Austria became the 13th country to join the protocol on a European Unified Patent Court (UPC) on provisional application (PPA) when the second chamber of the Austrian parliament (Bundesrat) approved the PPA unanimously on December 2, 2021. The Austrian government is expected to formally deposit its ratification shortly.

As expected, Austria followed Slovenia as the last of the 13 EU Member States that were required to ratify in order for the PPA to take effect. This group mandatorily included Germany, Italy and France (i.e., the three Member States in which the most European patents were in effect in 2012).
With the upcoming Austrian ratification, the UPC Preparatory Committee (Committee) will be able to formally start its work. Although there is no timeline set for the initial provisional application stage, the Committee expects that stage to take approximately six to 10 months. As stated in a note published by the Presidency of the Council of the European Union on September 24, 2021, this stage includes the adoption of the secondary legislation of the UPC, including procedures, establishment of a budget, recruitment of judges and administrative staff, election of a president, final configuration and testing of the file management system and ensuring that all IT infrastructure is properly set up and secured. In addition, a working agreement with the European Patent Office (EPO) on patent application and validation remains to be completed. Many observers regard the timeline to complete preparations as challenging, noting that several of these steps will likely require significant discussion.

As noted in the Presidency of the Council’s statement, the UPC will be in force when these preparations are completed, which could be as early as the second half of 2022. The exact start date of the UPC and the Unitary Patent System depends on how long the initial provisional application stage takes. It also depends on when Germany formally deposits its UPC Agreement ratification, which has been withheld so far in order to give the committee time to complete its work. Once the UPC member states agree that the initial provisional application stage is almost complete (likely during the next two to six months), Germany will deposit its UPC Agreement ratification, which will trigger another four-month period before the UPC may officially take its first cases. The UPC will finally open its doors four months after that last instrument deposit. At that point, European patents with unitary effect could be available at the EPO.

**Practice Note:** Entities doing business in the European Union should check whether their intellectual property strategy is fit for the UPC entering into force and European patents with unitary effect becoming available.

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