

Despite FCC ruling, Germany wants to push ahead with Unitary Patent system

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Contrary to all expectations, the German government wants the Unitary Patent project to go ahead as soon as possible, despite the recent ruling of the Federal Constitutional Court, declaring void the Act of Approval of the UPC Agreement.

In a [press release of 26 March 2020](#), the German minister of Justice and Consumer Protection, Christine Lambrecht, said: "I will continue to work to ensure that we can provide the European innovative industry with a Unitary Patent and a Unified Patent Court. The Federal Government will carefully evaluate the decision of the Federal Constitutional Court and examine ways to remedy the formal deficits the FCC found during this legislative period."



„Ich werde mich auch weiterhin dafür einsetzen, dass wir der europäischen innovativen Industrie ein einheitliches europäisches Patent mit einem europäischen Patentgericht zur Verfügung stellen können. Die Bundesregierung wird die Entscheidung des Bundesverfassungsgerichts sorgfältig auswerten und Möglichkeiten prüfen, um den festgestellten Formmangel noch in dieser Legislaturperiode zu beheben.“

In the ruling of the FCC, in a constitutional appeal filed in March 2017 and comprising four complaints against the German ratification of the UPCA, only the complaint about the vote on the Act of Approval was upheld. The FCC judged it was void because in "its outcome, it amends the Constitution in substantive terms, though it has not been approved by the Bundestag with the required two-thirds majority." Three more substantive points were held inadmissible.

In theory this allowed the Bundestag to repeat the vote of the Act of Approval and pass the ratification bill in a constitutional way. But virtually nobody expected this to happen any time soon, as the UPCA will have to be amended because of the Brexit and the UK's decision to withdraw from the Unitary Patent project.

So a simple re-run of the previous approval law with the same UPCA text will not work. It would most probably also be contrary to EU law if Germany were to ratify an agreement that transfers sovereign rights (part of its jurisdiction) to an international court that is currently partly located outside the EU and in a state which has explicitly declared that it is not minded to follow EU law and does not want to be subject to the jurisdiction of the CJEU.

The ministry's press release doesn't give any clues about how these issues will be solved. Germany reportedly hopes to give more clarity in the upcoming months.