1. THE FACTS: Business Facts in Peru for EU Companies

(Source: DG Trade)

<table>
<thead>
<tr>
<th>SIZE of Market:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Growth Rate in 2014: 2.4% (Source: World Bank)</td>
</tr>
<tr>
<td>EU export in goods to Peru (2014): € 3,236 million (Source: DG Trade)</td>
</tr>
<tr>
<td>EU import in goods from Peru (2014): € 4,936 million (Source: DG Trade)</td>
</tr>
<tr>
<td>Total trades in goods: € 8,172 million (Source: DG Trade)</td>
</tr>
</tbody>
</table>

Key INDUSTRY SECTORS:

Peru’s main economic sectors are mining and refining of minerals, petroleum extraction and refining, natural gas and natural gas liquefaction. The main Peruvian exports are copper and gold, followed by fishmeal. Added to this, exports of agricultural products have increased in the past years, with grapes, asparagus and mangoes as the main products. Nowadays, Peru has become the world’s largest exporter of quinoa and the main producer of tangerines in South America.

Retail services represent an important sector for the Peruvian economy, which has experienced a boost during the last years. According to the National Institute of Statistics and Informatics (INEI), this good performance was driven by several retail branches such as insecticides, pesticides, agrochemicals, power supplies, veterinary products and decorative items.
2. IPR in Peru for SMEs: BACKGROUND

Intellectual Property Rights for SMEs: Why is this relevant to you?

Intellectual Property (IP) refers to any creation, invention or sign, which can be used in commerce and is bound to its creator or inventor, capable of generating profits for its creator, inventor or right holder. Hence, it must be considered as part of the main assets in a company or industry. IP is usually divided into two branches, namely Industrial Property, which relates to inventions, designs or signs used in commerce; and Copyright (or ‘author’s right’, according to non-English definitions), which relates to literary and artistic works.

Intellectual Property Rights (IPR) are exclusive rights granted by a National Authority that allows the right holder to prohibit any unauthorized use or exploitation of their creations, inventions or signs by third parties. The referred exclusive right is temporary and will differ depending on the IPR.

The importance of IPR therefore lies in the possibility to generate assets for the companies based on the exploitation of the exclusive right granted and also the protection against unfair competitive practices.

The creation and protection of the IP elements, such as copyrights, trademarks, industrial designs, does not involve a big investment of resources compared with the advantages that it can bring. SMEs could benefit from the right protection, management and exploitation of their IP Rights since:

- May help to differentiate from competitors
- Constitute a strong basis to build a goodwill in the market
- Allow generating income through other business models such as licensing or franchising
- Could be even more important than tangible assets (e.g Coca Cola, Apple, Google)
- Allow preventing third parties from using its names, inventions, creative works...

Even though Intellectual Property Legislation enjoys a certain degree of international harmonization, Peru has some differences with EU Legislation. This Factsheet is aimed to explain such differences concerning Copyright, Patents, Industrial Designs, Trademarks, Trade Names, Geographical Indications and Appellations of Origin.

How does Peruvian IP legal framework compare to INTERNATIONAL STANDARDS?

Peruvian IP legal framework consists of a set of Andean community law and national regulations framed within different international treaties ratified by Peru, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS); the Paris Convention for the Protection of Industrial Property (CUP); the Trademark Law Treaty (TLT); the Patent Cooperation Treaty (PCT); Rome and Berne Convention; Budapest Treaty; Phonograms Convention; UPOV Convention; WIPO Convention; WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty.

Notwithstanding the fact that Peru has not ratified diverse Classification Agreements (Vienna, Nice, Locarno, Strasbourg) they are applied in practice by mandate of Andean Community. In relation to the aforementioned, Peru is part of the Andean Community of Nations (CAN).

The CAN is a trade bloc composed by Colombia, Ecuador, Bolivia and Peru in charge of the harmonization of the Andean Market that shares with the European Union some traits, such as Laws that are directly binding for all the Member States (Decisiones) under the control of the Andean Court (Tribunal Andino).

Decisions regulate different matters such as customs, occupational safety and health, migration and Intellectual Property. Decisiones 486 on the Common Regime of Industrial Property and 351 on the Common Regime of Copyright and Neighbouring Rights are the most relevant IP related ones.

Nowadays, Peru’s legal framework has simplified the registration of trademarks and has improved over the past decade.

Since March 2013, Peru is provisionally applying the bilateral EU-Peru Trade Agreement (signed in June 2012) which includes specific provisions on IPRs.

IP TIPS and WATCH-OUTS in Peru

A 2014 enforcement survey among EU businesses and stakeholders indicated for their experience in Peru:

- availability of counterfeit goods at the borders and in public markets and shops;
- reasonable IPR legislation but implementation problems;
- slow IPR procedures and administrative bureaucracy.
3. IP Rights in Peru: THE BASICS

A. Copyright and related rights

What are Copyright and related rights?

Copyright protects the creative work of any person. In order to grant protection, the work must be original, where originality is defined as the personal imprint of the author or reflect the personality of the author.

You can protect by Copyright any literary, musical, theatre, artistic, scientific or audio-visual work, regardless of its form of expression while related rights protect the right of intermediaries, such as film producers, record companies, performers or broadcasting organizations.

Copyright in Peru: What you need to know

Peruvian legislation considers the author as the original right holder and, therefore, the first owner of the moral and economics rights.

Economic rights, derived from the property of a copyrighted work, grant the author (or owner) the right to prevent third parties from: communicating to the public, reproducing, distributing and transforming the work.

Moral rights are personal rights of the author that cannot be transferred and include mainly the right to be recognized as author, the right to decide to publish the work and the right to the integrity of the work.

Economic rights can be transferred or licensed in order to allow third parties to exploit the work. The transfer or license can be done over all the economic rights recognized by the law or only in relation with some of them. In any case, the agreement must remain written.

According to Peruvian law, the author is the person who appears as such in the work, this is known as the "legal presumption of authorship".

The only requirement for a work to be protected in Peru is originality, without prejudice if the same is contrary to morality, good customs or public order.

Derivative works (see glossary) require the written authorization of the right holder of the economic rights. In other words, any transformation of the work must be considered as copyright infringement (if not, considered within the legal exceptions. e.g. parody).

With regards to collective rights management, collecting societies are non-profit organizations responsible of the defence of the economic rights of its members, which require prior authorization by the government.

The following is a list of the current existing collecting societies in Peru:

- APDAYC (authors and composers of musical works)
- UNIMPRO (phonogram producers)
- EGEDA PERÚ, (audio-visual producers)
- APSAV, (visual artists)

ANAIE, the Peruvian collecting society for performers, has divided into two new different collecting societies: SONIEM (musical performers) and INTER ARTIS (audiovisual performers). Nevertheless, as long as ANAIE’s authorization withdrawal is still pending SONIEM and INTER ARTIS cannot work properly.

HOW LONG does legal protection last?

The exclusive right granted by Copyright starts from the moment of the creation and lasts during the author’s lifetime plus seventy years after the death of the author. The starting of seventy years term may vary in certain cases (e.g. if the author remains unknown, the term will begin at the date of publication).

HOW do I register?

In Peru, the registration of a work is carried out before INDECOPI’s Directorate of Copyright (DC). The procedure is simple and cheap; you only need to:

- fill out the registration forms in Spanish (there are different registration forms depending on the kind of work)
- pay the required fee
- and submit a copy of the work
The registration can be done online (through INDECOPI’s website) or in person at INDECOPI’s offices.

_Peru protects Copyrights from the creation of the work. Registration is not mandatory although it is sometimes recommendable to facilitate the proof of its ownership or date of creation._

**WHO can register?**

Any natural person who is the author of the work or any legal or natural person holding the economic rights can apply for registration, either personally or duly represented.

For registering, you or your company must indicate a local domicile in case you do not have it, you should appoint a local representative that could be any Peruvian citizen with domicile in Peru.

**HOW much does it cost?**

<table>
<thead>
<tr>
<th>Fees</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registrations of databases, compilations, anthologies and other</td>
<td>€ 52.75</td>
</tr>
<tr>
<td>Phonogram record or recording of musical works or other sounds</td>
<td>€ 52.75</td>
</tr>
<tr>
<td>Multiple registrations of works or productions (collections, catalogues, albums and similar).</td>
<td>€ 311.84</td>
</tr>
<tr>
<td>Registration of artistic works and works of applied art (paintings, songs, photographs, maps, games, slogans, engravings, lithographs, choreography, crafts, sculptures, drawings, etc.).</td>
<td>€ 52.75</td>
</tr>
<tr>
<td>Registration of literary works (unpublished and published).</td>
<td>€ 52.75</td>
</tr>
<tr>
<td>Registration of works and audio-visual productions (film, television, video, multimedia, web pages and other recording motion pictures).</td>
<td>€ 52.75</td>
</tr>
<tr>
<td>Registration of presentations by performers (actors, circus artists, singers, dancers, orators, benders, imitators, bullfighters, magicians, mentalists, mimes, models, musicians, parodists, picks, reciters, puppeteers, ventriloquists, etc.).</td>
<td>€ 52.75</td>
</tr>
<tr>
<td>Registration of software or computer program.</td>
<td>€ 105.51</td>
</tr>
</tbody>
</table>
B. Patents

Peru provides for two main types of IPRs to protect technical solutions to problems (inventions).

- Patents, to protect products (including substances), processes or uses.
- Utility models to protect minor inventions, such as a new improvement of an already known invention that provides an extra functionality.

Non-patentable inventions, according to Article 20 of Andean Decision 486 are:

- those whose commercial exploitation must be prohibited in order to protect law and order or morality;
- inventions that may affect health or life of persons or animals, plants or the environment;
- plants, animals and essentially biological processes for the production of plants or animals that are not non-biological or microbiological processes;
- therapeutic or surgical methods for the treatment of human beings or animals, and also diagnostic methods applied to human beings or animals.

Patents in PERU: What you need to know

In order to have access to the patent protection, the new invention must fulfil the following requirements:

**Novelty:** An invention shall be considered new when it is not included in the state of the art. The state of the art comprises everything that has been made available to the public by written or oral description, by use or marketing or by any other means prior to the filing date of the patent application or, where appropriate, the recognized priority date (see Glossary) (as stated in article 16 of Decision 486).

**Inventive step:** An invention shall be regarded as involving an inventive step if, for a person in the trade with average skills in the technical field concerned, the said invention is neither obvious nor obviously derived from the state of the art (as stated in article 18 of Decision 486).

**Industrial applicability:** An invention shall be regarded as industrially applicable when its subject matter may be produced or used in any type of industry, industry being understood as that involving any productive activity, including services (as stated in article 19 of Decision 486).

Bear in mind that second use patents (see Glossary at the end of the document) are not allowed under the Andean Community legislation.

Peru provides for a grace period during which public disclosure of an invention (under certain conditions) would not affect the validity of a subsequent Patent application, provided that a complete application is filed within 12 months from the disclosure. If you want to know more about Grace Period in Peru please contact our Helpline.

**HOW LONG does legal protection last?**

The exclusive right granted for patents lasts twenty years from the filing date of the application. In the case of utility models, the term lasts ten years from the filing date of the application.
HOW do I register?

We strongly advice you to contact an IP attorney to draft your Patent application, since it would define the scope of protection once granted. Mistakes on the claims (see glossary) may render your patent unenforceable in practice. Take into account these formal requirements:

- Clarity and completeness: A expert in the field should be able to reproduce the invention with the sole reference of your Application.
- Unity: if you have more than one invention, please file different Patent applications, otherwise you will be forced to split the application into two or more applications, which usually entails delays in granting the patent.

In order to obtain the filing date, at the time of receipt the application must contain, at least, the following information:

a) a mention that the grant of a patent or utility model is applied for;
b) the particulars identifying the applicant or the person filing the application, or which enable the office to communicate with that person;
c) a description of the invention and claims
d) drawings if they are relevant; and
e) proof of payment of the prescribed fees.

Priority date can be claimed from a previously application filed within the last 12 months. Moreover, an applicant can file the document within the next 16 months counted from the filing date of the application the priority of which is claimed. After that, the Patent Office should provide the formal examination.

18 months after the filing date of the application in the member country, or where applicable following the priority date claimed, the file shall be declared public and may be inspected, and the competent national office shall order the publication of the application pursuant to national legislation. Notwithstanding that, the applicant may request publication of the application at any time, provided that the non-substantial examination has been completed. In such a case the competent national office shall order the said publication.

Once the application is published, third parties could oppose the patent on the basis of lack of substantive requirements (usually lack of novelty or inventiveness) the deadline is 60 days counted from its publication date.

Whether or not oppositions have been filed, the applicant must request the examination on the patentability of the invention within six months after the publication of the application. If it is not requested, the patent application may lapse.
WHO can register?

Any natural or legal person, whether the inventor in person or a third party to whom the rights have been assigned, may apply for the registration at the Patent Office. There is no need to hire an Intellectual Property Agent for representation; however, having a domicile within the Peruvian territory is mandatory.

HOW much does it cost?

The fees are the following:

<table>
<thead>
<tr>
<th>Fees</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patent application fee</td>
<td>€ 194.54</td>
</tr>
<tr>
<td>Request for patent examination (patentability)</td>
<td>€ 148.37</td>
</tr>
<tr>
<td>Priority claiming (Patent)</td>
<td>€ 36.33</td>
</tr>
<tr>
<td>Utility Model application fee</td>
<td>€ 87.54</td>
</tr>
<tr>
<td>Request for utility model examination (patentability)</td>
<td>€ 75.53</td>
</tr>
<tr>
<td>Priority claiming (utility model)</td>
<td>€ 30.21</td>
</tr>
<tr>
<td>Opposition fee</td>
<td>€ 79.13</td>
</tr>
</tbody>
</table>

C. Industrial Designs

Industrial designs protect the appearance of a product. The protection granted by this exclusive right comprises any arrangement of lines or combination of colours or any two-dimensional or three-dimensional outward shape, line, outline, configuration, texture or material that does not alter the intended purpose or use of the said product.

The only requirement needed for a design to be registered is novelty. A design in Peru will be considered new when no identical design has previously been disclosed.

In Peru objects with ancillary differences or the new use of already known products are not considered new.

HOW LONG does legal protection last?

The exclusive right granted for industrial designs lasts ten years from the filing date of the application.

HOW do I register?

In order to obtain the filing date, at the time of receipt the application must contain, at least, the following:

a) a mention that the grant of an industrial design is applied for;

b) the particulars identifying the applicant or the person filing the application, and that will enable the office to communicate with that person;

c) a graphic and photographic representation of the industrial design. In the case of two-dimensional designs incorporated in a flat material, the representation may be replaced by a sample of the material incorporating the design; and

d) proof of payment of the prescribed fees.

Priority date can be claimed from a previous application filed within the last 6 months. Moreover, applicant can file the document within the next 9 months counted from the filing date of the application the priority of which is claimed.

The publication of the application allows third parties to file an opposition, within the 30 days from the publication date.

WHO can register?

Any natural or legal person, whether the inventor in person or a third party to whom the rights have been assigned, may apply for the registration at the Patent Office. There is no need to hire an Intellectual Property Agent for representation. However, a domicile within the Peruvian territory is needed.

HOW much does it cost?

The fees are the following:

<table>
<thead>
<tr>
<th>Fees</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industrial Design application fee</td>
<td>€ 97.27</td>
</tr>
<tr>
<td>Priority claiming</td>
<td>€ 35.50</td>
</tr>
<tr>
<td>Opposition fee</td>
<td>€ 79.11</td>
</tr>
</tbody>
</table>
D. Trademarks

WHAT is a trademark?

A trademark is a sign able to distinguish the entrepreneurial origin products or services. It is important to mention that not only two-dimensional signs are capable to access protection as trademarks, also three-dimensional elements, sounds and smells can be registered as trademarks.

Colours per se cannot be registered in Peru. In order to access registration as a trademark, single colours must be outlined or delimited by a specific shape.

Trademarks in PERU: What you need to know

The Andean Community Decision 486 states that a trademark must be able to be graphically represented. However, it is subject to a substantial examination in order to determine if the applied sign at hand falls into any absolute or relative ground for refusal.

Absolute grounds: refers to all those trademark´s grounds of refusal based on the public interest, such as generic names, lack of distinctiveness, use of Estates emblems etc.

Relative grounds: are based in the existence of prior Trademarks that are confusingly similar to the one applied for and/or when the trademark application may mislead to the consumer regarding the origin of the good and services.

The legislation also protects Tradenames and advertising slogans. To protect a Tradename you have to proof its use on the course of trade whereas advertising slogans should always be linked to a trademark registration or application.

HOW LONG does legal protection last?

The exclusive right granted for trademarks lasts ten years from the registration date of the application. This period can be renewed as many times as desired by the right holder. The renewal of the trademark can be filed six months before the expiration date until six months after the referred date.

HOW do I register?

In order to obtain the filing date, at the time of receipt the application must contain, at least, the following:

a) a mention that the registration of a mark is applied for;
b) the data identifying the applicant or the person filing the application;
c) the trademark for which registration is sought, or a reproduction of the trademark in the case of a word mark with special graphic elements, shape or colour, or a figurative, composite or three-dimensional mark with or without colour;
d) goods and/or services for which protection of the trademark is sought;
e) proof of payment of the prescribed fees.

Priority date can be claimed from a previously application filed within the last 6 months. Moreover, an applicant can file the document within the next 9 months counting from the filing date of the application the priority of which is claimed. After that, the Patent Office should provide the non-substantial examination. National legislation allows applicant to file a multiclass application for a single trademark.

After the publication of the application in the Official Gazette and
within the following 30 days, any person with a legitimate interest may file an opposition.

After that, and regardless whether oppositions are filed or not, the Trademark Office must perform the substantial examination and determine if the application falls into any absolute or relative ground for refusal.

Publication fees are not a fixed amount and depend on the nature of the trademark (i.e. if it is a word mark/ a figurative trademark/ complex mark) and other factors such as the quantity of classes, products or services included.

WHO can register?

Any natural or legal person may apply for the registration at the Trademark Office. There is no need to hire an Intellectual Property Agent for representation. However, a domicile within the Peruvian territory is mandatory.

HOW much does it cost?

The fees are the following:

<table>
<thead>
<tr>
<th>Fees</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trademark application fee</td>
<td>€ 144.55</td>
</tr>
<tr>
<td>Multiclass application (Additional class)</td>
<td>€ 144.09</td>
</tr>
<tr>
<td>Division of the multiclass application</td>
<td>€ 13.14</td>
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<tr>
<td>Opposition fee</td>
<td>€ 102.34</td>
</tr>
<tr>
<td>Renewal fee</td>
<td>€ 84.72</td>
</tr>
<tr>
<td>Publication fee</td>
<td>Variable amount</td>
</tr>
</tbody>
</table>

E. Appellations of origin

An Appellation of Origin is the name of a particular country, region or place or a name, which is used to identify a product originating therein when its quality, reputation or other characteristics are exclusively or essentially due to the geographical environment in which it is produced, including both natural and human factors.

Foreign appellations of origin need to have been previously recognized as such in their country of origin. There is no time limit for the duration of Appellations of Origin and will remain valid as long as the reasons for their registration persist.

The fee amounts to € 119.90.

TIPS and WATCH-OUTS

The recognition of an appellation of origin can be denied if there is a breach of any of the following prohibitions:

- When people with knowledge of the area concerned and the general public consider the denomination as a common or a generic term applied to distinguish the product.
- Contrary to proper practice or public policy.
- The denomination is misleading.
- If the appellation of origin is confusingly similar to a previously trademark application in good faith, or to a previously registered trademark.
- If there is likelihood of confusion or association or dilution with respect to a well-known trademark. Also, if the appellation of origin could constitute misappropriation of the prestige of the well-known trademark.
4. ENFORCING your IPRs

Peruvian legislation has two different ways to enforce IPRs: (i) criminal prosecution and (ii) administrative actions.

Criminal prosecution is the less advisable method of enforcement in Peru due to the time needed to get a Decision and the need to prove that the infringer has acted in bad faith. There is a Prosecutor’s Office Specialized in Infringements against Intellectual Property, which is part of the Public Ministry.

On the other hand, administrative actions are the most cost-effective methods of enforcement, in relation to the requirements and time needed to obtain a decision. Administrative proceedings are followed before INDECOPI, which can grant the following interim protective measures:

a) immediate cessation of the acts constituting the alleged infringement.

b) withdrawal from commercial channels of the goods resulting from the alleged infringement.

c) suspension of the import or export of the goods.

d) temporary closure of the establishment, when necessary to avoid the continuation of the alleged infringement.

5. USING CUSTOMS to Block Counterfeits

A. Customs in Peru: What you need to know

Customs can be used to block counterfeit products. Border measures allow IP owners to enforce their rights and prevent the import of infringing products.

In order to apply the border measures the IP owners must be registered at the Customs Authority. The requirements are as follows:

• The data identifying the right holder or the person filing the application on behalf of the right holder.

• The data identifying the copyright, related right or trademark, including precise technical information and attaching any document or digital support which allows the identification of the right.

• Any other information, which may facilitate the adoption of Customs measures or injunctions.

If the application does not fulfill the requirements, the Customs Authority shall inform the applicant within five (5) days after the date of notification in order to rectify it. If, on the expiry of the period mentioned, the applicant has not complied with the requirements stated, the application shall be considered inadmissible.

If the application meets all the requirements specified, the Customs Authority requests a prior opinion from the National Institute for Protection of Competition and Intellectual Property-INDECOPI. In case of positive opinion, the registration will take place. If not, the application will be rejected.

The registration may be renewed on an annual basis within the first thirty days of the calendar year.

In order to request the suspension of the clearance, the right holder must submit a letter of guarantee (custom guarantee) by a sum not less than twenty per cent of the FOB price and a hundred per cent in case of perishable goods.

The Customs Office will seize the goods (suspend the clearance of imported goods) upon request of an IP owner or ex officio. The suspension will lapse ten days from the day the right holder was notified. This suspension can be extended ten more days if the right holder proves that an infringement proceeding has been filed. However, if no preliminary injunction has been ordered, Customs will cease the suspension and the clearance of the products will continue.
6. RELATED LINKS and Additional Information

Find out more information related in the following websites:

- National Customs and Taxation Authority – SUNAT (ADUANAS) [http://www.sunat.gob.pe/](http://www.sunat.gob.pe/)

7. GLOSSARY

**Derivative works**: derivative works are works that modify prior copyrighted works and require the consent of the owner of the original work: a translation, the adaptation of a novel or a version of a song are some of the most common examples of derivative works.

**Right of priority**: Whenever a person from any signatory country of Paris Convention files a national application for a patent or industrial design in any of the 176 members, the date on which the first application was filed is established as the date of priority for any future application in any of the members, provided that subsequent applications are applied for within twelve months of the first application.

**Second use**: Refers to the possibility of patenting a different use of an already known object/product (e.g. Use of a chemical composition as a medicine to treat heart diseases when the original patent claims its use as antibiotic). In general, in Europe it is possible to patent such second use subject to the fulfilment of the novelty and Inventive step requirements.
MANAGE YOUR INTELLECTUAL PROPERTY IN LATIN AMERICA

ABOUT LATIN AMERICA IPR SME HELPDESK:
The Latin America IPR SME Helpdesk offers free of charge, first-line support on IP and IP rights matters to facilitate the expansion of European SMEs (EU SMEs and SMEs from the Associated countries) already established at, or working with entities in Latin America as well as those potentially interested in establishing commercial and R&D activities and ventures in these countries.

SERVICES
Helpline: Ask our experts any IP related questions in Latin America! We provide professional IP advice – customized, straightforward, and free of charge. Our Experts will answer your question within three working days.

Newsletter: Keep track of the latest news on IP in Latin America relevant to your business.

Multi-lingual Webportal: Browse our multilingual web portal for a broad range of information and training materials on IPR in Latin America in English, Spanish, Portuguese, French and German.

Training: Attend our trainings (online and on-site) and learn more about the key aspects of IPR protection and enforcement issues for doing business in Latin America.

For more information please contact the Helpdesk:
info@latinamerica-ipr-helpdesk.eu
helpline@latinamerica-ipr-helpdesk.eu

SPAIN
ADDRESS: University of Alicante, Campus San Vicente del Raspeig, Edificio Torre de Control, 03690 Alicante, Spain
TEL: +34 96 590 9684
E-MAIL: head_office@latinamerica-ipr-helpdesk.eu
WORKING HOUR: Monday - Friday 9:00 - 16:30 (CEST)

BRAZIL
ADDRESS: Rua Marquês de Olinda, 70 – Botafogo. Rio de Janeiro-RJ, CEP 22251-040
TEL: +55 21 2237-8728
E-MAIL: brazil@latinamerica-ipr-helpdesk.eu
WORKING HOUR: 9h00 - 18h00 (GMT-3)

MEXICO
ADDRESS (1): c/del Puente 222 Ejidos de Huipulco, Tlalpan 14380, Ciudad de México, Distrito Federal
TEL: +52 (55) 5483-2252
E-MAIL: mexico@latinamerica-ipr-helpdesk.eu
WORKING HOUR: 9h30-18h30 (GMT-5)

ADDRESS (2): Avenida Eugenio Garza Lagüera & Rufino Tamayo, Valle Oriente, San Pedro Garza García, 66269, Nuevo León, México
TEL: +52 (81) 86256000
E-MAIL: mexico@latinamerica-ipr-helpdesk.eu
WORKING HOUR: 9h00-17h30 (GMT-5)

CHILE
ADDRESS: Galvarino Gallardo 1690, Providencia, Santiago
TEL: (56-2) 2 787 8422 – 2 787 8400
E-MAIL: chile@latinamerica-ipr-helpdesk.eu
WORKING HOUR: 9h30-18h30 (GMT-3)

Project implemented by: