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THE BRITISH PARLIAMENT WILL HAVE TO APPROVE THE BREXIT – UK WANTS TO END THE JURISDICTION OF THE EUROPEAN COURT OF JUSTICE IN BRITAIN

On January 23, 2017, the British Supreme Court issued its ruling in the matter of the procedure for exiting the European Union (Brexit).

The Supreme Court confirmed the ruling of the London High Court according to which the Parliament must indeed give its consent to trigger Article 50.

On January 26, 2017, Ms Teresa May published a very short Bill to be presented to the Parliament. The 6 lines Bill merely says: “the Prime Minister may notify, under Article 50(2) of the Treaty on European Union, the United Kingdom’s intention to withdraw from the EU”. Such a short wording is designed to minimize the possibility of amendments from the lower House and the House of Lords.

Debates on the Bill will begin in the House of Commons and the House of Lords on January 31.

The triggering of the Brexit, which Ms May wants to keep by the end of the March 2017, may thus be delayed

Status of the UPC Agreement

In her speech of January 16, 2017, Ms May indicated that the UK will take back control of the national laws and bring an end to the jurisdiction of European Court of Justice in Britain.

At the same time, Jo Johnson, the new UK Minister of State for Intellectual Property confirms the UK’s decision to ratify the Unified Patent Court Agreement.

The entry into force of the UPC Agreement could therefore still be expected before the end of 2017, after ratification by the UK and Germany (France has already ratified).

However, the situation after Brexit needs to be carefully considered. The UPC Agreement in its present wording, clearly provides that the primacy for Union law must be respected (Article 20 UPCA) and that the decisions of the European Court of Justice (ECJ) shall be binding for the UPC. This seems to contradict directly the wish of the UK to refuse the jurisdiction of the ECJ.

During the next two years, it will be necessary to find appropriate ways of amending the UPC Agreement in such a way that the UK could continue to participate, even after leaving the European Union.

Will the Unitary Patent extend to UK?

The wish of Ms May to refuse the jurisdiction of the ECJ, seems to render difficult an extension of the Unitary Patent protection to the UK after Brexit.

As a matter of fact, the Unitary Patent protection results from an EU Regulation and the European Court of Justice (ECJ) is responsible for any interpretation of such a Regulation.

Clarification of this situation will be necessary as soon as the UPC Agreement enters into force, so that owners of Unitary Patents know what kind of protection they will retain in the UK, after Brexit.

Contact us:

For any question you may have, please do not hesitate to contact our litigation team.



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