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National measures relating to the Unitary Patent

Overview of the most important national measures in the participating Member States having ratified the Agreement on a Unified Patent Court

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Introduction A.

Since 1977, the European Patent Office (EPO) has provided a single centralised process for granting patents in Europe. Patent applications, filed in English, French or German, are extensively searched and examined to ensure the best possible quality. After this centralised grant procedure, the patent proprietor can obtain patent protection in up to 44 countries. However, the granted European patent is not a unitary right but instead a bundle of patents with the effects of a national patent unless the EPC provides otherwise. Consequently, the patent has to be validated and maintained individually in each country in which it is to take effect – a process that involves administrative work and costs.

The Unitary Patent system eliminates these shortcomings for the participating EU Member States: the new European patent with unitary effect (Unitary Patent) offers a simplified route to uniform and broad territorial patent protection, significantly reduces red tape and brings down costs. the centralised pre-grant procedure of the European patent will be supplemented by a centralised post-grant procedure: instead of validating their European patent in several states individually, proprietors may opt for a Unitary Patent by filing a single request with the EPO, which will act as a one-stop shop. The EPO will also be responsible for centrally administering the Unitary Patent and the related renewal fee payments.

In December 2012, the EU Council and the European Parliament adopted two regulations laying the foundation for Unitary Patent protection in the EU:

- *Regulation (EU) No 1257/2012* of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection (OJ EPO 2013, 111 and Official Journal of the European Union, OJ L 361, 31.12.2012, 1-8), and-

- Council *Regulation (EU) No 1260/2012* implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements (OJ EPO 2013, 132 and Official Journal of the European Union, OJ L 361, 31.12.2012, 89-92).

The Select Committee adopted the necessary secondary legislation, in particular the Rules relating to Unitary Patent Protection (*OJ EPO 2022, A41*), and the Rules relating to Fees for Unitary Patent Protection (*OJ EPO 2022, A42)*.

The present booklet aims at providing a summary of the most important national measures accompanying the implementation of the Unitary Patent in the participating Member States having ratified the Agreement on a Unified Patent Court.

The synopses given in the following tables have been prepared on the basis of the information provided by the participating Member States (see document *SC/ 3/22 corr. 1*). Although we have exercised the greatest care in drawing up the tables, we cannot vouch for the absolute completeness and accuracy of the information given. If only because of their conciseness and the fact that they concentrate on the bare essentials, the tables can be no substitute for consultation of the national legal sources themselves, supplemented where appropriate by professional advice from authorised persons. Furthermore, it cannot be stated with any certainty that the legal provisions summarised in the tables will not have changed by the time this booklet appears. It is therefore advisable always to refer back to the official publications of the participating Member States so as to keep up to date with the development of national legislation and official practice.

Abbreviations B.

EPO	European Patent Office
PPI	Protocol on Privileges and Immunities
SIPO	Slovenian Intellectual Property Office
UPC	Unified Patent Court
UPCA	Agreement on a Unified Patent Court

General I.

This part provides some general information as to measures, i.e. in particular legislation accompanying the implementation of the European patent with unitary effect (Unitary Patent) in the participating Member States.

Participating Member State	1 Is there any measure accompanying the implementation of the Unitary Patent	2 National measure
Austria	Yes	An amendment of the law is being drafted in order to create the accompanying measures for the implementation of the European patent with unitary effect. It is envisaged that the European patent reform will be incorporated into the Federal Law of 16 December 1978 on the Introduction of the European Patent Convention and the Patent Cooperation Treaty (PatV-EG) and the Law of Fees (PAG). The draft is to be subject to a review procedure before being transferred to Parliament and has not yet been made officially available.
Belgium	Yes	Some amendments have been introduced in the Belgian Patent legislation through the adoption of the new Code of Economic Law (hereafter "CEL") in order to take into account the existence of the Regulations related to the Unitary Patent Protection: • definitions of the European patent with unitary effect and of Regulation 1257/2012 have been introduced in the list of definitions applicable to the patent chapter of the CEL (Article I.14 CEL); • a provision concerning the prohibition of double protection mentioned in Article 4.2 of Regulation 1257/2012 is now contained in Article XI.83, § 5, CEL. These provisions have been introduced by the Law of 19 April 2014 and entered into force on 22 September 2014 (Royal Decree of 19 April 2014, Article 1bis). Translations are not available. This is the link to the aforementioned provisions of the Code of Economic Law (consolidated online version): Article *I.14 CEL* and *XI.83 CEL* (French and Dutch texts). A second set of amendments has been adopted in order to: • align the wording of the provisions of the CEL related to the rights, exceptions and limitations with the wording of Articles 25-27 of the UPC Agreement; • provide for a safety net in case of late rejection of unitary effect in order for the right holder of a European patent to apply for national patent protection (Article XI.83/1 CEL). While these amendments have been introduced by the Law of 19 December 2017, only the provision related to the safety net has since entered into force, on 1 February 2018. The provisions related to the rights, exceptions and limitations will enter into force on the date of entry into force of the Agreement on a Unified Patent Court. Translations are not available. This is the link to the aforementioned provision of the Code of Economic Law (consolidated online version) as well as the provisions related to the rights, exceptions and limitations having yet to enter into force: *Article XI.83/1 CEL* and *Articles 2 to 4 of the Law of 19 December 2017* (French and Dutch texts).
Bulgaria	Yes	Bulgaria has adopted amendments in the Act on patents and registration of utility models, in force since October 2020 with proviso according that art. 72c, para. 1 and 8 in the part for the European patent with unitary effect, and art. 72g, para. 2, 4 and 5 in the part for the European patent with unitary effect, shall be applied after the entry into force of the Agreement on a Unified Patent Court (ratified by an Act - SG, 32/16).
Denmark	Yes	The Unified Patent Court etc. Act (Act No. 551 of 2 June 2014) has been adopted and can be retrieved via this link: *https://wipolex.wipo.int/en/text/546284* The Unified Patent Court etc. Act makes references to the Consolidate Patent Act, which can be retrieved via this link: *https://wipolex.wipo.int/en/text/546268*

Participating Member State	1 Is there any measure accompanying the implementation of the Unitary Patent	2 National measure
Estonia	Yes	In connection with the implementation of the European patent with unitary effect, the Estonian Parliament Riigikogu passed on 14 June 2017 the Act amending the Implementation of the Convention on the Grant of European Patents Act and other acts (hereinafter: amendments Act). Available only in Estonian: *https://www.riigiteataja.ee/akt/104072017004*. The amendments will enter into force simultaneously with the entry into force of the Agreement on a Unified Patent Court and of the Agreement on the Establishment of a Nordic-Baltic Regional Division of the Unified Patent Court for Estonia. A consolidated version of the Implementation of the Convention on the Grant of European Patents Act, as amended, is available in English: *https://www.riigiteataja.ee/en/eli/524072017003/consolide*. The amended name of the act is Implementation of the Convention on the Grant of European Patents and of Regulation (EU) No 1257/2012 of the European Parliament and of the Council Act. With the abovementioned amendments Act were also amended and supplemented the following Acts: **Patents Act** *https://www.riigiteataja.ee/akt/119032019165* (amended full text in Estonian only) The Act is amended as follows: 1. throughout the Act, the text "Implementation of the Convention on the Grant of European Patents Act" is replaced by the text "Implementation of the Convention on the Grant of European Patents and of Regulation (EU) No 1257/2012 of the European Parliament and of the Council Act"; 2. … ; 3. 3) § 395 is amended by adding section 11 worded as follows: "(11) Supplementary protection, the basic patent of which is a European patent with unitary effect, shall be registered by entering the data prescribed in the relevant supplementary protection regulation in the Register of European Patents Valid in Estonia."; **Utility Models Act** *https://www.riigiteataja.ee/akt/119032019164* (amended full text in Estonian only) In § 24 section 3 subsection 2 the text "Implementation of the Convention on the Grant of European Patents Act" is replaced by the text "Implementation of the Convention on the Grant of European Patents and of Regulation (EU) No 1257/2012 of the European Parliament and of the Council Act"; [RT I, 04.07.2017, 4 – enters into force simultaneously with the entry into force, in respect of Estonia, of the Agreement on a Unified Patent Court and of the Agreement on the establishment of a Nordic-Baltic regional division of the Unified Patent Court]. **Code of Civil Procedure** *https://www.riigiteataja.ee/en/eli/513042021008/consolide* § 11 is amended by adding section 1^1 worded as follows: (1^1) A district court shall not deal with civil matters related to European patents and European patents with unitary effect, except for such civil matters related to European patents or European patents with unitary effect which are not in the competence of the Unified Patent Court in accordance with the Agreement on a Unified Patent Court (OJ C 175, 20.6.2013, p. 1–40). [RT I, 04.07.2017, 4 - enters into force simultaneously with entry into force of the Agreement on a Unified Patent Court and the Agreement on the establishment of a Nordic-Baltic regional division of the Unified Patent Court with regard to Estonia].

Participating Member State	1 Is there any measure accompanying the implementation of the Unitary Patent	2 National measure
Estonia (continued)		**Code of Civil Procedure and Code of Enforcement Procedure Implementation Act** *https://www.riigiteataja.ee/en/eli/531032021005/consolide* The Act is amended by adding §2^5 worded as follows: § 2^5 . Jurisdiction of district courts in connection with the entry into force of Agreement on Unified Patent Court. For seven years following the entry into force of the Agreement on a Unified Patent Court (OJ C 175, 20.6.2013, pp. 1–40), jurisdiction to dispose of cases related to infringement or revocation of European patents and cases related to infringement or declaration of invalidity of a supplementary protection certificate issued for a product protected by a European patent is also vested in district courts. [RT I, 04.07.2017, 4 – enters into force simultaneously with the entry into force, in respect of Estonia, of the Agreement on a Unified Patent Court and of the Agreement on the establishment of a Nordic-Baltic regional division of the Unified Patent Court]. **Code of Enforcement Procedure** *https://www.riigiteataja.ee/en/eli/515042021001/consolide* § 2 section 1 is amended by adding subsection 4^1 worded as follows: 4^1) a decision or order of the Unified Patent Court that has entered into effect and is mentioned in Article 82 of the Agreement on a Unified Patent Court (OJ C 175, 20.06.2013, pp. 1–40); [RT I, 04.07.2017, 4 – enters into force simultaneously with the entry into force of the Agreement on a Unified Patent Court and the Agreement on the establishment of a Nordic-Baltic regional division of the Unified Patent Court with regard to Estonia]. **Principles of Legal Regulation of Industrial Property Act** *https://www.riigiteataja.ee/akt/119032019166* (amended full text in Estonian only) § 1 section 2 is amended and worded as follows: (2) For the purposes of this Act, the following are objects of industrial property rights: 1) inventions registered pursuant to the Patents Act, the Utility Models Act or the Implementation of the Convention on the Grant of European Patents and of Regulation (EU) No 1257/2012 of the European Parliament and of the Council Act; [RT I, 04.07.2017, 4 – enters into force simultaneously with the entry into force of the Agreement on a Unified Patent Court and the Agreement on the establishment of a Nordic-Baltic regional division of the Unified Patent Court with regard to Estonia].
Finland	Yes	Finland ratified the Agreement on a Unified Patent Court on 19 January 2016. During the ratification process, amendments to Finnish Patents Act (550/1967) were adopted. The amendments included implementation of the article 4(2) of the Regulation (EU) No 1257/2012 and amendments required by the UPCA. Some of the amendments were not required by the UPCA, but were seen advisable e.g. safety net – provision for late rejection of a request for unitary effect and harmonisation of the limitations included in national law with the limitations in the UPCA (Article 27 UPCA). The amendments to the national legislation were approved on 8 January 2016 and they will enter into force the same day as the UPCA enters into force. Link to the government proposal (in Finnish and Swedish) *http://finlex.fi/fi/esitykset/he/2015/20150045* Link to the amendment to Patents Act (in Finnish and Swedish) *http://finlex.fi/fi/laki/alkup/2016/20160023* Finland has decided to establish a local division, the Act on the local division (Laki yhdistetyn patenttituomioistuimen paikallisjaostosta Suomessa (971/2016) has been adopted in 2016 and the Act shall enter into force by decree. Link to the Act (in Finnish and Swedish): *https://finlex.fi/fi/laki/alkup/2016/20160971*

Participating Member State	1 Is there any measure accompanying the implementation of the Unitary Patent	2 National measure
France	Yes	France has adopted the following three laws on the Unified Patent Court: • law No. 2014-199 of 24 February 2014 authorising ratification of the UPCA https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000028652178 *https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000028652178* • law No. 2017-1840 of 30 December 2017 authorising ratification of the Protocol on Privileges and Immunities of the UPC, published in Official Journal (OJ) No. 0305 of 31 December 2017 https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000036339433 *https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000036339433* • decree No. 2021-1515 of 22 November 2021 publishing the Protocol on Privileges and Immunities of the UPC. In addition, existing French legislation has been amended by: • order No. 2018-341 of 9 May 2018 on European patents with unitary effect and the UPC, published in the OJ of the French Republic on 10 May 2018 and ratified on 24 October 2018 • implementing decree No. 2018-429 of 31 May 2018 on European patents with unitary effect and the UPC, published in the OJ of the French Republic on 2 June 2018. The order amends the Intellectual Property Code to include, in particular, provisions: • on the interplay between the various types of patent (national, "classic" European and European with unitary effect) • on the exclusive competence of the UPC • on the duty of the French Patent Office (INPI) to provide third parties with information about European patents with unitary effect and on the extension of their effect to overseas territories. Thanks to this order and its implementing decree, French law will be fully compatible when the UPCA enters into force. Order No. 2018-341: *https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000036887984* OJ of May 2018 (order): *https://www.legifrance.gouv.fr/eli/jo/2018/5/10/0107* Decree No. 2018-429: *https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000036974745* OJ of 2 June 2018 (decree): *https://www.legifrance.gouv.fr/eli/jo/2018/6/2/0125*

Participating Member State	1 Is there any measure accompanying the implementation of the Unitary Patent	2 National measure
Germany	Yes	In Germany, three laws implementing Unitary Patent protection have entered into force: • law of 7 August 2021 assenting to the Agreement of 19 February 2013 on a Unified Patent Court (Federal Law Gazette II, p. 8501 - Legislative materials of the German Bundestag) • law of 20 August 2021 updating national patent legislation in the light of the European patent reform (Federal Law Gazette I, p. 39142-Legislative materials of the German Bundestag) • law of 20 August 2021 assenting to the Protocol of 29 June 2016 on Privileges and Immunities of the Unified Patent Court (Federal Law Gazette II, p. 9533 - Legislative materials of the German Bundestag). Germany ratified the Protocol to the Agreement on a Unified Patent Court on provisional application on 27 September 2021. It will deposit the instrument of ratification for the Agreement on a Unified Patent Court as soon as sufficient arrangements for the Court's functioning have been made on the basis of the Agreement's "provisional application" to ensure that it will be operational when the Agreement enters into force.
Italy	Yes	The Ratification Bill of the Agreement on a Unified Patent Court was published in the Italian Official Journal on November 24th 2016 and entered into force on November 25th 2016 *(LEGGE 3 novembre 2016, n. 214 Ratifica ed esecuzione dell'Accordo su un tribunale unificato dei brevetti, con Allegati, fatto a Bruxelles il 19 febbraio 2013)*. For the full text of the Ratification Bill in Italian see: *https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2016-11-24&atto.codiceRedazionale=16G00227&elenco30giorni=false* The ratification procedure of the UPCA was completed on February 10, 2017 with the notification of the Ratification Bill to the European Council. UPC ratification details are available on the European Council's website: *http://www.consilium.europa.eu/en/documents-publications/agreementsconventions/agreement/?aid=2013001* The UPCA Ratification Bill includes amendments to the national legislation to implement the Agreement, including the introduction into the Italian Industrial Property Law *(Codice della Proprietà Industriale, decreto legislativo n. 30/2005)* of provisions on indirect patent infringement. In the past, indirect infringement was only acknowledged by the national case law. Italy signed the Protocol on Provisional Application of the UPCA in Brussels on February 20th 2017 at the margin of the EU Competitiveness Council. No further ratification is needed for its application. The Ratification Bill of the Protocol on Immunities and Privileges (PPI) of the UPCA was published in the Italian Official Journal on December 23rd 2017 (LEGGE 4 dicembre 2017 n. 201 Ratifica ed esecuzione del Protocollo sui privilegi e le immunita' del tribunale unificato dei brevetti, fatto a Bruxelles il 29 giugno 2016) and entered into force on December 24th 2017. For the full text of the Ratification Bill of the PPI in Italian see: *https://www.gazzettaufficiale.it/eli/id/2017/12/23/17G00209/sg* The Ratification procedure of the PPI was completed on April 20th 2018 with the notification of the Ratification Bill to the European Council. The set-up of a local division of the UPC in Milan (address: Via San Barnaba 50, 20122, Milan) will require a separate legal instrument, considering that a Headquarter Agreement between the Italian Republic and the UPC is needed in this regard and it can be signed only after the start of the provisional application period. Details concerning the venue of the Milan local division were officially communicated from the Italian representative to the Preparatory Committee on October 10th 2016. A technical workshop of the UPC was hosted by the Italian authorities in Milan on April 4th 2019 and included an official visit to the premises of the future UPC local division.

Participating Member State	1 Is there any measure accompanying the implementation of the Unitary Patent	2 National measure
Italy (continued)		For information and pictures on the Milan local division see: *https://www.unified-patent-court.org/locations* With a view to the introduction of the Unitary Patent, amendments to the Italian Industrial Property Law (Decreto legislativo n. 30/2005, Codice della Proprietà industriale) were introduced by the Legislative Decree n. 18 of 19th February 2019 [Legislative Decree no. 18 of 19 February 2019, to adapt national legislation to the provisions on European patent with unitary effect, in particular the Unitary Patent Regulation (Regulation (EU) no. 1257/2012) and the Agreement on a Unified Patent Court (UPC Agreement) ratified by Italy with Law no. 214 of 3 November 2016 (so called "Unitary Patent Package")]. The Legislative Decree entered into force on March 27th 2019. For the text see the Italian Official Journal of March 12th 2019: *http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario;jsessionid= k6M-flfHCtotwLaSPTTk3Q__.ntc-as3-guri2b?atto.dataPubblicazioneGazzetta=2019-03-12&atto.codiceRedazionale=19G00024&elenco30giorni=false* The amendments to the Italian Industrial Property Law (art. 56, 58, 59, 68, 70, 163, 245 bis) provided for by the Legislative Decree n. 18 are described as follows: • Application of art. 25-26 and 27 of the UPCA to both European patents and unitary patents in Italy; • Introduction of a "safety net" mechanism in case the unitary effect is rejected or revoked or withdrawn, to allow the patent owner to benefit from a 3 month period to validate his European patent at a national level; • No simultaneous protection is allowed for an invention covered by a European patent with unitary effect and a national patent; • Clarifications about applicable law at national level in case of national jurisdiction during the transitional period (according to art 83 UPCA). The full text of the Italian Industrial Property Law (Codice della proprietà industriale) is available in Italian at: *https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-02-10;30*
Latvia	Yes	National Patent Law has been amended and entered into force on 12.07.2021. The following amendments relating to Unitary Patents and the Agreement on a Unified Patent Court (UPCA) have been introduced: (I) Sub-sections 101 and 15 have been added to the Section 1 defining the European patent with unitary effect and the UPCA: 101) European patent with unitary effect - a European patent which has a unitary effect in the participating Member States in accordance with Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection; 10^{1}) European patent with unitary effect - a European patent which has a unitary effect in the participating Member States in accordance with Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection; 15) Agreement on a Unified Patent Court - an international agreement to which Latvia has acceded by the law On Agreement on a Unified Patent Court.

Participating Member State	1 Is there any measure accompanying the implementation of the Unitary Patent	2 National measure
Latvia (continued)		(II) Sub-section 1 of the Section 3 has been amended with reference to the scope of the UPCA: (1) The provisions of the Law regarding patents shall also apply to the filing of international applications and European patent applications of inventions, and also to the rights related to European patents, the validity, use and protection thereof, insofar as the provisions of the European Patent Convention and the Patent Cooperation Treaty or the Agreement on a Unified Patent Court or the special provisions of Chapters XI and XII of this Law regarding the filing of international patent applications, a European patent application and a European patent do not provide for otherwise. (III) Sub-section 4 to the Section 65 has been added stipulating disputes which are subject to jurisdiction of the UPC under Article 32 of the UPC Agreement: (4) On the basis of Article 32 of the Agreement on a Unified Patent Court, the disputes shall be examined if they are based on: (4) On the basis of Article 32 of the Agreement on a Unified Patent Court, the disputes shall be examined if they are based on: 1) a European patent with unitary effect; 2) a European patent regarding which the owner of the patent has not opted out from the exclusive competence of the Unified Patent Court during the transitional period provided for in Article 83(3) of the Agreement on a Unified Patent Court; 3) a supplementary protection certificate issued for a product protected by the patent referred to in Clause 1 or 2 of this Section.
Lithuania	Yes	The UPCA was ratified by the Parliament of the Republic of Lithuania on 3 November 2016, ratification came into force on 1 July 2017. Amendments of the Patent Law of the Republic of Lithuania were adopted on 4 May 2017 and entered into force on 1 July 2017.
Luxembourg	No	Legislative changes are currently being prepared. They will be similar to the measures concerning the unitary patent which were included in the draft law Nr 6784 that has been withdrawn. A date of entry into force of these changes cannot be foreseen yet.
Malta	No	No legislation has been adopted for the purpose of accompanying the implementation of the European patent with unitary effect at domestic level.
Netherlands	Yes	*Two separate Acts* Like in many member states, the implementation of the Patent Package (UPCA and the two EU Regulations) in the Netherlands results into two separate acts. One act concerning approval of the UPCA, needed for ratification of the Agreement; and one act amending the Patents Act of the Kingdom 1995 *('Rijksoctrooiwet 1995')*. *Ratification of the UPCA* The first act has entered into force and in September 2016 the Netherlands has ratified the UPC Agreement. For the act, see Stb. 2016, 314: *https://zoek.officielebekendmakingen.nl/stb-2016-314.html*. In 2019, the UPC Agreement is also ratified for the Caribbean part of the Netherlands (Bonaire, Sint Eustatius and Saba), Curaçao and Sint Maarten. *Amendment Patents Act* The proposal for the second act, the amendment of the Patents Act of the Kingdom 1995 ('Rijksoctroowet 1995'), has been approved by parliament. The act will enter into force on the same date the UPCA enters into force. For the act, see Stb. 2019, 476: *https://zoek.officielebekendmakingen.nl/stb-2019-476.html*.
Portugal	No	So far Portugal does not have any legislation envisaged or adopted for the purpose of accompanying the implementation of the European patent with unitary effect at domestic level.

Participating Member State	1 Is there any measure accompanying the implementation of the Unitary Patent	2 National measure
Slovenia	Yes	Concerning the European patent with unitary effect, the Slovenian Intellectual Property Office (SIPO) is considering to propose amendments to the Industrial Property Act (Official Gazette of the Republic of Slovenia, No. 51/06 - official consolidated text, 100/13 and 23/20); *http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1668* mainly with respect to the provisions concerning: • the prohibition of double protection for the invention covered by a European patent with unitary effect and a European patent, • the proprietors right to prevent the indirect use of the invention and • a safety net for subsequent validation (when the registration of unitary effect for the European patent is rejected by the EPO).
Sweden	Yes	Two sets of legislation (2014, 2016) and a first set of implementing regulations (2016) have been adopted in Sweden. From a material point of view, Sweden's legal implementation was completed until 6 April 2017 – when the unexpected delay in the reform's operationalisation made it legally-technically necessary to cancel the first set of implementing regulations. The intention is to readopt the first set of implementing regulations, and at the same time to fix the date of the legislative amendments' entry into force by means of a second set of implementing regulations, once the date for the applicability of the Unitary Patent and the UPCA is certain. The overall idea is of course to synchronize national and European operationalisation. * The first, necessary set of legislation is found in the first bill introduced into parliament (prop. 2013/14:89): *Prop. 2013/14:89 Ett enhetligt patentskydd i EU (regeringen.se)* The amendments to the Patent Act, adopted on 27 May 2014, are found on page 5–15 with an annex on page 16–27. The reasons (page 30–58) and explanatory notes (page 58–75) follow. * The second, complimentary set of legislation is found in the second bill introduced into parliament (prop. 2015/16:124): *Ökad rättssäkerhet i det enhetliga patentsystemet, Prop. 2015/16:124 (regeringen.se)* The amendments to the Patent Act and the Public Access to Information and Secrecy Act, adopted on 9 June 2016, are found on page 4–7. The reasons (page 9–24) and explanatory notes (page 24–32) follow. * The first set of implementing regulations, adopted on 9 June 2016 however cancelled on 6 April 2017, affecting the Swedish Intellectual Property Office, the Office of the Chancellor of Justice and The Legal, Financial and Administrative Services Agency and The Legal, Financial and Administrative Services Agency, is not officially available. Translations are not available. However, a memorandum outlining, in English, the different implementing stages and amendments is to be found in document *SC/3/22 corr. 1* on page 78. Please observe that the memorandum covers the whole legal implementation of the Unitary patent package including parts pertaining to the UPC.

Safety net II.

This part provides information as to whether a so-called safety-net has been implemented in the relevant participating Member State. The safety net is a mechanism providing the possibility to validate a European patent where a request for unitary effect has been rejected either by the EPO or the UPC, or where the unitary effect has been revoked by the UPC at the time when deadlines for validating the European patent have already expired.

Participating Member State	1 Safety net	2 Description
Austria	Yes	Pursuant to Section 5 of the PatV-EG, in the case where a European patent is not published in the German language - not later than three months after publication of the reference to the grant of the European patent in the European Patent Bulletin - a German translation has to be submitted to the Austrian Patent Office and a publication fee has to be paid. If the patent holder applies for the unitary effect of the European patent under the new patent system, Section 5 of the PatV-EG is not applicable. If, however, the request for a unitary effect is rejected by the European Patent Office, it will be in the interest of the patent holder to maintain his patent right in the form of a European patent with effect for Austria. Austria intends to introduce a safety net: the draft of the law is intended to ensure that the time limits for the translation and the payment of the publication fee are not expiring before it is definitively decided that the request for a unitary effect is rejected. This can also be the case after the outcome of judicial proceedings against the decision of the European Patent Office before the UPC under Article 32 (1) (i) of the UPCA. The date on which the decision of the EPO becomes effective or the date on which the decision of the UPC becomes effective will be the relevant date for the beginning of the time limit.
Belgium	Yes	A safety net mechanism is provided for in Article XI.83/1 CEL in case a request for unitary effect has been rejected by the EPO or by the UPC or in case unitary effect has been revoked by the UPC at the time when the deadline for the payment of the national renewal fee has expired. The mechanism has been introduced by the Law of 19 December 2017 and entered into force on 1 February 2018. Translations are not available. This is the link to the aforementioned provision of the Code of Economic Law (consolidated version): Article *XI.83/1 CEL* (French and Dutch texts). The main features of this safety net are the following: • restoration-type (restitutio in integrum) mechanism (no automatic extension of time limits); • twofold safety net corresponding: the patent proprietor will be required to establish that the request for unitary effect was submitted to the EPO in due time (and was not withdrawn);the request was rejected.the request will have to be filed before the Belgian IP office two months (at the latest) after the date of the rejection decision;after having its request processed and declared admissible, the patent proprietor will have a one month term to pay the overdue renewal fee(s). ◦ the patent proprietor will be required to establish that the request for unitary effect was submitted to the EPO in due time (and was not withdrawn);the request was rejected. ▪ the request for unitary effect was submitted to the EPO in due time (and was not withdrawn); ▪ the request was rejected. ◦ the request will have to be filed before the Belgian IP office two months (at the latest) after the date of the rejection decision; ◦ after having its request processed and declared admissible, the patent proprietor will have a one month term to pay the overdue renewal fee(s).

Participating Member State	1 Safety net	2 Description
Bulgaria	Yes	Bulgaria has already introduced such an option with the amendments at the Chapter "Effect of the European patent and of the European patent with unitary action" by the Act on patents and registration of utility models in force since October 2020 according to which: Art. 72c. (new – SG 66/02) (1) (Amend. – SG, 92/20) A European patent, in which the Republic of Bulgaria is designated, shall concede to the holder of the patent from the date of the announcement about its issuing in the European patent bulletin the rights under this Act, if in three months term after this date, or from the date of entry into force of the decision to refuse or revoke the unitary effect of the European patent, where unitary action is requested under Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012, enhanced cooperation in the field of the creation of unitary patent protection (OJ L 361/1 of 31 December 2012), a request was made to the Patent Office for recognition of the validity of the European patent, accompanied by a translation of the description and claims into the Bulgarian language, and a publication fee is paid and Art. 72c (8) (New - SG, 92/20) (*)) When it is established, that for a European patent, for which a request for securing action has been filed on the territory of the Republic of Bulgaria, a request for unitary action has been filed before the European Patent Office, the proceedings on the request before the Patent Office shall be suspended until the entry into force of the decision on the request for unitary action.
Denmark	Yes	Denmark intends to introduce a safety net provision in its national legislation (the Consolidate Patent Act). The chosen option and further details are still under consideration.
Estonia	Yes	The provision of the "safety net" from the earlier draft, which has not been substantially amended, has been introduced in the Implementation of the Convention on the Grant of European Patents and of Regulation (EU) No 1257/2012 of the European Parliament and of the Council Act by adding to §7 a new section 1^2 as follows: (1^2) If the European Patent Office refuses to register the unitary effect of a European patent, in which the Republic of Estonia is indicated as the designated state, in accordance with Regulation (EU) No. 1257/2012 of the European Parliament and of the Council, and the request for registration of unitary effect has been filed with the European Patent Office in a timely manner, the proprietor of the respective European patent has the rights provided for in this section. In such case the term provided for in subsection (1) of this section shall be calculated from the entry into force of the decision on refusal to grant unitary effect for a European patent. The decision, which has entered into force, on refusal to grant unitary effect for a European patent shall be submitted together with the translation of the patent specification.
Finland	Yes	A safety net provision has been introduced to the Finnish Patents Act (70h § 2). The new term for validation will begin the day the decision of EPO or UPC rejecting the request for unitary effect gains legal force. The current national term assigned for validation (3 months) and paying the first renewal fee will respectively apply to the new term. The standard re-establishment of rights rules under the Finnish Patents Act apply also to the new term for validation.
France	Yes	France has put a "safety net" system in place to allow for validation of a European patent where a request for unitary effect has been rejected. The applicable provisions are laid down in Article R. 614-16, as amended by decree No. 2018-429 of 31 May 2018, and will enter into force on the same date as order No. 2018-341 of 9 May 2018, i.e. on the date of entry into force of the UPCA. Under Article L. 612-19 of the Intellectual Property Code, renewal fees are payable for any French patent application or patent or European patent having effect in France. They are due for each year of the patent term; for European patents, however, only for the years following publication of the mention of grant in the European Patent Bulletin. Under Article R. 613-46, renewal fees are due on the last day of the month containing the anniversary of the date of filing of the European patent application.

Participating Member State	1 Safety net	2 Description
France (continued)		If a renewal fee has not been paid on the due date, it can still be validly paid within a six-month grace period, subject to payment of an additional fee within the same period. Moreover, Article R. 614-16 provides, in accordance with Article 141 EPC, that renewal fees for a European patent may only be imposed for the years following that in which the mention of its grant was published in the European Patent Bulletin and that fees falling due within two months of that publication in the European Patent Bulletin can be paid within that two-month period without any additional fee. In addition, where a European patent proprietor has filed a request for unitary effect and that request is rejected, they have a "safety net" enabling them to pay the following fees within three months of the date of notification of the non-appealable rejection: • fees that fell due between the date on which the mention of grant was published and the date on which the decision to reject the request for unitary effect was notified • fees falling due within three months of notification of the decision to reject the request for unitary effect. In any event, the fees can still be paid within a further six-month period, subject to payment of an additional fee.
Germany	Yes	Under Article II.7(1) LIPT, renewal fees under Section 17 PL are payable for a European patent effective in Germany, but only for years following the one in which the mention of its grant was published in the European Patent Bulletin. The fees' due dates and payment deadlines are governed by the Law on Patent Fees (LPF). Under Section 7(1), first sentence, LPF, they must be paid by the end of the second month after the due date. Failing that, they can still be paid, together with a late-payment surcharge, up to the end of the sixth month after the due date (Section 7(1), second sentence, LPF). So German law already offers a safety net for late payment of renewal fees. The fees are payable for the year ahead, and their due date is normally prescribed (by Section 3(2), first sentence, LPF) as the last day of the month containing the anniversary of the filing date. Against this backdrop, a new Article II.15(3) LIPT as per the accompanying law will be added to ensure that European patents can remain in force if the EPO or UPC – possibly after lengthy proceedings – refuses a request for unitary effect, and without the new rule the deadline for paying the renewal fee would have expired. Under the new rule, if a request for unitary effect is refused, the due date for renewal fees will depend on when the decision of the EPO or – in the event of litigation under Article 32(1)(i) UPC Agreement – a final decision of the UPC is notified, unless a later one is available to the patent proprietor under Section 3(2), first sentence, LPF.
Italy	Yes	In case the unitary effect is rejected or revoked or withdrawn a "safety net mechanism" is introduced in the Italian Industrial Property Law *(Codice della Proprietà Industriale, decreto legislativo n. 30/2005)* to allow the patent owner to benefit from a 3-month period to still validate the European patent at a national level. This provision is included in the revised art. 56. Unofficial English translation of revised Article 56: <u>Rights conferred by the European patent</u> 1. The European patent granted for Italy and the European patent with unitary effect shall confer on its proprietor the rights referred to in Articles 25 and 26 of the Agreement on a Unified Patent Court, ratified and made enforceable pursuant to the Law no. 214 of November 3, 2016, and impose the limitations set forth in Article 27 of the same Agreement. The European patent granted for Italy and the European patent with unitary effect shall take effect from the date on which the mention of the grant of the patent is published in the European Patent Bulletin. If the patent is under opposition or limitation proceedings, the scope of protection established by the grant or by the decision to maintain it in an amended form or by the decision to a limitation shall be confirmed from the date on which the mention of the decision on the opposition or on the limitation is published.

Participating Member State	1 Safety net	2 Description
Italy (continued)		2. SUBSECTION REPEALED BY LEGISLATIVE DECREE NO. 18 OF FEBRUARY 19, 2019. 3. The holder (of a European patent granted for Italy) shall provide the Italian Patent and Trademark Office with a translation in Italian language of the text of the patent granted by the European Office as well as of the text of the patent maintained in a modified form following the opposition proceedings or limited following the limitation proceedings. 4. The translation, declared to be perfectly in conformity with the original text by the patent proprietor or his representative, must be filed within three months from the date of each of the publications referred to in paragraph 1. (4-bis). For European patents, for which a request for unitary effect has been filed within the terms provided for by Article 9 (1) (g) of Regulation (EU) No 1257/2012, the time limit referred to in paragraph 4 starts from the date of receipt of the communication of the final act of rejection or revocation of unitary effect or from the date of receipt of the request for withdrawal by the European Office. 5. In case of non-compliance with the provisions of paragraphs (3, 4 and 4-bis), the European patent shall be deemed, from the outset, to be without effect in Italy.
Latvia	Yes	Specific provisions relating to safety net mechanism are under consideration and will be introduced later.
Lithuania	Yes	The provision concerning introduction of the safety net for the situations where a request for unitary effect has been rejected by the EPO is included in the amendments of the Patent Law (Article 3 of the law, amending Article 79 of the Patent Law).
Luxembourg	No	A safety net is not currently under proposal but is being envisaged. There is no validation procedure for European patents in Luxembourg. The only required act is the timely payment of the annual fees. A restoration procedure exists, which can be requested within 20 months after a European patent lapsed due to non-payment of annual fees. This procedure could be used to reinstate some of the European patents for which the request for unitary effect has been rejected and the annual fee payment time limits have expired.
Malta	No	The introduction of a safety net would be considered once work on legislation ensues.
Netherlands	Yes	Yes, the Netherlands will introduce a 'safety net' in the Patents Act. For a successful safety net request, the following conditions have to be met: • the request for unitary effect has to be rejected by the EPO; • the request for unitary effect had to be filed at the EPO in due time (see art. (1)(g) of Regulation 1257/2012); • the patent should be void, either due to not filing the translation as prescribed in the Netherlands Patent Act or lapsed due to not paying the renewal fee; • the safety net request should be filed at the Netherlands Patent Office within two month from either the refusal of the Unitary Patent Protection Division (EPO) or the confirmation of the refusal by the UPC (Court of First Instance of Court of Appeal); • a copy of the EPO refusal or the UPC confirmation should be enclosed with the safety net request; and • the translation and the translation fee, if they were not already filed with the Netherlands Patent Office, need also to be enclosed with the safety net request. (The payment of a filing fee for the safety net request is not foreseen).

Participating Member State	1 Safety net	2 Description
Netherlands (continued)		If all conditions are met, the Netherlands Patent Office will re-establish the European patent. However, if at the date of notification of a positive decision on the safety net request, renewal fees were due, then these fees (without surcharge) have first to be paid before the patent will be re-established. The fee due (if any) will be mentioned in the decision of the Office. The patent proprietor will have a term of four weeks for paying the fee. After receipt of these renewal fees, the patent will be re-established. The re-establishment will be entered in the Netherlands Patent Register. The refusal of the EPO or the confirmation by the Court of First Instance of the UPC does not need to be final. The national validation makes third parties aware that the patent proprietor wants protection for his invention in The Netherlands. If at any moment in the future the European patent will benefit from unitary effect, article 4 of the regulation 1257/2012 makes clear that the unitary effect is retro effective as from the date of publication of the grant (which will also be implemented in the Netherlands Patents Act). A negative decision of the Office on a safety net request can be appealed according the normal procedures.
Portugal		Portugal is still evaluating the "safety net" option.
Slovenia	Yes	SIPO intends to propose amendments to the Industrial Property Act to enable validation of a European patent where a request for unitary effect has been rejected by the EPO.
Sweden	Yes	The safety-net is twofold. The first part concerns validation and reads (in English translation and while using transcripts of substance in provisions referred to in the article) like this: • If the patent proprietor's request for unitary effect has been rejected, the (normal) three months term for submitting a translation and paying the fee for its publication shall not start until the rejection decision has gained legal force, provided that the request was submitted to the EPO in due time. In order to enjoy the safety-net, the patent proprietor will be required to establish three facts before the national patent office, namely: 1. That the request for unitary effect was submitted in due time. 2. That the request was rejected. 3. That the rejection decision has gained legal force. The second part concerns fee payment and reads (in English translation and while using transcripts of substance in provisions referred to in the article) like this: • The first renewal fee for a European Patent shall never have to be paid earlier than three months from the day when the rejection decision has gained legal force, provided that the request for unitary effect was submitted to the EPO in due time.

III. Simultaneous Protection

This part provides information on whether, and if yes to which extent, simultaneous protection is allowed for an invention covered by, on the one hand, a European patent with unitary effect or a European patent and, on the other hand, a national patent. The relevant provisions are specified in the table below.

Under Article 139(3) EPC, any Contracting State may prescribe whether and on what terms an invention disclosed in both a European patent application or patent and a national application or patent having the same date of filing or, where priority is claimed, the same date of priority, may be protected simultaneously by both applications or patents (see also Article 140 EPC).

Participating Member State	1 Simultaneous protection possible between a Unitary Patent and a national patent	2 Simultaneous protection possible between a classic European patent and a national Patent	3 Description
Austria	Yes	Yes	Pursuant to Article 139 (3) EPC, any Contracting State may prescribe whether, and on what terms an invention disclosed in both a European patent application or patent, and a national patent application or a patent having the same filing date or, where priority is claimed, the same date of priority, may be protected simultaneously by both applications or patents. According to Article 140 EPC (National utility models and utility certificates), Art. 139 shall apply accordingly in the Contracting States, whose laws provide protection for such models or certificates. Austria allows double protection by means of a European patent and a national patent and/or national utility model, there are neither provisions which exclude double protection nor special procedures for the enforcement of the rights. Double protection in the current form has now existed in Austria for more than 40 years. In the long-term practice, this legal situation has not caused any problems, and the introduction of a double-protection ban in Austria has never been the subject of legislative initiatives. There has been no need for changes to the existing system. In the draft of the amendment of the law it is not envisaged to include provisions concerning the prohibition of the double protection of one and the same invention by a European patent with unitary effect and a national patent/or utility model.
Belgium	No	No	In Belgium, according to Article *XI.86 CEL*, no simultaneous protection is allowed between a European patent - with or without unitary effect - and a national patent. For reasons related to the temporal scope of the relevant patent legislation, similar provisions are contained in previous legislation, namely *Article 5 of the Law of 21 April 2007* and *Article 7 of the Law of 8 July 1977*. The wording of the provisions makes no difference between a classic European patent and a European patent with unitary effect. Moreover, as mentioned before, simultaneous protection for the same invention between a Unitary Patent and a national protection stemming from a classical European patent is not allowed. This exclusion is implemented in Article *XI.83, § 5 CEL*.

Participating Member State	1 Simultaneous protection possible between a Unitary Patent and a national patent	2 Simultaneous protection possible between a classic European patent and a national Patent	3 Description
Bulgaria	No	No	Simultaneous protection is not allowed, under the provisions with the changes in the chapter "Prohibition of simultaneous protection" by the Act on patents and registration of utility models in force since October 2020 according to which: Art. 72g. (new – SG 66/02) (1) (Amend. – SG, 92/20) When a national patent for invention is issued, for which a European patent is issued with validity on the territory of the Republic of Bulgaria is pointed out with one and the same date of application, respectively one and the same priority date, to one and the same person or his legal successor, the national patent shall terminate its validity. Art. 72g. (2) (Amend. – SG, 92/20) (*)) Under the conditions of Para. 1, the national patent shall terminate its effect as of the date of publication of a notice for issuance of the European patent in the European Patent Bulletin, in case the European patent with effect on the territory of the Republic of Bulgaria or with registered unitary effect has not been declared invalid with an enforced decision or no objection has been lodged to the extent, that they overlap. Art. 72g. (4) (New, SG, 92/20 (*)) National patent for an invention, for which a European patent has been issued with unitary effect, with the same date of application or priority date, on the same person or his successor in title, shall terminate its effect to the extent, that it is identical to the European patent. The proceedings shall be initiated at the request of any person or ex officio and shall be considered as the requests under Art. 55, Para. 2.
Denmark	Yes	Yes	Denmark does not have any provisions in its national legislation prohibiting simultaneous protection by a national patent and a classical European patent/Unitary patent. Consequently, simultaneous protection for an invention covered by a European patent with unitary effect and a national patent will be allowed in Denmark in accordance with Article 139(3) EPC. This is in order to provide a possibility to obtain patent protection on the Faroe Islands and in Greenland (which is a part of the Kingdom of Denmark) which is only possible through a national patent. A national Danish patent can co-exist with a Unitary patent. Any litigation regarding a national Danish patent is dealt with by the Danish courts; also after the entry into force of the UPCA.
Estonia	Yes	No	The amendments Act does not prohibit a simultaneous protection between a European patent with unitary effect and a national patent. Neither have any possible procedural safeguards been envisaged for possible filing of actions under both a national patent and a European patent with unitary effect. The legislator's decision not to introduce a prohibition of simultaneous protection was mainly based on the different scope of the European patent with unitary patent and national patent.

Participating Member State	1 Simultaneous protection possible between a Unitary Patent and a national patent	2 Simultaneous protection possible between a classic European patent and a national Patent	3 Description
Finland	Yes	Yes	The Finnish Patents Act allows simultaneous protection between a European patent and a national patent. This also applies to a European patent with unitary effect. No legislative amendments were made during the ratification and implementation process and there are no special provisions concerning the situation where a national patent and a European patent with unitary effect are simultaneously in force in Finland. Article 4(2) of the Regulation (EU) No 1257/2012 is implemented by 70 y § of the Patents Act. The national validation of the European patent has no legal effect in the situation where unitary effect is registered to the same European patent.
France	Yes	Yes, if EP is not opted-out No, if EP is opted-out	How the provisions apply: (A) Simultaneous protection by a Unitary Patent and by a national patent or by a European patent for which no opt-out has been declared and by a national patentIf no opt-out from the UPC's exclusive competence has been exercised for the European patent, the French patent will continue to have effect. If no opt-out from the UPC's exclusive competence has been exercised for the European patent, the French patent will continue to have effect. It is permissible for a French patent to relate to an invention for which a European patent with unitary effect has been granted to the same inventor or to their successor in title with the same filing or priority date. However, special rules apply where a national patent co-exists with a Unitary Patent or a European patent for which the UPC is competent and the two patents (or applications) have the same filing or priority date, relate to the same invention and are owned by the same inventor (or successor in title): ◦ It is not possible to validly transfer, pledge, mortgage or license the common parts of the patents (or applications) separately from one another (Articles L. 614-14 and L. 614-16-4). ◦ If an action for infringement of a French patent is brought before a French court and, at the same time, the UPC is hearing a claim based on a Unitary Patent or a European patent falling within its exclusive competence in a dispute about the same facts between the same parties, the French court must stay the proceedings before it until the UPC's decision has become final (Article R. 615- 2). ◦ An infringement action brought before a French court is inadmissible if the UPC has already taken a final decision on the same claim in a dispute about the same facts between the same parties (Article R. 615-2).

Participating Member State	1 Simultaneous protection possible between a Unitary Patent and a national patent	2 Simultaneous protection possible between a classic European patent and a national Patent	3 Description
France (continued)			(B) No simultaneous protection by a European patent for which an opt-out has been declared and by a national patentWhere a French patent relates to an invention for which a European patent has been granted to the same inventor or to their successor in title with the same date of filing or priority and an opt-out from the UPC's exclusive competence has been exercised under Article 83(3) UPCA for the European patent, the French patent will cease to have effect: Where a French patent relates to an invention for which a European patent has been granted to the same inventor or to their successor in title with the same date of filing or priority and an opt-out from the UPC's exclusive competence has been exercised under Article 83(3) UPCA for the European patent, the French patent will cease to have effect: ◦ on the date on which the period for filing opposition against the European patent expires, if no opposition has been filed by then, ◦ on the date on which opposition proceedings are closed if the European patent is maintained, or ◦ on the date on which the opt-out is entered in the register under Article 83(3) UPCA if that date is later than the dates mentioned in the first and second indents.
Germany	Yes	Yes (if EP is not opted out) No, if EP is opted out	Simultaneous protection by a national patent and a European one, with or without unitary effect, will be possible under the accompanying law. Firstly, Article II.8 LIPT hitherto prohibiting simultaneous protection by national and European patents will not apply to European patents with unitary effect (new Article II.15(1) LIPT as per the accompanying law). Secondly, the existing prohibition under Article II.8 LIPT will in future apply only to European patents which do not fall under the UPC's exclusive jurisdiction because the proprietor has opted out under Article 83(3) UPC Agreement. To make up for this, the new Article II.18 LIPT as per the accompanying law will offer defendants a protection mechanism, namely a "double jeopardy" defense which they can plead before national courts to ensure that they cannot be sued there as well as before the UPC.

Participating Member State	1 Simultaneous protection possible between a Unitary Patent and a national patent	2 Simultaneous protection possible between a classic European patent and a national Patent	3 Description
Italy	No	No	According to the Italian Industrial Property Law (Dlgs. N. 30/2005) double protection for a national patent and for a European patent is not allowed. A specific provision (art 59) ensures the supremacy of the European patent over the national patent. In compliance with the principle of no double protection, the same provision applies now also as regards unitary patents, following the legal reform entered into force in Italy in March 2019. Unofficial English translation of revised article 59, Italian Industrial Property Law (Dlgs. N. 30/2005): <u>Precedence of the European patent in case of cumulation of protections</u> 1. Where, in respect of the same invention, an Italian patent and a European patent valid in Italy or a European patent with unitary effect have been granted to the same inventor or his successor in title with the same filing date or priority date, the Italian patent, to the extent that it protects the same invention as the European patent or the European patent with unitary effect, shall cease to have effect on the date on which: (a) the time limit for filing an opposition to the European patent or the European patent with unitary effect has expired without any opposition being filed; (b) the opposition proceedings have been definitively terminated with the maintenance into force of the European patent or the European patent with unitary effect (c) the Italian patent has been granted, if this date is later than the date referred to in points (a) or (b). 2. The provisions of paragraph 1 shall remain valid even if, subsequently, the European patent, or the European patent with unitary effect, is revoked or lapses. 3. On expiry of the terms referred to in paragraph 1, the person who has brought an action for the protection of the Italian patent may request its conversion into the corresponding action for the protection of the European patent or the European patent with unitary effect, without prejudice to the rights deriving from the Italian patent for the earlier period.

Participating Member State	1 Simultaneous protection possible between a Unitary Patent and a national patent	2 Simultaneous protection possible between a classic European patent and a national Patent	3 Description
Latvia	No	No	Section 75 of the Patent Law has been amended including the reference to Unitary Patents as follows: If the European patent or the European patent with unitary effect and the national patent has been granted for one and the same invention with the same filing date to one and the same person or successor in title thereof, or - if a priority has been requested - with the same priority date, in such a case, if the European Patent Office has not received the opposition to the grant of a patent referred to in Article 99, paragraph one of the European Patent Convention, the operation of the national patent shall be discontinued from the day when the time limit for the filing of oppositions has ended but, if oppositions have been received, from the day when the examination of the relevant opposition has been completed and a final decision regarding maintaining the European patent in force has been taken.
Lithuania	No	No	Patent law precludes simultaneous protection of a classical European patent and national patent for the same invention. The provision precluding double protection of a European patent with unitary effect and a national patent is included in the amendments of the Patent Law (Article 4 of the law, new Article 84 of the Patent Law).
Luxembourg	See description below	No	Simultaneous protection between a European patent with unitary effect and a national patent is not excluded under the current state of the legislation. An exclusion is envisaged in a draft law under preparation.
Malta	See description below		The current regulations do not preclude the co-existence of a national patent and a European patent with unitary effect.
Netherlands	No		The introduction of simultaneous protection on the same territory is not foreseen.
Portugal	Under consideration	Yes	Portugal is still evaluating the possibility of simultaneous protection between a European patent with unitary effect and a national patent. Simultaneous protection is possible between a classic European patent and a national Patent since the approval of Decree Law 110/2018, 10th December, The Industrial Property Code.
Slovenia		Yes (under certain conditions)	According to Industrial Property Act (Article 3(3)), a national application shall not give rise to an industrial property right if a prior application has been filed abroad and seeking protection in the Republic of Slovenia. Therefore, if the European patent application has been filed, earlier than a national patent application for the same invention, the national patent application will have no effect. If the national patent application has been filed earlier than European patent application, the national patent application will be effective. In this case, the simultaneous protection is possible.

Participating Member State	1 Simultaneous protection possible between a Unitary Patent and a national patent	2 Simultaneous protection possible between a classic European patent and a national Patent	3 Description
Sweden	Yes	Yes	Double patenting (Swedish patents-EP) is currently not forbidden in Sweden. The issue has been re-analysed in the context of the Unitary Patent and UPCA implementation. In summary: The starting point has been that there is no obligation to introduce a ban, neither in the EPC, nor in Regulation (EU) No 1257/2012. Theoretically, double patenting could lead to problems on the execution level. However in drafting and applying a ban there would be difficulties concerning identification of the inventions in issue. Furthermore, in order for a ban to be effective it would be necessary to also consider overlapping scope of protection. Moreover it is questionable whether the absence of a ban would lead to any problems in practice. Therefore the Swedish legislator has opted for not introducing a ban.

IV. Territorial field of application of the European patent with unitary effect: overseas territories and areas

This part provides information as to the territorial field of application of the European patent with unitary effect in the participating Member States as regards overseas territories and areas. For the territorial field of application of a classic European patent please see the Brochure "National law relating to the EPC" *epo.org/law-practice/legal-texts/html/natlaw/en/x/index.htm*.

Please note that this table is only relevant for Denmark, France and the Netherlands.

Participating Member State	1 Territorial scope of the European patent with unitary effect in the overseas territories and areas
Austria	N/A
Belgium	N/A
Bulgaria	N/A
Denmark	Denmark's accession to the European Patent Convention does not encompass the Faroe Islands and Greenland (though a part of the Kingdom of Denmark) cf. Article 168 EPC. Further, the Faroe Islands and Greenland are not members of the European Union. A Unitary patent or a designation of Denmark in a classic European Patent therefore doesn't cover the Faroe Islands or Greenland.
Estonia	N/A
Finland	N/A
France	Under the rules governing the European Union's association with the overseas countries and territories, the two EU Regulations are not directly applicable there. However, the state with the power to legislate in the area of industrial property for those territories can put applicable provisions in place. Overseas applicability of order No. 2018-341 of 9 May 2018 implementing the Unitary Patent and the UPC: • Order No. 2018-341 of 9 May 2018 applies in full to Guadeloupe, French Guiana, Martinique, Réunion, Mayotte, Saint Barthélemy, Saint Pierre and Miquelon, Saint Martin and the French Southern and Antarctic Lands, as well as to Wallis and Futuna. This means that, like a traditional European patent, a European patent with unitary effect will apply in all those places (see Article L. 811-2-2). • By contrast, the order applies only in part to New Caledonia and French Polynesia. They have their own powers in the area of industrial property and the French state ("Metropolitan France") does not have the authority to pass legislation on this for them. As things stand, the unitary patent will therefore not apply in New Caledonia or French Polynesia. (It is possible that New Caledonia and French Polynesia will exercise their powers in this area soon; if so, this questionnaire will be updated accordingly).
Germany	N/A
Italy	N/A
Latvia	N/A
Lithuania	N/A
Luxembourg	N/A
Malta	N/A
Netherlands	The Unitary Patent (European patent with unitary effect) will only give protection in the European part of the Netherlands. The Kingdom of the Netherlands consists of 4 countries: (i) the Netherlands, (ii) Aruba, (iii) Curaçao and (iv) Sint Maarten. The Netherlands (the country within the Kingdom) consists of two parts: • the part of the Netherlands within Europe; and • the Caribbean part of the Netherlands, which consists of: Bonaire;Sint Eustatius; and Saba. ◦ Bonaire; ◦ Sint Eustatius; and ◦ Saba. These three islands are special municipalities of the Netherlands and are often abbreviated as the 'BES'. Only the part of the Netherlands within Europe belongs to the territory of the European Union. Aruba, Curaçao, Sint Maarten and the BES are, with regard to the EU, so-called 'overseas countries and territories' *('pays et territoires d'outre-mer')*.

Participating Member State	1 Territorial scope of the European patent with unitary effect in the overseas territories and areas
Netherlands (continued)	The European Patent Convention (EPC) is ratified by the Kingdom of the Netherlands for: - the Netherlands (European part and BES); - Curaçao; and - Sint Maarten. This is also the territory covered by the Rijksoctrooiwet 1995 (the Netherlands Patent Act of the Kingdom 1995). The territorial scope of a national patent and of a European patent are therefore the same. The Rijksoctrooiwet 1995 is not applicable in Aruba. Aruba has its own patent act, the Aruba Patent Act (for the IP office of Aruba, see *http://www.opi-aruba.org/index.html*). The EPC is not ratified for Aruba. European patents are therefore valid in the whole Kingdom, except for Aruba. The UPP Regulations 1257/2012 and 1260/2012 only apply within the territory of the EU, i.e. in the European part of the Netherlands. The UPC Agreement is ratified for the European part of the Netherlands, the BES, Curaçao and Sint Maarten. The Patents Act determines that the protection of the European patent in the overseas territories is equal to the protection given by a European patent with unitary effect. The envisaged new provision in the Patents Act states (in short) that UPP Regulations 1257/2012 and 1260/2012 shall apply accordingly to the European patent that gives protection in these overseas territories.
Portugal	N/A
Slovenia	N/A
Sweden	N/A

V. Any other important aspect

This part provides some other important aspects of national law as provided by the participating Member States which may be relevant for the users of the Unitary Patent system.

Participating Member State	1 Any other important aspect of national law
Austria	N/A
Belgium	In the patent chapter of the Code of Economic Law, the provisions related to the rights of the patent holder and to the exceptions and limitations, will be amended by the *Law of 19 December 2017*, in order to align them to the wording of Articles 25-27 of the UPCA. This will create a level playing field for all right holders, regardless of whether they choose Unitary Patent protection, the European protection or the national protection. These amendments will enter into force on the date of entry into force of the UPCA.
Bulgaria	N/A
Denmark	The provisions for penalty in relation to infringements will also comprise infringement of Unitary patents, see provisions in the Unified Patent Court etc. Act.
Estonia	N/A
Finland	A Local division of the Court of First Instance of the UPC will be set up in Finland. It will be located in Helsinki and will share the premises with the Market Court which is the specialized IPR-Court in Finland. The languages of the proceeding at the local division in Finland will be English and national languages Finnish and Swedish. Criminal enforcement: The infringement of a European patent with unitary effect is criminally sanctioned like the infringement of a national patent and a classical European patent validated in Finland.
France	N/A
Germany	N/A
Italy	N/A
Latvia	N/A
Lithuania	N/A
Luxembourg	N/A
Malta	N/A
Netherlands	The provisions concerning the reasonable compensation for infringing activities after publication of a European patent application (Article 67 EPC) but before the grant of the European patent will apply to European patents with unitary effect as well (cf. article 72 of the Netherlands Patent Act). Since the UPCA does not contain any substantive provision on the reasonable compensation before grant it is foreseen that article 72 of the Netherlands Patents Act (on the reasonable compensation) will explicitly mention European Patents with unitary effect.
Portugal	N/A
Slovenia	N/A
Sweden	N/A