

**The European Unitary patent system (UPC) is established by different legal texts:**

- An **international Treaty**, the [Agreement on a Unified Patent Court](#) (UPC Agreement), signed on 20<sup>th</sup> June 2013, entered into force on 1<sup>st</sup> June 2023 (it needed 13 ratifications, including by Germany and France),
- **Two EU Regulations that have direct effect ONLY in countries having ratified the UPC Agreement** (enhanced cooperation that allows EU countries to advance in matters at different speed): [Regulation 1257/2012](#) creating the European unitary patent and [Regulation 1260/2012](#) for the language regime.

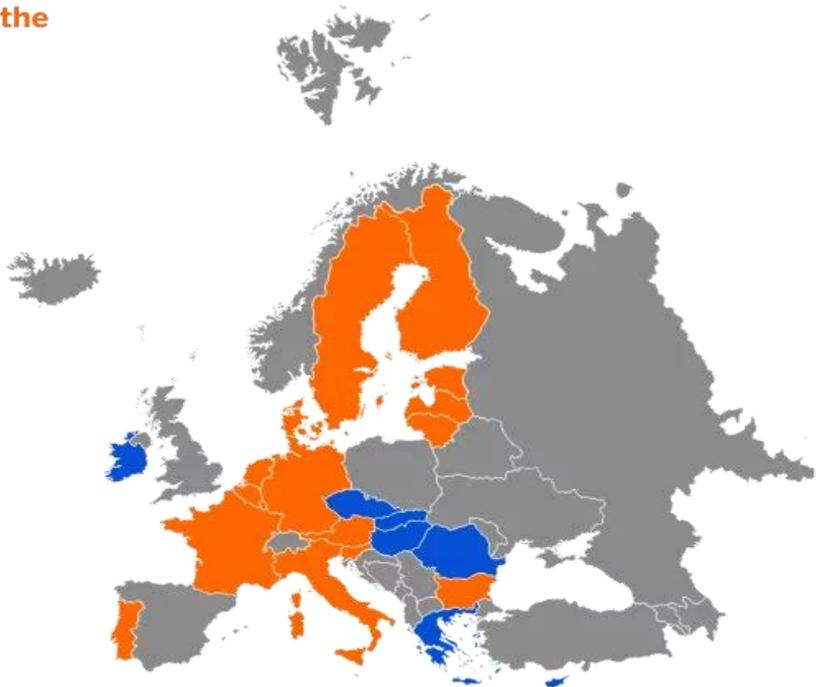
The UPC system does **not apply in all EU Member States**, but only those having ratified the international UPC agreement.

**EU Member States party to the UPC Agreement (17):**

- Austria
- Belgium
- Bulgaria
- Denmark
- Estonia
- Finland
- France
- Germany
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Portugal
- Slovenia
- Sweden

**EU Member States which have not yet ratified the UPC Agreement (7):**

- Cyprus
- Czech Republic
- Greece
- Hungary
- Ireland
- Romania
- Slovakia



**The new system's objectives** are to make the European patent system more competitive **by increasing legal certainty and decreasing costs for patent applicants and holders**. The new system focuses mostly on benefits for patent applicants, as it provides cost advantages, reduces administrative burden, and provides uniform protection for European unitary patents across all participating countries (one-stop-shop system).

**The UPC does not make any changes to patent granting procedures**, as European patents with unitary effect will still be granted by the European Patent Office (EPO) following the **same rules as classical European patents regarding patentability** (and exceptions for essentially biological processes and products thereof). **The unitary effect needs to be requested by the patent holder AFTER the decision to grant a European patent has been adopted by the EPO**. All disputes that relate to patentability and the grant of unitary patents will continue to be dealt with in line with the European Patent Convention (EPC). Opposition and appeal procedures to the grant of patents do not change, with a central role for EPO institutions.

**Patent holders can request unitary effect for their European patents** free of charge through a formula one month after its grant by the EPO and its publication in the European Patent Bulletin, if the patent lists the same claims for all Member States. While a classical European patent costs 20.000 EUR if it were to be validated in the 17 EU countries that participate in the UPC, a unitary patent costs about

5.000 EUR to cover the same territory for 10 years of protection. SMEs and non-profit organisations only pay a 500 EUR lump-sum for translation costs under the UPC.

**The UPC does not abolish the existing European and national patent systems, but adds a layer of new patents** with some changes:

	GRANTING INSTITUTION	APPLICABLE LEGISLATION		LITIGATION
		Grant (patentability)	Scope of protection	
<b>NATIONAL PATENT</b>	National patent office	National patent law	National laws (incl. EU Biotech Directive)	National courts & tribunals
<b>EUROPEAN PATENT</b>	European Patent Office	European Patent Convention	National laws (incl. EU Biotech Directive)	National courts & tribunals
<b>UNITARY PATENT (European patent with unitary effect)</b>			UPC Agreement, EU Regulation 1257/2012 & National laws (incl. EU Biotech Directive)	Unified Patent Court

- **National validation procedures:** unitary patents are automatically validated in participating EU Member States, and do not need to be reviewed by national patent offices (as is the case for classical European patents)
- **Scope of patent protection:** the extent of rights awarded to patentholders is not only determined by national patent laws, but has to be uniform across the EU Member States, in line with the UPC Agreement & Regulation 1257/2012.
- **Litigation rules:** disputes on the implementation of unitary patents (whether revocation or infringement procedures) will not be resolved by national courts and judges, but by the different tribunals and courts of the Unified Patent Court (Court of First Instance with its Life Sciences Division in Munich, multinational panel of both technical and legal judges, and the Court of Appeals in Luxembourg)

The UPC system establishes a **transition period of 7 years**, where more flexibility is given to patent actors.

- Actions for infringement or revocation of granted patents can still **be brought before national courts**.
- Patent holders can also **opt out from the UPC's competence** unless an action has already been brought before the UPC on that patent.

### What does it mean for seeds and breeding?

The UPC system has **specific provisions on patents on seeds**. While provisions on patentability do not change in the UPC, the scope of unitary patents is specifically adapted to plant innovation, with the inclusion of the so-called breeders' and farmers' exceptions in its article 27, which limits the effects of European patents with unitary effect.

*This factsheet was written by Fulya Batur/Kybele as part of the ARCHE NOAH project "Liberate Seeds, reap diversity 2023" funded by the Gen-ethische Stiftung.*