These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

European Commission

Explanatory Meeting on the Acquis

Patents, including unitary patents

7-8 February 2019, Brussels

Patents in the EU

- *Limited EU legislation (bio-patents, SPCs, civil and customs enforcement)*

- *National patents granted by NPO*
- *National patents from the European route (EPC) and*
- *National patents from the international route (PCT)*
- *Soon: regional patent from the European route (Unitary patent)*

The European Patent Convention (EPC-2000)

- *All current 28 EU MS are EPC contracting parties*
- *Accession States and candidate States are required to adhere to both the PCT and the EPC*
- *Not EU law as such (but, biotechnology provisions in the implementing regulations)*

Unitary patent: a project with a long history

A long history:

- First drafts in the 1960s
- Luxembourg Convention (1975), Agreement relating to Community patent (1989)
- Commission proposal for a Regulation (2000)
- Decision of Council to launch enhanced cooperation (March 2011)
- Adoption of Regulations 1257/2012 and 1260/2012 under enhanced cooperation on 17 December 2012
- Signature of the UPC Agreement on 19 February 2013

Patent package: three pillars

Unitary patent:

- **Regulation No 1257/2012** implementing *enhanced cooperation* in the area of the creation of **Unitary Patent Protection** (26 Member States, excluding Spain and Croatia)
- **Regulation No 1260/2012** implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable **translation arrangements** (same 26 MSs)

Unified Patent Court:

- **International Agreement on a Unified Patent Court** (signed by 25 MSs, excluding Spain, Poland and Croatia)

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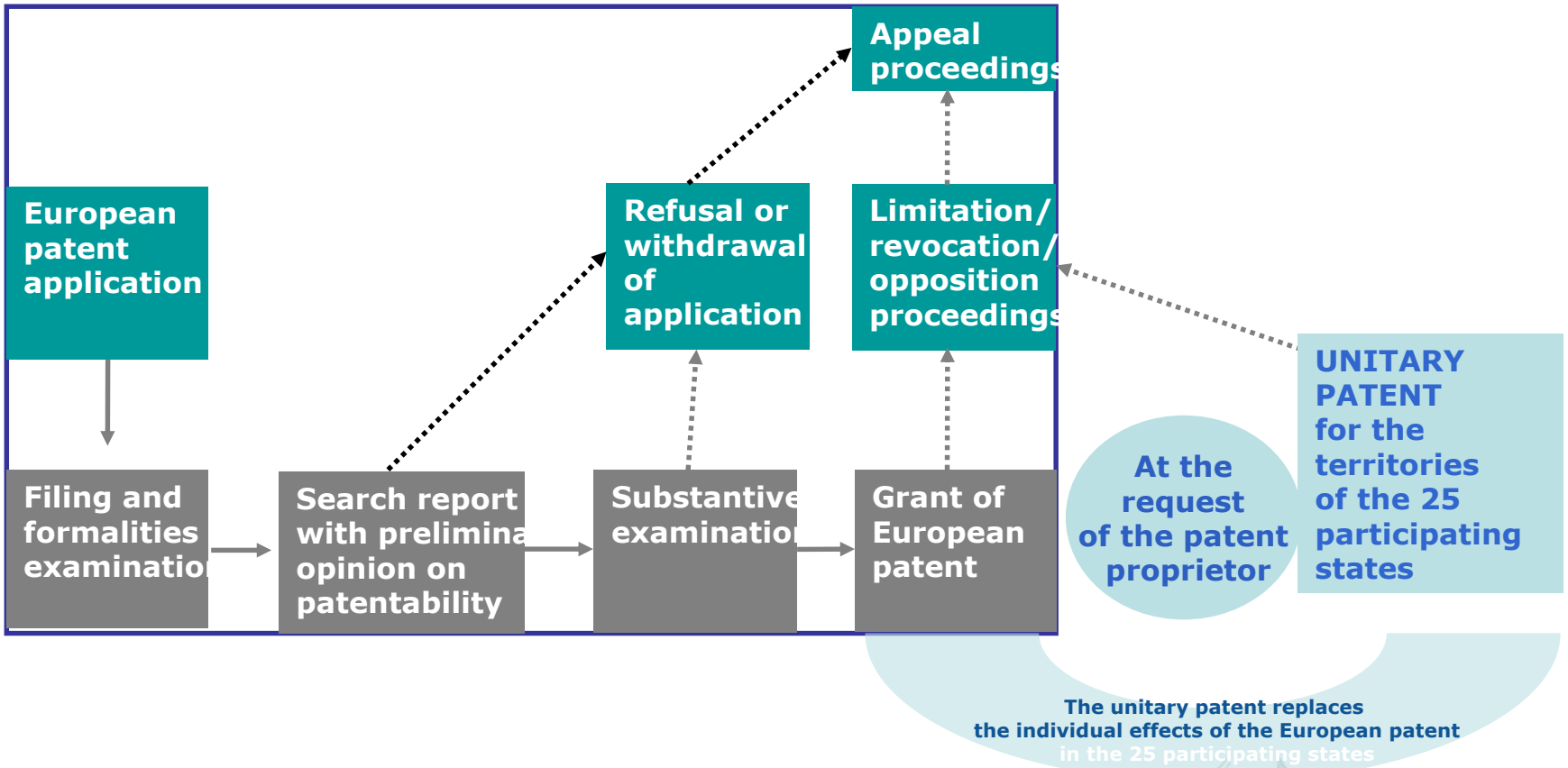
Unitary Patent: main features

Toolkit approach: additional tool for innovators

1. **Existing tools:** National and "classical" European patent
2. **European patent with unitary effect**
   - **uniform protection** in participating MS
   - **one-stop shop** procedure cutting costs and administrative burden
   - **Translation:** minumum requirements
   - **Renewal fees:** tbd; ref "average European patent"

How the Unitary patent will be granted?

Same grant procedure as for classic European patent – source EPO



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UPC – main features

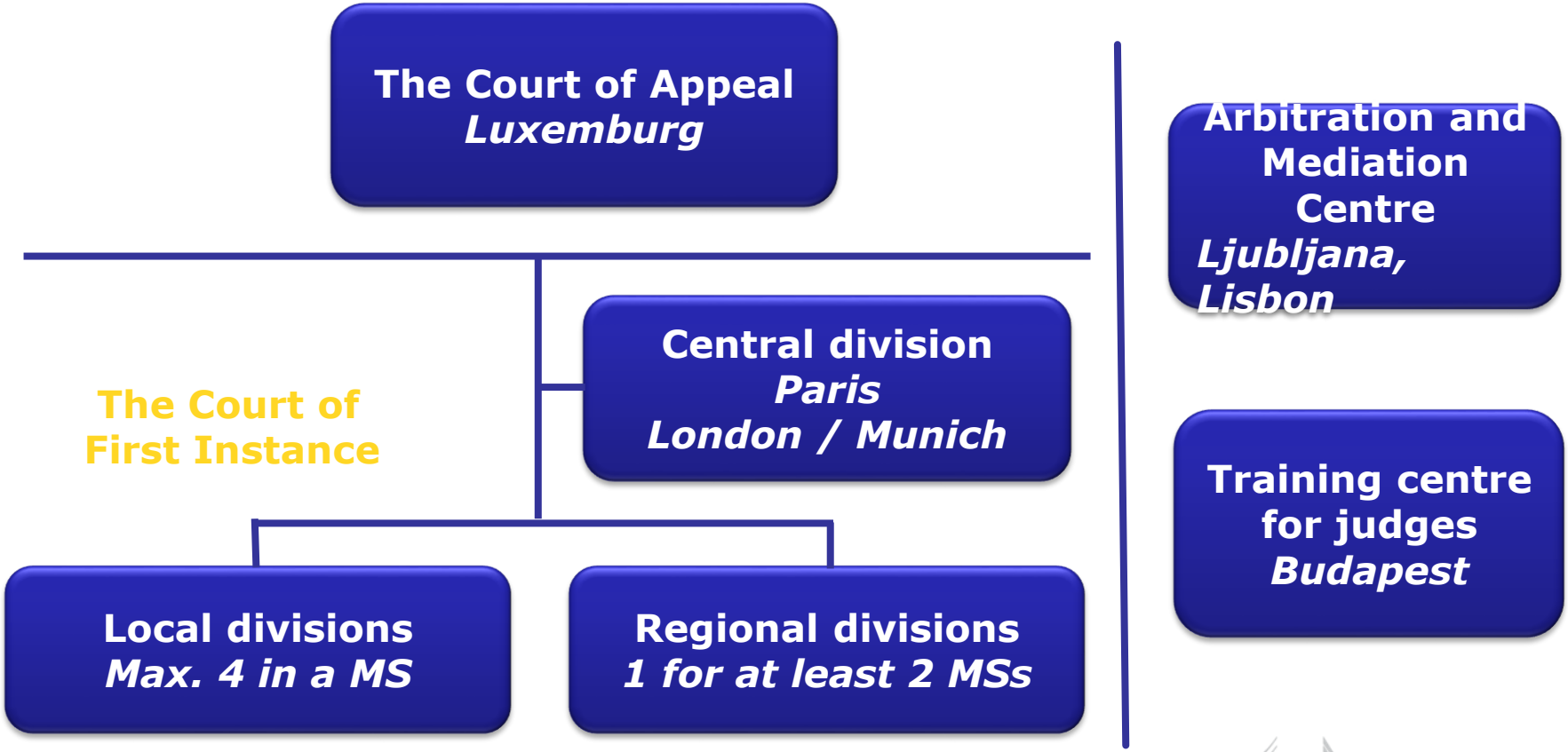
- **Common** specialised court of EU Member States
  - ✓ Legal and technical expertise of judges (3/5 judges)
  - ✓ Possible referral to the Court of Justice of the EU

- **Competence:**
  - ✓ European "classical" patents and Unitary patents
  - ✓ Infringement and revocation actions

- **Procedure:**
  - ✓ Language of proceedings: any EU official language based on location and parties

- **Transitional period 7 + (possibly 7 years):**
  - ✓ Possible opt-out for European patent proprietors
  - ✓ Choice of national court for all litigants if opted out

UPC– structure



European Commission

Patent package: preparatory work

- **Unitary patent:** *Select Committee* in the framework of the EPO:
  - ✓ Implementing rules
  - ✓ Compensation scheme for Translations
  - ✓ Level and distribution of renewal fees

- **UPC:** *Preparatory Committee* of signatories of the UPC Agreement:
  - ✓ Rules of Procedure
  - ✓ Finances, IT, selection and training of judges, etc.

- **Role of the European Commission***:*
  - Legal and policy dimension to the technical implementation process

Provisional application protocol

- Provisional Application Protocol ('PAP'): signed on the margins of 1 October 2015 Competitiveness Council.

- Aims to allow the Administrative Committee to adopt definitive measures such as appointement of judges further to a call for applications.
- Entry into force: 13 MS have to endorse the PAP including FR, DE and UK (to date: 11 inluding FR and the UK)
- Paves the way of the entry into force of the patent package.

Patent package: entry into force?

- **Legal statute:** Legal actions against the regulations dismissed by the Court on 5 May 2015

- **Completion of the preparatory work at the Select Committee and at the Preparatory Committee**

- **Ratification of the UPC Agreement:**
  - 13 ratifications of the UPC Agreement are required, including France, Germany and the UK
  - To date 16 ratifications: Austria, France, Belgium, Sweden, Denmark, Malta, Luxembourg, Portugal, Malta, the Netherlands, Finland, Estonia, Latvia, Lithuania, Bulgaria, the UK (ratification of DE is missing)
- **Timing:** depends on the outcome of the DE constitutional action

Single Market Strategy Communication (28/10/2015)

- Clarifies uncertainties over ***how the Unitary Patent will work together with national patents and national supplementary protection*** certificates (SPC) granted under the SPC regime
- Study further **possible creation of a unitary SPC title**