

CHAPTER 7 INTELLECTUAL PROPERTY LAW

Priority 7.1 Improving the capacity of police, customs and the judiciary to enforce intellectual property rights, including strengthening coordination between these bodies

The Action Plan for the implementation of the EU acquis on intellectual and industrial property rights, required for the fulfilment of the opening benchmark for Intellectual Property Law Chapter, was officially submitted to European Commission on 24 January 2008. “Intellectual and Industrial Property Coordination Board”, “Technical Committee for Intellectual Property Rights” and “Technical Committee for Industrial Property Rights” will ensure strengthening of coordination between all institutions responsible for the enforcement of intellectual property rights.

1 Schedule of legislative alignment

Table 7.1.1

No	EU legislation in force	Draft Turkish legislation	Scope	Institution in charge	Publication date
1	Regulations No. 2913/92, 2700/2000, 1383/2003 and 648/2005	Law Amending the Customs Law and Certain Laws and Decree Laws ¹	Increasing the effectiveness and efficiency of customs activities; authorising customs administrations for granting authorisations regarding customs procedures with economic impact; making customs controls based on risk identification and assessment and using computerised risk analysis techniques; establishing risk management framework of Undersecretariat of Customs and identification of risk criteria and priority control areas; filling the gaps in the customs legislation on the identification of the boundaries and entry and exit points of free zones.	Undersecretariat of Customs	2009
2	Regulations No. 1383/2003, 2454/93 and 1891/2004.	Implementing Regulation Amending the Implementing Regulation on Customs ²	Improvement of the effectiveness and efficiency of the customs activities.	Undersecretariat of Customs	2009

¹ It is also mentioned in “Priority 29.1 Aligning legislation on free zones with the relevant acquis, particularly for rules concerning customs controls and tax auditing”, “Priority 29.2 Strengthening the enforcement capacity of the customs administration, particularly regarding the fight against illegal trade and counterfeit. Continuing the preparations for interconnectivity of the IT systems with the EU” and “Priority 29.4 Completing alignment of customs legislation on dual-use goods and technologies, precursors and counterfeit and pirated goods”

² It is also mentioned in “Priority 29.2 Strengthening the enforcement capacity of the customs administration, particularly regarding the fight against illegal trade and counterfeit. Continuing the preparations for interconnectivity of the IT systems with the EU” and “Priority 29.4 Completing alignment of customs legislation on dual-use goods and technologies, precursors and counterfeit and pirated goods”

2 Schedule of institutional capacity building requirements necessary for legislative approximation and implementation

Table 7.1.2

No	Requirements	Year
(Ministry of Justice)		
1	Assigning certain number of juvenile courts specifically for cases caused by the infringement of IPR by children in places where there is more than one juvenile court.	2009
2	Establishing prosecutor's offices responsible for IPR investigations in places where annual number of investigations on IPR is more than 500. In places where the workload does not necessitate establishment of separate bureaus, IPR investigations will be under the responsibility of one of the existing bureaus or certain prosecutors.	2009
3	Establishing the "Juridical Consultation Group for IPR".	2009
4	Establishing an electronic data network between Specialised IPR Courts and other relevant institutions.	2009
(Undersecretariat of Customs) ³		
5	Centralization of customs implementation for protecting the Intellectual Property Rights and establishment of a computer database accessible by the local customs administrations	2009
6	Establishment of a central risk analysis unit	2009
7	Establishment of the regional risk analysis departments ⁴	2010-2013
(Ministry of Interior (Turkish National Police))		
8	Organizing training programs, cooperation seminars and workshops under the EU project in order to strengthen the administrative and technical capacity of the Turkish Police in the enforcement of intellectual and industrial property rights and to enhance co-ordination and co-operation with judiciary, customs and other enforcement bodies and right owner associations. ⁵	2008-2009

³ Financial requirement regarding these institutional capacity building measures are mentioned under Chapter 29 of the Customs Union with Table 29.2.3.

⁴ To be financed by the project titled "Modernisation of the Turkish Customs Administration VI" under Pre-Accession Financial Assistance 2009 Programme

⁵ Financed by the project titled "Support to the Turkish National Police in enforcement of intellectual and industrial property rights - TR06IBJH05" under Pre Accession Financial Assistance 2006 Programme.

3 Financial requirements and resources

Table 7.1.3.1

(Euro)

Requirements (Ministry of Justice)	Year	National Budget	EU sources	Other	Total
I- Investment					
II- Legislative approximation and implementation					
- Personnel					
- Training					
Training of judges and public prosecutors dealing with preparatory investigations of IPR infringements ⁶	2008-2011	120,000			120,000
- Consultancy					
- Translation					
- Other					
Establishing the “Juridical Consultation Group for IPR”	2009	6,500			6,500
Total		126,500			126,500

⁶ Contribution of national budget is 30,000 Euro for each year between 2008-2011.

Table 7.1.3.2

(Euro)

Requirements (Ministry of Interior (Turkish National Police)) ⁷	Year	National Budget	EU sources	Other	Total
I- Investment					
Procurement of technical equipment to strengthen technical capacity of the Turkish Police	2008-2009	177,500	532,500		710,000
II- Legislative approximation and implementation					
- Personnel					
- Training					
Training the trainers, specialized training programs, awareness and cooperation seminars, and study visits	2008-2009	100,000	530,000		630,000
- Consultancy					
Project resident twinning advisor and EU experts	2008-2009		196,000		196,000
- Translation					
Interpreter and translation of training materials	2008-2009		50,000		50,000
- Other					
Resident twinning advisor assistant	2008-2009		24,000		24,000
Total		277,500	1,332,500		1,610,000

⁷ Financed by the twinning project titled "Support to the Turkish National Police in enforcement of intellectual and industrial property rights - TR06IBJH05" under Pre-Accession Financial Assistance 2006 Programme

Priority 7.2 Addressing, in particular, the counterfeiting of trade marks and piracy

1 Schedule of legislative alignment

The EU legislation to be aligned under this priority is Directive No. 2004/48/EC and the schedule of legislative alignment is available under “Priority 7.3 Continuing alignment and ensuring an effective enforcement of intellectual property rights”

2 Schedule of institutional capacity building requirements necessary for legislative approximation and implementation

Table 7.2.2

No	Requirements	Year
(Ministry of Culture and Tourism)		
1	Setting up a common database for monitoring and protecting intellectual property rights and recruiting 15 technical personnel to set up and maintain this common database	2009
2	Training for the staff of the 81 Provincial Directorates of Culture and Tourism on banderol, certification and fight against piracy	2008-2009
3	Preparing spot films focusing on fight against piracy	2008-2009
(Turkish Patent Institute)		
4	Increasing the TPI's institutional capacity	2008-2009
5	Increasing the public awareness on industrial property rights and their infringement (constantly)	2009
(Ministry of Interior (Turkish National Police))		
6	Organizing one-day trainings especially for the personnel working in public order sections in the provinces with high rate of IPR infringements in order to raise the awareness of police chiefs and officers about IPR issues.	2009

3 Financial requirements and resources

Table 7.2.3.1

(Euro)

Requirements (Ministry of Culture and Tourism)	Year	National Budget	EU sources	Other	Total
I- Investment					
II- Legislative approximation and implementation					
- Personnel					
Recruitment of 15 technical personnel	2009	135,000			135,000
- Training					
Training for the 162 staff of the provincial directorates of culture and tourism for 3 days	2008-2009	55,250			55,250
- Consultancy					
- Translation					
- Other					
Software, data transfer, licence, hardware for a common database	2008-2009	800,000			800,000
Preparing spot films focusing on fight against piracy	2008-2009	37,500			37,500
Total		1,027,750			1,027,750

Table 7.2.3.2

(Euro)

Requirements (Turkish Patent Institute)	Year	National Budget	EU sources	Other	Total
I- Investment					
II- Legislative approximation and implementation					
- Personnel					
Recruiting 4 new administrative staff	2009	25,000			25,000
- Training					
Attending to seminars, study visits and workshops on implementation and enforcement of IPRs ⁸	2008-2009	16,000	94,000		110,000
- Consultancy					
- Translation					
- Other					
Enhancing implementation of industrial property rights ⁹	2008-2009	60,000	1,200,000		1,260,000
Total		1,071,000	1,294,000		1,395,000

⁸ Detailed information is available in the action plan designed for the implementation of the EU Acquis on intellectual property rights.

⁹ Financed by the project titled "Supporting Turkey for Improvement of the Implementation and Enforcement of the Industrial Rights – TR0702.14" under Pre Accession Financial Assistance 2007 Programme. This figure refers to the total project budget.

Table 7.2.3.3

(Euro)

Requirements (Ministry of Interior (Turkish National Police))	Year	National Budget	EU sources	Other	Total
I- Investment					
II- Legislative approximation and implementation					
- Personnel					
- Training	2009	30,000			30,000
- Consultancy					
- Translation	2009	6,000			6,000
- Other					
Total		36,000			36,000

Priority 7.3 Continuing alignment and ensuring an effective enforcement of intellectual property rights

1 Schedule of legislative alignment

Table 7.3.1

No	EU legislation in force	Draft Turkish legislation	Scope	Institution in charge	Publication date
1	Directives No. 98/44/EC and 2004/48/AT Regulation No. 816/2006	Patent and Utility Model Law	Further improvement of the harmonization of patent legislation with the EU, and regulating the issue of patent and utility model by a Law, which is regulated by a Decree Law. In this framework, legislation shall be enacted for effective protection of inventions based on biotechnological research and issuing compulsory license for the production of patented pharmaceutical products. Furthermore the provisions on civil measures and remedies will be aligned with the EU legislation.	Turkish Patent Institute Ministry of Justice	2009
2	Directive No. 89/104/EC and 2004/48/EC	Trademarks Law	Further improvement of the harmonization level of trademark legislation with the EU and regulating the issue of trademarks by a Law, which is regulated by a Decree Law. Furthermore the provisions on civil measures and remedies will be aligned with the EU legislation.	Turkish Patent Institute Ministry of Justice	2009
3	Directives No. 98/71/EC and 2004/48/EC	Law on Protection of Designs	Further improvement of the harmonization level of design legislation with the EU and regulating the issue of designs, which is regulated by a Decree Law. Furthermore, the provisions on civil measures and remedies will be aligned with the EU legislation.	Turkish Patent Institute Ministry of Justice	2009
4	Directive No. 2004/48/EC	Law Amending the Law No. 5747 on the Protection of Integrated Circuit Topographies	Harmonization of the provisions on civil measures and remedies with the EU legislation.	Turkish Patent Institute Ministry of Justice	2009

Table 7.3.1 (Continued)

No	EU legislation in force	Draft Turkish legislation	Scope	Institution in charge	Publication date
5		Law Establishing the Turkish Patent Institution	Increasing the TPI's efficiency and its institutional capacity. It will also serve to establish an Industrial Property Academy with an objective of giving training to examiners, attorneys and private sector in cooperation with universities and R&D institutions.	Turkish Patent Institute	2009
6		Amendment to the Regulation on The Collecting Societies and Federations for the Authors of the Intellectual and Artistic Works and Related Rightholders	Enabling collective operation of all related collecting societies under one umbrella.	Ministry of Culture and Tourism	2009
7	Directives No. 2001/84/EC, 93/83/ EEC, 96/9/ EC, 2006/116/ EC, 91/250 EEC, 2006/115 EC, 2004/48/ EC, 2001/29/ EC	Law Amending Certain Articles of the Law No. 5846 on Intellectual and Artistic Works	Enabling full harmonisation of the Law no 5846 with the EU acquis.	Ministry of Culture and Tourism Ministry of Justice	2009-2010
8	Directive No. 98/44/EC Regulation No. 816/2006	Implementing Regulation on the Patent and Utility Model Law ¹⁰	Regulating detailed provisions for the implementation of Patent and Utility Model Law.	Turkish Patent Institute	2009
9	Directive No. 89/104/EEC Regulation No. 816/2006	Implementing Regulation on Trademarks Law ¹¹	Specifying the procedures and principles to be followed regarding the place, time, and arrangement of application documents for trademark registration application, which is identified in Trademarks Law, and concerning other applications on trademarks. It includes the principles, rules and requirements for the protection of trademarks eligible for registration.	Turkish Patent Institute	2009

¹⁰ It will be enacted after the adoption of Patent and Utility Model Law.

¹¹ It will be enacted after the adoption of Trademarks Law.

Table 7.3.1 (Continued)

No	EU legislation in force	Draft Turkish legislation	Scope	Institution in charge	Publication date
10	Directive No. 98/71/EC	Implementing Regulation on the Law on Protection of Designs ¹²	Regulating detailed provisions for the implementation of the Law on Protection of Designs.	Turkish Patent Institute	2009
11	Directive No. 2006/115/AT	Implementing Regulation on the Renting and Lending of Intellectual and Artistic Works	Specifying the principles and the procedures for the use of the exclusive rights by the right holders concerning renting and lending.	Ministry of Culture and Tourism	2009
12	Directives No. 2001/84/EC, 93/83/ EEC, 96/9/ EC, 2006/116/ EC, 91/250 EEC, 2006/115 EC, 2004/48/ EC, 2001/29/ EC	Implementing Regulations on the Law Amending Certain Articles of the Law No. 5846 on Intellectual and Artistic Works ¹³	Regulating the implementation of the articles amending Law No5846.	Ministry of Culture and Tourism	2010

¹² It will be enacted after the adoption of the Law on Protection of Designs.

¹³ It will be enacted after the adoption of the Law No. 5846 on Intellectual and Artistic Works.

2 Schedule of institutional capacity building requirements necessary for legislative approximation and implementation

Table 7.3.2

No	Requirements	Year
(Ministry of Culture and Tourism, Directorate General of Copyright and Cinema)		
1	Reorganisation of Directorate General of Copyright and Cinema under Ministry of Culture and Tourism in order to ensure effective enforcement of intellectual property rights	2009
3	Establishing mechanisms for increasing coordination and cooperation between collecting societies.	2009
4	Supervising collecting societies on a regular basis	2009
5	Strengthening the infrastructure of the Ministry of Culture and Tourism and collecting societies with a view to enabling fair allocation of remuneration collected within the scope of 2. paragraph of Article 44 of the Law No. 5846 to the right holders	2009
6	Maintaining the functioning of Technical Committee for Intellectual Property Rights (quarterly on a regular basis)	2009 and Beyond
(Turkish Patent Institute)		
7	Establishment of Technical Committee for Industrial Property Rights and maintaining its activities (continuous activity)	2009 and Beyond
8	Increasing the TPI's institutional capacity	2009-2011
9	Increasing the public awareness on fight against counterfeiting and piracy (continuous activity)	2009-2011

3 Financial requirements and resources

Table 7.3.3

(Euro)

Requirements (Turkish Patent Institute)	Year	National Budget	EU sources	Other	Total
I- Investment					
II- Legislative approximation and implementation					
- Personnel					
Recruiting 62 new examiners and 38 administrative staff ¹⁴	2009-2011	3,816,000			3,816,000
- Training					
Attending to seminars, study visits and workshops on implementation of IPRs.	2009-2011	162,000	243,000		405,000
- Consultancy					
Preparing a collection of the Turkish Courts' rulings on IPRs.	2009-2011		150,000		150,000
- Translation					
- Other					
Conferences and activities for increasing public awareness on industrial property rights and their infringement ¹⁵	2009-2011	3,200,000			3,200,000
Total		7,178,000	393,000		7,571,000

¹⁴ Law Establishing the Turkish Patent Institution is to be adopted as a prerequisite for meeting the personnel needs.

¹⁵ These figures indicate the total budget of the Department of Information, Documentation and IT for the period 2009-2011 involving all promotional activities including AP priorities. Exclusive budget limited to the priority can not be presented.