

Mapping the Withdrawal Agreement against the PA’s Brexit Blueprint Policy asks

The **Withdrawal Agreement** (WA) establishes the terms of the UK's withdrawal from the EU. It ensures that the withdrawal will happen in an orderly manner and offers legal certainty once the Treaties and EU law will cease to apply to the UK. The **Political Declaration** (PD), however, sets out the framework for the future relationship between the European Union and the United Kingdom

Publishing Brexit Blueprint ask	Status quo	No-deal	Withdrawal Agreement and Political Declaration	Commentary
<p>1. Maintain access to global talent and ideas</p>				<p>The Withdrawal Agreement (WA) outlines terms of residence for EU citizens living in the UK, or UK citizens in the EU. Anyone resident prior to the end of the implementation period has the right to stay. The Political Declaration (PD) builds on this by making provisions for short term visas and mobility for business people and students.</p> <p>Whilst retaining full EU free movement would have been ideal, this was always politically unlikely post-Brexit.</p> <p>In terms of future UK immigration policy, the Government’s Migration Advisory Committee have noted our concerns about the importance of access of talent. In their recommendations, they did not seek to distinguish between EEA and non-EEA migration without a trade deal. Furthermore, they referred to an arbitrary £30k salary as part of the test for high skilled workers which could be problematic for publishers. Concerns also remain around students and academics and the long-term ability to attract staff to the UK.</p>

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<p>2. Support and improve our gold standard copyright framework</p>				<p>The PD says there will be ‘protection and enforcement of intellectual property rights beyond multilateral treaties to stimulate innovation, creativity and economic activity.’ This means keeping to and building on the international frameworks, such as the Berne Convention, which we already abide by and is good for publishing. Both the PD and the WA say we will continue to work together in international forums, which is also positive. Taken together, assuming these provisions become legally binding, the UK’s copyright framework is unlikely to be weakened substantially by Brexit. Slight divergence from the EU may occur which could cause friction. However, there may be some positives to this, for example we could avoid the long-term negative effects of an adverse ruling in the ongoing <i>Tom Kabinet</i> case, which is a case in the European Court of Justice considering allowing the resale of eBooks in the EU without the rights holders’ consent.</p>
<p>3. Commit to free speech and freedom to publish</p>				<p>We did not anticipate the inclusion of anything related to freedom to publish in the Withdrawal Agreement, so we are pleasantly surprised to see it in the text. The PD specifically says we will remain signed up to European Convention of Human Rights. This means values such as free speech and others will continue to be upheld post-Brexit. This also removes the risk of withdrawal from the European Convention of Human Rights post-Brexit, something which those in the Conservative party have previously asked for.</p> <p>Unless “No Deal” also leads to other major political shifts that see UK leave ECHR, freedom to publish is unlikely to be directly affected by Brexit.</p> <p>Our attention will then turn to how freedom to publish is handled in the new Free Trade Agreements.</p>

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<p>4. Maintain a sustainable approach to open access policy for research</p>				<p>The PD mentions ongoing engagement with EU science and research programmes, however it does not know outline what this engagement will be and there are no reassurances in the document that we will be a member of the Horizon programme, for example. However, since the announcement of Europe’s Plan S, participation in European programmes could mean further progress towards this OA plan, so it could be a double-edged sword.</p> <p>From an academic publishers’ perspective, it seems that OA will remain a major risk for publishers irrespective of what happens regarding Brexit.</p>

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<p>5. Ensure quality control through national exhaustion for intellectual property</p>				<p>The wording of the WA and the Northern Ireland backstop ‘Single Customs Treaty’ suggests that the UK will remain close to the EU exhaustion framework. However, the extended PD says that ‘parties should maintain the freedom to establish their own regimes for the exhaustion of intellectual property rights.’</p> <p>One could read this clause in a very innocent way. Free Trade Agreements often contain provisions that explicitly reserve their position on exhaustion regimes (including Article 6 of the WIPO Copyright Treaty), so this is simply confirming what is the accepted position in most major FTAs and international law. However, this is not a normal FTA negotiation. Had the UK and EU already agreed that as part of these wider discussions we would remain in the EEA exhaustion regime come what may (as the WA implied that we might), there would have been no need to make what would have then been such a technical point in a high-level political document at this stage.</p> <p>That being the case, another reading is that the matter of exhaustion has been discussed at length and the UK is seeking to keep open the possibility that it will indeed leave the EEA regional exhaustion regime to have the flexibility to move to a new regime in future. This could either be because (as many lawyers in Brussels have suggested) it isn’t lawful from a WTO perspective for the UK to remain in a “one way” regional framework. Or it is because the UK may want the flexibility to move to an international regime in future once the Implementation Period and any UK wide backstop arrangement have come to an end.</p> <p>One other reason why the UK may want to move to an international exhaustion regime could be to ensure a national IP exhaustion framework doesn’t become a barrier to trade between the UK and the EU27.</p>

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<p>6. Maximise our ability to export to all markets</p>				<p>Both the WA and PD provide for an implementation period until December 2021, which buys businesses time to adjust to new changes in line with the UK's new relationship with the EU. The WA also holds that both the UK and EU will use the implementation period to reach a future trade agreement.</p> <p>If no long-term future trade agreement is reached by that time, the UK can ask to extend the Implementation Period or if not, the so-called 'backstop' (i.e. a Single Customs Territory for the whole UK) will kick in to prevent a hard border with Northern Ireland.</p> <p>The PD originally suggested that a future deal will be similar and will 'build on the single customs territory provided for in the [WA]'. However, recent UK and EU discussions have now suggested that this wouldn't be the case.</p> <p>However, it is worth noting what this means for export to all markets, not just EU markets. While the UK is in the implementation period with the EU or the Single Customs Territory, it must postpone (either in whole or in part) making free trade agreements with other countries which could, in turn, delay market access improvements with new territories.</p>

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7. Lead the way on rights enforcement				<p>The WA says ongoing police cooperation and judicial cooperation in criminal matters (i.e. specific cases) would be brought to a close at the end of the implementation period.</p> <p>As mentioned in point 2, the PD says there will be ‘protection and enforcement of intellectual property rights beyond multilateral treaties to stimulate innovation, creativity and economic activity.’ This also applies to enforcement work.</p> <p>There are also provisions in the PD for the UK to continue to participate in proceedings before the European Court of Justice (ECJ), such as <i>Tom Kabinet</i>.</p>
8. Enable cross-border data flows				<p>Both the WA and the PD are positive about future data flows, but they do not mention a commitment to the Digital Single Market and they do not say the UK will remain part of the EU’s data protection framework after Brexit.</p> <p>The WA says the that data flows and protections will be continued during the transition period.</p> <p>The outline Political Declaration on the future relationship published alongside the draft Withdrawal Agreement sets out that the EU will hope to begin and complete its Adequacy Decision assessment of the UK as a third country by the end of the implementation period. In the same timeframe, the United Kingdom will take steps to ensure comparable facilitation of personal data flows to the Union or it will be a third country.</p>

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9. Zero rate VAT on epublications				<p>Overall, the two documents suggest we will likely remain close to EU tax rules. The PD says the UK and EU will remain 'on a level playing field'. The WA says any movement of goods during the implementation period will be subject to the same VAT rules as exist at the moment.</p> <p>The decision to implement a zero-rate VAT on epublications remains a UK decision that will be easier to argue for if we remain in the EU framework, or close to it. This is because ECOFIN has already agreed that European member states can reduce their VAT rate on epublications to their level of tax on print. To start from scratch with a new VAT framework post-Brexit would mean we would lose this valuable progress and have to restart our lobbying as part of a new independent VAT regime.</p>
10. Ensure fair online markets				<p>This Blueprint ask is about ensuring fair scrutiny of big tech companies as the global online market place evolves with the aim of ensuring the best possible outcomes for UK society and consumers.</p> <p>It has been questioned whether the UK has the regulatory clout to regulate big tech alone and would benefit from remaining close to the EU as the latter boasts an established body of law that will ensure the required scrutiny of these digital companies.</p> <p>From this perspective, the alignment suggested in both the WA and PD both to ensure 'open and fair competition' by maintaining a 'level playing field' is positive for the future protection of online markets.</p>

