EUROPEAN COMMISSION
DIRECTORATE-GENERAL TAXATION AND CUSTOMS UNION

Brussels, 17 August 2020
REV2 – replaces the notice (REV1)
dated 4 June 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF CUSTOMS ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a "third country".[1] The Withdrawal Agreement[2] provides for a transition period ending on 31 December 2020. Until that date, EU law in its entirety applies to and in the United Kingdom.[3]

During the transition period, the EU and the United Kingdom will negotiate an agreement on a new partnership, providing notably for a free trade area. However, it is not certain whether such an agreement will be concluded and will enter into force at the end of the transition period. In any event, such an agreement would create a relationship which in terms of market access conditions will be very different from the United Kingdom's participation in the internal market,[4] in the EU Customs Union, and in the VAT and excise duty area.

Therefore, all interested parties, and especially economic operators, are reminded of the legal situation applicable after the end of the transition period (Part A below). This notice also explains the rules applicable in Northern Ireland after the end of the transition period (Part B below).

Advice to stakeholders:

To address the consequences set out in this notice, stakeholders are in particular advised the following

1 A third country is a country not member of the European Union.

2 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 ("Withdrawal Agreement").

3 Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.

4 In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition, the "country of origin principle", and harmonisation. Nor does a free trade agreement remove customs formalities and controls, including those concerning the origin of goods and their input, as well as prohibitions and restrictions for imports and exports.

- to assess carefully where to submit Union applications for action under Regulation (EU) No 608/2013;

- to assess the need to obtain, after the end of the transition period, protection by UK customs under the applicable UK national laws.

Please note:

This notice does not address

- specific intellectual property rights in the EU;

- the EU rules on exhaustion of intellectual property rights;[5]

- EU rules on judicial cooperation in civil and commercial matters ("European private international law").

For these aspects, other notices are in preparation or have been published.[6]

In addition, attention is drawn to the more generic notice on prohibitions and restrictions, including import/export licences.

A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD

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 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights,[7] no longer apply to the United Kingdom. This has in particular the following consequences:

EU customs authorities will have to apply controls foreseen under Regulation (EU) No 608/2013 to movement of goods between the EU and the United Kingdom.

According to Section 1 of Chapter II of Regulation (EU) No 608/2013, an applicant can submit to the competent customs department a Union application requesting the customs authorities of that Member State and of one or more other Member States to take action with respect to goods suspected of infringing an intellectual property right.

In the case of a Union application, where the application is granted by the competent customs department in accordance with Section 2 of Chapter II of Regulation (EU) No 608/2013, this decision takes effect in all Member States where action by the customs authorities are requested (Article 10(2)(b) of Regulation (EU) No 608/2013).

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5 In any case, it is recalled that Regulation (EU) No 608/2013 does not apply to illegal parallel trade and overruns, cf. Article 1(5) of Regulation (EU) No 608/2013.

6 https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en

7 OJ L 181, 29.6.2013, p. 15.

- Submission of Union applications: After the end of the transition period, Union applications can no longer be submitted to the competent customs department of the United Kingdom.

  Union applications submitted before the end of the transition period in one of the EU Member States other than the United Kingdom remain valid in the European Union after the end of the transition period even if the customs authorities of the United Kingdom are amongst the customs authorities requested to take action. The concerned application will however no longer apply in the United Kingdom. Where a Union application was submitted in a Member State other than the United Kingdom, requesting only the customs authorities of that Member State and the customs authorities of the United Kingdom to take action, that application remains valid as a national application for the Member State in which it was submitted.

- Decisions concerning granted Union applications: Decisions granting Union applications adopted by the competent customs department of the United Kingdom are no longer valid in the EU after the end of the transition period. Those holders of a decision must submit a new Union application 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.

  Decisions granting Union applications adopted in one of the EU Member States remain valid in the European Union after the end of the transition period even if the customs authorities of the United Kingdom are amongst the customs authorities required to take action. Where a Member State other than the United Kingdom adopted a decision granting a Union application, requiring only the customs authorities of that Member State and the customs authorities of the United Kingdom to take action, that decision remains valid for the Member State in which it was adopted.

B. APPLICABLE RULES IN NORTHERN IRELAND AFTER THE END OF THE TRANSITION PERIOD

After the end of the transition period, the Protocol on Ireland/Northern Ireland ("IE/NI Protocol") applies.[8] The IE/NI Protocol is subject to periodic consent of the Northern Ireland Legislative Assembly, the initial period of application extending to 4 years after the end of the transition period.[9]

The IE/NI Protocol makes certain provisions of EU law applicable also to and in the United Kingdom in respect of Northern Ireland. In the IE/NI Protocol, the EU and the United Kingdom have furthermore agreed that insofar as EU rules apply to and in the United Kingdom in respect of Northern Ireland, Northern Ireland is treated as if it were a Member State.[10]

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8 Article 185 of the Withdrawal Agreement.

9 Article 18 of the IE/NI Protocol.

10 Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/NI Protocol.

The IE/NI Protocol provides that Regulation (EU) No 608/2013 applies to and in the United Kingdom in respect of Northern Ireland[11] for

- intellectual property rights protected, under UK law, in Northern Ireland;[12] and
- EU intellectual property rights which are, by virtue of the IE/NI Protocol, protected in Northern Ireland,[13] i.e.
    - geographical indications or designations of origin protected for agricultural products and foodstuff as provided for in Regulation (EU) No 1151/2012;[14]
    - geographical indications of spirit drinks as provided for in Regulation (EU) 2019/787;[15]
    - geographical designations for aromatised products as provided for in Regulation (EU) No 251/2014;[16]
    - designations of origin or geographical indications for wine as provided for in Section 2 and 3 of Chapter I of Title II of Part II of Regulation (EU) No 1308/2013.[17]

However, the IE/NI Protocol excludes the possibility for the United Kingdom in respect of Northern Ireland to

- participate in the decision-making and decision-shaping of the Union;[18]

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11 Article 5(4) of the IE/NI Protocol and section 45 of annex 2 to that Protocol.

12 It is recalled that, by virtue of Article 54 of the Withdrawal Agreement, certain intellectual property rights which have been registered or granted in the EU before the end of the transition period continue to be enforceable intellectual property rights in the United Kingdom after the end of the transition period. This means for instance that the owner of an EU trademark registered or granted in the EU before the end of the transition period, will become, after the end of the transition period, the owner of two identical trademarks: one protected and enforceable in the EU as EU trademark valid in the 27 Members States and one protected and enforceable in the UK as national UK trademark.

13 Article 5(4) of the IE/NI Protocol and section 45 of annex 2 to that Protocol.

14 Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs, OJ L 343, 14.12.2012, p. 1.

15 Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, OJ L 130, 17.5.2019, p. 1.

16 Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, OJ L 84, 20.3.2014, p. 14.

17 Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products, OJ L 347, 20.12.2013, p. 671.

18 Where an information exchange or mutual consultation is necessary, this will take place in the joint consultative working group established by Article 15 of the IE/NI Protocol.

- invoke the recognition of assessments by the United Kingdom in respect of Northern Ireland.[19] However, an assessment by the United Kingdom in respect of Northern Ireland is valid in Northern Ireland.[20]

More specifically, this means *inter alia* the following:

- a Decision granting an application in respect of Northern Ireland adopted by the competent customs department of the United Kingdom is not valid in the EU;

- a Decision granting an application in respect of Northern Ireland adopted by the competent customs department of the United Kingdom *is* valid in the United Kingdom in respect of Northern Ireland as regards EU intellectual property rights, which are, by virtue of the IE/NI Protocol, protected in Northern Ireland;

- a Decision granting a Union application adopted by the competent customs department of a Member State can include the United Kingdom in respect of Northern Ireland as regards EU intellectual property rights, which are, by virtue of the IE/NI Protocol, protected in Northern Ireland.

The website of the Commission on taxation and customs union (https://ec.europa.eu/taxation_customs/business/customs-controls/counterfeit-piracy-other-ipr-violations/defend-your-rights_en) provides for general information on the rules on customs enforcement of intellectual property rights. These pages will be updated with further information, where necessary.

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[19] First subparagraph of Article 7(3) of the IE/NI Protocol.

[20] Fourth subparagraph of Article 7(3) of the IE/NI Protocol.