

Response

by the Federal Government

**to the brief parliamentary enquiry by deputies Roman Müller-Böhm, Stephan Thomae, Grigorios Aggelidis, additional deputies and the FDP parliamentary group
– Printed matter 19/11707 –**

Budget resources for the Unified Patent Court

Preliminary remark by the enquiring parties

In addition to a unitary patent, several member states of the European Union, including Germany and the United Kingdom, strive for a Unified Patent Court (UPC). EU regulations no. 1257/2012 and no. 1260/2012 to create the unitary patent system came into force on 20 January 2013 but only apply from the date of the UPC treaty coming into force, i.e. after the lodging of 13 ratification documents, including, necessarily, the ratification documents of Germany and the United Kingdom. Thus, the ratification of the respective countries is required for the establishment of the Unified Patent Court. 16 member states have already ratified the treaty (www.consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=2013001). In spite of the impending exit of the United Kingdom from the European Union, the treaty has also been signed by the United Kingdom. So far, only the Federal Government has not yet completed the necessary ratification. Since an appeal has been lodged against them before the Federal Constitutional Court, the Federal President Frank-Walter Steinmeier has suspended the promulgation of the laws until further notice. Nonetheless, resources for the Unified Patent Court have been allocated in the budgets since 2015, and Euro 544,000.00 were spent in 2015

(www.bundeshaushalt.de/fileadmin/de.bundeshaushalt/content_de/dokumente/2017/soll/Gesamt_Haushalt_2017_mit_HG.pdf – PDF-page: 786; budget item 687 03 -059; actual for 2015: Euro 544,000.00).

The question arises what the resources were spent on, although the ratification process has not yet been completed and the outcome of the constitutional appeal is still uncertain.

Preliminary remark of the Federal Government

To gain a better understanding of the meaning of European patent reform, the Federal Government points out the following: The reform for the creation of a unified patent protection in Europe envisaged for decades has been successfully passed in December 2012 or February 2013. Amongst the key components

of the unified patent protection is the creation of a European patent with unitary effect for inventions within Europe. On the basis of regulations (EU) no. 1257/2012 and no. 1260/2012 of the European Parliament and Council dated 17 December 2012 about the implementation of increased cooperation in the area of creating the unitary patent protection, applicants may in future obtain a European patent with unitary effect for all participating EU member states. The European patent with unitary effect complements the patent hitherto granted as “European patent” by the European Parliament in accordance with the European Patent Convention of 5 October 1973 (EPC) and which continues to be granted.

On the basis of the international treaty on a Unified Patent Court signed by the Federal Republic of Germany on 19 February 2013 (official gazette C 175 dated 20 June 2013, p. 1, hereinafter referred to as the Treaty) a Unified Patent Court is to be established. In future this will decide with unitary effect in disputes e.g. concerning patents issued by the European Patent Office as well as supplementary protection certificates. The Treaty provides as courts of first instance local courts situated decentralised within the signatory member states or in case of an integration between several members states regional courts and a central court. The central court is to be located in Paris with departments in Munich and London. The court of appeal is located in Luxembourg. For the Federal Republic of Germany the establishment of four local courts in Düsseldorf, Hamburg, Mannheim and Munich is planned.

With the creation of the European patent with unitary effect and the Unified Patent Court the protection of inventions is simplified, made cheaper and their enforcement in court optimised both for already existing European patents and for the European patent with unitary effect. In future this patent protection will be subject to a single unified court procedure for all of Europe. Hitherto existing expensive translation requirements for the validity of a patent in other countries shall be entirely obsolete. In particular the German innovative industry will profit from the patent package. Approx. 40 percent of all European patents granted in Europe by the European patent office are for German applicants.

1. What effects does in the opinion of the Federal Government the impending exit of the United Kingdom from the European Union have on the Treaty on a Unified Patent Court?
2. Does the Federal Government have a plan for the subsequent procedure should the United Kingdom leave the European Union and a ratification of the Treaty in its current form is no longer possible?

If so, what does this subsequent procedure look like?

Given the material context, questions 1 and 2 shall be answered together.

The question of the exit of the United Kingdom from the European Union (so-called Brexit) and its effects on the European patent reform play an important part in the subsequent implementation process of the Treaty on a Unified Patent Court. The actual and legal effects of an exit must be reviewed in relation to the Treaty and coordinated at European level. Currently, this opinion forming process is not yet complete, not least because significant factors of the likely exit are currently not yet known.

3. How does the Federal Government justify that budget resources designated “Contribution to the running costs of the Unified Patent Court” were spent under number 687 03 -059 i 2015 although this has not been ratified?
 - a) What were the financial resources allocated in the budget in the year 2015 (Euro 544,000.00) concerning the European Patent Court actually used for?

Questions 3 and 3a are answered together.

In its article 89 the Treaty provides for it to come into force four months from the ratification by 13 states, including Germany, France and the United Kingdom. Expenditure arises already in the preparatory phase and is necessary to guarantee that the Unified Patent Court will be operational from the start date. This includes e.g. the development, establishment and test operation of an IT system to network a court system with numerous locations throughout Europe. This required, and continues to do so, the creation of a project plan and the commissioning of external service providers. Since the Unified Patent Court does not yet exist as a legal person and thus a legal entity for commissioning orders is missing, the United Kingdom declared in the past its readiness to commission the necessary orders for the signatory states and advance the significant expenditure. The greatest share of the advance performances was necessary for the development of the IT system for the Unified Patent Court initially headed by the United Kingdom and since then by Luxembourg.

To finance a financial contribution requested by the United Kingdom from the Federal Republic of Germany in 2014 for the necessary planning and development of an IT system for the future Unified Patent Court as part of the preparation for the coming into force of the Treaty, the necessary resources were registered for the budget year 2015, approved by the budgetary legislator and then the United Kingdom reimbursed with an amount of Euro 543,981.00.

- b) What does the Federal Government mean by “running costs” for an establishment which has not yet been ratified?

The Federal Government understands question 3b to ask how an establishment may incur “running costs” if due to a lack of ratification of coming into force of the Treaty by which it is founded it does not yet exist as a legal entity. In this respect please refer to the answer to question 3a. Furthermore, the budget plan explicitly also provides for the financing of the costs of preparatory measures and costs incurred by other member states in connection with the foundation of the Unified Patent Court.

- c) What is the status or development state of the IT system or IT infrastructure mentioned in the explanations for item 687 03 -059 in the budgets?

The development of the IT system (software for the electronic maintenance of the case files) or the IT infrastructure (website, email system, software for the electronic maintenance of the staff and administrative files and payment system) is almost complete.

4. What concrete purpose should the financial resources allocated in the budget concerning a Unified Patent Court in the years 2018 (Euro 3 m) and 2019 (Euro 5.5 m) serve although a legal basis has not yet been ratified?

The resources allocated in the budget 2018 and 2019 were or are mainly intended to cover the forecast contributions to be paid by the Federal Republic of Germany in accordance with the Treaty for financing the budget of the Unified Patent Court. The actual delay in the ratification of the Treaty by the Federal Republic of Germany could not be foreseen at the date the budgets were passed.

5. Why were no budget resources allocated in the years 2016 and 2017?

In the budget year 2016 in chapter 0710 title 687-03 (contribution to the running costs of the Unified Patent Court) budget resources amounting to Euro 5,500.00 and in the budget year 2017 amounting to Euro 4,188.00 were allocated.

6. What should in the opinion of the Federal Government be done with spent and allocated resources for the Unified Patent Court if the constitutional appeal is successful?

The Federal Government does not comment on hypothetical questions. We further point out that the resources allocated in chapter 0170 title 687-03, which are not required, are returned to the Federal budget.

7. Should in the estimation of the Federal Government budget resources also be allocated in future for a Unified Patent Court not ratified by a Treaty?
If so, what level of budget resources is currently envisaged?
8. What expenditure of budget resources can in the current estimate of the Federal Government be expected in the case that a Unified Patent Court shall not be constituted in accordance with the current version of the Treaty?

Given the material context, questions 7 and 8 shall be answered together.

The Federal Government has always strongly advocated the creation of a unified patent system in Europe as well as the Unified Patent Court. This commitment continues unchanged. Therefore, the Federal Government takes the necessary budgetary precautions to be able to meet the financial obligations resulting from a ratification (see also answer to question 4).

The Treaty obliges the signatory states in particular to provide pro rata financial contributions to the budget of the court. These financial contributions shall be necessary as long as the Unified Patent Court shall be unable to cover its operating costs by its own means and achieve a balanced budget. According to the wording of the Treaty a balanced budget should have been achieved after a transitional period of seven years from the coming into force of the Treaty.

The government draft budget 2020 (chapter 0710 title 687 03) includes an authorised expenditure of Euro 4.300 T. For the remainder, the further budgetary requirements shall be awaited.

Preliminary version - to be replaced by the proof-read

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