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CONTRIBUTION

From:	Bulgaria, Croatia, Finland, France, Greece, Italy, Luxembourg, Romania and Sweeden
To:	Working Party on Intellectual Property (Patents)
N° prev. doc.:	10909/25, 12208/25
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Subject:	Supplementary Protection Certificates (SPCs) - Joint comments from Bulgaria, Croatia, Finland, France, Greece, Italy, Luxembourg, Romania and Sweeden

Delegations will find attached joint comments of the above-mentioned delegations on the SPC proposals.

JOINT COMMENTS from BULGARIA, CROATIA, FINLAND, FRANCE, GREECE, ITALY, LUXEMBOURG, ROMANIA AND SWEDEN

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The unitary patent system is universally praised by users and its further development through the creation of the unitary supplementary protection certificate (USPC) – currently under discussion in the Council - would be a decisive lever for the competitiveness of the single market.

Both the conclusions of the Draghi report and the Commission's strategy for the single market set a clear course: all Member States should join the system and the Commission should ensure that it is promoted and attractive.

In this context, the swift creation of the USPC should be fully in line with these recommendations. As a necessary and long-awaited complement to the European patent with unitary effect, **this reform must therefore be fully aligned with it.**

Two guiding principles should underpin this reform:

i) The USPC system must be **simple, predictable, legally secure and cost-effective at all stages** (application, assessment, issuing, registration and definition of the associated litigation procedures).

ii) The USPC must be tailored in full alignment with the UPC and Unitary European Patent System. **Therefore, the UPC should be competent for both the appeal of the decision to grant or of refusal of the USPC and the invalidity action.**

After careful examination, entrusting the USPC to the EUIPO would inevitably lead to increased legal uncertainty, administrative burden, and institutional fragmentation. Similarly, and contrary to what is proposed in document ST10909 (*Joint proposal by the Polish Presidency and the incoming Danish Presidency for a compromise on major building blocks of the SPC proposals*), we do not support a system where one national administration would be in charge of granting (or refusing) the unitary SPC. A unitary title that would be valid across multiple Member States through a single national administrative act would introduce a new legal construction with unforeseeable consequences and a highly questionable legal robustness. Furthermore, this approach would undermine the consistency of the Unitary Patent framework, dilute the fundamental role of the UPC, and create significant risks of legal fragmentation. **Therefore, we believe that the European Patent Office (EPO) remains the most relevant organization to be entrusted with the role of central authority for granting USPCs.** This position, fully consistent with EU law, is rooted in the Unitary patent System, the EPO's technical expertise and established procedural infrastructure for managing patent-related titles. Against a backdrop of tight budgets and the competitiveness crisis, the EU also needs to be pragmatic. The aim of this reform is to usefully complement the unitary system by building on what already exists. **In view of the current simplification trend, it would not be acceptable, particularly for small and medium-sized enterprises, to have to apply to different organizations and judicial bodies** for two intrinsically linked IP titles, the European patent with unitary effect and the USPC.

The EPO should be entrusted with the administrative tasks but also the grant/refusal of the USPC**.** The examination process however should be conducted **with a strong involvement of national patent offices (NPOs**) which already have a solid technical and legal assessments experience. This cooperation should be facilitated through an examination panel composed of national experts. **This panel – formally and administratively attached to the EPO – should take the decision to grant the SPC**. This approach guarantees high-quality decisions based on robust technical and legal assessments, while simultaneously preserving national expertise and ensuring consistent practice.

Competence in matters of **appeals of the decision of refusal or grant, invalidity and infringement** should be **clearly and exclusively assigned to the Unified Patent Court** (UPC), thus avoiding duplication of competences or overlapping procedures and in the end a major risk of fragmentation thus missing the main objective of the reform.

In conclusion we call upon the Presidency, in close cooperation with the Member states, to operationalise the canvas in the direction outlined above as quickly as possible, by addressing the remaining operational and legal questions that have been raised.

We look forward to continuing the work on this dossier and to support the Presidency in its work to deliver on the highly prioritised USPC-reform.

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