

UPC Agreement Ratification Process and Local or Regional Divisions

Litigation Committee

Before the Unified Patent Court Agreement (UPCA) can enter into force, it needs to be ratified by 13 Member States, including Germany, France and the UK (Art 89(1) UPCA). The **epi's** Litigation Committee members from the various EU Member States have contributed information on the latest developments in their respective countries with regard to the ratification process. The input has been summarised in the attached table, which

also contains news about the potential establishment of local or regional divisions (Art 7 UPCA) and the corresponding languages of proceedings (Art 49 UPCA). This table comprises data from all Signatory States to the UPCA. In addition, Poland, Croatia and Spain are included, being Member States of the European Union and potential candidates for joining the UPC in the future.

	Ratification Process	Local or Regional Division
AT	Austria deposited its instrument of ratification on 6 August 2013.	In January 2015, it was decided by the Council of Ministers to establish a local division in the premises of the Austrian Patent Office in Vienna. It is not yet sure whether, and to what extent, English will be admitted as an additional language of proceedings.
BE	Belgium deposited its instrument of ratification on 6 June 2014.	Belgium is committed to establishing a local division in Brussels, which will operate in the three national languages (French, Dutch and German) plus English.
BG	Bulgaria is the 25th country that signed the UPCA. At this stage, its ratification is not envisaged. The reasons for which ratification is put off are related to the necessity of assessing the financial aspects.	Bulgaria is not considering the establishment of a local division, but under certain conditions the establishment of a regional division could be supported. In Bulgaria, there are no court cases on infringement of a European patent. Taking this lack of disputes into consideration, the opinion of the Bulgarian competent authorities is that the benefits of a regional division would be insignificant.
CY	In Cyprus, there is no progress with regard to ratification.	Cyprus has not made proposals for a local or regional division.
CZ	In the Czech Republic, for the moment, no steps have been taken for ratification. A study is expected to be carried out on the impact of the UPC on Czech firms and on the Czech economy and budget. It is moreover noted that the present quality of machine translation into Czech must be improved.	There are furthermore no measures for a local or regional division. Discussions with Slovakia in this regard are only at the beginning.
DE	In Germany, a draft law for ratification has still not been proposed to the Parliament, but no obstacles are expected. The bill should be ready in the second half of 2015.	It is planned to have four local divisions in Germany: Munich, Düsseldorf, Mannheim and Hamburg. Munich will most likely have English as the second language of proceedings (besides German). Düsseldorf appears to be more reluctant in this respect. It is thus not clear that all local divisions will accept English.
DK	Denmark deposited its instrument of ratification on 20 June 2014.	A local division in Copenhagen with English and Danish as the languages of proceedings is envisaged.

	Ratification Process	Local or Regional Division
EE	The Ministry of Justice of Estonia has made a draft law for ratification, which might still take place in 2015 but more likely at the beginning of 2016.	Estonia has concluded an agreement with Sweden, Latvia and Lithuania to set up a regional division (the "Nordic-Baltic" division) seated in Stockholm. This will enter into force when two of these countries, including at least Sweden, have ratified the UPC. The Nordic-Baltic division is expected to constitute a flexible organisation which allows for proceedings to also be held in other locations than the seat of the division. The language of the proceedings will be English with interpretation to and from the national languages.
ES	The main political parties in Spain are against the unitary patent package. This has not changed after the decision of the CJEU dismissing Spain's actions. The Spanish profession is divided in this respect. Since there will be general elections at the end of 2015, the position of the newly elected government needs to be awaited.	
FI	In Finland, the Patent Act and some other laws need to be amended before the UPCA can be ratified. There have been various stakeholder consultations and a report on the economic aspects. A draft law concerning the implementation of the UPCA has just been released for public consultation. This law will be discussed in Parliament at the end of September 2015. The instrument of ratification is expected to be deposited at the end of this year or, at the latest, at the beginning of next year. The general opinion in Finland is in favour of ratification.	Finland plans to create a local division in Helsinki with Finnish, Swedish and English as the languages of proceedings.
FR	France deposited its instrument of ratification on 14 March 2014.	France intends to establish a local division in Paris. It will most likely designate French and English as the languages of proceedings. There are ongoing discussions to also accept German, but it is not sure whether it will pass. This will also depend on the rule concerning the limitation of a language to certain parts of the proceedings (Rule 14 Draft RoP).
GB	The UK Intellectual Property Office [IPO] is currently reviewing and revising the Statutory Instrument [SI], which it will first discuss with the Law Commission. The next step is to clear policy with government. Since the SI will pass or fail in the form in which it is presented to Parliament, the IPO intends to share it with CIPA before it is published. CIPA requested to involve several knowledgeable interest groups. The UK ratification process is expected to be completed by Spring 2016.	The UK plans to have a local division in London.
GR	In Greece there is no progress, until now, regarding the ratification.	

	Ratification Process	Local or Regional Division
HR	Croatia has not made a formal decision to join the system. "Formal procedure to join has not yet been initiated, but competent authorities are currently working on analyses and preparations for the likely joining. Competent state authorities and participants in the discussions concerning this issue took the view that it is necessary to wait with the final decision until all relevant aspects of the new system are known and until some open issues of the national innovation system are resolved."	
HU	It is assumed that Hungary will ratify the UPCA, but it is not known when. A study on the impact of the UPC on the Hungarian economy will be conducted, according to a legal requirement.	Hungary may establish a local division with Hungarian and English as the languages of proceedings. Another option is to take part in a regional division.
IE	Before Ireland is able to ratify the UPCA, a referendum will be necessary. Since there will be a general election in 2016, it is not sure whether the referendum will still be held under the existing government.	If the Agreement is ratified, it is expected that a local division will be established in Ireland.
IT	Italy has filed a formal request with the European Commission to participate in the enhanced cooperation for the creation of unitary patent protection. This has been confirmed in a document of the EU Council (10621/15, dated 7 July 2015). The EC has four months to decide on the request.	Italy intends to have a local division with seat in Milano.
LT	A working document for ratification of the UPCA, which has been prepared by the Lithuanian State Patent Bureau, has been circulated in Government. It is not available to the public. Ratification is expected to take place in the autumn 2015 or the spring 2016 session of parliament.	Lithuania will take part in the "Nordic-Baltic" division (see above under "Estonia").
LU	Luxembourg deposited its instrument of ratification on 22 May 2015.	Luxembourg will not have a local or regional division. This means that all cases will be brought before the central division (Art 33(1) UPCA).
LV	There are no real obstacles in Latvia against ratification. Ratification may be postponed until the costs become clear, perhaps at the end of the year.	Latvia will take part in the "Nordic-Baltic" division (see above under "Estonia").
MT	Malta deposited its instrument of ratification on 9 December 2014.	Malta will not have a local or regional division. This means that all cases will be brought before the central division (Art 33(1) UPCA).
NL	In order to ratify the UPCA, the Dutch Patent Act needs to be amended. Together with the ratification act, this is treated as a package. After an online public consultation, some minor amendments were made to the proposal. The Council of Ministers approved the proposal. It is currently before the Council of State. Thereafter, it will be put to Parliament.	The Council of Ministers formally decided that there will be a local division in The Hague. A study commissioned by the Ministry of Economic Affairs had pointed to rather limited benefits (or even an overall cost) of having an own local division, but there are expected to be substantial indirect benefits.
PL	Even though Poland participated in the enhanced cooperation concerning unitary patent protection, it decided not to sign or ratify the UPCA. This position has not changed.	

	Ratification Process	Local or Regional Division
PT	The Portuguese Parliament approved on 10 April 2015 the accession of Portugal to the UPCA. The legislative process will follow its legal course with the referral to the Portuguese President for ratification.	
RO	In Romania, there are currently two points being discussed that somewhat slow the ratification process: 1) Transitory application of the UPCA. 2) Compatibility between national lawyers or judges that are going to become part-time UPC judges. However, these two points should not constitute an impediment to the ratification by Romania, which is expected to be finished by end of this year.	The preliminary option of Romania is to set up a regional division with the neighbouring states, such as Bulgaria, Greece and Cyprus, having the headquarters in Bucharest. At the present moment, however, Romania is taking into consideration other states for forming a regional division. A final decision in this respect has not yet been taken.
SE	Sweden deposited its instrument of ratification on 5 June 2014.	Sweden will take part in the "Nordic-Baltic" division (see above under "Estonia").
SI	In Slovenia an inter-ministerial group for unitary patent package was formed in July 2013, which is preparing documents for ratification of the UPCA. The ratification process is ongoing. However, the time frame for its completion is still rather undetermined. Ratification is not expected within this year.	A tripartite expert meeting with respect to forming a potential regional division was held in 2014 with the representatives of Hungary and Croatia, which expressed their interest for partnership in the regional division. Croatia would join such regional division subsequently, following the signing and ratification of the UPCA.
SK	The Slovak Republic has not moved to ratifying the UPCA. It will wait until the system is operational. Officials are discussing whether a study on the impact of the UPC on the Slovak economy should be conducted. There are concerns about the increase in density of patents, the level of the fees and the pro-patent approach of the UPC. The Ministry of Justice will look into the CJEU decisions.	There are no concrete steps for a local or regional division. The Ministry of Justice is involved in formal discussions with Czech colleagues in this regard. Brno has been considered as a possible seat of the local division.