

# Kluwer Trademark Blog

## Brexit: Are we seeing the end of the tunnel?

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Since our last article, so many things have happened that it is sometimes hard to follow what is going on! Here is a snapshot to keep you updated.

As you all know, Boris Johnson has now replaced Theresa May as the new leader of the Conservative Party and the new Prime Minister of the UK. Mr Johnson was very keen for the UK to leave the EU by the 31 October 2019 but as MPs failed to pass a revised Brexit deal into law, he had no choice but to request a third extension which was approved and ends on 31 January 2020 (about 2 weeks from now!).

Back then, it seemed that we were strongly leaning towards leaving the EU without a deal and while there is still a slight possibility, a new [Brexit deal](#) has finally been agreed by Parliament. But this wasn't achieved without any hurdles as in an attempt to leave without a deal, Mr Johnson made a bold decision last September to prorogue Parliament, which was later found to be unlawful by the Supreme Court in the UK (please see more [here](#)). Parliament then approved his request to hold an early general election, which took place on 12 December 2019.

The election resulted in a Conservative victory with a majority of nearly 80 seats! Eight days later, the Withdrawal Agreement Bill was approved and on Friday 10 January 2020, the House of Commons gave it its final backing.

The main reason why previous agreements had not been ratified by Parliament was clearly the lack of significant majority by the ruling party.

We have previously discussed the impact of a no-deal Brexit on IP protection [here](#) and since then the UKIPO provided its [guidance on IP protection after Brexit](#).

So now that it seems likely that the UK will leave the EU with a deal, would leaving the EU with the current deal have a different impact on right holders compared to a no-deal Brexit? Generally, no.

Here are some key points of the agreement regarding intellectual property:

- EUTMs, RCDs, Community plant variety and EU geographical indications will no longer be valid in the UK;
- EU registered or granted rights will be cloned to UK rights equivalent, free of charge;
- Applicants of EUTM or CD applications will have a priority period of 9 months after the

transition period to file an application for the same trade mark/design in the UK and enjoy the date of the earlier EU filing, subject to UK IPO usual filing fees;

- Any EU rights declared invalid or revoked in the UK and EU before the transition period shall remain invalid or revoked then.

More details can be found [here](#) and [here](#).

Nevertheless, there seems to be a few differences and representation is one such difference. Indeed, a no-deal Brexit would mean a UK representative would no longer be entitled to act before the EUIPO or EU Courts from the exit day i.e. 31 January 2020. On the other hand, in case of a deal Brexit, a UK representative would still be able to do so during the transition period i.e. until 31 December 2020, and even be able to continue representation for ongoing procedures before EUIPO (Article 97) /ongoing proceedings before EU Courts (Article 91) after that.

Three and a half years since the referendum, we are now certain that the UK becomes the first country to leave the EU, on 31 January 2020 at 11pm (UK time). The Brexit Bill would need to be passed before the House of Lords and the European Parliament. The authors believe that there is a likelihood the Bill will pass.

Does this mean that we are now approaching the end of the tunnel? Yes and no. Brexit will happen soon but the UK will enter into a transition period until 31 December 2020 (extendible only once, until 2022) meaning no changes for right holders and UK citizens until then. During this period, the UK will face the mammoth task of negotiating a trade deal with the EU. Will eleven months be enough to reach such deal? It seems very difficult and according to the new European Commission President, even “impossible” but only time will tell!

*\*This article was written on 13 January 2020.*

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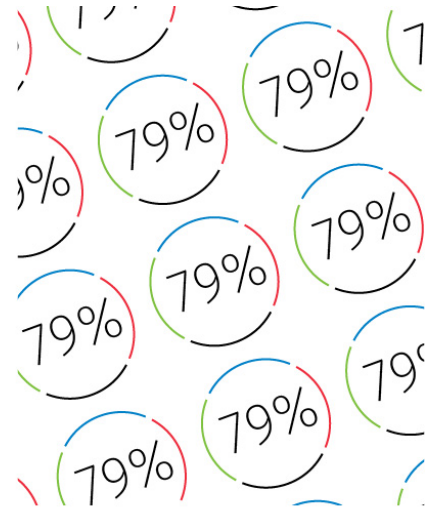
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