK companies and also by many US companies as well - then if that IP right-holder wishes to continue to have customs enforcement in the EU 27 Member States after December 31, 2020, it will need to submit a new Union AFA with the customs department of one of these Member States, like France for example⁷.

⁷ However, decisions granting Union AFAs adopted in one of the EU Member States remain valid in the EU after the end of the transition period even if the customs authorities of the UK are amongst the customs authorities required to take action.