

EPI – LitCom meeting – 21 October 2020

UK notifies Council Secretariat of its withdrawal from the UPC

On the 20 July 2020, the Preparatory Committee of the Unified Patent Court (UPC) published UK Withdrawal from the UPCA, stating that “*A deposit of the withdrawal notification of ratification has been deposited with the Council Secretariat*” after Amanda Solloway (UK IP Minister) parliamentary written statement in the House of Commons.

Ms Solloway declared that, “*by means of a Note Verbale*”, the UK has withdrawn its ratification of the UPC Agreement and the UPC’s Protocol on Privileges and Immunities, and its consent to be bound by the UPC Agreement’s Protocol on Provisional Application (PPA).

Ms Solloway further explained (in line with her March statement to the House of Lords EU Justice Sub-Committee’s Chair, follow link here) that, in view of the UK’s withdrawal from the EU, the UK no longer wishes to be a party to the UPC system; participating in a court that applies EU law and is bound by the CJEU would be inconsistent with the government’s aims of becoming an independent self-governing nation.

Ms Solloway went on to say that the UK had decided to withdraw its ratification now to ensure clarity regarding the UK’s status in respect of the Agreements and to facilitate orderly entry into force for other states without our participation.

The UPC Preparatory Committee stated that it will now convene to discuss the consequences of the UK withdrawal and agree a way forward.

One issue that is not entirely clear is whether the UK’s deposit of the withdrawal notification is sufficient for clean break or whether any further steps may be needed to ensure the withdrawal is effective and complete.

The UPC Agreement provides that instruments of ratification be deposited with the General Secretariat of the Council of the EU (i.e. the Council Secretariat) but, although notification to the Council Secretariat (via a “*Note Verbale*”) may therefore be sufficient to withdraw a ratification.

On litigation more widely

Much depends on whether a deal is agreed between the UK and the EU.

If no agreement is secured i.e. NO deal Brexit, the Brussels Regulation will simply cease to apply, so jurisdiction and cross-border enforcement will become more complex.

To ameliorate that, the UK is re-joining the Hague Convention in its own name, and has applied to join the Lugano Convention (though joining requires the consent of EU states).

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