

## WHEN CAN I OPT OUT OF THE UPC?

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The signatory states to the UPC Agreement (UPCA) have agreed a Protocol which paves the way, in terms of practical steps, to getting the Unified Patent Court (UPC) up and ready to run. Here we explain the practical steps enabled by the Protocol and why its agreement makes 2017 a more achievable target for the UPCA coming into effect.

Last Thursday a practical step was taken which brings the inception of the UPC much closer in real terms. A Protocol to the UPC Agreement was finalised, and is now awaiting the signature or formal consent of the participating member states.

The Protocol will come into force when 13 member states (including Germany, France and the UK) have signed or consented. Those 13 member states must also have ratified the Agreement on a Unified Patent Court, or have received Parliamentary approval for ratification. However, they need not have deposited their instrument of ratification with the depositary (which is the General Secretariat of the Council of the European Union for both the Agreement and the Protocol).

The Protocol will bring certain Articles of the Agreement into provisional application, to enable the practical steps which need to be taken before the UPC can become fully operational. The duration of the period between the Protocol coming into force and the Agreement coming fully into force will be uncertain, as it will depend on how long it takes for sufficient member states to progress from approval to ratify the Agreement, to the deposit of the instrument of ratification with the depositary. Under Article 89 of the Agreement a further three-month period will follow before the Agreement comes into full effect.

During the period of provisional application some of the Articles of the Agreement will be in

force. These cover the structure, legal status and liability of the UPC, the establishment of the Registry and the mediation and arbitration centre, finalising the Rules of Procedure, and the rules on legal aid.

Some of the Articles of the Statute of the Unified Patent Court (which is Annex 1 to the Agreement) will also come into force. These include provisions on appointing and training judges and the terms of their appointment, on appointing the Advisory Committee, the Presidents of the Court of First Instance and Court of Appeal, the members of the Presidium, and the Registrar, and on the establishment of the local and regional division courts.

These are all the practical requirements to get the UPC up and ready to run. From the practitioner's perspective a welcome feature is that this is intended to make it possible to register opt-outs ahead of the coming into force of the Agreement. Once the Protocol has come into force the Registry can then be established, after which the opting-out can begin! We are assured that the IT system is being designed to cope.

This may all seem cumbersome, but when was the last time a complete new court system was introduced in any one country, let alone across a minimum of 13 countries with a mixture of localised and central functions, working in several languages?

In the meantime the participating member states are getting court buildings ready, the Rules are all but finalised, we have proposed renewal fees and court fees (including for the opt out) and the Preparatory Committee's work streams on such practical aspects as IT, financial regulation, and legal and language training are proceeding well. The current estimate that the UPC will become fully operational in 2017 is looking increasingly realistic.

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