

# Kluwer Patent Blog

## Unitary Patent system to start this year after all?

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If the period of provisional application of the Unified Patent Court Agreement starts before the summer break, it is still possible that the Unitary Patent system launches this year. European Commissioner Elzbieta Bienkowska said this in a press conference after the meeting of the EU Competitiveness Council, 29 and 30 May 2017 in Brussels.

Bienkowska acknowledged that the target date which had earlier been set for the start of the provisional application period – 29 May, the day of the council meeting – had turned out to be too optimistic: ‘We’re not there yet unfortunately.’ She explained that ‘an agreement of three member states on the [Protocol on Provisional Application \(PPA\)](#)’ is still needed. The provisional application period will be used for practical preparations for the UPC and the appointment of judges, for instance.

According to Bienkowska, if these three member states can be found in the short term to support the PPA, the UPC may still open its doors as planned in December. It is remarkable that the time schedule as laid out by the UPC Preparatory Committee is apparently still on the table, at least the planned opening date for the new European patent court. After the call for early elections in the UK, it was widely considered inevitable that the Unitary Patent project would face a new delay of at least one and more likely several months. In an [interview with this blog](#) last March, Eileen Tottle, head of secretariat of the Preparatory Committee said: ‘If we cannot start by the end of May, our whole time schedule will need to be re-planned.’

But at the press conference Bienkowska made clear that this is not necessarily so, although there is uncertainty about the UK: ‘I said it also today, that we should agree to start the provisional application by the summer break. Because, if not, it will be too late to launch the Unitary Patent this year. Of course, we are still waiting for the UK, for the UK minister. Of course, they have an election at



Elzbieta Bienkowska

the beginning of June so he cannot say what the next government will do, but he said that they still keep the line that they will agree and that they will ratify the Unitary Patent. But of course, we'll have to wait till the election and then ask the next government.'

The PPA enters into force ([Article 3 PPA](#)) the day after 13 UPC member states, including France, Germany and the UK, have 1) ratified or received parliamentary approval to ratify the UPCA and 2) approved or declared to be bound by the PPA.

According to a [Bristows report](#), Belgium, Denmark, France, Finland, Italy, Luxembourg, the Netherlands and Sweden meet these requirements. Also, 'Germany and the UK have each consented to the Protocol. (...) it appears that other countries (such as Greece, Estonia, Lithuania and Slovenia) may be in a position to enable the Provisional Application Phase to start before the summer break.'

Reports on the progress with the PPA have sometimes been confusing. Also in the March interview, Eileen Tottle told *Kluwer IP Law*: 'Apart from Germany and the UK, which are fully on track, we need two more member states to qualify for this.'

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