

Update 2 December 2021 (original document dated 20 July 2015)

Overview on Ratification of the UPC Agreement

Including Protocol on Provisional Application, Local/Regional Divisions, Languages

Before the Unified Patent Court Agreement (UPCA) can enter into force, it needs to be ratified by 13 Member States, including the three Member States in which the highest number of European patents had effect in the year preceding the year in which the signature of the Agreement took place: Germany, France and Italy, which replaces the UK after its withdrawal (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. The input has been summarised in the attached table, which also contains news about the Member States' consent to be bound by the Protocol on Provision Application (PPA) and 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 UPCA	Consent to be Bound by PPA	Local or Regional Division
AT	Austria deposited its instrument of ratification on 6 August 2013.	Austria signed the PPA on 29 January 2019. On 19 November 2021, the <i>Nationalrat</i> (lower Chamber of the Austrian Parliament and main legislative body of Austria) decided to ratify the PPA. On 2 December, this was approved by the <i>Bundesrat</i> (upper Chamber of the Austrian Parliament). The bill will still need to be signed by the Austrian President and will need to be deposited with the General Secretariat of the Council of the EU.	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 expressed its consent to be bound by the PPA on 29 March 2017.	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 deposited its instrument of ratification on 3 June 2016.	Bulgaria expressed its consent to be bound by the PPA on 24 July 2018.	Bulgaria is not considering the establishment of a local division, but under certain conditions the establishment of a regional division could be supported.
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 are taken for ratification. A study carried out reported a negative 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 no measures for a local or regional division. Discussions with Slovakia in this regard are only at the beginning.

DE	<p>In Germany, the laws for ratification passed the Parliament in March 2017. Upon a complaint regarding the constitutionality of this law, the German Federal Constitutional Court had requested the President to postpone its issuance. The signature of the President and publication in the Federal Law Gazette are required for entry into force.</p> <p>The Federal Constitutional Court decided on 13 February 2020 that the complaint was admissible and well founded to the extent that it alleged an infringement of the requirement of a qualified majority for the ratification law under the German Constitution. Hence, the complaint succeeded because the ratification law was not adopted with the required consent of two-thirds of the members of the <i>Bundestag</i>. The Federal Constitutional Court found the further grounds of the complaint to be inadmissible.</p> <p>The <i>Bundestag</i> approved the new ratification law with the required two-thirds majority on 26 November 2020. The <i>Bundesrat</i> gave its approval on 18 December 2020. On the same day, two new constitutional complaints were filed with the Federal Constitutional Court, upon whose request the President again</p>	<p>Germany expressed its consent to be bound by the PPA on 27 September 2021.</p>	<p>It is planned to have four local divisions in Germany: Munich, Düsseldorf, Mannheim and Hamburg. The premises have been announced. 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.</p>
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	<p>postponed signing the ratification law. These complaints included applications for preliminary injunctions. With its order of 23 June 2021, the Federal Constitutional Court addressed and rejected these applications. It decided that the applications for a preliminary injunction had to be dismissed because the constitutional complaints were inadmissible on the merits.</p> <p>The President signed the ratification law on 7 August 2021, as officially published on 12 August 2021. The instrument of ratification of the UPC Agreement has not yet been deposited with the General Secretariat of the Council of the European Union.</p>		
DK	Denmark deposited its instrument of ratification on 20 June 2014.	Denmark expressed its consent to be bound by the PPA on 1 October 2015.	A local division in Copenhagen with English and Danish as the languages of proceedings is envisaged.
EE	Estonia deposited its instrument of ratification on 1 August 2017.	Estonia expressed its consent to be bound by the PPA on 3 July 2017.	Estonia has concluded an agreement with Sweden, Latvia and Lithuania to set up a regional division (the “Nordic-Baltic” division) seated in Stockholm. Its premises have been announced. 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. Estonia will provide facilities for hearings at the premises of the Harju County Court in Tallinn.
ES	The Spanish government (in power since January 2020) has not considered, or at least publicly referred to, the Unitary Patent Package. It seems this is an issue of no relevance for the Spanish government at the moment.		
FI	Finland deposited its instrument of ratification on 19 January 2016.	Finland expressed its consent to be bound by the PPA on 19 January 2016.	Finland intends to establish a local division in Helsinki with Finnish, Swedish and English as the languages of proceedings. Government Bill 87 2016 in this regard was approved by Parliament on 28 October 2016. The local division will be at the same premises as the Market Court. In preparatory work conducted in relation to recent amendment of national law, it was suggested that Finland has no intention of applying provision of Rule 14 (2)(c), in other words, judges should be able to conduct the proceedings in any of the three languages (FI, SE, EN) mentioned. Other relevant legislation, such as the Finnish Patent Act and the Market Court Act, have already been amended based on the previous Government Bill 45 2015, which laid the basis for the Finnish

			ratification. The amendments will enter into force when the UPCA enters into force.
FR	France deposited its instrument of ratification on 14 March 2014.	France expressed its consent to be bound by the PPA on 1 October 2015.	It appears that the UPC's local and the central division will occupy the historical Palais de Justice, located close to the Louvre. There will be a provisional building for the beginning on the Quai de la Mégisserie. French, German and English will be the languages of proceedings. On 14 February 2018, France deposited its instrument of ratification of the Protocol on Privileges and Immunities (PPI).
GB	The UK deposited its instrument of ratification on 26 April 2018. On 20 July 2020, the UK officially withdrew its ratification of the UPCA by depositing a notification with the Council Secretariat.	The UK became bound by the PPA on 7 July 2017. On 20 July 2020, the UK officially withdrew its consent to be bound by the PPA by depositing a notification with the Council Secretariat.	London is explicitly mentioned in Art 7(2) UPC Agreement as one of the sections of the central division. The redistribution of the cases originally foreseen for the London section needs to be decided. It seems that the Preparatory Committee has agreed to temporarily divide the cases between Paris and Munich. On 20 July 2020, the UK officially withdrew its ratification of the Protocol on Privileges and Immunities (PPI) by depositing a notification with the Council Secretariat.
GR	A consultation on the draft ratification law was completed at the beginning of 2017. In May 2017, the Greek government commissioned a study on the impact of	Greece signed the PPA on 23 March 2017 but is not yet bound.	The ratification law proposes the creation of a local division, which would be located in Thessaloniki.

	unitary patent protection on the Greek economy.		
HR	Croatia is still at a preparatory stage of joining the enhanced cooperation on unitary patent protection. Our contacts at the Croatian IPO and the Ministry of Justice have unofficially confirmed their support of UPCA. Said support was backed by a positive attitude of the High Administrative Court and High Commercial Court towards the matter. Furthermore, we have been unofficially informed that Croatian IPO has been enticed by the Ministry of Justice to take initiative and to bring the subject to the competent authorities' attention again, which could result in expediting the preparatory stage.		
HU	Ratification of the UPCA has been delayed due to a decision of the Hungarian Constitutional Court from 26 June 2018. The decision followed a request filed by the Minister of Justice on behalf of the Hungarian Government regarding the interpretation of the Hungarian Constitution. The Court took the view that ratification of the UPCA did not comply with the Constitution. Therefore, an amendment to the Constitution will be necessary before Hungary can ratify.	Hungary signed the PPA on 7 October 2015 but is not yet bound.	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. The referendum has not been scheduled for 2019. It is unlikely that there will be a referendum whilst the issues of Brexit and the questions before the DE Constitutional Court remain open.		If the Agreement is ratified, it is expected that a local division will be established in Ireland.
IT	Italy deposited its instrument of ratification on 10 February 2017.	Italy expressed its consent to be bound by the PPA on 20 February 2017.	<p>Italy intends to have a local division with seat in Milano. As announced by the Ministry of Justice in 2016, the premises will be an existing court building at via San Barnaba 50, which is in the centre of Milano.</p> <p>Milano has been suggested as an alternative for the London section of the central division. In a press release of 4 December 2018, the Ministry of Foreign Affairs and International Cooperation confirmed its full willingness to commit itself effectively to Milano's candidacy to host a central section of the UPC provided that the Government would opt for this, also in the light of an assessment of the financial burden.</p> <p>On 20 April 2018, the instrument of ratification of the Protocol on Privileges and Immunities (PPI) was deposited.</p> <p>As of 27 March 2019, amendments to the Italian patent law to adapt it to the Unitary</p>

			Patent and Unified Patent Court are in force.
LT	Lithuania deposited its instrument of ratification on 24 August 2017.	Lithuania has not signed the PPA.	Lithuania will take part in the “Nordic-Baltic” division (see above under “Estonia”). According to Lithuania’s Law on ratification of the Agreement on the establishment of a Nordic-Baltic regional division of the UPC (came into force on 1 July 2017), Lithuania will provide facilities for hearings at the premises of the Vilnius Regional Administrative Court. Lithuania has not acceded to the UPC’s Protocol on Privileges and Immunities.
LU	Luxembourg deposited its instrument of ratification on 22 May 2015.	Luxembourg expressed its consent to be bound by the PPA on 18 July 2016.	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). Luxembourg will host the Court of Appeal and the Court’s Registry the premises of which have been selected and announced: the UPC will share a building with the EFTA Court. On 3 April 2018 Luxembourg deposited its instrument of approval of the Protocol on Privileges and Immunities (PPI).
LV	Latvia deposited its instrument of ratification on 11 January 2018.		Latvia will take part in the “Nordic-Baltic” division (see above under “Estonia”). A law to ratify the agreement regarding the “Nordic-Baltic” division came into force on 1 January 2018.

MT	Malta deposited its instrument of ratification on 9 December 2014.	Malta will issue a unilateral declaration to be bound.	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	The Netherlands deposited its instrument of ratification on 14 September 2016.	The Netherlands expressed its consent to be bound by the PPA on 1 October 2015.	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. The representatives of the Ministry have indicated that the seat would be at the central station in The Hague, where it is also planned to have an international arbitration court. On 23 January 2017, the Netherlands deposited its instrument of ratification of the Protocol on Privileges and Immunities (PPI).
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.		
PT	Portugal deposited its instrument of ratification on 28 August 2015.		There are discussions about the establishment of a local division and the costs thereof. The premises would be in

			the present building of the civil court of Lisbon.
RO	In Romania, draft legislation for ratification of the UPCA and the PPA was published for consultation by the Ministry of Justice in June 2017.	Romania signed the PPA on 14 September 2016 but is not yet bound.	Romania does not intend to host a local division.
SE	Sweden deposited its instrument of ratification on 5 June 2014.	Sweden expressed its consent to be bound by the PPA on 1 October 2015.	Sweden will take part in the “Nordic-Baltic” division (see above under “Estonia”). The Nordic-Baltic Regional Division has confirmed its location at Scheelegatan 7, 112 28 Stockholm, Sweden.
SI	Slovenia deposited its instrument of ratification on 15 October 2021.	Slovenia expressed its consent to be bound by the PPA on 15 October 2021.	Slovenia intends to host a local division.
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.