

EN
E-005551/2021
Answer given by Mr Breton
on behalf of the European Commission
(10.3.2022)

In its Opinion 1/09¹, the Court of Justice of the European Union (CJEU) has thoroughly assessed the compatibility of the draft Unified Patent Court Agreement (UPCA) with the EU treaties. The CJEU's objections raised in that Opinion were effectively addressed in the final text of the UPCA², signed on 19 February 2013.

In this respect, the Commission wishes to recall that, pursuant to article 21 of the UPCA, the Unified Patent Court (UPC) is considered “a court common to the Contracting Member States and as part of their judicial system.” As such, the UPC “shall cooperate with the Court of Justice of the European Union to ensure the correct application and uniform interpretation of Union law, as any national court, in accordance with article 267 of the Treaty on the Functioning of the EU (TFEU), in particular.” That article also stipulates that decisions of the CJEU shall be binding on the UPC. Furthermore, Article 38 of Annex I to the UPCA containing the Statute of the UPC establishes that “the procedures established by the Court of Justice of the European Union for referrals for preliminary rulings within the European Union shall apply.”

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62009CV0001&from=FR>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2013:175:FULL&from=en>