

UK will ratify UPCA in March and has political will to stay in Unitary Patent system post-Brexit

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The UK will ratify the Unified Patent Court Agreement (UPCA) in March, most likely before the Brexit article 50 is triggered. German will be ready to ratify soon as well, but will delay the official deposit of its instrument of ratification with the EU Council, with a view to the Court starting its operations on 1 December 2017 (art 89 UPCA), preceded by a Provisional Application Phase.

This timeline was outlined by Alexander Ramsay, chairman of the UPC Preparatory Committee and Kevin Mooney, chairman of the Drafting Committee for the Rules of Procedure, on the first day of the [Unitary Patent Package Conference in Amsterdam](#).

13 ratifications are needed in order for the UPCA to enter into force. So far, 11 member states have ratified: Austria, Belgium, Bulgaria, Denmark, France, Luxembourg, Malta, Netherlands, Portugal, Sweden and Finland. According to Alexander Ramsay, Italy, Slovenia and Lithuania have completed the national procedures and five more member states are reportedly close. It means that the UPC and UP system could start functioning with at least 16 member states.

However, three signatures or so-called 'declarations' to be bound by the Protocol on provisional application (PPA) of the UPCA are missing as well, Ramsay pointed out. The PPA allows parts of the UPC Agreement to be applied early, so the court can be set up and judges can be appointed, for instance. The Preparatory Committee hopes for the PPA to start in May. In the ensuing months, the Administrative, Advisory and Budget Committee of the UPC will be formed, interviews with candidate judges will be held, appointments made in September and presidents elected for the Court of First Instance and the Court of Appeal, among others. The sunrise period to opt out patents of the jurisdiction of the UPC is envisaged to start in September as well.

Kevin Mooney gave some details about the recruitment of UPC judges, which started in the first half of last year but was delayed by the uncertainty regarding the consequences of the Brexit vote. There were 840 applications, he said. 40% are from Germany, 16% from France, 13% from Italy and 7% from the UK, among others. Only 17% are female. So far, two trainings have been given in Budapest and advanced training will follow this summer. The plan is to appoint 50 legally qualified judges in September, with another group on a reserve list. Most of the judges will be part time judges, working on a case by case basis. How this will work out in practice remains to be seen and will also depend on the caseload of the UPC, Alexander Ramsay explained.

In a panel at the conference, the French judge Marie Courboulay, Klaus Grabinski from Germany and Sam Granata from Belgium pointed at the importance of creating harmonized standards at the UPC. Will judgments be very short, as in France, or on the contrary very long, as sometimes is the case in the UK? They also stressed the importance of training in using English language in proceedings, and of the availability of a translation service. 'We have to have good quality judgments with regards to language.'

Of course, there was discussion at the conference about the Brexit vote, the UK's future participation in the Unitary Patent system and particularly recent remarks by UK Prime Minister Theresa May that she wants 'to take back control of our laws and bring an end to the jurisdiction of the European Court of Justice in Britain'. Alexander Ramsay and others at the conference who have been in contact with the UK Government are confident however the UK has the ambition to stay in the Unitary Patent system post-Brexit. Ramsay: 'Prime Minister Theresa May basically said the ECJ should not influence UK law; UK law should be decided in Westminster. But the UPC will not apply UK law. The ECJ will to some minor extent influence the interpretation of EU law, which will be applied by an international court - a court located in the UK, but that's not the same thing. The ECJ will not influence UK law, even if the UK would participate in the UPC. That's an important distinction, at least in my view.'

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