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**NOTE**

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From: Presidency  
To: Delegations

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Subject: Supplementary Protection Certificates (SPCs)  
- Discussion paper

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**Introduction**

At the last Intellectual Property Working Party meeting under the Danish Presidency, on 5 December 2025, the feasibility of relying on Article 114 TFEU for the unitary SPCs proposals was explored in order to respond to the objections of the Council Legal Service (CLS) on the choice of Article 118 TFEU for the unitary SPC proposals.

In order to respond to the request of Member States, this paper aims to provide a brief overview of the key elements of this approach as presented at the last IP Working Party. However, it should be noted that this newly-envisaged model has only been discussed preliminarily and the details still have to be fleshed out.

This overview is not to be understood as a Presidency proposition on the matter. It is meant to provide delegations with a brief written summary of the ideas exchanged regarding the legal basis, to allow Member States to make a first assessment of these initial ideas and to facilitate further discussions.

The Presidency remains committed to further discussing the concepts suggested so far and will follow the guidance of Member States when setting the course for further work on the SPC package.

### **Main elements of the model presented at the IP Working Party on 5 December 2025**

**General principle:** On the basis of Article 114 TFEU, it would be possible to cover the territory of (at least) the 18 unitary patent Member States by creating a concept which would take effect in the Member States as a bundle of national SPCs, and not as a unitary title.

**The nature of SPCs granted:** No new, EU-wide Intellectual Property (IP) right would be created. Instead, the protection would be provided through a bundle of national SPCs. Even though the SPCs under this model would be national rights, the bundling of these national SPCs would enable concretely covering the **territorial scope** of the underlying unitary patent. At the same time, the protection would not be restricted to that territory – depending on which Member States are designated in the application, the bundle could also include non-UPCA Member States.

With regard to the **nature of the protection** being granted, the SPC based on a unitary patent would, in those Member States where the basic patent has unitary effect, provide for the same rights and limitations as the underlying unitary patent. This could be complemented with appropriate provisions, to take account of the non-UPCA Member States designated in the application.

**Effects:** No ‘unitary’ effect, as would normally be the case for unitary IP rights, would be provided for under the newly-proposed model. It will therefore require further reflection how this would affect, inter alia, revocation actions which would not be automatic in all UP-Member States – while noting that, where the conditions are met, the UPC may invalidate several corresponding SPCs through a single decision. While the SPCs would be national, there may be avenues to replicate the unitary effect by inserting specific provisions in the Regulation, and, as necessary, by amending the UPCA.

**Conditions for the application:** The application would be based on a basic patent which is a European patent (possibly having unitary effect) in force in the designated Member States. It was initially suggested that, in case of a European patent with unitary effect, there would be no obligation to designate in the application for an SPC all Member States in which the basic patent has unitary effect. However, it was not excluded to introduce such an obligation.

*Bearing in mind that this model should not merely replicate the recast proposals, delegations are invited to give their views as to whether such obligation should be introduced.*

**Centralised procedure:** The SPC protection would be obtained through a centralised application procedure where:

- The applicant files a single application designating those Member States where protection is sought (see section above);
- The application undergoes a centralised examination (as currently envisaged in the recast proposal);
- The designated authority [TBC] would then (in the event of a positive examination) approve the issuing of a corresponding set of national SPCs for the territories of the Member States designated in the application.

*The concept of granting national SPCs in a bundle has not yet been discussed in detail. Delegations are invited to reflect on the feasibility and procedural requirements of tasking one designated authority to grant national SPCs.*

### **Implications and viability of the newly-proposed model**

- Procedural harmonisation: The proposed model replicates the nature of the protection of the underlying patent, and it harmonises to a certain extent the effects of these SPCs with an application in all Member States. It would also seem possible to differentiate the effects between SPCs granted in the UPCA Member States and non-UPCA Member States.
- It remains to be assessed how this approach would reflect on additional issues such as the granting authority and languages.

## **Conclusion**

When considering any such new model, care should be taken to ensure that it does not constitute a mere duplication of the mechanism providing the protection proposed in the two recast proposals.

Delegations are invited to give their views on the elements of the newly-proposed model outlined above in the upcoming Working Party meetings.

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