

The Unitary Patent Package is back on the table

The unitary patent package is a European Union initiative which includes an EU-wide patent court and streamlined procedures for the validation of European Patents granted by the EPO. It has been strongly supported by the UK Government and was expected to come into force in 2017 but the UK's Brexit vote in June 2016 to leave the European Union threw into doubt the UK's continued involvement. While it was always clear that the UK would continue to be a member of the European Patent Convention and continue to be covered by patents granted by the EPO, it seemed likely that the Unitary Patent Package would be significantly delayed because for it to come into force with the UK's involvement would require a further surrender of sovereignty to the Court of Justice of the EU. That looked to be politically impossible given the UK Prime Minister's statement in October where she said, "*But let's state one thing loud and clear: And we are not leaving only to return to the jurisdiction of the European Court of Justice. That's not going to happen*". For the unitary patent package to happen without the UK's involvement was possible but would require lengthy renegotiation.

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Surprise Surprise

In a surprise announcement, the UK Government has confirmed it is proceeding with preparations to ratify the Unified Patent Court Agreement (UPCA). If Germany also ratifies, as is expected, the Unitary Patent Package will enter into force.

On 28 November 2016, the UK Minister of State for Intellectual Property, Baroness Neville Rolfe said: "The new system will provide an option for businesses that need to protect their inventions across Europe. The UK has been working with partners in Europe to develop this option."

"As the Prime Minister has said, for as long as we are members of the EU, the UK will continue to play a full and active role. We will seek the best deal possible as we negotiate a new agreement with the European Union. We want that deal to reflect the kind of mature, cooperative relationship that close friends and allies enjoy. We want it to involve free trade, in goods and services. We want it to give British companies the maximum freedom to trade with and operate in the Single Market - and let European businesses do the same in the UK. But the decision to proceed with ratification should not be seen as pre-empting the UK's objectives or position in the forthcoming negotiations with the EU."

The UK Government has said that the UK will continue with preparations for ratification over the coming months and will be working with the Preparatory Committee to bring the UPC into operation as soon as possible.

It is unclear whether or not the UK will remain in the UPC system following its eventual departure from the EU. That once seemed unlikely, but a move to keep the UK in is building momentum because all agree that the system will be much more attractive to users if it includes the UK.

When will it happen?

The Unitary Patent Package will enter into force on the first day of the fourth month following ratification by at least 13 signatories to the agreement which must include the UK, France and Germany. As of today 11 states, including France, have ratified. That leaves the ratification of the UK and Germany as the trigger for entry into force. The UK's instrument of ratification received

Royal Consent, the final step of the British parliamentary process, in March 2016 and so the UK should now be able to ratify very quickly. We understand that Germany is almost ready to ratify. This means that those final two ratifications

could take place very soon, perhaps within a few months and that the Unitary Patent Package would enter into force in the second or third quarter of 2017. On ratification, the Unitary Patent Package will cover the UK, France, Germany, Austria, Belgium, Bulgaria, Denmark, Finland, Luxemburg, Malta, the Netherlands, Portugal and Sweden (and any other countries that ratify before entry into force).

Planning ahead

Once the start date for the Unitary Patent Package is known, proprietors of European Patents and Applications will face several decisions which may need to be taken in a matter of months. Most notably they need to decide whether to opt some or all of their existing portfolio out of the jurisdiction of this new Court. For further details see our [guide to the Unitary Patent and Unified Patent Court](#) which contains a guidance on how best to plan for the new regime.

The only thing that can be confidently predicted is that there will be more surprises as the UK moves towards Brexit. The team at Abel & Imray will keep you informed as developments emerge.