

Milestone for the European economy – UPC almost ready to come into being despite Brexit

Following the UK's vote to Brexit, it was thought rather unlikely that the UK would ratify the agreement for establishing the **Unitary Patent Court (UPC)**. This put the entire plan for a unified European patent court system at risk: ratification by the UK – along with Germany and France being the three EU Member States with the highest number of patent applications – is a condition for the UPC to come into effect. Although the UK remains entitled to ratify the UPC agreement following June's Brexit vote, it was not thought that the UK would do so for political reasons, since the agreement necessitates Europe's Court of Justice to have jurisdiction over certain matters.

Surprisingly then, on 28 November 2016, Baroness Neville-Rolfe, Britain's Minister for Energy and Intellectual Property, announced that the UK is ready to ratify the EU's patent plans:

"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."

This ratification will bring closer the establishment of the UPC – probably still in 2017. France has already ratified the UPC agreement. It is assumed that Germany will be able to easily resume the ratification process now, having suspended this in the light of Brexit discussions.

Notwithstanding the ratification, the UK's involvement in the UPC is uncertain following its exit from the EU. It is not

clear yet whether the UK might be forced to leave the UPC after its initial participation upon Brexit. It is likewise unclear whether the UK still wants to participate in the UPC after its definitive exit, since the CoJ's jurisdiction would appear to be incompatible with the UK Government's position on what is meant by Brexit. The UK's subsequent departure from Europe and the UPC is likely to cause further debate and uncertainty over the future of the UPC. For the UK to remain part of the UPC but leave Europe a number of "legislative fixes" and agreements will be necessary. If it leaves the UPC, there is likely to be a debate over which country hosts the division of the central court currently to be located in London.

Notwithstanding these uncertainties, the fabled UPC seems once again to have been resuscitated and edges that bit closer to its creation.

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