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DRAFT REPORT

on the 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 (COM(2013)0554 – C7-0239/2013 – 2013/0268(COD))

Committee on Legal Affairs

Rapporteur: Tadeusz Zwiefka

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ¶ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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 (COM(2013)0554 – C7-0239/2013 – 2013/0268(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0554),
 - having regard to Articles 294(2) and 67(4) and points (a), (c) and (e) of Article 81(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0239/2013),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of ...¹,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A7-0000/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 3

Text proposed by the Commission

(1) On 19 February 2013, certain Member States signed an Agreement on a Unified Patent Court. This Agreement provides that it shall not enter into force prior to the first

Amendment

(1) On 19 February 2013, certain Member States signed an Agreement on a Unified Patent Court. This Agreement provides that it shall not enter into force prior to the first

¹ Not yet published in the Official Journal.

day of the fourth month after the date of entry into force of the amendments to Regulation (EU) No 1215 concerning the relationship of the latter with the Agreement.

day of the fourth month after the date of entry into force of the amendments to Regulation (EU) No 1215/2012 *of the European Parliament and of the Council*^{4a} concerning the relationship of the latter with the Agreement.

^{4a} *Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments on civil and commercial matters (OJ L 351, 20.12.2012, p. 1).*

Or. en

Justification

It seems appropriate to recall the full title of the amended regulation in the first recital.

Amendment 2

Proposal for a regulation Recital 4 a (new)

Text proposed by the Commission

Amendment

(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 or the arrangements laid down in the UPC Agreement concerning the exercise of jurisdiction, including exclusive jurisdiction, during the transitional period provided for in that Agreement.

Or. en

Justification

This recital seeks to clarify the purpose of the amendments: this regulation concerns general private international law. The internal distribution of tasks in the court is not covered by the changes to the Brussels I Recast.

Amendment 3

Proposal for a regulation Recital 5 a (new)

Text proposed by the Commission

Amendment

(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 of a Union claimant bringing proceedings against a third State defendant before a common court relating to an infringement of a unitary patent giving rise to damage both inside and outside the Union. Such subsidiary jurisdiction should be exercised where property belonging to the defendant is located in a Member State which is a party to the agreement establishing the common court and the dispute in question has a sufficient connection with that 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, the common court should have regard to the value of the property in question, which should not be insignificant and which should be such as to make enforcement of the judgment possible, at least in part, in the Member States which are parties to the agreement establishing the common court.

Or. en

Justification

This recital clarifies the provision on subsidiary jurisdiction contained in the rules on common courts.

Amendment 4

Proposal for a regulation

Article 1 – point -1 (new)

Regulation (EU) No 1215/2012

Recital 11

Present text

(11) For the purposes of this Regulation, courts or tribunals of the Member States should include courts or tribunals common to several Member States, such as the Benelux Court of Justice when *it exercises* jurisdiction on matters falling within the scope of this Regulation. Therefore, judgments given by such courts should be recognised and enforced in accordance with this Regulation.

Amendment

(11) For the purposes of this Regulation, courts or tribunals of the Member States should include courts or tribunals common to several Member States, such as *the Unified Patent Court or* the Benelux Court of Justice when *they exercise* jurisdiction on matters falling within the scope of this Regulation. Therefore, judgments given by such courts should be recognised and enforced in accordance with this Regulation.

Or. en

Justification

In view of the importance of the future Unified Patent Court, it should also be mentioned in the recitals of the Brussels I Regulation.

Amendment 5

Proposal for a regulation

Article 1 – point 2

Regulation (EU) No 1215/2012

Article 71 a – paragraph 2 – introductory part

Text proposed by the Commission

2. For the purposes of this Regulation, the following *shall each be a common court*:

Amendment

2. In particular, the following *are common courts for the purposes of this Regulation*:

Justification

This amendment establishes that the two extant common courts could in future be joined by further common courts set up by groups of Member States, which would also be covered by the Brussels I Regulation to the extent that they issue judgments in civil and commercial matters.

Amendment 6**Proposal for a regulation****Article 1 – point 2**

Regulation (EU) No 1215/2012

Article 71 b – paragraph 2

Text proposed by the Commission

2. Where the defendant is not domiciled in a Member State, and this Regulation does not otherwise confer jurisdiction over him, ***the provisions of*** Chapter II shall apply as ***if the defendant was domiciled in a Member State. Article 35 shall apply even if the courts of non-Member States*** have jurisdiction as to the substance of the matter.

Amendment

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.

Justification

There appears to be a need to clarify the meaning of this paragraph.

Amendment 7**Proposal for a regulation****Article 1 – point 2**

Regulation (EU) No 1215/2012

Article 71 b – paragraph 3

Text proposed by the Commission

3. Where ***the defendant is not domiciled in***

Amendment

3. Where ***a common court*** has jurisdiction

a Member State and no court of a Member State has jurisdiction under this Regulation, the defendant may be sued in the common court if:

a) property belonging to the defendant is located in a Member State party to the agreement establishing the common court;

b) the value of the property is not insignificant compared to the value of the claim;

c) the dispute has a sufficient connection with any Member State party to the agreement establishing the common court.

over a defendant under paragraph 2 in a dispute relating to an infringement of a unitary 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 one or more Member States which are parties to the agreement establishing the common court and the dispute has a sufficient connection with one or more of those Member States.

Or. en

Justification

This amendment rewords the proposal for a subsidiary ground of jurisdiction, and seeks to clarify that all Member States party to the agreement are to be considered to constitute a single legal area for the assessment of the existence of connecting factors.

Amendment 8

Proposal for a regulation

Article 1 – point 2

Regulation (EU) No 1215/2012

Article 71 d – paragraph 1 a (new)

Text proposed by the Commission

Amendment

However, where recognition and enforcement of a judgment given by a common court is sought in a Member State which is a party to the agreement establishing that court, any rules of the said agreement on recognition and

enforcement shall apply instead of this Regulation.

Or. en

Justification

Where an agreement establishing a common court contains special provisions on recognition and enforcement, this new paragraph is to allow those to apply instead of the general rules of the Brussels I Regulation as between the Member States party.

Amendment 9

**Proposal for a regulation
Article 2**

Text proposed by the Commission

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 2015.

Amendment

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

It shall apply from 10 January 2015.

Or. en

Justification

The UPC Agreement is to enter into force on the first day of the fourth month after the entry into force of this Regulation. Since the Brussels I Regulation will in any case only be applied from 10 January 2015, the date of entry into force of the Regulation can be brought forward without negative legal consequences, but with the benefit that the UPC Agreement will enter into force up to a month earlier.

EXPLANATORY STATEMENT

On 12 December 2012, the Brussels I Recast Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters was adopted. It will enter into application on 10 January 2015.

That reform brought about a number of important changes, including the abolition of the *exequatur* procedure, ensuring an easier enforcement procedure in other Member States.

After the adoption of the recast, an agreement was reached on the Patent Package, consisting of two regulations and the Unified Patent Court Agreement, which together will create a system of unitary patent protection in the European Union.

Article 89(1) of that agreement provides that it cannot enter into force prior to the entry into force of certain amendments to the Brussels I Regulation. This is because, as a court common to several Member States, there is a need to create new rules in the Brussels I Regulation which address the specific situation of such a court.

This change will also concern the Benelux Court of Justice, which is currently the only other court common to several Member States.

In particular, it must be clarified that the Unified Patent Court and the Benelux Court of Justice are to be treated in the same way as ‘courts of Member States’ for the application of the Brussels I Regulation.

Rules on jurisdiction, recognition and enforcement must be laid down for the Unified Patent Court and the Benelux Court of Justice. Specific rules on *lis pendens* and related actions are also required.

Your rapporteur fully agrees with the main lines of the regulation proposed by the Commission. However, in this draft report, he is making some proposals for improvements. In particular, it seems appropriate to clearly define the scope of this change, as it seeks to affect neither the internal distribution of work within a common court nor any specific rules on recognition and enforcement which may be contained in common court agreement. Within the specific legal framework of a common court, particular attention must also be paid to the rules applying to third state defendants, which are generally not concerned by the Brussels I rules.

Your rapporteur proposes that this legislation be brought forward as speedily as possible, as it is not contentious and the entry into force of the Unified Patent Court Agreement depends on it.