

Supplementary protection certificate for plant protection products. Recast

2023/0128(COD) - 28/02/2024 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 523 votes to 26, with 69 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on the supplementary protection certificate for plant protection products (recast).

As a reminder, the proposal for a recast of Regulation (EC) No 1610/96 lays down the rules on the supplementary protection certificate for plant protection products protected by a patent in the territory of a Member State and subject, prior to being placed on the market as a plant protection product, to an administrative authorisation procedure.

According to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the Commission proposal does not include any substantive amendments other than those identified as such in the proposal. As regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission's proposal as follows:

Conditions for obtaining a certificate

The proposal provides that the holder of more than one patent for the same product shall not be granted more than one certificate for that product. However, where two or more applications concerning the same product and emanating from two or more holders of different patents are pending, one certificate for that product may be issued to each of those holders, where they are not economically linked.

According to Members, the same principle should apply *mutatis mutandis* to applications submitted by the holder concerning the same product for which one or more certificates or unitary certificates have been previously granted to other different holders of different patents.

Opposition

The opposition should include **any evidence** the opponent relies on in support of the opposition. If the opposition panel notes that the notice of opposition does not comply with the provisions of the Regulation, it should reject the opposition as inadmissible, and communicate its decision as well as its reasoning for that decision to the opponent, unless these deficiencies have been remedied before expiry of the opposition filing period.

In cases where several oppositions have been filed against an examination opinion, the Office should deal with the oppositions jointly and issue one single decision in respect of all oppositions filed.

It is stated that the Office should issue a decision on the opposition, including a detailed reasoning for that decision, within 6 months, unless the complexity of the case requires a longer period.

Full transparency should be ensured throughout the whole opposition proceeding, which shall be open, whenever possible, to public participation.

Competent national authorities

On a request made to the Office, any competent national authority may be appointed by the Office as a participating office in the examination procedure. Once a competent national authority is appointed, that authority should designate one or more examiners to be involved in the examination of one or more applications for unitary certificates based on relevant expertise and sufficient experience required for the centralised examination procedure.

Examination panels

The assessments should be conducted by an examination panel including one member of the Office as well as two examiners from two different participating competent national authorities. When setting up an examination panel, the Office should ensure the following:

- **relevant expertise and sufficient experience** in the examination of patents and supplementary protection certificates, ensuring, in particular, that at least one examiner has a minimum of five years of experience in the examination of patents and supplementary protection certificates;
- where possible, **geographical balance** amongst the participating offices.

Appeals

Parliament underlined the need to **safeguard procedural rights** and ensure a complete system of remedies.

In case of an appeal, a written statement setting out the grounds of appeal, including the evidence supporting those grounds, should be filed within 3 months of the date of notification of the decision. Any reply to the statement of grounds of appeal should be submitted in writing no later than three months from the date of the filing of the statement of grounds of appeal. The Office should, where applicable, fix a date for oral proceedings within three months of the filing of the reply or within six months following the filing of the statement of grounds of appeal, whichever is earlier. The Office should issue a written decision within three months of the date of the oral hearing or of the filing of the reply to the statement of grounds of appeal, as applicable.

When appointing members of the Boards of Appeal in matters concerning applications for unitary certificates, due consideration should be given to their previous experience in matters concerning supplementary protection certificates or patent law

Taking of evidence

If the Office or the relevant panel considers it necessary for a party, witness or expert to give evidence orally, it should issue a summons to the person concerned to appear before it. Where an expert is summonsed, the Office or the relevant panel, as applicable, should verify that that expert is free of any **conflict of interest**.

Report

By five years after the date of application, and every five years thereafter, the Commission should carry out an evaluation of the application of Chapter III (Centralised procedure for certificates) and present a report on the main findings to the European Parliament and to the Council.