



2021/2007(INI)

15.7.2021

OPINION

of the Committee on Development

for the Committee on Legal Affairs

on an intellectual property action plan to support the EU's recovery and
resilience
(2021/2007(INI))

Rapporteur for opinion: Patrizia Toia

PA_NonLeg

SUGGESTIONS

The Committee on Development calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Welcomes the communication on an intellectual property action plan to support the EU's recovery and resilience, but regrets that the focus on international cooperation and assistance to developing countries is poorly addressed; in this regard, calls on the EU to assume the role of a key global player in the field of intellectual property and to lead international efforts in order to accelerate and facilitate the sustainable development of low and middle income countries;
2. Highlights that, according to UNCTAD, while developed countries have been able to mobilise massively their monetary and fiscal resources to prop up their economy (estimated at between 20 and 25 % of their GDP), the poorest countries have mobilised just 1 % to mitigate the socio-economic damage caused by the pandemic crisis¹; emphasises that a diversified economy is a prerequisite for resilience to future shocks; underlines that the main barriers to the industrial upgrading of developing countries are production capacity constraints such as access to technology;
3. Calls on the Commission to continue strengthening intellectual property rights (IPR) protection and enforcement in non-EU countries, also through an increase in funding for targeted EU technical cooperation programmes and capacity building, such as the three ongoing IP Key cooperation programmes with China, South-East Asia and Latin America; in this context, encourages the Commission, on the basis of the EU's experience, to assist policymakers and enforcement authorities and provide them with knowledge and guidelines for improving the capacity to tackle infringements of IPRs, and to promote feasible solutions, which could significantly reduce costs and simplify the procedures for obtaining, maintaining and enforcing the protection of IPRs, as well as to give information to rights holders about the changing infringement landscape and the supply of counterfeit goods; welcomes in particular the intention to promote better generation and management of intellectual property (IP) on the African continent as part of a joint partnership building on the current four-year cooperation programme for Africa (AfrIPI), the first of its kind, which will lead to a better microclimate for SMEs, contribute to increasing competitiveness and flexibility, and, in the long-term, enhance the resilience of companies which operate in developing countries; urges the Commission to work towards forging a stronger consensus on the importance of IPR protection in increasing creativity, supporting bottom-up research and promoting socioeconomic growth and development, through which innovators and investors can encourage domestic innovation and attract sustainable foreign direct investment, also by offering the means to participate in global economic activities and by strengthening exports of local products;
4. Welcomes the proposals for measures to promote the effective use and implementation of intellectual property, to facilitate access to and exchange of assets protected by

¹ 'Reforming the International Trading System for Recovery, Resilience and Inclusive Development', UNCTAD Research Paper (No 65), April 2021, p. 3.

intellectual property rights and to combat infringements of intellectual property rights; points out, however, that it is very important that these measures should not result in new or excessive obligations on businesses, in particular in the SME sector;

5. Points out that SMEs should be able to take full advantage of their technology and innovative products, processes or methods; underlines the importance of protecting IPRs, since infringements lead to losses for citizens and producers, such as loss of jobs, sales or tax revenue, and could inflict serious damage and pose risks to the health and safety of consumers;
6. Recalls that one of the main challenges for developing countries is to climb up the global value chain through economic diversification, which necessitates fair and pro-development global trade rules;
7. Calls on the Commission to boost research to determine how the IP strategies of companies based in developing countries differ from firms located in developed countries, and how legal systems in developing countries address IP protection; strongly encourages the Commission and the EU Delegations to assist producers and their associations as well as local authorities in developing countries in unlocking the potential of IP and reaping the economic value of local innovations, geographical indications and traditional knowledge; reiterates its call, in this regard, to respect the progress achieved in the international protection of indigenous peoples' rights over their genetic resources and associated traditional knowledge; encourages, moreover, consultation with business representatives and their associations, as well as with other interested groups, in order to collect and analyse the available data and information, with a view to ensuring that decisions taken in this field take into account the interests of all stakeholders in the broadest and most favourable manner possible; calls on the Commission to increase efforts to offer qualified consulting services with the purpose of helping innovative enterprises at the different stages of the research and innovation process, as well as to provide technical assistance and raise awareness as to the significance of the opportunities which new technologies, including digital means, offer for growth and competitiveness; more broadly, calls on the EU and its Member States to support regional projects such as the African Continental Free Trade Agreement, which should favour products of local enterprises and in this way support regional industrialisation processes;
8. Invites the Commission to help developing countries put in place effective policies in order to implement firmer sanctions and penalties for intellectual property right infringements, especially in relation to counterfeiting and pirated goods;
9. Calls on the Commission to ensure that owners of standard essential patents commit to licensing their patents on fair, reasonable and non-discriminatory terms in developing countries;
10. Recognises that IP systems contribute to the development of new medicines, but stresses that they must comply with international human rights law, public international law and public health requirements; notes that strong IPRs may limit access to medicines in developing countries while not necessarily encouraging pharmaceutical innovation that responds to the needs of developing countries; encourages the

Commission, therefore, to initiate a broader discussion at World Trade Organization (WTO) level on how best to avoid barriers to access to vaccines, medicines and other critical health services, in particular in the event of major health crises; stresses at the same time that producers of generic medicines, unlike producers of innovative medicines, tend to be more regional; asks the Commission in particular to promote regulatory solutions that encourage competition in generic medicine production while maintaining a balance between generic and innovative medicines; calls on the Commission and the Member States to increase efforts to offer qualified technical assistance and research funding in view of developing vaccines that prevent future outbreaks of diseases recurrent in developing countries, such as malaria or zika;

11. Welcomes the announcement of the revision and harmonisation of the legislation on industrial designs and the recognition of the need to develop the protection of geographical indications for non-agricultural products; recognises that such measures are necessary and can have a very positive impact on business competitiveness;
12. Stresses that a more equitable distribution of vaccines around the globe is essential to combat effectively the spread of COVID-19 and its mutations; recalls that, while COVAX, the vaccine pillar of the World Health Organization's (WHO) Access to COVID-19 Tools (ACT) Accelerator initiative, is aiming to have two billion vaccine doses available by the end of 2021, it will neither be enough to respond to the vaccination needs of the poorest countries to reach herd immunity, nor does it constitute an appropriate integrated global approach for scaling up production capacities worldwide;
13. Notes that the lack of access to affordable vaccines is still a major challenge in developing countries; considers, therefore, that investments in local manufacturing capacities, training of health professionals and the development of storage and roll-out capacities should be priorities in the EU external response to COVID-19;
14. Underlines that compulsory licensing only applies to patents as one category of intellectual property rights (IPR), but that other IPR categories are beyond the scope of compulsory licences;
15. Welcomes the fact that least-developed countries already enjoy a waiver, granted until 1 January 2033, regarding the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights provisions on pharmaceuticals, and is convinced that suggestions of removing IP protections for vaccines would not remedy the existing shortage of vaccines; urges the Commission, therefore, in cooperation with the WTO, to follow through on its promise to engage in active and constructive text-based negotiations at the WTO to work on incentivising and supporting the scaling up of production capacities for vaccines in developing countries and incentivising voluntary licensing agreements, and to launch a dialogue on existing obstacles to voluntary licensing and how to overcome them;
16. Strongly supports effective measures to address the shortage of vaccines against COVID-19, especially in developing countries, and therefore supports the Commission and the Member States in their efforts to push non-EU countries to lift existing export bans and to step up the donation of vaccines; calls on the Commission and the Member

States to further increase their efforts to support technology transfer and voluntary licensing for intellectual property rights to treat endemic or pandemic infectious diseases in the world population;

17. Notes that any decision taken within the existing framework should be conditional on the effective ramping up of global production capacity, ensuring that vaccines are fairly and evenly distributed through the removal of trade barriers on exports of vaccines, by encouraging voluntary licensing and sharing of know-how of leading pharmaceutical companies;
18. Calls on the Commission to engage in negotiations at the WTO to simplify the use of compulsory licenses under the TRIPS Agreement and provide more legal certainty to countries that use this flexibility, especially regarding the compensation to be paid; calls on the Commission to provide developing countries with technical assistance to enable the effective implementation of the current compulsory licensing framework when the circumstances provided for in Article 31 of the TRIPS Agreement occur in these countries, and to ensure that Member States smoothly implement Regulation (EC) No 816/2006 of the European Parliament and of the Council on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems, in order to export these products when requested by developing countries with insufficient manufacturing capacity facing public health crises; welcomes, in this regard, that the Commission is exploring with Member States the possibility of creating an emergency coordination mechanism to be triggered when Member States consider issuing a compulsory licence;
19. Insists upon the need to support global open access to COVID-19 vaccines to scale up global production through technology transfer; underlines that the Commission has so far solely focused on encouraging Western vaccine manufacturers to share technology and licences on a purely voluntary basis;
20. Urges the Commission to maintain its strong support for innovation and intellectual property rights in global discussions;
21. Calls on the Commission to refrain from seeking expansive IP chapters in Free Trade Agreements with middle-income and lower-middle income developing countries, such as TRIPS-plus measures, and to review the existing ones in order to ensure that they are in line with the Doha Declaration on TRIPS and Public Health;
22. Is of the opinion that the EU should urgently foster multilateral arrangements at WTO level, including a treaty on pandemics, as recently proposed by the President of the European Council, as part of the 'Health and Trade Initiative' to be adopted in November 2021 during the twelfth Ministerial Conference and at the next WHO general assembly;
23. Calls on the Commission to support developing countries in reviewing their national IP laws, taking into account available flexibilities, especially the LDCs transition waivers and those not commonly used in these countries, such as the research exception and the regulatory review exception;
24. Encourages developing countries to strengthen regional value chains and intra-regional

trade and investments in health and health-related areas, notably through collective R&D efforts in medical research and regional pooling of resources; notes with concern that, according to the Global Trade Alert, as of 21 March 2020, 54 governments had introduced export curbs on key medical supplies since the beginning of that year²; stresses that regional trade pacts should be used to prevent export bans on key products in times of global and regional shortages, as in the case of the ongoing pandemic crisis;

25. Takes note of the Commission's intention to evaluate and revise the Community Plant Variety Rights (CPVR); recalls the EU's commitments to implement the 2030 Agenda and its objective to leave no one behind; stresses that small-scale farmers (SSFs) and agricultural biodiversity are critical to achieving the SDGs; accordingly, stresses the need to support a rights-based approach to implement the Declaration on the Rights of Peasants and Other People Working in Rural Areas adopted by the United Nations General Assembly at its 73rd Session in December 2018;
26. Highlights that small-scale farmers (SSFs) and agricultural biodiversity play a critical role in healthy, nutritious diets and ensuring the resilience of agricultural production systems to cope with climate change; recalls also that seed diversity is vital in building the resilience of farming to climate change;
27. Recalls that farm-saved seeds are estimated to account for over 80 % of farmers' total seed requirements in some African countries; calls for the EU to support intellectual property rights regimes that enhance the development of locally adapted seed varieties and farm-saved seeds, in line with the provisions of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), which safeguards the rights of farmers to maintain genetic resources for purposes of food security and climate change adaptation, and Article 19 of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas, according to which peasants have the right to maintain, control, protect and develop their own seeds and traditional knowledge.

² Reforming the International Trading System for Recovery, Resilience and Inclusive Development, UNCTAD Research Paper (No 65), April 2021, p. 20.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	13.7.2021
Result of final vote	+: 12 -: 4 0: 10
Members present for the final vote	Anna-Michelle Asimakopoulou, Hildegard Bentele, Dominique Bilde, Udo Bullmann, Antoni Comín i Oliveres, Ryszard Czarnecki, Gianna Gancia, Charles Goerens, Mónica Silvana González, Pierrette Herzberger-Fofana, György Hölvényi, Rasa Juknevičienė, Beata Kempa, Pierfrancesco Majorino, Erik Marquardt, Janina Ochojska, Jan-Christoph Oetjen, Michèle Rivasi, Marc Tarabella, Miguel Urbán Crespo, Chrysoula Zacharopoulou, Bernhard Zimniok
Substitutes present for the final vote	Ewa Kopacz, Iskra Mihaylova, Marlene Mortler, Patrizia Toia

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

12	+
ID	Gianna Gancia
EPP	Anna-Michelle Asimakopoulou, Hildegard Bentele, György Hölvényi, Rasa Juknevičienė, Ewa Kopacz, Marlene Mortler, Janina Ochojska
Renew	Charles Goerens, Iskra Mihaylova, Jan-Christoph Oetjen, Chrysoula Zacharopoulou

10	-
ID	Bernhard Zimniok
S&D	Udo Bullmann, Mónica Silvana González, Pierfrancesco Majorino, Marc Tarabella, Patrizia Toia
The Left	Miguel Urbán Crespo
Verts/ALE	Pierrette Herzberger-Fofana, Erik Marquardt, Michèle Rivasi

4	0
ECR	Ryszard Czarnecki, Beata Kempa
ID	Dominique Bilde
NI	Antoni Comín i Oliveres

Key to symbols:

+ : in favour

- : against

0 : abstention