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THE EUROPEAN UNION**

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ADDENDUM TO NOTE

from: Presidency
to: Council

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Subject: Proposal for a Regulation of the European Parliament and of the Council
amending Regulation (EU) No 1215/2012 on jurisdiction and the recognition
and enforcement of judgments in civil and commercial matters (Recast) [**First
reading**]
- General approach

Delegations will find in the Annex the text of the abovementioned proposal which the Presidency proposes as a compromise with a view to the adoption of a general approach by the Council (Justice and Home Affairs) at its meeting on 5 and 6 December 2013.

Changes compared to the text of the Commission proposal are marked in **bold** or by (...) for deleted text.

2013/0268 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**amending Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular (...) points (a), (c) and (e) of Article 81(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

- (1) On 19 February 2013, (...) **the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand-Duchy of Luxembourg, Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland** signed an Agreement on a Unified Patent Court ("the UPC Agreement")¹. That Agreement provides for **its entry into force** not prior to the first day of the fourth month after the date of entry into force of the amendments to **Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)**² concerning the relationship of **that Regulation** with the Agreement.
- (2) On 15 October 2012, (...) **the Kingdom of Belgium, the Grand-Duchy of Luxembourg and the Kingdom of the Netherlands, party to the Treaty of 31 March 1965 concerning the establishment and statute of a Benelux Court of Justice, signed a Protocol amending that Treaty, making it possible to transfer jurisdiction to the Benelux Court of Justice in specific matters falling** within the scope of Regulation (EU) No 1215/2012.
- (3) It is necessary to regulate the relationship between the above **two** international agreements and Regulation (EU) No 1215/2012 **by way of amendments to that Regulation**.
- (4) The Unified Patent Court and the Benelux Court of Justice should be considered (...) courts within the meaning of **Regulation (EU) No 1215/2012** in order to ensure legal certainty and predictability for defendants **who** may be **sued** before those two courts **at a location situated** in a Member State **other than** the one designated by the rules of **Regulation (EU) No 1215/2012**.

¹ OJ C 175, 20.6.2013, p. 1.

² OJ L 351, 20.12.2012, p. 1.

- (4a) **The amendments to Regulation (EU) No 1215/2012 provided for in this Regulation with regard to the Unified Patent Court are intended to establish the international jurisdiction of that Court and do not affect the internal allocation of proceedings among the divisions of that Court nor the arrangements laid down in the UPC Agreement concerning the exercise of jurisdiction, including exclusive jurisdiction, during the transitional period foreseen in that Agreement.**
- (5) **As courts common to several Member States the Unified Patent Court and the Benelux Court of Justice cannot, like a court of one Member State, (...) exercise jurisdiction with respect to defendants not domiciled in a Member State on the basis of national law. To allow the two Courts to exercise such jurisdiction, the rules of Regulation (EU) No 1215/2012 should therefore, with regard to matters falling within the jurisdiction of respectively the Unified Patent Court and the Benelux Court of Justice, also apply to defendants domiciled in third States. The existing rules of jurisdiction of Regulation (EU) No 1215/2012 ensure a close connection between proceedings to which that Regulation applies and the territory of the Member States. It is therefore justified to extend those rules to proceedings against all defendants, regardless of domicile. When applying the rules of jurisdiction of Regulation (EU) No 1215/2012 the common courts should apply only the rules which are appropriate for the subject-matters for which jurisdiction has been conferred on them.**

- (5a) **The common court should be able to hear disputes involving defendants from third States on the basis of a subsidiary rule of jurisdiction in the specific case where an EU claimant brings proceedings against a third State defendant before a common court relating to an infringement of a European patent giving rise to damage as well inside as outside the Union. In order to ensure access to court in the Union in such a situation, Regulation (EU) No 1215/2012 should provide for subsidiary jurisdiction for the common court in a way similar to that of national courts. Such subsidiary jurisdiction should be exercised by the common court where property belonging to the third State defendant is located in a Member State party to the agreement establishing the common court and the dispute in question has a sufficient connection with such a Member State, for instance, because the claimant is domiciled there or because the evidence relating to the dispute is available there. In establishing its jurisdiction on this ground the common court should have regard to the value of the property in question which should not be insignificant and which should be likely to make the enforcement of the judgment possible, at least in part, in the Member States party to the agreement establishing the common court.**
- (6) The rules of **Regulation (EU) No 1215/2012** on *lis pendens* and related actions, aimed at preventing parallel proceedings and irreconcilable judgments, should apply when proceedings are brought before **a court of a Member State to which** the above **two** international agreements apply and before a court of **a Member State to which those** agreements do not apply.
- (7) The rules of **Regulation (EU) No 1215/2012** on *lis pendens* and related actions should equally apply where, during the transitional period (...) **foreseen** in the UPC Agreement, proceedings concerning certain types of disputes are brought before, on the one hand, the Unified Patent Court and, on the other hand, a national court of a Member State party to the UPC Agreement.

- (8) Judgments given by the Unified Patent Court or **by the Benelux Court of Justice** should be recognised and enforced **in accordance with Regulation (EU) No 1215/2012** in a Member State **not party to, as the case may be**, the UPC Agreement or the Benelux Agreement.
- (9) Judgments given by the courts of a Member State **not party to, as the case may be**, the UPC Agreement or the Benelux Agreement should be recognised and enforced in another Member State in accordance with **Regulation (EU) No 1215/2012**.
- (10) (...)
- (11) Regulation (EU) No 1215/2012 should (...) be amended accordingly.
- (12) **Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.**
- (13) **In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation.**

- (14) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application, without prejudice to the possibility for Denmark of applying the amendments to Regulation (EU) No 1215/2012 laid down in this Regulation pursuant to Article 3 of the Agreement of 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters¹,**

HAVE ADOPTED THIS REGULATION:

¹ OJ L 299, 16.11.2005, p. 62.

Article 1

(...) Regulation (EU) No 1215/2012 **is amended as follows:**

(0) **The following words are inserted in recital 11 before "the Benelux Court of Justice":
"the Unified Patent Court or".**

(1) The following sentence is added at the end of recital 14:

"Uniform jurisdiction rules should also apply regardless of the defendant's domicile in cases where courts common to several Member States exercise jurisdiction **in matters falling within the scope (...)** of this Regulation".

(2) **The following Articles are inserted in Chapter VII:**

"Article 71a

1. For the purposes of this Regulation, a court common to several Member States (a "common court") shall be a court of a Member State when, pursuant to the agreement establishing it, **such a common court** exercises jurisdiction in (...) matters **falling within the scope** of this Regulation.
2. **The following courts shall be common courts for the purposes of this Regulation:**
 - (a) the Unified Patent Court established by the Agreement on a Unified Patent Court signed on 19 February 2013 (the "UPC Agreement"); **and**
 - (b) the Benelux Court of Justice established by the Treaty of 31 March 1965 concerning the establishment and statute of a Benelux Court of Justice **as last amended by the Protocol of 15 October 2012** (the "Benelux Agreement").

Article 71b

The jurisdiction of a common court shall be determined as follows:

- (1) The common court shall have jurisdiction where, under this Regulation, the courts of a Member State party to the agreement establishing the common court **would** have jurisdiction in a matter governed by that agreement.
- (2) Where the defendant is not domiciled in a Member State, and this Regulation does not otherwise confer jurisdiction over him (...) **Chapter II shall apply as appropriate (...) regardless of the defendant's domicile.**

Application may be made to a common court for provisional, including protective, measures even if the courts of a **third** State have jurisdiction as to the substance of the matter.

- (3) Where (...) **a common court has jurisdiction over a defendant under paragraph 2 in a dispute relating to an infringement of a European patent giving rise to damage within the Union, that court may also have jurisdiction in relation to damage arising outside the Union from such an infringement.**

Such jurisdiction may only be established if property belonging to the defendant is located in a Member State party to the agreement establishing the common court (...) and the dispute has a sufficient connection with such a Member State (...).

Article 71c

1. Articles 29 to 32 shall apply where proceedings are brought in a common court and in a court of a Member State not party to the agreement establishing that common court.
2. Articles 29 to 32 shall apply where, during the transitional period referred to in **Article 83** of the UPC Agreement, proceedings are brought in the Unified Patent Court and in a court of a Member State party to the UPC Agreement.

Article 71d

1. **The rules of this Regulation (...)** shall apply to the recognition and enforcement of:
 - (a) judgments given **by a common court (...)** which **are** to be recognised and enforced in a Member State not **party** to the **agreement establishing the common court**; and
 - (b) judgments given by the courts of a **Member State not party** to the agreement **establishing the common court** which are to be recognised and enforced in a **Member State party to that agreement**.
2. **The rules of this Regulation shall not apply to the recognition and enforcement of judgments given by a common court where such recognition and enforcement is sought in a Member State party to the agreement establishing the common court.**

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 10 January 2015¹.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at [...],

For the European Parliament
The President

For the Council
The President

¹ **As Regulation (EU) No 1215/2012 will apply as of 10 January 2015, it would be preferable to set that date as the date of application for this Regulation.**