Jurisdiction, recognition and enforcement of judgments in civil and commercial matters: rules to be applied with respect to the Unified Patent Court and the Benelux Court of Justice

2013/0268(COD) - 26/07/2013 - Legislative proposal

PURPOSE: to amend Regulation (EU) No 1215/2012 (the so-called Brussels I Regulation) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation (recast)), recasting Regulation (EC) No 44/2001, was adopted. Regulation (EU) No 1215/2012 will enter into application on 10 January 2015.

In December 2012, an agreement was reached on the so-called “patent package”:

- **two Regulations on the unified patent** (Regulation (EU) No 1257/2012 and Regulation (EU) No 1260/2012). These were adopted in enhanced cooperation involving 25 Member States (all Member States except Italy and Spain); and
- **an international Agreement (the "Unified Patent Court Agreement" or "UPC Agreement")**, laying the ground for the creation of unitary patent protection in the European Union. This was signed on 19 Februrary 2013 by the majority of Member States.

Article 89(1) of the UPC Agreement provides that the Agreement cannot enter into force prior to the entry into force of the amendments to the Brussels I Regulation (recast) regulating the relationship between both instruments.

On 15 October 2012, the three Member States (Belgium, Luxembourg and the Netherlands) who are Contracting Parties to the Treaty of 31 March 1965 concerning the establishment and statute of a **Benelux Court of Justice** signed a Protocol modifying the said Treaty creating the possibility to extend the competences of the Benelux Court of Justice to include jurisdictional competences in specific matters which come within the scope of the Brussels I Regulation.

As a result, similar to the UPC Agreement, the Protocol to the Benelux Treaty requires an amendment to the Brussels I Regulation (recast) with the aim (i) to ensure compliance between the revised Treaty and the Brussels I Regulation (recast), and (ii) to address the lack of common jurisdiction rules *vis-à-vis* defendants in non-European Union States.

IMPACT ASSESSMENT: the matter of jurisdictional rules *vis-à-vis* State defendants was extensively assessed in the Commission's impact assessment accompanying the legislative proposal amending

Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("Brussels I"). The conclusions of that assessment are *a fortiori* relevant for the limited harmonisation foreseen in this proposal.

LEGAL BASIS: Article 67(4) and points (a), (c) and (e) of Article 81(2) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: this proposal aims, firstly, at **allowing the entry into force of the UPC Agreement**. Article 89(1) of the UPC Agreement makes the entry into force of the Agreement dependent on the amendment of Regulation (EC) No 1215/2012. In addition, the proposal aims at **ensuring compliance with the Brussels I Regulation of this Agreement as well as the Protocol to the Benelux Treaty of 1965**.

In order to ensure the combined and coherent application of the Agreement and Protocol and the Brussels I Regulation (recast), it is necessary to address the following issues in the Brussels I Regulation (recast):

- clarify in the text of the Regulation that the **Unified Patent Court and the Benelux Court of Justice** are 'courts' within the meaning of the Brussels I Regulation;
- clarify the **operation of the rules on jurisdiction** with respect to the Unified Patent Court and the Benelux Court of Justice insofar as defendants domiciled in Member States are concerned;
- create uniform rules for the international jurisdiction *vis-à-vis* **third State defendants** in proceedings against such defendants brought in the Unified Patent Court and Benelux Court of Justice in situations where the Brussels I Regulation does not itself provide for such rules but refers to national law;
- define the **application of the rules on *lis pendens* and related actions** in relation to the Unified Patent Court and the Benelux Court of Justice, on the one hand, and the national courts of Member States which are not Contracting Party to the respective international agreements on the other;
- clarify the **operation of the rules on recognition and enforcement** in the relations between Member States which are and Member States which are not Contracting Parties to the respective international agreements.

BUDGETARY IMPLICATION: the proposal has no implications for the European Union's budget.