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The Impact of BREXIT on Smartphone Patent Wars and other IP Issues

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What does BREXIT mean?

- *BR (Britain) EXITS (the European Union)*
- *“It means leaving the European Union”. Davis (British Secretary of State of the Department for Exiting the EU)*



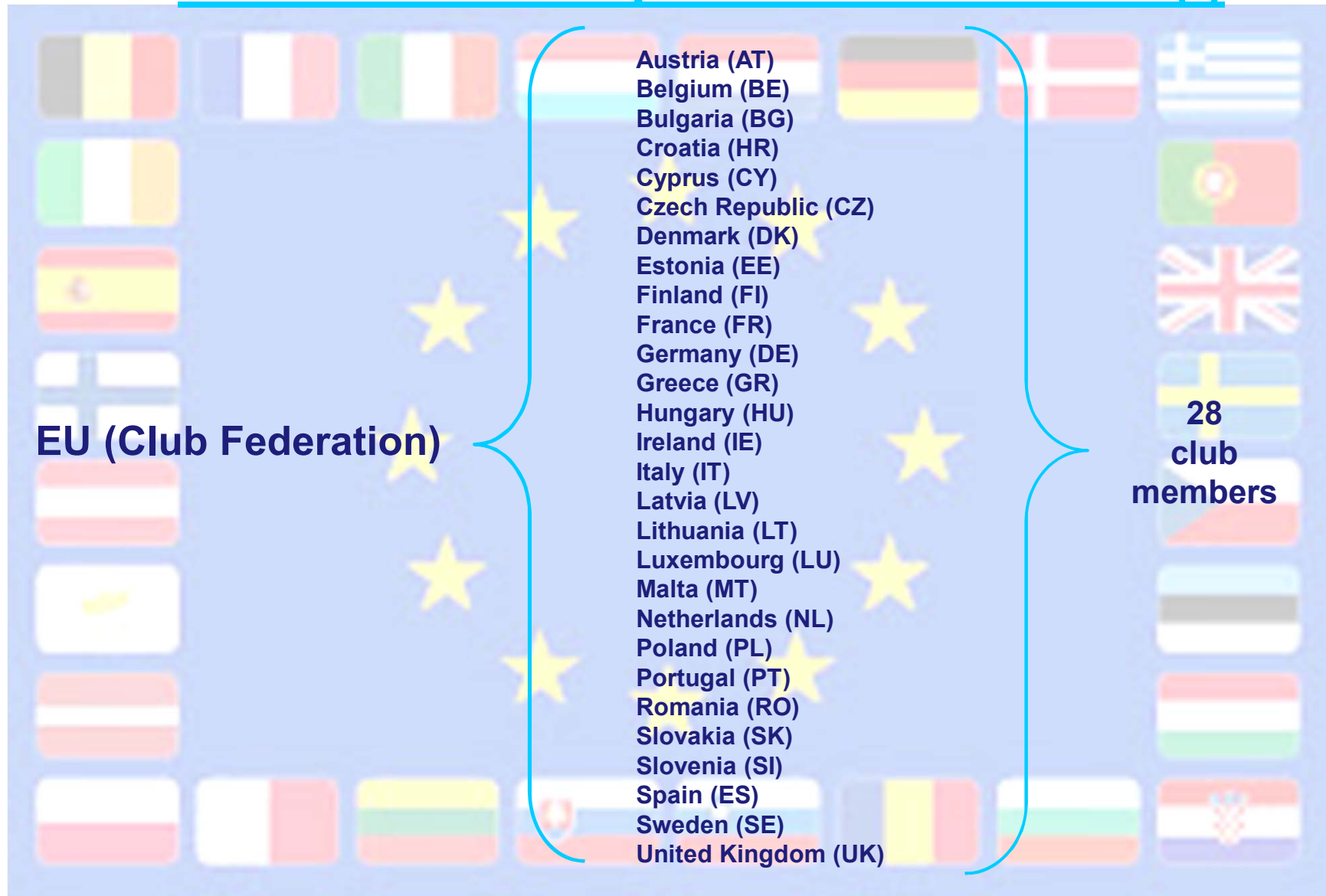
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What is the European Union in Brief (I)



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What is the European Union in Brief (II)

Each Country has:

- ⊕ Executive body: *Government.*
- ⊕ Legislative body: *Parliament.*
- ⊕ Judicial body: *Courts.*

They have agreed to:

- ⊕ Accept to have common rules on certain aspects:
 - ⊕ Treaties
 - ⊕ EU Regulations
- ⊕ Harmonise certain National Laws in some aspects:
 - ⊕ EU Directives
- ⊕ Accept the supremacy of the CJEU Interpretation on EU Legislation.

What is the European Union in Brief (III)

- ◆ An economic & political union between 28 countries
- ◆ Started as a purely economic union that has evolved to policy areas as:
 - ✓ Climate
 - ✓ Environment
 - ✓ Health
 - ✓ External Relations
 - ✓ Security
 - ✓ Justice
 - ✓ Migration



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What is the European Union in Brief (IV)

◆ Bodies:

✓ *European Parliament:* legislative, supervisory & budgetary responsibilities

✓ *European Council:*

- ◆ Heads of State
- ◆ European Commission President
- ◆ High Representative for Foreign Affairs Security Policy



Role:
*Defines the general
political direction and
priorities of EU*

✓ *Council of EU:*

- ◆ Government Ministers for EU country, according to policy area to be discussed
- ◆ Voice of EU member governments , adopting EU Laws and coordinating policies

✓ European Commission

✓ Court of Justice of the EU

- ◆ Applying European Law: - Interpretation of EU Directives
- Decisions on European rights i.e.: EUTM's, CD's, etc.

✓ European Central Bank

✓ European Union Agencies:

- ◆ EUIPO
- ◆ EMA (European Medicines Agency)
- ◆ Etc

✓ Etc

What has happened?

- On June 23rd, 2016 British citizens voted in a referendum 51,9% v 48,1% to leave the EU.
- This does not automatically mean that the UK will leave the EU.
- The British Government must first, formally notify the EU, it's country wishes to withdraw from the EU.
- This notice will trigger negotiations for an exit agreement
- The agreement can be concluded at any time within a two year period following the notice
- The negotiation period can last longer, provided there is a unanimous agreement.
- If no agreement, UK exits without agreement



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What will happen?



- Nobody knows.

- Some possibilities:

- UK Notifies *EXIT*:
 - Leaves with agreement
 - Leaves without agreement



Uk leaves EU

- UK Organises a new Referendum => **Depends of result**
- UK does not notify *EXIT* => **UK remains in EU**

- If UK does not leave EU => IP situation does not change.

- If UK leaves => IP situation will depend of:

- Agreement conditions
- UK Government decisions

Impact of UK Exit EU on IP (I)

IP Unitary Rights:

- Trade Marks
- Designs
- Plant Varieties
- European Patents with Unitary effect (not yet in force)
- GI's (geographical indications)

***Will cease to
exist in UK***

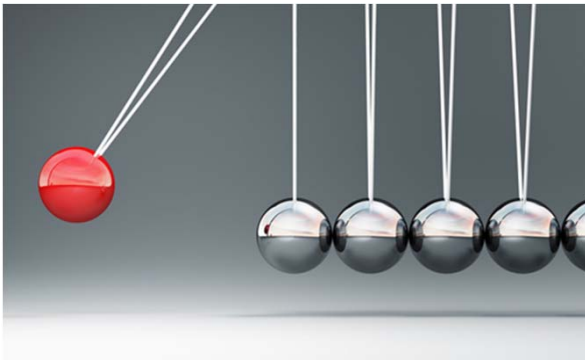


Impact of UK Exit EU on IP (II)

Rights Introduced by EU directives:

- Trade Marks
- Designs
- Copyrights
- Trade Secrets
- SPC's (supplementary protection Certificate)

*Will also disappear
and it will be up to the
UK to amend National
Legislation to cover
such rights*



Patents



- European Patents unaffected:
 - EPC is an international Treaty, not a EU legislation
- European patents with unitary effect (EPUE):
 - Will not cover UK
- UPC (Unified Patent Court):
 - EPUE
 - Classic European Patents

UPC (I)

- ◆ Planned Timetable for Implementation:
 - ◆ January 2017: *Appointment of Judges*
 - ◆ February 2017: *Germany and UK lodge their instruments of ratification*
 - ◆ May 2017: *Start date*

**After
BREXIT
unrealistic**



UPC (II)

- UK ratifies UPC before leaving EU:
 - UPC enters into force.
 - UPC Agreement is amended so a UPC member will not lose its status if it leaves EU.
 - UPC new protocol providing extension of EPUE to UK.
 - Current Interpretations of CJEU opinion 01/09 is that UK could not participate in UPC if leaves the EU.
 - UPC Agreement cannot be ratified without amendment of all MS.
 - Doubtful that provisional application of UPC will happen without amendment.

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EU Trade Marks & Designs

- ◆ If UK leaves EU, will no longer cover UK
- ◆ UK could establish legislation to:
 - ◆ Convert EU rights into UK application or registration.
- ◆ UK:
 - ◆ In EEA: UK National Legislation will remain unchanged and CJEU jurisprudence will become advisory opinions of EFTA Court
 - ◆ Not EEA: UK no longer bound by EU Directives and CJEU Jurisprudence



Impact on Smartphone Patent Wars



- ✦ UK would become a separated market as far as IP protection and enforcement is concerned.
- ✦ Smartphone companies will have to protect UK as any other non EU European Market (CH, NO, ECT).
- ✦ On Patent protection not much will change, since UK will remain an EPC country.
- ✦ On Patent enforcement, depending on negotiations, it might not be possible to obtain Patent injunctions on UK, through UPC.

Thank you
for your attention



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