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God save the UPC, Europe and the world

Miquel Montaña (Clifford Chance) · Monday, June 27th, 2016

Last Friday Europe woke-up with the worst news since World War II, which could have far-reaching consequences not only for the economy, but also for the values that one would like to see prevailing in the world. It is sufficient to read the posts published by some of those who are celebrating Brexit to realize how scary this world may become depending on which values end up prevailing. Against this background, it is reassuring that the firm where this author has worked for 23 years now was cited in the Financial Times as firmly positioned against Brexit, notwithstanding the comprehensible reluctance of law firms to take positions on political matters. But Brexit is not only about politics, it is about the principles and values that should enlighten the world for the decades to come.

Descending to the mundane world of patents, a number of friends reacted to the Brexit catastrophe proposing ways of at least saving the Unified Patent Court (“UPC”) and the European patent with unitary effect which, as the readers know all too well, will not see the light of day until the Agreement on the UPC comes into force, if and when it does. One proposal has been to lobby the United Kingdom (“UK”)’s government so that it ratifies the Agreement on the UPC and then withdraws in an orderly manner. Leaving aside whether this would quite fit in with the intent of the parties to the Agreement on the UPC, there is of course a question mark on whether one can realistically expect such an act of generosity from the UK, bearing in mind the colossal challenges and priorities that its Government and Parliament will be facing.

The result of the referendum has led other commentators to suddenly realize that the Opinion of the Court of Justice of the European Union (“CJEU”) declaring that only members of the European Union (“EU”) may be parties to the Agreement on the UPC is perhaps not so well-founded. The fact that this only transpired last Friday does not appear to say much about the strength of the proposition.

If one may add his tuppence worth on possible ways of saving the UPC, Europe and perhaps the world, the answer might be in a combination of big politics and demography. As shown by the analysis published on the age profile of voters, most of the remainers were youngsters, while the percentage of leavers increased with the age. So taking into account that the Brexit negotiations with the EU might take years, before Brexit has materialized it should be feasible to organize a new referendum letting the younger generations get rid of this mortgage.

Obviously, this would take time, although it does not seem that the other proposals that are floating around will bring immediate solutions either.

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