



EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

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Subject: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1215/2012 as regards the rules to be applied with respect to the Unified Patent Court and the Benelux Court of Justice

REGULATION (EU) No .../2014
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

amending Regulation (EU) No 1215/2012
as regards the rules to be applied
with respect to the Unified Patent Court
and the Benelux Court of Justice

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 procedure²,

¹ Opinion of 26 February 2014 [OJ C. ... , p....] [(not yet published in the Official Journal)].

² Position of the European Parliament of 15 April 2014 (not yet published in the Official Journal) and decision of the Council of

Whereas:

- (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 the Agreement on a Unified Patent Court¹ (the 'UPC Agreement'). The UPC 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 of the European Parliament and of the Council² concerning the relationship of that Regulation with the UPC Agreement.
- (2) On 15 October 2012, the Kingdom of Belgium, the Grand-Duchy of Luxembourg and the Kingdom of the Netherlands, parties to the Treaty of 31 March 1965 concerning the establishment and statute of a Benelux Court of Justice (the 'Benelux Court of Justice Treaty'), signed a Protocol amending that Treaty. That Protocol made it possible to transfer jurisdiction to the Benelux Court of Justice in specific matters falling within the scope of Regulation (EU) No 1215/2012.

¹ OJ C 175, 20.6.2013, p. 1.

² 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 in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

- (3) It is necessary to regulate the relationship of Regulation (EU) No 1215/2012 with the UPC Agreement and with the Benelux Court of Justice Treaty by way of amendments to that Regulation.
- (4) The Unified Patent Court and the Benelux Court of Justice should be deemed to be courts within the meaning of Regulation (EU) No 1215/2012 in order to ensure legal certainty and predictability for defendants who could be sued in 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.
- (5) 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 provided for in that Agreement.

- (6) As courts common to several Member States, the Unified Patent Court and the Benelux Court of Justice cannot, unlike a court of one Member State, exercise jurisdiction on the basis of national law with respect to defendants not domiciled in a Member State. To allow those two Courts to exercise jurisdiction with respect to such defendants, 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 appropriate to extend those rules to proceedings against all defendants regardless of their domicile. When applying the rules of jurisdiction of Regulation (EU) No 1215/2012, the Unified Patent Court and the Benelux Court of Justice (hereinafter individually referred to as a 'common court') should apply only those rules which are appropriate for the subject-matter for which jurisdiction has been conferred on them.

- (7) A common court should be able to hear disputes involving defendants from third States on the basis of a subsidiary rule of jurisdiction in proceedings relating to an infringement of a European 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 any Member State party to the instrument establishing the common court and the dispute in question has a sufficient connection with any such Member State, for example because the claimant is domiciled there or 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 it possible to enforce the judgment, at least in part, in the Member States parties to the instrument establishing the common court.
- (8) 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 in a common court and in a court of a Member State in which the UPC Agreement or, as the case may be, the Benelux Court of Justice Treaty does not apply.
- (9) The rules of Regulation (EU) No 1215/2012 on lis pendens and related actions should likewise apply where, during the transitional period provided for in the UPC Agreement, proceedings concerning certain types of disputes are brought in, 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.

- (10) 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 Court of Justice Treaty.
- (11) Judgments given by the courts of a Member State not party to, as the case may be, the UPC Agreement or the Benelux Court of Justice Treaty should be recognised and enforced in another Member State in accordance with Regulation (EU) No 1215/2012.
- (12) Regulation (EU) No 1215/2012 should therefore be amended accordingly.
- (13) Since the objective of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, 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.

- (14) In accordance with Article 3 and Article 4a(1) of the 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 Treaty on the Functioning of the European Union (TFEU), those Member States have notified their wish to take part in the adoption and application of this Regulation.
- (15) In accordance with Articles 1 and 2 of the 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

In Chapter VII of Regulation (EU) No 1215/2012, the following Articles are inserted:

'Article 71a

1. For the purposes of this Regulation, a court common to several Member States as specified in paragraph 2 (a "common court") shall be deemed to be a court of a Member State when, pursuant to the instrument establishing it, such a common court exercises jurisdiction in matters falling within the scope of this Regulation.
2. For the purposes of this Regulation, each of the following courts shall be a common court:
 - (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 (the "Benelux Court of Justice Treaty").

Article 71b

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

- (1) a common court shall have jurisdiction where, under this Regulation, the courts of a Member State party to the instrument establishing the common court would have jurisdiction in a matter governed by that instrument;
- (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 point 2 in a dispute relating to an infringement of a European patent giving rise to damage within the Union, that court may also exercise 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 any Member State party to the instrument establishing the common court and the dispute has a sufficient connection with any such 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 instrument establishing the 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

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 instrument establishing the common court; and
- (b) judgments given by the courts of a Member State not party to the instrument establishing the common court which are to be recognised and enforced in a Member State party to that instrument.

However, where recognition and enforcement of a judgment given by a common court is sought in a Member State party to the instrument establishing the common court, any rules of that instrument on recognition and enforcement shall apply instead of the rules of this Regulation.'.

Article 2

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.

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
