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## UPDATED: 2023 to be the year of the UPC

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**STOP PRESS:** The start of the ‘sunrise period’ for the UPC has been delayed by two months and, as such, will now begin on 1 March 2023. We understand that the delay is because of difficulties in both implementation of systems and user access to the secure online UPC filing environment. The delay aims to allow enough time for these technical difficulties to be addressed and for the UPC to launch smoothly.

We await an update from the EPO as regards the transitional measures and will provide a further update in this respect when we have news from the EPO.

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The Unitary Patent system is now expected to enter operation in April 2023. Germany has already ratified the Unitary Patent Court Agreement (UPCA) and is expected to deposit its instrument of ratification in the near future, which will set the official start of the UPC ‘sunrise period’. Germany acts as a ‘gatekeeper’ for implementation of the UPC, and it is understood will deposit its ratification shortly when the UPC member states agree that the preparations for the implementation of the UPC are close to completion. As part of the sunrise period, and in order to support early uptake of the Unitary Patent, the EPO has introduced two transitional measures, which will take effect from 1 January 2023.

The first transitional measure is the ability to make an early request for “unitary effect” for a European patent about to grant before the April launch date for the UPCA. Once an early request has been filed, the EPO will notify the applicant of any formal deficiencies, such that the applicant may correct them before entry into force of the UPCA. A patent will then grant as a unitary patent effective in the UPCA signatory countries, provided the patent grants on or after the date the UPCA comes into force.

The second transitional measure allows for an applicant to request to delay the grant of a pending European patent application such that it grants on the coming into force of the UPCA in April 2023. The applicant will then have one month to make the decision on whether they wish the patent to have unitary effect and make such a request. The request to delay grant can be filed alongside an early request for unitary effect or on its own.

**Now** is the time for applicants to think about whether they want to take advantage of these transitional measures. If an applicant has recently received an Intention to Grant communication (communication under Rule 71(3) EPC) for a European patent application, they can likely make use of the four-month period for responding to the communication, potentially allowing the applicant to delay a response until after 1 January 2023 and thus make use of these transitional measures.

The unitary patent system is not suitable for every situation. The decision on whether to make use of the UPC and these transitional measures will depend on your patent strategy and budget, among many factors. Our specialist European patent attorneys based in HG’s London office are very happy to discuss this with you at any time; please contact your preferred HG attorney or our London office for any further information.

