

WHERE WILL A UP HAVE EFFECT?

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Legal Briefings

26 EU Member States participated in the enhanced cooperation procedure to establish the unitary patent (including the UK which has now withdrawn). However unless these states have also ratified the Unified Patent Court Agreement (UPCA) then the unitary patent (UP) will not be effective in their jurisdictions. Poland has participated in the UP but has not signed the UPCA and so the UP will not have effect there, nor will it apply to Croatia or Spain which have still not signed the UPCA or participated in the UP. Now the UK is not in the UPC system nor the EU, UPs will not have effect in the UK either.

See the [table](#) produced by the Council of Europe which shows which have signed and which states have then ratified (with dates) the UPCA. Since no non-Member State countries are able to take part in the UPCA on its current drafting, the UP will not extend to all the EPC states in relation to which it is currently possible to request EP designations. Aside from the EU states mentioned above, all non-EU EPC states will also be excluded.

EU Member States where the UP will not apply (given the current state of UP participation and UPCA ratification):

- **Spain** – has declined involvement in UP or UPC and has challenged the use of the enhanced cooperation procedure to establish the UP and the language regime at the Court of Justice of the European Union which rejected both attempts (see our [IP e-bulletin of 5 May 2015 on the CJEU's decision to reject the latest challenges](#)).
- **Poland** – participated in enhanced cooperation establishing the UP but has said it will not sign the UPC (for now), thus a UP will not be enforceable in Poland since enforcement can only occur via the UPC.
- **Croatia** – has not agreed to the UP enhanced procedure or signed the UPC Agreement.

However Croatia only joined the EU on 1 July 2013 so it may well catch up with these agreements soon. There is no suggestion that it has any particular objections to the UP/UPC system.

- The UP will also not apply in **EPC member states which are not eligible to be signatories of the UPC Agreement**, although they are European Patent Convention signatories and are options for designation under the EP
 - **Norway, Turkey and Switzerland**
- The **UK** has withdrawn from the UPC system and UPs will not cover the UK as it is no longer and EU Member State.
- **Late joiners to the EPC** – European patents applied for before 2008 (for **Croatia**) and 2007 (for **Malta**) which are coming up to grant will not be able to extend to those states as they were not signatories to the EPC when the applications were made. Thus if a UP is requested when such applications come to grant, it will not be possible for it to cover these states even when Croatia has signed the UPCA and participated in the enhanced cooperation for the UP (Malta has signed the UPCA and agreed to the UP enhanced cooperation).

See also on this hub: [How to get a Unitary Patent](#)

[< SEE MORE ON OUR UPC AND UP HUB](#)

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



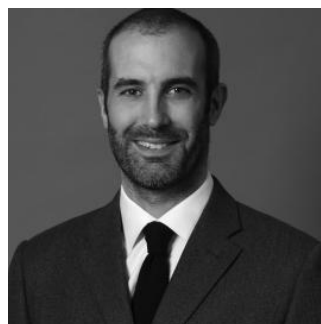
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