

A Message from the Chairman, Alexander Ramsay – June 2017

27 June 2017

As previously announced, the timetable for the start of the period of provisional application and the entry into force of the UPC Agreement is relying on the timely finalisation of national procedures concerning the ratification of the UPC Agreement (UPCA) and the participation in the Protocol on Provisional Application (PPA).

Progress is indeed being made in several Contracting Member States. In Estonia the necessary laws have been passed and the last steps towards formal ratification are now being taken. Furthermore the UK Government has recently laid the orders implementing the Protocol on Privileges and Immunities in Westminster, thereby signalling a firm intent and commitment on the road to ratification.

However, even considering Estonia and the UK, three additional approvals of the PPA, including Germany, are necessary in order for the preparations to be completed for this final phase (provisional application period).

In Germany another layer of complexity has been added due to a suit lodged in the German Constitutional Court concerning the German ratification of the UPCA. Unfortunately this has brought a pause to the German ratification of the UPCA and the Protocol on Provisional Application. It is difficult to get a clear understanding of what is the status of the suit and what it is about, since there is not much information publicly available. The complaint has not been notified to the German Government or the Parliament. According to publicly available information an unnamed individual has lodged a complaint against the bill regarding the German ratification of the UPCA and has also submitted a request for preliminary/emergency measures ordering the suspension of the ratification until the Court has decided on the merits of the case. The Court seems to have informed the President of the Republic informally and as seems to be the usual practice in Germany, the President has decided not to proceed with the ratification until the Court has decided on the request for preliminary measures.

Under the current circumstances it is difficult to maintain a definitive starting date for the period of provisional application. However, I am hopeful the situation regarding the constitutional complaint in Germany will be resolved rather quickly and therefore I am hopeful that the period of provisional application can start during the autumn 2017 which would mean that the sunrise period for the opt out procedure would start early 2018 followed by the entry into force of the UPCA and the UPC becoming operational.

A more detailed timetable will be communicated on this website as soon as the picture is clearer.

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