



To the attention of Rodrigo Pacheco
President of the Federal Senate
Arthur Lira
President of the Chamber of Deputies

Brussels, 20 September 2021

Object: Concerns with proposed amendments to Brazil's intellectual property law

Hr. Mr. Pacheco and Hr. Mr. Lira,

As Brazil's second largest trading partner, the European Union enjoys close economic ties with your country. Indeed, trade and foreign direct investment continue to be a key component of the European Union - Brazil relationship.

As such, we are writing to express concerns with PL n° 12/2021, and the resulting Law n° 14.200 of September 2, 2021, which fundamentally undermine the intellectual property (IP) environment in Brazil and call into question how European industries, from many sectors which rely on IP protections, can invest and trade in Brazil.

Strong IP regimes stimulate innovation and creativity and are necessary for economic growth, competitiveness, and job creation. Moreover, as the European Commission notes in its recent report on the protection and enforcement of IP rights in third countries, IP rights are “... *directly linked to the production and distribution of new and authentic goods and services from which all citizens benefit.*”

The report also describes specific positive developments related to Brazil's IP regime. It cites Brazil's National IP Strategy of 2020 (“Strategy”), which makes clear that Brazil needs to create an IP system which “...*incentivizes creativity, investment and innovation....*”

Unfortunately, PL n° 12/2021, and the resulting Law n° 14.200, do not help Brazil meet the goals outlined in the Strategy. On the contrary, they call into question how seriously Brazil takes its international commitments, including obligations outlined in the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”). Both pieces of legislation are based on the false premise that IP is a barrier to access. IP allows for the voluntary licensing of technology, which facilitates access without compromising incentives

for innovation. Indeed, the COVID-19 pandemic has shown how IP was central to the research and development of new therapeutics and allowed for the sharing of technology to scale up vaccine manufacturing worldwide.

Moreover, PL n° 12/2021 fundamentally upends the compulsory licensing scheme outlined in the TRIPS Agreement by facilitating compulsory licensing on vague and ambiguous grounds and introducing exceptions to important IP norms not contemplated in the TRIPS Agreement.

The requirement in PL n° 12/2021 mandating that innovators share necessary trade secrets and *know-how* to exercise patents subject to compulsory licenses is unprecedented and inconsistent with obligations protecting trade secrets in the TRIPS Agreement. Forcing technology transfer would deny innovators the certainty and predictability needed to confidently invest and accelerate the launch of new products in Brazil.

While Law n° 14.200 is highly problematic, it eliminates some of the more egregious elements of PL n° 12/2021 including (1) provisions related to mandatory technology transfer (including trade secrets, technical information, and know-how) and the sharing of biological material related to an issued compulsory license and (2) a provision that would have applied compulsory licensing mechanisms to COVID-19 related products, including treatments and vaccines. Indeed, the press release accompanying Law n° 14.200 correctly recognizes that IP is facilitating the voluntary partnerships helping scale up the manufacturing and distribution of COVID-19 vaccines and therapeutics in Brazil.

There are better alternatives when it comes to creating an environment in Brazil which promotes innovation, foreign direct investment, and access to new products. I am confident that we can work together in a mutually beneficial manner that helps Brazil pursue policies which protect innovation and creativity, with the goal of making clear that Brazil's legal regime embraces today's knowledge-based economy, industries, and practices.

Kind regards,

Gianna GANCIA MEP