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**UPC AND PRIVATE INTERNATIONAL LAW  
(CHANGES TO THE BRUSSELS I BIS REGULATION)**

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Introduction

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1. **Regulation No 542/2014** “amending Regulation No 1215/2012 as regards the rules to be applied with respect to the UPC and the Benelux Court of Justice”
2. Insertion of **Articles 71a to 71d** in Regulation No 1215/2012 (Brussels I bis)
3. **Main issue** of private international law : « courts common to several MS »
  - a) UPC
  - b) Benelux Court of Justice

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## The UP and the UPC

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- 1. The Unitary Patent**
  - Regulation No 1257/2012 implementing enhanced cooperation in the area of the creation of unitary patent protection
  - Regulation No 1260/2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements
- 2. The Unified Patent Court**
  - Agreement on a Unified Patent Court, done at Brussels on 19 February 2013

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## The international jurisdiction of the UPC (Art. 31 of the UPC Agreement)

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**« The international jurisdiction of the UPC shall be established in accordance with Regulation No 1215/2012 or, where applicable, on the basis of the Lugano Convention »**

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**UPC « deemed to be » a court of a Member State**  
**(Art. 71a of the Regulation)**

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« 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 »

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**The general jurisdiction of the UPC**  
**(Art. 71b(1) of the Regulation)**

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« 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 MS party to the instrument establishing the common court **would have jurisdiction** in a matter governed by that instrument »

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**Defendants not domiciled in a MS:**  
**extension of the ordinary jurisdiction rules**  
**(Art. 71b(2), par. 1 of the Regulation)**

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« The jurisdiction of a common court shall be determined as follows: (...)

(2) where the defendant is not domiciled in a MS, and this Regulation does not otherwise confer jurisdiction over him, Chapter II shall apply as appropriate regardless of the defendant's domicile »

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**Defendants not domiciled in a MS:**  
**damage arising outside the Union**  
**(Art. 71b(3) of the Regulation)**

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« The jurisdiction of a common court shall be determined as follows: (...)

(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 MS party to the instrument establishing the common court and the dispute has a sufficient connection with any such MS. »

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## Provisional and protective measures (Art. 71b(2), par. 2 of the Regulation)

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« The jurisdiction of a common court shall be determined as follows: (...)

(2) (...) 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 »

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## Lis pendens and related actions (Art. 71c of the Regulation)

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« (1) Articles 29 to 32 shall apply where proceedings are brought in a common court and in a court of a MS 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 UPC and in a court of a MS party to the UPC Agreement. »

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## Recognition and enforcement of judgments

### (Art. 71d of the Regulation)

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**« 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 MS not party to the instrument establishing the common court; and

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

**However, where recognition and enforcement of a judgment given by a common court is sought in a MS 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 »**

(see Art. 82 UPC Agreement)

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## Conclusion

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- Revision passed almost unnoticed
- Rules derogating from the ordinary jurisdiction rules of the Brussels I bis Regulation
- Rules having to be combined with the internal rules on the competence of the divisions of the CFI (Art. 33 UPC Agreement)
- Main impact in matters relating to tort, delict or quasi-delict (Art. 7(2) of the Brussels I bis Regulation)
- Rule on jurisdiction relating to damage arising outside the Union unclear
- Rules on lis pendens and related actions unclear
- Adaptation of the Lugano Convention?

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**Thank you for your attention !**

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**Any questions?**

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