Council of the European Union
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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Intellectual Property (Patents)
N° prev. doc.:	5438/26
N° Cion doc.:	8851/23, 8869/23, 8887/23, 8894/23
Subject:	Supplementary Protection Certificates (SPCs) – Member States comments

Following receipt of Finland's contribution, delegations will find attached a revised compilation of comments to the discussion paper set out in document 5438/26. The compilation now includes comments by CZ, FI, FR, HU, IE, IT, NL, PL and SE .

CZECH REPUBLIC (CZ)

Comments of the Czech Republic on the proposal for the possible use of Article 114 TFEU as the legal basis for the proposals for regulations on unitary SPCs (ST 5438/26)

The Czech Republic applies a scrutiny reservation to the proposed possible solution to the issue of the legal basis.

After consultation with the relevant department of the Ministry of Foreign Affairs, we continue to believe that the use of Article 118 TFEU as the legal basis for the regulations under discussion is possible and, if the objective of the new legislation is to create a new intellectual property right with truly unitary protection, we consider its use to be necessary.

However, if it is not possible to reach agreement on the use of Article 118 TFEU as the legal basis, the Czech Republic may agree to the use of Article 114 TFEU as the legal basis, provided that the regulations under discussion are amended in the sense of merely harmonizing the process and conditions for granting (bundles of) national SPCs.

When setting up a system based on Article 114 TFEU, care must be taken to ensure that:
1) harmonization leads to added value compared to the regulations on „classic“ SPCs (recast versions);
2) at the same time, the new system does not create de facto uniform effects within the meaning of Article 118 TFEU, as the Court of Justice of the EU could then assess the harmonization legal basis as insufficient.

PUBLIC

FINLAND (FI)

Comments of Finland on the Discussion paper on Supplementary Protection Certificates (doc. 5438/26)

PUBLIC

Finland greatly appreciates the efforts of the Presidency as well as the Council Legal Services to come up with viable solutions with regard to the SPC-proposals, so as to move forward and reach an acceptable outcome with regard to this file.

However, unfortunately we do not find the suggested way forward with a creation of 'bundle' of national SPCs based on art. 114 TFEU to be a viable solution.

For FI, the creation of a truly unitary SPC system that complements the unitary patent remains the most important aspect of the SPC reform. An approach based on unitary title can bring about harmonization, achieve legal certainty, cost efficiency and serve as an incentive for innovation for European industries. We fear that the 'bundle approach' would fail to bring about these objectives.

However, we remain fully committed to working constructively so as to find a way forward with regard to this file.

RÉPUBLIQUE
FRANÇAISE
Liberté
Égalité
Fraternité

PUBLIC

Paris, 4 février 2025

NOTE DES AUTORITÉS FRANÇAISES

Objet : Propriété intellectuelle – Proposition de règlement sur le CCP unitaire - Commentaires écrits des autorités françaises sur le document 5438/26 - Note des autorités françaises

Ref : document 5438/26

Commentaires écrits des autorités françaises sur le document 5438/26

Les autorités françaises remercient la présidence pour ses efforts visant à faire avancer le dossier CCP et pour avoir partagé par écrit la proposition du Service Juridique du Conseil.

Nous sommes toutefois surpris et préoccupés par l'orientation de cette dernière proposition. Un faisceau de CCP nationaux ne permettrait pas de créer un CCP véritablement unitaire, qui est la pierre angulaire de cette importante réforme.

S'appuyer sur un faisceau de CCP nationaux risquerait de réintroduire de la complexité institutionnelle, de la fragmentation juridique et un risque accru de litiges, compromettant ainsi l'efficacité du système.

Après environ trois ans de négociations, nous voulons éviter de consacrer un temps précieux à une proposition supplémentaire qui ne permet pas d'atteindre les objectifs d'harmonisation, de simplification et d'accessibilité visés par le paquet brevet.

Les autorités françaises restent engagées dans le dossier du CCP unitaire et, sur la base des discussions menées sous la Présidence Danoise, nous sommes impatients de travailler en étroite collaboration avec la Présidence, la Commission et les États membres afin de trouver une solution qui offre un titre véritablement unitaire, cohérent et conforme au paquet du brevet unitaire, et qui réponde ainsi aux besoins de toutes les parties prenantes.

Written comments of French autorities on document 5438/26

PUBLIC

French autorities are grateful to the Presidency for its efforts to move forward the SPC file and for submitting into writing the Council Legal Service proposal.

We are however surprised and concerned about the direction of the latest proposal. A bundle of national SPCs would not bring about a truly unitary SPC, which is the cornerstone of this important reform.

Relying on a bundle of national SPCs would risk reintroducing institutional complexity, legal fragmentation, and increased litigation risk, thereby undermining the effectiveness of the system.

After about three years of negociations, we want to avoid spending precious time on an additional proposal that is unable to achieve the intended harmonisation, simplification and accessibility goals of the patent package.

French autorities remain committed to the USPC dossier and, building on the discussions held during the Danish Presidency, we look forward to working closely with the Presidency, the Commission and the Member States to find a solution that provides a genuine unitary title,that is coherent and consistent with the unitary patent package and thus meets the needs of all stakeholders.

HUNGARY (HU)

PUBLIC

Comments of Hungary on the Discussion paper on Supplementary Protection Certificates (doc. 5438/26)

We would like to thank the Cypriot Presidency for preparing the discussion paper.

First of all, we appreciate the Presidency's and the Legal Service's efforts to elaborate a new concept which would solve the problems regarding the legal basis of the unitary SPC proposals.

While we understand that this paper aims to give only a brief, introductory overview on a possible new concept that would replace the unitary SPC title and the details will be elaborated at a later stage, we would like to share our main concerns and questions regarding the key elements of the concept:

- our major concern is that the new concept would enable the designated central authority/a Member State's IP office to grant a bundle of national SPCs. We believe that this is not a viable solution, and creates constitutional problems since the granting of national SPC falls exclusively within the competence of NPOs. It is unclear what would be requested in the application, given that there is no such legal title as "bundle of national SPCs". As, according to our understanding, the proposal is still in the early stages, we only assume that the application would likely be similar to the centralized application. This prompts the question of the purpose of such a proposal in relation to the recast proposal, given that the only difference lies in the designated authority and the legal remedies.
- The Council Legal Service mentioned during the previous Working Party that it is possible for the granted SPCs to have different effect in the Unitary Patent (UP) Member States and in the non-UP Member States. We would welcome more details on how this differentiation could be made.
- How would the „bundle of national SPCs" be treated as object of property? E.g. could these SPCs be licensed or transferred only as a bundle or separately?
- Furthermore, if the designated office would be the EPO, it is not clear whether the EPC gives a competence to the EPO to grant national IP law titles, given the fact that even in the case of the basic (European) patents it is the national IP office that validates the European patent to the territory of a given Member State.
- Lastly, the concept is also problematic as regards to the remedies: it is also not clear that if a national SPC was granted by a central authority or a designated NPO, how this decision could be reviewed by the national court of another Member State. Would the „bundle of national SPCs" be granted by the central authority/one NPO in one decision? If yes, how could this single decision be appealed before different courts?

IRELAND (IE)

Following from the recent request for commentary at the IP Working Party on Wednesday 21 January on the discussion paper on SPCs, IE would like to submit the following commentary:

We cautiously welcome the proposed new direction and consider it a positive development, subject to appropriate safeguards and further assessment. We appreciate the efforts made by the Danish and Cypriot Presidencies to facilitate progress on the matter.

In recognising the complexity of the subject matter, our IP experts have identified several preliminary areas for further consideration, and these are currently undergoing a more detailed examination. As such, IE retains a scrutiny reserve. We remain committed to contributing constructive feedback and will provide more detailed observations in writing following additional discussions at the Working Party.

PUBLIC

ITALY (IT)

Comments on the Discussion paper on Supplementary Protection Certificates (doc. 5438/26)

PUBLIC

Following the last IP WP meeting, we are pleased to share with you our comments in writing, to confirm what was already indicated by the Italian delegation during the meeting.

We're grateful to the Presidency for its efforts to move the SPC file forward and for submitting into writing the Council Legal Service proposal.

We are however surprised and concerned about the direction of the latest proposal. A bundle of national SPCs would not bring about a truly unitary SPC, which is the cornerstone of this important reform.

Relying on a bundle of national SPCs would risk reintroducing institutional complexity, legal fragmentation, and increased litigation risk.

After almost three years of negotiations, we want to avoid spending precious time on an additional proposal that is unable to achieve the intended harmonisation, simplification and accessibility goals of the patent package.

We remain committed to the USPC dossier and, building on the discussions held during the Danish Presidency, we look forward to working closely with the Presidency, the Commission and the Member States to find a solution that provides a genuine unitary title, that is coherent and consistent with the unitary patent package.

Thank you for your consideration and your continued collaboration.

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NETHERLANDS (NL)

Comments on the Discussion paper on Supplementary Protection Certificates (doc. 5438/26)

PUBLIC

1. Introduction

The Netherlands wishes to express its sincere gratitude to the Presidency for its continued dedication and efforts in managing the complex Supplementary Protection Certificate (SPC) file. We appreciate the opportunity to provide these preliminary comments regarding the recent direction of the proposal.

2. Preliminary Assessment: the "Bundle" Model vs. Genuine Unitarity Title

Following an initial scrutiny of the provided text, we must express a significant degree of concern regarding the current trajectory of the proposal. The approach presented represents a substantial and unexpected departure from the options previously deliberated within this Working Party.

Our primary substantive concern lies in the nature of the proposed title. The current draft describes a bundle of national SPCs, based on Article 114 TFEU, rather than a singular, truly unitary SPC.

This "bundle" approach fails to deliver the unitary effect which serves as the fundamental cornerstone of the Unitary Patent system. By reverting to a collection of national rights, the proposal risks:

- Reintroducing institutional complexity: Negating the administrative efficiencies intended by the reform.
- Legal fragmentation: Allowing for diverging national interpretations of the same title.
- Increased litigation risk: Subjecting the title to separate national revocation actions, which creates a precarious environment for both innovators and generic companies.

A truly unitary SPC is vital for the European Union’s innovation landscape. To maintain competitive advantage, industry stakeholders require a system characterized by simplicity, predictability, and legal security.

The "bundle" model fails to meet the "one-stop-shop" requirement that is essential for reducing the administrative burden. Furthermore, this approach potentially undermines the competence and centralized benefits of the Unified Patent Court, as the lack of a single title makes centralized enforcement and validity proceedings impossible.

3. Conclusion

While we recognize the Presidency's efforts to reach a compromise, we believe the current "bundle" approach is legally and practically insufficient to meet the objectives of harmonisation and the Unitary Patent package.

The Netherlands remains fully committed to the USPC project. We look forward to collaborating closely with the Presidency, the Commission and the Member States to find a solution that provides a genuine unitary title.

PUBLIC

POLAND (PL)

Poland would like to thank the Presidency for document 5438/26.

Poland is open to examining the proposal to move from Article 118 TFEU to Article 114 TFEU as the legal basis. At this stage, however, only a general outline of the concept has been presented, and a number of issues require further clarification and in-depth analysis.

In particular, it is not clear to us whether the proposed concept envisages that the designated authority would directly grant a bundle of national SPCs - which would raise significant legal concerns - or whether it would issue a single legal title (e.g. a "European SPC") that would produce effects as a bundle of national SPCs only following validation, in a manner comparable to the European patent. From Poland's perspective, it is essential to draw a clear distinction between the centralisation of the procedure and the legal effects of the decision.

With regard to the concept whereby a bundle of SPCs based on a unitary patent could be subject to a single revocation decision before the UPC, it remains unclear whether such a decision would have automatic effect in all Member States concerned and whether this would, in practice, amount to a form of mutual recognition of judicial decisions. Poland has serious doubts as to whether such an approach would be legally feasible under the current legal framework. In our view, this issue requires further clarification and comprehensive legal analysis.

Should such a solution nevertheless prove to be legally feasible, Poland considers it essential that an SPC application explicitly indicate all Member States falling within the jurisdiction of the UPC. This would ensure transparency of the system and legal certainty for all stakeholders.

At the same time, for Poland it is of fundamental importance that it be clearly guaranteed that the competences of the UPC do not, in any respect, extend to Member States not participating in the UPC system, and that the effects of UPC decisions remain strictly limited to the Member States falling within its jurisdiction.

Finally, Poland takes note of the statement made by the Council Legal Service at the last meeting (21.01.2026), according to which, in a system based on Article 114 TFEU, the key element would be the replication of effects rather than the creation of a new unitary right. Further clarification would therefore be welcome as to what is meant by the "replication of effects" and what consequences this would entail for both UPC and non-UPC Member States.

SWEDEN (SE)

Government Offices of Sweden

30 January 2026

PUBLIC

Ministry of Justice
Division for Intellectual Property and Transport Law

Sweden's comments on Presidency discussion paper regarding Supplementary Protection Certificates (5438/26)

Sweden would like to sincerely thank the Cypriot Presidency for its commitment and efforts in advancing the Supplementary Protection Certificate (SPC) file and for submitting the Council Legal Service proposal in writing.

Following an initial examination of the text, we note with great concern the direction taken in the latest proposal. The unitary SPC is the cornerstone of this important reform, and a bundle of national SPCs would not bring about a truly unitary SPC. Rather, reliance on a bundle of national SPCs would undermine legal certainty by reintroducing institutional complexity, legal fragmentation and an increased risk of parallel litigation in several Member States.

After almost three years of negotiations, we would caution against devoting further time to an additional proposal that does not contribute to achieving the patent package's objectives of harmonisation, simplification and accessibility.

Notwithstanding the concerns outlined above, Sweden remains committed to the dossier and – building on the discussions held under the Danish Presidency – looks forward to working constructively with the Cypriot Presidency, the Commission and the Member States to find a solution that delivers a genuine unitary title that is coherent and consistent with the unitary patent package.

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