

The UK's Vote on Membership of the EU – “Brexit”

On 23 June 2016 the population of the UK will go to the polls to vote on a simple question – “Should the UK remain a member of the European Union, or should it leave the European Union?” The outcome of the vote is currently too close to predict and will have important ramifications for businesses both inside and outside the UK, but as we explain below there is no reason to take any action before the result of the vote is known.



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The most important point is that even if the UK votes to leave, nothing will happen quickly. Article 50 of the Treaty on European Union provides a 2 year period for a leaving state to negotiate an exit package with the other member states before the exit takes effect. That 2 year period may be extended by agreement and most commentators expect the period to be considerably longer – perhaps 4 or 5 years and maybe as many as 10 years. The most relevant past example is Greenland, which decided to leave the predecessor of the EU in 1982 and took 3 years to do so. If the UK votes to leave there will be many more issues to negotiate on than was the case for the Greenland exit. For that reason, there will be plenty of time after 23 June to address the possible consequences of a UK vote to leave.

The European Patent Office (EPO) is not an EU institution and so a UK vote to leave the EU would not have any effect on the UK's membership of the European Patent Organisation. The EPO will remain the most important patent granting body for the UK and the rights of representation of UK-based European Patent Attorneys at the EPO will be unchanged.

It would, of course, remain possible to validate European patents granted by the EPO as happens today. The forthcoming Unitary Patent and Unified

Patent Court systems would not extend to the UK if the UK were outside the EU, UK-based European Patent Attorneys would retain their right to represent clients in the Unified Patent Court.

Supplementary Protection Certificates (SPCs) are important rights in the pharmaceutical and plant protection industries. SPCs are national rights that exist separately for each EU state. Essentially the same regime currently exists in non-EU European states, such as Norway and Switzerland. It is expected that SPCs would continue in the UK after a Brexit in essentially unchanged form – “business as usual”.

The EUIPO (formerly known as OHIM) is an EU institution and so a UK vote to leave the EU would have more impact on the EU Trade Mark (formerly known as the Community Trade Mark) system and the Community Design system which are administered by EUIPO. However, as mentioned above, there will be a substantial delay before any vote to leave has any effect. Also, before the UK in fact left the EU following years of negotiation, it is expected that the UK would put in place transitional provisions that would provide continued protection in the UK for any EUTMs (formerly CTMs) or Community designs that were in existence as of the date of actual exit. Those transitional provisions might mean that existing EUTMs and

Community designs automatically gave rise to corresponding new national rights in the UK or it may be that owners of existing EU rights would need to re-register their rights in the UK by way of application submitted to the UKIPO. If the UK were outside the EU in the future, it would, as from the date of actual exit, be necessary to seek protection in the UK for trade marks and designs separately from the EU. Whatever happens in the future, Abel & Imray will of course be on hand to advise on how best to protect marks and designs throughout Europe.

We certainly live in interesting times for European politics. Abel & Imray will keep our clients informed of developments, and advise on how to minimise any disruption and maximise opportunities. We look forward to the future, whatever it holds!

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