

In an Order of 23 June 2021, the German Constitutional Court rejected the complaints filed against the UPC

According to a press release of 9 July 2021, the German Constitutional Court rejected the two applications for preliminary injunction filed against the German ratification law of the UPC Agreement, thus allowing ratification of the Agreement and the Provisional protocol of application.

The German Court considered inter alia that article 20 of the UPC Agreement according to which the UPC should respect the primacy of the EU law, was not in contradiction with the German national law. In fact, according to the German Court, the UPC Agreement does not modify the existing *status quo* in the relationship between EU law and national constitutions.

In the same way, the German Court considered that the nomination procedure of the judges for the Unified Patent Court appointed for six years (and not for life) did not affect the principle of democracy.

This important decision will now allow effective ratification by Germany of the UPC Agreement together with the Protocol on provisional application.

It must be recalled that the entry into force of the Protocol will allow appointment of the judges, of the Registrar as well as all administrative organs of the future Court.

The administrative Committee will be able, as soon as created, to issue the definitive version of the Rules of procedure and to decide necessary measures for amending the Agreement to take into account the withdrawal of the United Kingdom, following Brexit.

➤ **What are now the perspectives for the future?**

Entry into force of the Protocol on provisional application still requires ratification by at least two other Member States, in addition to Germany. These additional States could be Austria which appears almost ready or Malta. After those additional ratifications, the Protocol could enter into force without further delay.

The administrative preparations necessary for the operation of the future court are expected to take approximately six months. After this provisional period, the entry into force of the Unified Patent Court itself could occur after final ratification by Germany, within four months.

Consequently, it can now be expected that the new European Court could enter into force somewhere around the end of 2022 and immediately receive complaints for infringement or actions for revocation of European patents.

At the same time, it will be possible to obtain the grant by the EPO of “Unitary patents” covering the majority of the European Union territories. This will constitute a major advantage for a more simple and cheaper protection of innovations in Europe.

For more information on the organization and function of the future Court, please see our analysis [under this link](#).

For the Unitary patent, please see our analysis [under this link](#).

Our teams are ready to assist you in this evolution.

