



Forty-first Amendment of the Constitution **(Agreement on a Unified Patent Court) Bill 2024**

Screening question

Q. To what extent is the proposed legislation relevant for SMEs?

Not relevant Relevant Highly relevant

The following questions are relevant to consideration of the above question:

- Are SMEs within the scope of the legislative initiative?
- Does the initiative specifically target SMEs?
- Will SMEs be impacted directly or indirectly by the initiative?
- Are SME impacts likely to be more substantial than on other companies, for example, in terms of adverse effects?

If 'Relevant' or 'Highly Relevant', please proceed to complete Sections 1-5.

1. Identification of affected businesses

Q1a: Please identify the types of SMEs that will be directly affected by the proposed legislation.

Micro (1-9 employees)

Small (10-49 employees)

Medium (50-249) employees

N/A



Q1b: Please identify the types of SMEs that will be indirectly affected by proposed legislation (i.e. SMEs not in scope, but potentially affected indirectly, for instance through impacts on supply chain)

Micro (1-9 employees)

Small (10-49 employees)

Medium (50-249) employees

N/A

Q1c: Has an estimate been carried out of the numbers of micro, small and medium companies affected directly or indirectly by the legislation?

Yes No N/A

Q1d: Will the proposed legislation have a greater impact on SMEs in any particular economic sector?

Yes No

If Yes, please specify.

This legislation enables Government to host a constitutional referendum on 07 June 2024 to allow the State to ratify the Agreement on a Unified Patent Court which Ireland signed up to on the 19th of February 2013.

If the referendum is successful, Ireland will become the 18th participating member and further legislation will be required to establish a local court of the UPC in Ireland.

This will mean that Irish inventors will be able to protect their Unitary Patent on home ground rather than having to travel to other UPC Member States to have their case heard.

Q1e: Will the proposed legislation have a greater impact on SMEs in any particular region?

Yes No

If Yes, please specify.



2. Consultation

2.1 What consultation will take or has taken place to capture input from the SME community, particularly those potentially most impacted by this initiative?

Public consultation

Other (e.g. stakeholder meetings, targeted consultation)

N/A

If Other, please provide details:

In 2014, an impact assessment was undertaken to inform the Government Decision regarding the establishment of a local division of the UPC in Ireland. This assessment included stakeholder consultation with Government, Enterprise Agencies and Business representative bodies, the results of which strongly favoured the establishment of a local division of the Court.

3. Assessment of the impacts on SMEs

Q3a What are the expected positive impacts of the legislation on SMEs (e.g. improved regulatory framework or working conditions, cost savings)?

Before the establishment of the Unitary Patent and the Unitary Patent Court on 1 June 2023, the patent renewal system was quite fragmented with different levels of annual renewal fees, individual national legal requirements, and payment transactions in different currencies.

Now this new patent package provides a much simpler, less expensive process for registering and protecting patents to Inventors across those 17 Member States which have already ratified the UPC Agreement.

Currently, if an Irish inventor wants a Unitary Patent for their invention, they must register a unitary patent abroad to protect their invention in the 17 participating countries and then also pay separately to register it in Ireland, along with annual fees, which means extra costs for Irish inventors.

If the outcome of the referendum in June is successful and Ireland becomes the 18th participant Member State, Government will then propose further legislation to establish a local division of the UPC in Ireland.

The cost savings for inventors under the new Unitary Patent System are significant. It is estimated that it will cost less than €4,700 to maintain a Unitary Patent for an average of 10 years, down from a current €30,000 today on a comparable basis, if this Agreement is validated in all 24 Member States.

Participation in the Unified Patent Court will also ensure Unitary Patent holders in Ireland will be able to enforce their patent rights on home ground rather than travelling to another UPC member state.



This will lead to a significant reduction in administrative and financial burden for micro and small companies and provide a level playing field when competing against similar sized enterprises in participating member states.

Q3b Will the proposed legislation result in any of the following impacts for SMEs?

- Administrative costs, including the obligation to provide information on the activities or products of the company, including one-off and recurring administrative cost
- Other compliance costs, including the obligation to pay fees or duties; and costs created by the obligation to adapt the nature of the product/service and/or production/service delivery process to meet economic, social or environmental standards.
- Other impacts, including on business entry and exit; competition and competitiveness, whether proposed regulations might discourage, entrepreneurship or innovation; potential impact of any proposed exemption thresholds on business growth; impacts on SME population composition and location.

Yes No

Q3c If yes, please describe impacts, including whether any impacts will affect particular cohorts of SMEs differently, for example based on size (micro, small and medium), age of the business (e.g. start-up costs for new companies), economic sector and geographic location.

Administration of international patent law on Irish soil: A local division in Ireland ensures that we continue to oversee the administration of justice related to international patent law on home ground. This will help to drive intellectual property skills and legal expertise in Ireland which is important for our innovation-based economy.

Reduced costs: A local court will bring reduced legal costs for researchers, inventors and businesses, in particular for micro and SMEs. A single litigation process will cover all participating Member States in Europe, rather than costly litigation in individual jurisdictions.

Expertise: Each local division is expected to have judges with expertise in patent law and relevant technical fields. This ensures that the court can provide informed and specialized decisions on patent matters. Either one or two of the three legally qualified judges will be 'local' judges, having the nationality of the Member State hosting the local division.

Promotion of innovation: A local division can contribute to a supportive environment for innovation by providing an efficient and specialized forum for patent disputes. This, in turn, may encourage businesses and inventors to invest in innovation, research and development.

Enhanced Competitiveness: A more efficient and cost-effective patent system can contribute to the competitiveness of businesses, particularly small and medium-sized enterprises (SMEs), by facilitating innovation and reducing legal barriers.



Economic Impact: It will be a catalyst to build specialist skills and expertise in intellectual property services. It may attract legal professionals and related services to the region, contributing to the local legal and business ecosystem. A local court in Ireland will attract and generate a wider pool of professional skills and competences in intellectual property including legal services and patent agencies.

4. Assessment of alternative options and mitigating measures

4a If the analysis above has shown that the draft legislation will result in impacts on SMEs, has there been consideration of any measures to mitigate against these impacts, such as less onerous reporting requirements, exemptions for certain cohorts of SME, simplified language etc? (See list of examples of potential mitigating measures on page 5 above)

Yes No N/A

5. Post-completion of SME Test

5a Do you intend to summarise the outcome of the SME Test, including identified impacts and provision for mitigating measures, under the Impacts section of any Memorandum for Government proposing the legislation?

Yes No N/A

The findings of the SME Test were accounted for under the Regulatory Impact Statement accompanying the Memo to Government.

5b Do you intend to make this form available publicly on your Department's website?

Yes No