

Kluwer Patent Blog

Start of provisional application phase Unified Patent Court is top priority for Preparatory Committee

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The Preparatory Committee of the Unified Patent Court is delighted with the UK's decision to ratify the UPC Agreement and will publish a revised roadmap for the start of the Unitary Patent system as soon as possible. Chairman Alexander Ramsay is a happy man, he told Kluwer IP Law.

Monday's [announcement of Minister of State for Intellectual Property, Baroness Neville Rolfe](#), that the UK will ratify the UPC Agreement despite the Brexit vote, has been qualified as surprising and even sensational. Quite a few people thought that, even if there were no legal objections, politically it would not be feasible for the UK to ratify the UPC Agreement. The UP system implies the acceptance of the supremacy of EU law, whereas the Brexit vote was a vote for less EU, not more. [European Commissioner Elzbieta Bienkowska](#), the [EPO](#) and the [Preparatory Committee](#), among others, have welcomed the decision.

'I was of course very happy. This is the best possible option for the project. A UK participation makes the UPC/UPP stronger and more attractive', Alexander Ramsay, chairman of the UPC Preparatory Committee said in reaction to questions by Kluwer IP Law. He declined to get into detail about what happened behind the scenes, where a lot of silent diplomacy has been going on since the Brexit vote of 23 June 2016.



'This has been a decision of the UK Government. I and others have of course been in close contact with the UK colleagues and hope that we have been perceived as constructive and supportive partners', Ramsay said. He believes that 'one of the basis of the decision is that the UK government see the UPC/UPP as beneficial for British businesses.'

Ramsay doesn't know yet when the UK will be ready to ratify, he said. A lot of work will be done in the coming months: 'The UK will now continue with preparations for ratification and is at the same time engaging fully in the work of the Preparatory Committee to facilitating the last

preparations needed to bring the UPC into operation as soon as possible.

From the Committee's side we will now be aiming at enabling the provisional application phase to start as soon as possible. This depends not only on the UK ratification of the UPCA but also on other Member States' approvals of the [Protocol on Provisional Application](#)*. I expect the Committee to communicate a time-plan for this as soon as possible.'

The protocol will allow some parts of the UPC Agreement to be applied early. This includes final decisions on the practical set up of the Court, for example, the recruitment of judges and testing of IT systems. The provisional application phase will also be used to allow for early registration of opt-out demands. Ramsay: 'The process of the selection of the UPC judges is ongoing and the pre-screening of the candidates is almost completed. The final selection cannot be completed before we enter into the provisional application phase. It is first when we enter into provisional application that there will be an international organisation – the UPC – with the legal capacity to formally employ judges.'

Ramsay regards the possible need of changes to the Unitary Patent system and the UPCA due to the UK leaving the European Union at some point, premature to discuss: 'This needs to be looked into further. If there is a need for any amendments of the UPCA this can, after the entry into force of the UPCA, be taken care of by the simplified procedure that is foreseen in the Agreement (article 87) – by a decision of the Administrative Committee of the UPC.'

Not only the UK, but also Germany will have to ratify the UPCA before the Unitary Patent system can start functioning. Alexander Ramsay doesn't expect any delays there. 'As far as I know the German ratification process is progressing and I am confident that we will see also a timely German ratification of the Agreement. So I expect the UP system to start functioning during 2017.'

For regular updates on the Unitary Patent and the Unified Patent Court, subscribe to this blog and the free [Kluwer IP Law Newsletter](#).

**The Protocol enters into force (article 3(1)) 'the day after 13 Signatory States of the Agreement on a Unified Patent Court including Germany, France and the United Kingdom, have either ratified, or informed the depositary that they have received parliamentary approval to ratify, the Agreement on a Unified Patent Court and have*

- 1. signed in accordance with Article 2(2)a. or signed, and ratified, accepted or approved this Protocol in accordance with Article 2(2)b.; or*
- 2. declared by means of a unilateral declaration or in any other manner that they consider themselves bound by the provisional application of the articles of the Unified Patent Court Agreement mentioned under Article 1 of this Protocol.'*

So far nine states: Germany, France, the UK, Denmark, Hungary, Luxembourg, Romania, Sweden and Slovenia have signed (art 3 (1)a) the Provisional Protocol ([link](#)). However, in four of them: Germany, the UK, Hungary and Romania, there is no parliamentary approval yet for the UPCA.

Two states, the Netherlands and Finland, have declared they consider themselves bound by the Protocol (art 3 (1)b). Belgium and Malta have announced they will use this route as well and will declare themselves bound by the Protocol as soon as the UPC Preparatory Committee knows a date of when it can start.

Bulgaria, Austria and Portugal have completed the ratification of the UPCA, but they haven't signed or declared themselves bound by the Provisional Protocol.

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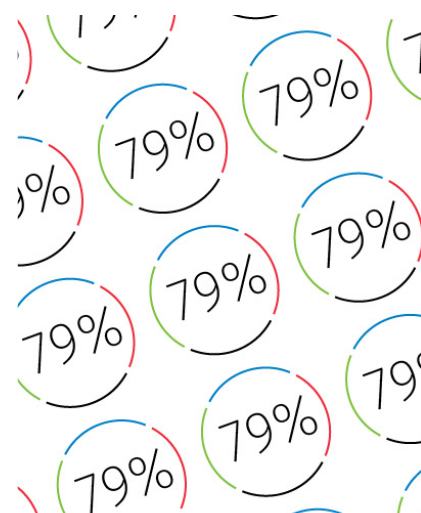
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