

Germany, United Kingdom: Preparations on track for the Unitary Patent system

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[Kluwer UPC News blogger](#)

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Will the Unitary Patent project become operational on 1 December 2017? The UPC Preparatory Committee has warned this date 'is conditional and provided with the clear disclaimer that there are a number of factors that will dictate whether it is achievable.' But for supporters of the UP and UPC, developments are encouraging. Crucial ratification procedures in Germany and the UK appear to go smoothly. A Scottish independence referendum may be a problem for UK prime minister Theresa May, but not for the UP system. Even in Spain, which has long been a fierce opponent of the Unitary Patent and Unified Patent Court, support for the system is growing.

United Kingdom

In the UK, the UPC Protocol on Privileges and Immunities (PPI), that still has to be approved as part of the ratification procedure of the Unified Patent Court Agreement, sat in parliament for 21 days without opposition. An early day motion of UKIP MP Douglas Carswell objecting to the UPCA failed to get any support, and in upcoming debates in both houses of parliament on a statutory instrument to implement the PPI no opposition is expected either.

Last month Kevin Mooney, chairman of the Drafting Committee for the Rules of Procedure, said UK ratification of the UPCA would happen at the end of March.

Scottish first minister Nicola Sturgeon's announcement yesterday, that she wants to hold a second referendum on Scottish independence, won't change that. According to [Dr. Luke McDonagh](#) of the Law School at City University London, Sturgeon's timing is excellent: 'Legally, PM Theresa May can refuse to agree to the referendum. Politically, it will be very hard for her to do so, as that would certainly inflame tensions with the Scots, and boost nationalism. What will be interesting is the timing of the referendum. Sturgeon wants it before Brexit occurs i.e. while the UK is still in the EU, and May would prefer it to occur after Brexit (...). It is a clever political strategy from Sturgeon: PM May has so far pursued a hard Brexit strategy, with little thought for the regions, and it may now be necessary to compromise in order to keep the Scots within the United Kingdom.'



Sturgeon's ambitions with Scotland will not create new problems for the Unitary Patent system, according to McDonagh: 'The possible Scottish referendum does not really complicate UPC matters at present. The vast majority of UK patent litigation takes place in London within the courts of England and Wales. The Scots legal system has always been a separate one. Everything to do with the UPC, including the courts themselves (Local and Central divisions), is London-based. Presumably even if the Scots left the Union, the remaining nations of England, Wales and Northern Ireland will constitute the state that will inherit the UPC. The UK designation of the EP would no longer apply to Scotland, and neither would UP jurisdiction.'

Germany

The German parliament, the Bundestag, approved ratification of the Unified Patent Court Agreement and amendments to the German patent law on 9 March 2017.

The drafts will now go to the Federal Council, the Bundesrat, where they will be discussed in the Legal Affairs Committee on 15 March. According to German Rechtsanwalt Ingve Björn Stjerna, a vote on the drafts will likely be held on 31 March or 12 May 2017. After countersignature by the German government and certification by the president, the acts will be published in the Federal Law Gazette.

Meanwhile, legislation to enable Germany to ratify the Protocol on Privileges and Immunities of the Unified Patent Court (PPI) was approved by the Bundesrat and sent to the Bundestag on 9 March.

Germany is expected to postpone the final formal step, the deposit of its instrument of ratification with the EU Council, until August. If the UK has ratified the UPCA by then, it means the German deposit will trigger the start of the Unitary Patent system and the UPC and the Unitary Patent will launch on 1 December 2017.

Spain



In Spain, the socialist opposition party PSOE has requested the minister of Economy, Industry and Competitiveness to appear in the Economy commission of parliament and 'explain the position of the government concerning the enhanced cooperation between EU member states to establish a European Unitary Patent'.

Last week, the Spanish parliament adopted a non-binding motion of the PSOE, requesting the government to reconsider joining the Unitary Patent system. Only the representatives of the Popular Party, which runs the minority government, voted against the motion. According to PSOE MP Patricia Blanquer, it is detrimental to Spain to stay outside the UP system.

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