

## BREXIT: RULES IN THE FIELD OF GEOGRAPHICAL INDICATIONS

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### BACKGROUND

Following the results of the referendum held on 23 June 2016, **United Kingdom formally left the European Union on 1<sup>st</sup> February 2020**, date of the entry into force of the [Withdrawal Agreement](#). It was supposed to ensure an orderly exit of the UK from the EU, marking the beginning of a **transition period until 31 December 2020**, during which EU rights and obligations continued to apply to the UK.

On 2 March 2020 **formal negotiations on a future [EU-UK Trade and Cooperation Agreement](#)** began.

Due to the uncertainty regarding the course of the negotiations, in July 2020 the European Commission adopted the **Communication [“Getting ready for changes”](#)** in order to help national authorities, businesses and citizens prepare for the inevitable changes that would have arisen at the end of the transition period. Irrespective of whether an agreement on a future partnership would have been concluded or not, the Communication set out a sector-by-sector overview of the main areas where there would have been changes and the relative measures that should have been taken to be ready for these changes as of 1 January 2021. At the same time, the European Commission published [102 stakeholder preparedness notices](#), among which [one dedicated to Geographical Indications](#), suggesting to stakeholders concerned, where relevant, to take the necessary measures to ensure protection in the UK of future intellectual property rights.

Intensive negotiations lead to an **agreement in principle reached at negotiators’ level on 23 December 2020**, provisionally entered into force on 1 January 2021. As a matter of fact, in light of the exceptional urgency of the matter, the Commission proposed **to apply the Agreement on a provisional basis**, for a limited period of time until 28 February 2021, giving proper time to both parties to advance with the signature and ratification of the draft Agreement, in line with their respective rules and procedures.

Even with the new EU-UK Trade and Cooperation Agreement in place, big changes took place on 1 January 2021. On that date, **the UK left the EU Single Market and Customs Union, as well as all EU policies and international agreements.**

## 1. RULES IN THE FIELD OF GEOGRAPHICAL INDICATIONS

### 1. THE WITHDRAWAL AGREEMENT

As concerns the protection of EU Geographical Indications, **the Withdrawal Agreement provides for the continued protection in the United Kingdom of the stock of geographical indications registered in the EU until the last day of the transition period** (Article 54(2), first subparagraph).

Under the terms of the Withdrawal Agreement, the protection of the registered EU GIs is to be granted in the United Kingdom without re-examination, free of charge and at least at the same level of protection as under the relevant EU legislation, *unless and until* a new agreement is concluded. Such protection is indefinite for as long as the relevant GIs is protected in the EU.

Even after the entry into force of the EU-UK Trade and Cooperation Agreement, **the Withdrawal Agreement remains in place**. This means that the geographical indications registered in the European Union by the 31 December 2020 will remain protected in the United Kingdom without a need to introduce an application in the UK or to undertake any particular administrative procedures to ensure such protection. **They will be converted into United Kingdom rights**.

Furthermore, as foreseen by the Withdrawal Agreement, after the end of the transition period the **Protocol on Ireland/Northern Ireland (“IE/NI Protocol”)** has entered into force. The IE/NI Protocol makes certain provisions of EU law applicable also to and in the United Kingdom in respect of Northern Ireland, including provisions on quality schemes. This means that, on the expiry of the transition period, **EU GIs will continue to be protected in Northern Ireland through the EU GI scheme**.

In addition, after the end of the transition period, since United Kingdom will become a third country, the registration by the EU of geographical indications pertaining to the produce of England, Scotland and Wales, **will have to comply with the conditions that apply for GIs from third countries**, requiring them to have a registered UK GI prior to applying for an EU GI. This requirement does not affect Northern Ireland which, as mentioned before, shall continue to operate under the EU GI scheme.

### 2. EU-UK TRADE AND COOPERATION AGREEMENT

As concerns the **future GIs**, registered after the end of the transition period (as of 1 January 2021), they will not be automatically protected, but a **mechanism should have been established** by the two parties through the negotiations on future relationship.

Nevertheless, negotiations stalled on this issue and no provisions on protection of future GIs have been included in the Trade and Cooperation Agreement. The final text of the agreement simply mentions a possible future **review in relation to geographical indications**<sup>1</sup>, leaving

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<sup>1</sup> Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, Article IP.57: Review in relation to geographical indications, p. 162

room for the two sides to agree at a later date on **rules concerning the protection and enforcement of their GIs.**

## 2. UK GI SCHEME

As of 1 January 2021, **the UK will set up its own GI schemes which will be managed by the Department for Environment, Food & Rural Affairs (DEFRA).** The protection conferred by a UK GI shall mirror that conferred by an EU GI.

The UK scheme will protect food, agricultural products and drinks (including beers, wines, aromatised wines and spirits), with specific origins. Three schemes will be established with the related logo:

- **Protected designations of origin (PDO);**
- **Protected geographical indications (PGI);**
- **Traditional speciality guaranteed (TSG)**



In accordance with the Withdrawal Agreement, **existing EU GIs will be granted an equivalent UK right.** As a result, EU GIs registered by the end of the transition period will experience uninterrupted protection in both the EU and the UK. **The registration of the equivalent UK GI will be automatic and at no cost.** In this case, producers will have until 1 January 2024 to incorporate the UK logo to their packaging.

**Concerning EU GIs registered after the end of the transition period, they are entitled to make an application to DEFRA for a UK GI.** In fact, the only requirement is to have a registered GI under the scheme which governs their home nation, prior to making an application to DEFRA. Producers should incorporate the relevant logo onto their packaging as soon as their registration for a UK GI is granted.

### 1. OUTSTANDING APPLICATIONS FOR EU GIS AT THE END OF THE TRANSITION PERIOD

In case of a pending application for registration of a new EU GI by the end of the transition period, once the registration granted, it will apply to EU member states and Northern Ireland. The applicant will be required to apply separately to DEFRA for protection in England, Scotland and Wales. Provided the applicant applies to DEFRA before 30 September 2021, it will be assigned the same application date as the EU GI.

	Continued protection in UK	Application under UK GI Scheme	EU Protection in Northern Ireland
EU GIs registered before 31 December 2020	✓		✓
EU GIs registered as of 1 January 2021		✓	✓
Pending EU GIs applications		✓	✓

Table 1. Summary of the different cases and related scheme of protection

## NEXT STEPS

In light of the exceptional urgency of the matter, the Commission proposed **to apply the Agreement on a provisional basis**, for a limited period of time until 28 February 2021, giving proper time to both parties to advance with the signature and ratification of the Agreement.

As a consequence, by the end of February, the European Parliament will have to give its consent to the Agreement, while the Council, acting by the unanimity of all 27 Member States, must adopt the decision on its conclusion.

Nevertheless, the Conference of Presidents of the European Parliament decided to examine with the Council presidency and the Commission a proposal to slightly extend the period of provisional application, allowing for a parliamentary ratification during the March plenary session.

## USEFUL LINKS

- [EU-UK Trade and Cooperation Agreement](#)
- [EU-UK Trade and Cooperation Agreement brochure](#)
- [EU-UK Trade and Cooperation Agreement Overview](#)
- [EU-UK Trade and Cooperation Agreement Infographic](#)
- [EU-UK Trade and Cooperation Agreement Press Release](#)
- [The EU-UK Withdrawal Agreement](#)
- [Protected geographical food and drink names: UK GI schemes](#)