

European Commission would welcome swift German ratification of Unified Patent Court Agreement

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The European Commission would welcome a swift ratification of the Unified Patent Court Agreement by Germany. Commissioner Thierry Breton for the Internal Market has written this in answer to questions of MEP Patrick Breyer.

Breyer, member of the European Parliament for the German Pirate Party, asked the European Commission on 5 May 2020 to confirm that, due to the Brexit, Germany no longer has the right to ratify the UPCA. Breyer argued: "According to EU case law (Court of Justice of the European Union Case 22/70), Member States must not enter into agreements with third countries that affect EU rules or alter their scope. The UK is now considered a 'third country' under Article 216 of the Treaty on the Functioning of the European Union. While the EU may jointly assume obligations with the UK with respect to patent litigation, Member States no longer have a right to do so." See also [this earlier blogpost](#).



The European Commission however, doesn't agree. In a [letter of 15 July 2020](#), Thierry Breton wrote:

"The unitary patent will be an effective tool for businesses to protect their inventions on the European market at a competitive price, and the Unified Patent Court will offer the possibility for these businesses to enforce their patents at a European Union level, thereby enhancing legal certainty and reducing costs. It will further boost innovation in Europe, which will be key for the economic recovery following the COVID pandemic.

The Commission is of the view that the withdrawal of the United Kingdom from the European Union does not affect the ratification process of the Unified Patent Court Agreement in Germany. The United Kingdom signed and ratified the United Patent Court Agreement when it was still an EU Member State and in its capacity of Member State. The United Kingdom has ceased to be an EU Member State and, therefore, will not participate in the unitary patent system after the end of the transition period, given that participation in that system, including the Unified Patent Court Agreement, is only open to EU Member States.

The Commission would welcome a swift ratification of the Unified Patent Court Agreement by Germany."

In the meantime, Breyer sent similar questions to the European Council as well on 8 June 2020, according to a [report by SIB.it](#). These questions "are still awaiting an answer".

Last March, the German Federal Constitutional Court declared void the German ratification of the UPCA on formal grounds, but soon after the German government declared it will repeat and complete the ratification process in the proper way as soon as possible. Some observers think this could be [before the end of this year](#).