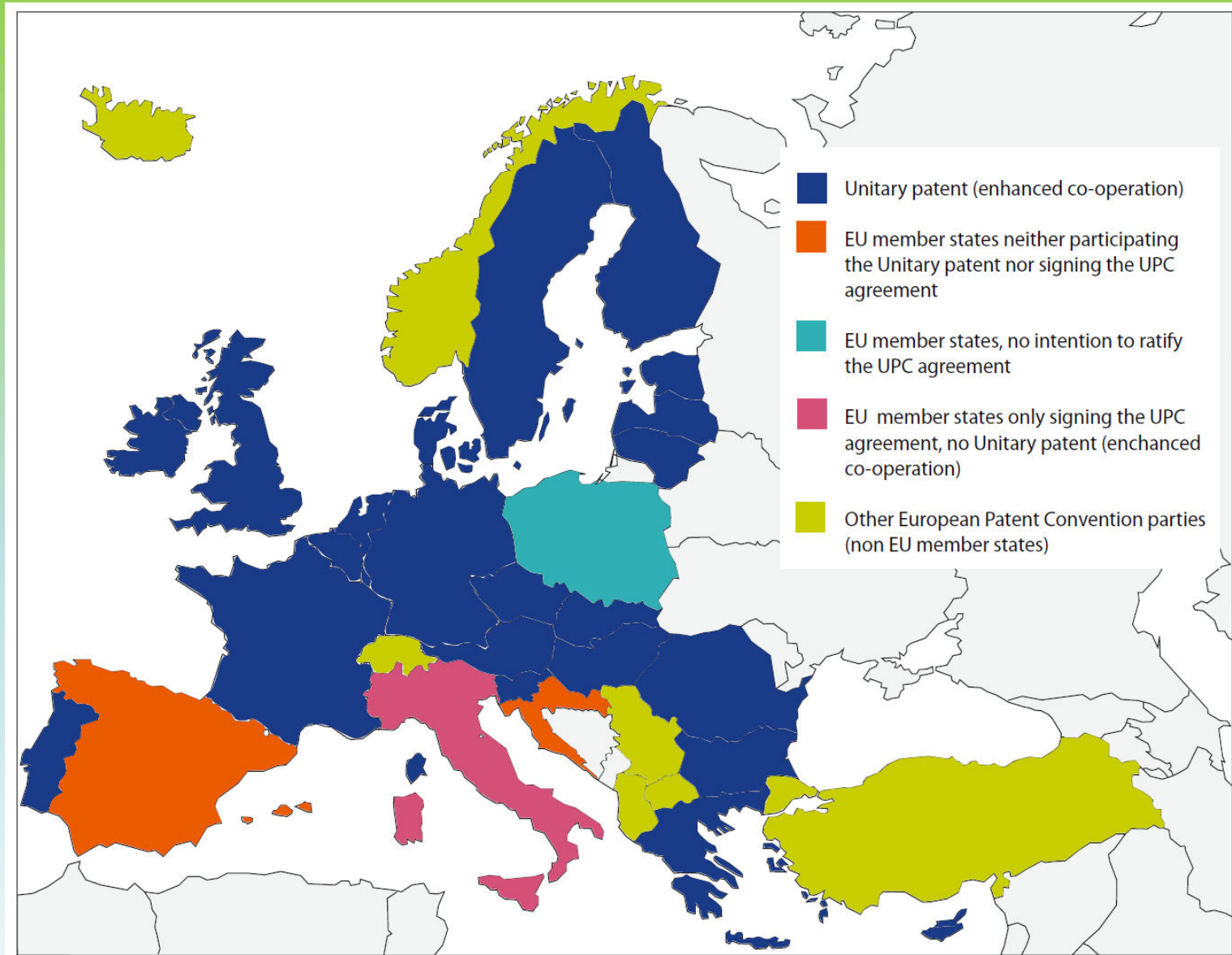


# Unitary Patent and Unified Patent Court – the Czech Perspective

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Source: Report „The European Patent Reform“, Confederation of Finnish Industries

# Position of the Czech Republic

# The current position

- CZ participates in the Enhanced Cooperation (Unitary Patent Regulations)
- CZ has signed the UPC Agreement
- No ratification of the UPC Agreement yet
- CZ is not a member of the London Agreement

# Conditions for CZ ratification

- We need to know what the impact of the state budget would be
    - Loss/benefit from renewal fees compared to the present situation?
    - Cost of the UPC?
    - A study of impacts will probably be ordered by the Ministry of Trade and Commerce, but only when all the variables are known – end 2015?
    - Preliminary impact studies so far by PL,FI,HU
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# Conditions for CZ ratification

- Sufficient quality of machine translations
- Necessary pre-condition for CZ participation in the UP/UPC system
- Necessary pre-condition for CZ accession to the London Agreement

# UPC national/regional chamber

- Not yet decided
- Again, the costs must be clear
- Possible options:
  - CZ?
  - CZ/SK?
  - CZ/SK/HU?
  - CZ/SK/PL?

# Pressure groups

- Chamber of patent attorneys and patent attorney societies strongly opposed to ratification
- Unions of trade and commerce mostly in favour of the system (do they know all the risks?)



# Conclusions

- CZ will not be among the first to ratify
- The ratification process will be started when
  - The budgetary impacts are known
  - The machine translations into Czech language reach a sufficient quality and reliability

# Conclusions

- UP/UPC is an open system
- It is possible to be a free-rider
  - while the UP/UPC does not extend to the country's territory, national companies can benefit from the system
  - this would probably in long term adversely affect the „political“ position of the country in IP field
- Probably, when most other countries join, CZ will join, too

# Increase of valid rights

- At present, less than 10 % of granted EPs validated in CZ (2013: 4500/50 000)
- How many EPs will be validated as Unitary Patent when the system comes into operation?
- Negative effect on FTO of nationally operating companies

# Personal Opinions

# Qualitative impact on:

- Active users (patentees) – companies
- Active users (patentees) – R&D entities
- Passive users
- Patent attorney profession

# Active users - companies

- Claimed Positives
  - Unitary patent protection throughout a substantial part of Europe easier to achieve
  - Lower validation costs – really?
  - Lower maintenance costs – really?
  - Easier and unitary enforcement of rights
- Negatives
  - Unitary nullity proceedings
  - In the beginning, no case law, no legal certainty
  - Limited FTO

# Active users - companies

- Possible impacts
  - Need to cope with limited FTO
  - Higher costs for IP searches and FTO opinions
  - Fostering innovation?
  - Due assessment of FTO in an earlier stage (production stage, not export stage)

# Active users – R&D

- Claimed Positives
  - Unitary patent protection throughout a substantial part of Europe easier to achieve
  - Lower validation costs – really?
  - Lower maintenance costs – really?
  - Easier and unitary enforcement of rights – do they normally enforce?
- Negatives
  - Unitary nullity proceedings, loss of the whole patent - do these users normally participate in nullity proceedings?



# Active users – R&D

- Possible impacts
  - Need to cope with limited FTO when licensing out
- Potentially most benefiting type of users

# Passive users

- Positives?
  - Due assessment of FTO in an earlier stage (production stage, not export stage)
- Negatives
  - Local businesses higher costs for IP and FTO searches and opinions
  - Possibly need to check the reliability of the translations
- General impact – clearly negative
- Turning passive users into active ones?

# Patent Attorneys

- Less work in validations (depending on country)
  - More work in searches and FTO assessment
  - Increase in filings?
  - Need to involve in dissemination of information on IP and on the UP/UPC
  - Need to be able to recommend the right type of validation
-

# Viability of UP/UPC system

- A tough competition – **London Agreement**
- In many fields obtaining protection for DE, FR, GB, CH, IT, ES, PL is essential, there is no point making products only for the remaining countries
- DE, FR, GB, CH – cheap under London A.
- IT, ES, PL – probably not participating in UP/UPC
- Why choose UP?

Thank you for your attention

Dziękuję za uwagę

(machine translation)

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