

PHARE 2001
STANDARD SUMMARY PROJECT FICHE

1. Basic information

1.1 Désirée Number	RO-0107.06
1.2 Title	Strengthening of implementing authorities of intellectual and industrial property rights
1.3 Sector	Intellectual and industrial property
1.4 Twinning Component	N/A
1.5 Location	Romania

2. Objectives

2.1. Overall objective

Effective enforcement of intellectual and industrial property rights in Romania.

2.2. Project purpose

Meeting the requirements of the *acquis communautaire* in intellectual and industrial property matters

2.3. Accession Partnership and NPA priority

Romania has committed itself to improve the protection of intellectual and industrial property rights in order to achieve within five years a level of protection similar to the EU level.

2.3.1. Accession Partnership

Short-term priorities

- Align and enforce legislation relative to trademarks, patents, designs, copyright, databases, and neighbouring rights
- Reinforce the administrative capacity of specialised administrative bodies dealing with intellectual and industrial property matters
- Increase the fight against piracy through better co-ordination

Medium-term priorities

Fulfil all requirements related to intellectual and industrial property development in order to become an EU Member

2.3.2. National Programme for Accession

2.3.2.1. Intellectual property

Short-term priorities

- Introducing new legislation needed by the *acquis communautaire*
- Enhancing institutional and administrative capacity and increasing legislation enforcement in the field of copyright and related fields

Medium-term priorities

- Review of ORDA's jurisdiction (including fraud monitoring and collecting societies) and organisation
- Training ORDA's staff in order to perform adequately its specific tasks
- Increase specialised checks of potential piracy

- Develop cooperation with customs

2.3.2.2. Industrial property

Short-term priorities

- Introducing new legislation needed by the *acquis communautaire* and by the European Patent Convention (deadline : 1st July 2002)
- Enhancing institutional and administrative capacity and increasing legislation enforcement in the field of industrial property and related matters
- Increase cooperation with administrative bodies fighting and/or monitoring piracy
- Training OSIM's staff to provide better service to the business community

Medium-term priorities

- Systematic introduction of new EU Directive requirements and EU trademark
- Training of all stakeholders in intellectual and industrial property matters to reduce piracy (Customs, Police, Judges, General Parquet, Lawyers)
- Increasing interconnections of new and/or existing Registers
- Implementing new Registers when needed by the business community

3. Description

3.1 Background and justification

Romania has a long tradition in the field of intellectual and industrial property dating back to the 19th century. Since 1991, Romania has adopted modern laws, accompanied by the relevant implementing regulations that are broadly aligned with the relevant European and international provisions in the field.

Intellectual and industrial property is a specialised part of the legal system that pushes towards a true market-driven society. Its function in attracting foreign direct investment should not be underestimated. Without efficient enforcement of intellectual and industrial property rights no investor can be attracted.

Acquiring knowledge and expertise in intellectual and industrial property matters is necessary for all of the stakeholders within the framework of an overall and straightforward strategy of modernisation of the Romanian economy.

Beside ORDA and OSIM, other organisations involved in the protection of industrial property are:

- The Ministry of Justice,
- The Customs administration
- The Police
- The Register of companies
- The Register of Internet domain names
- Universities (Law —, Engineering —, Business & administration schools), and, in some cases,
- The Institute for protection of consumers

In addition to the staff of these organisations, institution building and training should meet the needs of:

- Lawyers in case of litigation or consulting
- Staff of the Chambers of commerce
- Staff of Romanian enterprises, and more generally any interested party.

Romania has to meet four principal challenges in this domain:

- 1) To reduce piracy

- 2) Join the European Patent Convention on 1st July 2002
- 3) Harmonise with the EU Directives (databases & designs) and prepare the Community trademark (Alicante)
- 4) Limit conflicts between the different intellectual and industrial property rights

3.2 Linked activities

ORDA has benefited from technical assistance programmes financed by Phare IP multi-country funds that allowed the organisation of seminars on IP enforcement and the participation of Romanian specialists to other seminars organised abroad.

OSIM benefited since 1992 of the Phare Ripp Programme. It was included in 1994 in a national Phare programme aiming at strengthening information dissemination. It benefited of a UK Know How Fund programme that allowed a first modernisation. OSIM has signed a cooperation agreement with the OHIM (Alicante, European trademark office) for preparing the accession of Romania to the European trademark system.

3.3 Results

3.3.1 Reducing piracy

The circulation of counterfeited and pirated goods is a major problem for Romania, much of which enter the country illegally along with contraband imports of goods legally produced, but which are imported illegally avoiding customs duties and control. Unlawful parallel imports cause a loss of income to the Romanian government. Another danger occurs when counterfeited goods do not offer the same quality than the original ones and lead to injuries. Quality related fraud has to be stopped.

Whatever the importance of parallel imports may be, there is an obvious need for increasing the general awareness about intellectual or industrial property, including in some administrative bodies like the Police or the Customs. Judges and the General Parquet ("Procuratura") have to understand what the expectations of the business community are.

This can only be reached through training anti-fraud officers (ORDA — Romanian Copyright Office), customs, police, judges, General Parquet, and lawyers. For example, OSIM has organised training courses for future industrial property attorneys, customs officers, etc. It has also organised national and international seminars and symposia. It has prepared and disseminated different materials.

3.3.2 European Patent Convention

In the patent field there are two conventions.

The first, the Munich Convention on the European Patent, which was signed in 1973 by a number of Member States and non-EU countries in Europe, provides for patents to be obtained for a number of countries through a single application to the European Patent Office. All of the EU Member States are now party to this Convention and apply specific rules as regards the PCT (Patent cooperation treaty, Washington).

The second one, the Luxembourg Convention, was signed in 1975 and amended in 1989. It aims to give unitary effect to European patents applied for within the EU.

Becoming a member of the European Patent Convention is a major step for Romania because it means that it will enforce one of the most modern patent laws in the World. This requires that the staff of OSIM (Romanian Patent and Trademark Office) be efficiently trained both in Roma-

nia (on the job training) and in Munich (location of the European Patent Office) and with some EU Member States' Patent Offices.

Becoming a full member of the European Patent Convention means that the Romanian patent office (OSIM) is able to accomplish the duties devoted to National Patent Offices by the European Patent Convention and with the specific PCT rules. It is necessary to train OSIM's staff in fulfilling its tasks. This can only be achieved through a long, selective, comprehensive training occurring with the European Patent Office (Munich), with one or two selected National Patent Offices having a proven track record in performing the duties of a National Patent Office with a large number of patent applications, including biotechnology, and in Romania while implementing the necessary procedures.

3.3.3 Harmonise with EU Directives

Pressure of the business community within and outside Romania makes the harmonisation with the EU Directives a crucial task that cannot be postponed and that will limit the piracy because fewer opportunities to counterfeit will be left.

As regards the protection of intellectual or industrial property, attention was initially focused on trademarks.

The first instrument concerns the harmonisation of national rights, which have been the subject of a Directive harmonising the conditions for registration of national trademarks and the rights conferred by such trademarks.

The second instrument, the Community trademark, was adopted in 1993.

A similar approach has been taken towards designs in 1998.

The Database Directive will be integrated within the Copyright law (ORDA), including the *sui generis* right. Romania will prepare itself for the introduction of the Community trademark by fully harmonising between its national trademark and the Community trademark.

The Design Directive can be introduced within the Copyright law (*sui generis* right) (ORDA) and registered designs with OSIM. Since substantial law should be identical, it is recommended to have only a law for both protection systems. OSIM should be prepared to introduce the Community trademark.

Administrative bodies in charge of drafting intellectual and industrial property law, ORDA, and OSIM are the two key-actors. Assistance will be provided to both ORDA and OSIM in order to draft the law, the related regulations and to train the different administrative staff for offering an effective service to the business community when registering application and granting rights. Some training may be foreseen for ORDA's and OSIM's staff outside Romania (for example with the OHIM in Alicante or with National Offices for Intellectual or Industrial Property of Member States).

Publicly accessible Registers are central devices in intellectual and industrial property. There is a need of strengthening institutional capabilities of these bodies but there is a complementary need for equipment, including efficient software (large databases).

Moreover, civil servants involved in intellectual and industrial property should be made aware of these new regulations and apply them. This training should also be offered to judges and to the General Parquet.

Implementation of this activity will require:

3.3.4. Limiting conflicts between industrial property rights

There is an absolute need to avoid any overlapping leading to conflicts between existing intellectual and industrial property rights. This means that the different administrative bodies try to avoid granting registration without checking whether the “name” is free through identifying prior rights. In other words, Registers should be interconnected and accessible.

3.4. Activities

It is understood that a very close cooperation should be organised and maintained between all of the stakeholders. Staff working with administrative bodies like ORDA (intellectual property), OSIM (industrial property), Chambers of Commerce (Company register), Internet Domain Name Supplier, Customs, Police and Ministry of Justice should receive the necessary training in order to increase their awareness and willingness to address intellectual and industrial property issues.

Actions in the area of Reducing Piracy

A number of distinct activities will be undertaken in this area:

Short-term technical assistance for the definition of database interconnection between the different agencies.

Short-term technical assistance on the application of piracy investigation methods.

Training in the use of information exchange systems, information, and communication on piracy issues to the wider community, and in piracy investigation methods.

Actions in the area of Legislative Harmonisation

Short-term technical assistance comprising external and local consultants in the following areas:

- Assessment of the current degree of legislative transposition
- Drafting of new legislation compatible with the community acquis.

Training courses and study tours in the following areas

- Study tours in EU Member States for members of the legal profession, police, and customs officials, and judges

Actions related to accession to the European Patent Convention

Short term technical assistance for design and training of database interconnectivity between OSIM and regional centres within Romania and also between OSIM and the European Patent Office.

Short-term technical assistance to examine internal organisation and procedures within OSIM.

Study tours to EU Member States for training in specific procedures for the treatment of patent applications in specialised sectors.

Actions related to the reduction of conflict between intellectual and industrial property rights

Short-term technical assistance for the conception and design of specific procedures in this area.

Design of dedicated software and database interconnectivity.

Training of officials involved in patent applications and use of specialised software and data base exploitation.

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4. Institutional Framework

Because of the strategic importance of the programme, responsibilities for its implementation will be placed at three levels: Steering committee, OSIM, and ORDA. OSIM will be designated as co-ordinating institution for the programme.

The PIU (Project Implementation Unit) will be established within OSIM that will provide office facilities (space and telecommunications).

Information of all stakeholders and visibility in and outside Romania will be in all cases a central issue.

Project steering committee

A Project steering committee will be created. Comprising nine members representing to the main stakeholders:

- EC Representation
- ORDA
- OSIM
- One representative of the Customs
- One representative of the Police
- One representative of the Chambers of Commerce
- One representative of the Internet Domain name supplying body
- One representative of the Ministry of Justice
- One representative of the General Parquet

plus the programme team leader as an observer. Secretariat will be provided by OSIM.

5. Detailed budget

	EU Phare- IB	Beneficiaries (OSIM + ORDA)	TOTAL
	Euro	Euro	Euro
Services			
Result 4	460,000		400,000
Result 3	365,000		375,000
Result 2	765,000		705,000
Result 1	360,000		290,000
Supplies			
OSIM		260,000	260,000
ORDA		75,000	75,000
Total	1,950,000	335,000	2,285,000
Audits/evaluations *	50,000		50,000
Total budget	2,000,000		2,335,000

* Heading which can be used only with the previous written agreement of the Commission

6 Implementing arrangements

6.1 Implementing agency

The Project shall be managed under the Decentralised Implementation System (DIS). The Romanian Implementing Agency is the Central Finance and Contracts Unit (CFCU), which retains overall responsibility for the implementation of the Project (approval of Terms of Reference, of tender documents, of evaluation criteria, of evaluation of offers, signature of contracts, authorisation and payments of invoices).

The Romanian Implementing Authority is the OSIM, which is responsible towards the Implementing Agency for the operational management of the project: preparation of Terms of Reference, of tender documents, of evaluation criteria, of evaluation of offers, of contracts. A Steering Committee comprising representatives of the main stakeholders will be created to ensure co-ordination amongst the project beneficiaries: OSIM, ORDA, Customs Authorities, Police, Chambers of Commerce, Ministry of Justice, Parquet, Internet domain authority.

6.2 Twinning

Not applicable

6.3 Non-standard aspects

The DIS Manual will strictly be followed.

6.4 Contracts

The assistance programme should embrace all of the different tasks in a single tender with the possibility of subcontracting.

7. Implementation schedule

Start of tendering	Start of project activities	Completion
October 2001	February 2002	November 2004

8 Equal opportunity

The proportion between men and women in the personnel involved in the project design and implementation will be balanced, with no discrimination regarding women's tasks and salaries compared to the men's.

9 Environment

Not applicable

10 Rates of return

Not applicable

11 Investment criteria

Not applicable

12. Conditionality and sequencing

In order to ensure the appropriate implementation of the project, the Romanian authorities should be committed to:

- Take all necessary measures so as to ensure that all financial or direct contributions in kind to the present assistance programme are put at the disposal of the programme, including to ORDA and OSIM at the appropriate moment
- Inform the EC Delegation without delay of any situation (structural, political, economical or social), which may interfere with the good implementation of the programme
- Adapt without delay national legislation and regulations to fulfil the programme aims
- Agree and assist in the setting up of the Project steering committee

LOGFRAME PLANNING MATRIX FOR Strengthening of implementing authorities of intellectual and industrial property rights			Programme name: and number:	RO-0107.06
			Contracting period expires: 30.11.2003	Disbursement period expires: 30.11.2004
<i>Project Number</i>			Total Budget:(MECU)2.335	Phare contribution: (MECU) 2.00

Please : Always read from bottom to head and from left to right

	Reason for intervention	Performance indicators	Sources of information	Resources	Hypotheses
Overall objective	Effective enforcement of intellectual property rights in Romania	Romania no more stigmatised (quoted as a no-rule state)	Watch papers issued by the international business community		
Specific objective	Meeting the requirements of the requirements of the <i>acquis communautaire</i>	Efforts of Romania are acknowledge in EU progress reports on integration	Legislation and regulation in force		Legislation and regulations are effectively applied
Result 4	Reducing piracy	Rate of infringement actions coherent with the level of development and the size of Romania	Statistics	400,000 euro)	Political will New mindset of the Romanian business community
Result 3	Joining the European Patent Convention	Romania is member of the European Patent Convention on 1 st July 2002	Increase in the number of European patent applications designating Romania (EPO & WIPO official statistics)	375,000 euros (plus 260,000 from OSIM)	Political will
Result 2	Harmonisation with EU Directive (<i>Acquis communautaire</i>) and preparation of the Community trademark	Reinforced cooperation between Romanian and European authorities in the field of intellectual and industrial property laws and regulations updated, in force, enforced	Increase in the number of applications (OSIM & WIPO official statistics)	705,000 euros (plus 75,000 from ORDA)	Political will
Result 1	Reducing potential conflict between intellectual and industrial property rights	No conflict of internal law reported No slow down of granting process	No reported case in the "Romanian electronic case law bulletin" (see action 1.7)	290,000 euros	Political will

		Total direct EU disbursements	1,870,000 euros	
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	Reason for intervention	Indicators of good performance	Relevant sources for cross-checking	Resources	Hypotheses
Result 4	Reducing piracy	Circulation of counterfeited and pirated goods reduced of 25% within two years Rate of infringement actions coherent with the level of development and the size of Romania	ORDA's statistics International statistics		Reliability of statistics
Action 4.5	Evidencing piracy	Use of mobile equipment to perform on-site inspections	Mobile equipment on the road	100,000 euros	General acceptance of the need to reduce piracy The question of using state own means for proving private dispute has been carefully studied at the political level
Action 4.4	Training in evidencing piracy with EU similar institutions	At least 3 EU Member States visited by 5 ORDA's staff members during 5 days Efficient debriefing	1 EU expert is with ORDA's staff members for efficient debriefing and assistance in designing a procedure (rule of law)	100,000 euros	Study tours should be organised in EU Members States with different legal tradition in matter of infringement proof Study tours well prepared and organised Limited staff turnover
Action 4.3	Awareness of the business community and of the public of the dangers of piracy	PR campaign (TV, ads, workshops, etc.) Please report to Action 2.7 for increasing the awareness of the international business community	15% increase of the demands for interventions of ORDA in infringement cases ORDA's statistics	Increase of ORDA's budget	Cooperation with OSIM and other stakeholders Political will to increase ORDA's budget
Action 4.2	Training of staff of ORDA, OSIM, Chambers of commerce	50 speakers trained in presenting the dangers of piracy Documentation and presentations prepared	Reports of ORDA, OSIM, Chambers of commerce	EU experts Training with a PR firm 100,000 euros	Cooperation with OSIM and other stakeholders
Action 4.1	Secured access to Registers (databases)	Interconnection between Registers made available and reliable	Random check	200,000 euros	Precise definition of the interconnection system to avoid unnecessary spending

	Reason for intervention	Indicators of good performance	Relevant sources for cross-checking	Resources	Hypotheses
Result 3	Joining the European Patent Convention	Romania is member of the European Patent Convention on 1 st July 2002	Official gazette of the European Patent Office		
Action 3.6	Preparation of documentation to be disseminated within the Romanian and international business community	Paper documentation should be avoided and use of electronic documentation (CDRoms) should be promoted European Patent Attorneys should receive a comprehensive (electronic) document reporting efforts undertaken by Romania in intellectual and industrial property matters	Random check with European Patent attorneys The list of European Patent Attorney is maintained by the European Patent Office. The list of Lawyers accredited with the European Patent Office should also be considered	Preparation of the documentation should be made by OSIM (with the assistance of ORDA when useful)	Dissemination is done before 1 st July 2002
Action 3.5	Romanian Patent law and accompanying regulations are published in "La propriété Industrielle / Industrial property" (the WIPO official gazette)	Publication made before 1 st of June 2002	WIPO	Translation in English and French 10'000 euros	—
Action 3.4	OSIM's staff is trained to receive applications, even very specific ones like computer programmes, biotechnology, etc.	Study tours of 10 OSIM's staff members to at least 3 EU Patent Offices (1 with substantial examination like Germany or Austria, 1 without substantial examination like France or Belgium, 1 with very large experience in biotechnology like UK)	Smooth and efficient implementation of the European Patent Convention Check with the European Patent Office	1 EU expert organising the study tour and participating to it in order to be sure the debriefing is correctly made 50,000 euros	Deadline : 1 st June 2002 Debriefing Low turnover rate
Action 3.3	Regional centres are interconnected to OSIM via secured intranet	5 computer specialists trained Trained specialists transfer their expertise to other / future specialists	Smooth and rapid production of listings	2 local short term experts Software + training 100'000 euros	Deadline : 1 st May 2002 Low turnover rate
Action 3.2	OSIM is interconnected with the European Patent Office	5 computer specialists trained Trained specialists transfer their expertise to other / future specialists	Smooth and rapid production of listings	2 local short term experts Software + training 100'000 euros	Deadline : 1 st March 2002
Action 3.1	OSIM Management is assisted in organising the application procedure and the post-grant procedure	A new organisation chart might be provided Systematic application of the rule of law should be organ-	Proposals made to the supervising authorities of OSIM for increasing the application of the rule of law	1 expert in administrative organisation 1 expert in patent matters 50,000 euros	Deadline : 1 st February 2002

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	Reason for intervention	Indicators of good performance	Relevant sources for cross-checking	Resources	Hypotheses
Result 2	Harmonisation of Romanian law with EU Directives and preparation of the Community trademark performed	Reinforced cooperation between Romanian and European authorities in the field of intellectual and industrial property laws and regulations updated, in force, enforced	Annual reports made by national (Member States) offices and international offices (WIPO)		
Action 2.7	Romanian intellectual property laws and accompanying regulations are published in "La propriété Industrielle / Industrial property" (the WIPO official gazette)	All regulations are translated, including regulations regarding piracy enforced by Customs and Police Publication made before 1 st of June 2002	WIPO	Translation in English and French	—
Action 2.6	Study tours organised in at least 3 EU Member States for Customs officers, Police officers, Judges, General Parquet	50 people having contact with their equivalent in the EU during 7 days study tours (visit to the Benelux trademark and design Office is a must)	Debriefing Trainees organise debriefing seminars	150,000 euros 1 EU expert with each group	Pre-requisite : having been selected after attending to action 2.5 Turnover is small
Action 2.5	Presentation of the new provisions and of the Registers to Customs, Police, Courts and General Parquet	300 people trained during 3 days – groups of 15 auditors mixing the different stakeholders = 900 days of training Documentation disseminated	Presence lists	20 seminars 350,000 euros 4 EU experts (trademarks, 1 designs, 1 databases, 1 patents) translators	Political will Good organisation
Action 2.4	Registers are modernised and interconnected	Good value for money when using databases	Material evidence of databases Random checks	Please report to action 1.5	Full access to databases Efficiently built databases
Action 2.3	Drafting new provisions for amending the present Romanian legislation	Amendments presented to the Parliament and in force before 31 st December 2002	Official gazette	Local experts 3 EU expert (designs, databases, copyright) 100,000 euros	Political will for meeting the acquis communautaire and for eradicating piracy
Action 2.2	Presentation of the results to the stakeholders	Pressure of the business community for a modification of the Romanian law	Road-shows performed in Bucharest and all over Romania	15,000 euros	Good organisation of the road-shows
Action 2.1	Assessing the present degree of transposition of the acquis communautaire	Exhaustive reports	Reports of EU and local experts	1 EU expert + 1 local expert by field of expertise (trademarks, designs, copyright,	Selection of experts is pertinent

				etc) 90,000 euros	
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	Reason for intervention	Indicators of good performance	Relevant sources for cross-checking	Resources	Hypotheses
Result 1	Conflict between the different kind of intellectual and industrial rights is avoided	No conflict of internal law reported No slow down of granting process	Reports from courts (no contest of the right because of conflict with other right)		Reporting is efficient
Action 1.7	Granting is denied when possible conflict is foreseen	Conflicts (if any between applicant and denying body) are reported to the Court (application of the rule of law)	Case law bulletin reporting cases for all bodies	Creation of a "Romanian electronic case law bulletin" 10'000 euros Training of 5 people 10'000 euros	Romanian electronic case law bulletin is widely disseminated Turnover is small
Action 1.6	Personnel of Bodies examining applications (examiners) is trained	5 examiners are trained Trained examiners transfer their expertise to other / future examiners	Listings are used by the examiners	Training in Romania and with equivalent bodies of EU Member States 50'000 euros	Interconnection software is efficient Turnover is small
Action 1.5	Potential conflicting rights are identifiable	Listings of potential conflicting rights are provided both to the applicant and to the granting body	Material evidence of listing Random checks	Interconnection software between the databases belonging to the different bodies 100'000 euros	Full access to databases Efficiently built databases Competition of providers
Action 1.4	Personnel of Bodies identifying potential conflicting rights is trained	5 computer specialists trained Trained specialists transfer their expertise to other / future specialists	Smooth and rapid production of listings	Staff of the different Bodies Local experts lead by 1 EU expert in industrial property during 10 days for 4 Bodies 20'000 euros	Database software is efficient Training is efficient Turnover is small
Action 1.3	Potentially conflicting rights are listed in databases	Listings of potential conflicting rights are good (zero error and can be used for identifying purposes)	Random check	Database software and training of technical staff 50'000 euros	Technical staff is stabilised within the different bodies
Action 1.2	A set of rules for solving potential conflicts is designed	A set of rules is presented to the Romanian authorities	Discussion of the proposed rules for conflict solving by the different stakeholders	2 EU experts in industrial property during 15 days each 50'000 euros	
Action 1.1	Identification of possible conflicts of intellectual property rights	Cooperation of the different stakeholders for identifying possible conflicts (grey areas)	Report to the different stakeholders made	Local experts for the different stakeholders 1 EU expert in industrial property during 10 days 10'000 euros	Increasing awareness of the need of reliable intellectual and industrial property laws There is a political will to reduce the "grey areas" The local business community backs the political need The international business community exerts pressure on Romania