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INTELLECTUAL PROPERTY

AMENDMENT TO THE REGIME OF ENFORCEMENT OF INDUSTRIAL PROPERTY RIGHTS CONCERNING MEDICINES

The first amendment to Law nr. 62/2011, approved by Decree-Law nr. 110/2018, enters today in force.

An original system of legal enforcement of industrial property rights concerning medicines had been created by Law nr 62/2011 of 12 December, subjecting to mandatory arbitration all disputes arising out of said rights against generics medicines. According to the such Law, the arbitration proceedings should be initiated within 30 days from INFARMED's publication, on its official website, of the marketing authorisation (MA) application, or from the date of the registration application, in case of centralized MA.

After 7 years in force, the Parliament authorised the Government to revisit this legal regime and article 4 of Decree-Law nr. 110/2018, of 10 of December, which enters into force today, carries out such revision.

Here are the main aspects of the new system of legal enforcement of industrial property rights concerning medicines:

- The interested party who seeks to enforce an industrial property right, following the publication of MA applications for generics medicines, **still needs to do so within 30 days from the date of the publication of such applications at INFARMED's official website;**
- But the nature of the arbitration has changed, and it is now **voluntary;**
- In case the parties do not agree to submit the dispute to arbitration, **the action shall be brought before the Court of Intellectual Property (CPI).**

Foreseeing the large number of judicial proceedings that will now be taking place before the CPI, Decree-Law nr 110/2018 determines that a statistical analysis report relating to the performance of the IPC in dealing with these disputes shall be presented in one year.