

EIP



UPC Agreement Is Not EU Law, No Referrals to CJEU

expert v. Seoul Viosys, UPC_CoA_380/2025

Order of 20 August 2025 (ORD_22147/2025)[1]

This order from the UPC Court of Appeal clearly states that the Court of Justice of the EU cannot be asked to interpret the UPC Agreement and Rules of Procedure. The order also sets out the circumstances in which a referral to the Court of Justice of the European Union (CJEU) might be made by the UPC and reiterates the need for parties to stick to the time limits specified in the Rules of Procedure.

The appeal arose from a decision of the Düsseldorf LD rejecting an application for costs by expert as inadmissible. The application for costs was brought outside the one-month time limit specified for such applications in the Rules of Procedure[2].

With its appeal, expert requested that the one-month period set out in the Rules of Procedure be extended and, as a precautionary measure, requested that the Court of Appeal refer questions to the CJEU. In essence, the requested referral was intended to resolve an alleged contradiction between the time limit imposed by the Rules of Procedure and the right of the successful party to seek reimbursement for its costs from the unsuccessful party, as set out in the UPC Agreement[3].

On its main request, expert was unsuccessful. The Court of Appeal referred to its earlier decision in *Hanshow v. VusionGroup*[4], where the court stated that failure to meet the one-month deadline for an application for a cost decision can only be remedied through re-establishment of rights[5], not through a retrospective extension of the deadline.

On the question of a referral, the Court of Appeal clearly stated that the CJEU cannot be asked to interpret the UPC Agreement or the Rules of Procedure. The Agreement is not a

regulation, a directive, a decision, a recommendation or an opinion, nor is it an act of the institutions, bodies, offices or agencies of the Union. Indeed, the Court of Appeal considered it clear from CJEU case law that the UPC Agreement is an international agreement forming part of international law.

The Court of Appeal also considered whether the time limit specified in the Rules of Procedure is compatible with EU law. It concluded that it is, and that the correct interpretation of EU law on time limits is so obvious that it leaves no room for any reasonable doubt, making a referral to the CJEU on the compatibility of the Rule of Procedure with EU law unnecessary.

Nevertheless, the Court of Appeal set out a series of clear examples of when a referral may be appropriate:

- When **a provision of the UPCA or the RoP implements or relates to a directive, a regulation, or to an international agreement such as the Lugano Convention where the EU is a contracting party**, whether the UPCA and/or the RoP make specific reference thereto or not. The EU legislation referred to in the UPCA and the RoP is not exhaustive.
- When **the UPC applies EU law**.
- When assessing the **compatibility of the UPC Agreement and Rules of Procedure with EU law**.

However, even in these situations, a referral will not automatically be made. So far, the UPC has not made any referrals to the CJEU, even when issues specific to EU law come up, as in *Aylo v. Dish*^[6]. In that case, the court was asked but declined to refer a question to the CJEU regarding jurisdiction and the application of the Brussels I recast regulation.

The present order sets out very clearly that referrals will not be made to the CJEU for the purpose of interpreting the UPC Agreement or Rules of Procedure. This means that referrals to the CJEU are likely to be rare in practice, only arising when there is a question of EU law or when the compatibility of the UPC Agreement or Rules of Procedure with EU law is unclear.

[1] <https://www.unifiedpatentcourt.org/en/node/137181>

[2] Rule 151 RoP: "Where the successful party... wishes to seek a cost decision, it shall within one month of service of the decision lodge an Application for a cost decision..."

[3] Article 69 UPCA: “Reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party...”

[4] <https://www.unifiedpatentcourt.org/en/node/125743>, UPC_CoA_618/2024, decision of 6 June 2025 (ORD_69091/2024)

[5] Rule 320 RoP: “Where a party has failed to observe a time-limit set by these Rules or the Court for a cause which, despite all due care having been taken by the party...”

[6] UPC_CoA_188/2024, order of 3rd September 2024 ORD_42716/2024, as reported here: <https://eip.com/uk/latest/article/upc-court-of-appeal-clarifies-jurisdiction-on-indirect-infringement/>