Standard Summary Project Fiche

1. Basic Information
   1.1 Désirée Number: RO-2002/000-586.04.16
   1.2 Title: Assistance in strengthening the independence and functioning of the Romanian Judiciary system
   1.3 Sector: Justice
   1.4 Location: Romania
   1.5 Twinning sub-components: (title and number)

1: RO02/IB/JH-01 " Strengthening the functioning of the Romanian Judiciary and its representative body – Superior Council of magistrates" 0,75 Meuro, 18 months
2. RO 02/IB/JH – 02 “Further Assistance for the Development of NIM and TCC" 0,9 Meuro, 18 months
3: RO02/IB/JH-03 “Creating and strengthening conflict analysis and resolution capacities by introducing alternatives means to the judiciary in solving civil and commercial" 0,15 Meuro, 6 months

2. Objectives
   2.1 Overall Objective:
      Contribution to the improvement of the operation of the Romanian judicial system

   2.2 Project purpose:
      Component A: Institutional capacity and functioning of SCM enhanced in line with EU requirements;
      Component B: Further development of NIM and TCC
      Component C: Creating and strengthening conflict analysis and resolution capacities by introducing alternatives means to the judiciary in solving civil and commercial cases.

   2.3 Accession Partnership and NPAA priority

This project proposal is related to the priority areas for judiciary, as underlined in the Accession Partnership (AP) and the National Programme for Adoption of the Acquis (NPAA):
A: Institutional capacity and functioning of SCM enhanced in line with EU requirements
Priorities and intermediate objectives of the Accession Partnership for the political criteria

- guarantee the independence of judiciary. Improve its functioning by introducing objective criteria for recruitment and career development for judges and prosecutors…;

Short term priorities of the NPAA for 2001 committed by the Romanian Ministry of Justice in JHA field:

- The improvement of the judiciary system functioning by amending Law No 92/1992 and aimed at enhancing the role of the Supreme Court of Justice with a view to extending its competence as an instance of judicial control and ensuring a unitary judicial practice;

Short term priorities of the NPAA for 2002 to be committed by the Romanian Ministry of Justice in JHA field:

- establishing of an independent and responsible judicial system by:
- strengthening the role of the Superior Council of Magistrates (SCM) to ensure the independence of the judges and courts and strengthening the autonomy of institutional framework. Strengthening of the role of SCM shall mainly, reflect:

- appointment, promotion and evaluation of the professional activity of the magistrates
- disciplinary procedures against magistrates
- the allocation of the budget for the judiciary

Regular Report for 2001
- The European Commission states at the chapter Political Criteria/Democracy and the rule of law/ Judicial System: “At the same time, additional reforms are still necessary and should include measures to further guarantee the independence of the judiciary.”

Component B: Further development of NIM and TCC

Priorities and intermediate objectives of the Accession Partnership for the political criteria

‘…ensuring appropriate initial and in-service training of judges, prosecutors, and law clerks through continued support to the NIM and TCC”.

Short and medium term priorities of the NPAA for 2001 committed by the Romanian Ministry of Justice in JHA field

“Training of magistrates in the field of EC law, financial and banking legislation, the new fields of commercial law and the specialised areas such as money laundering, drug trafficking, illegal migration, computer frauds”

„Training of auditors and auxiliary staff”

„The improvement of the legal system’s functionality by:
  - Continuous training of magistrates, auditors and additional staff;
- Continuation of the training of magistrates in specialised areas, such as money laundering, drug trafficking, illegal migration, computer frauds''

• **Regular Report for 2001**

(Chapter 1.1) “continued support… for the National Institute of Magistrates”.

“additional reforms are still necessary and should include measures to …..develop a human resources policy for ….supporting court staff”

**Component C:** creating and strengthening conflict analysis and resolution capacities by introducing alternatives means to the judiciary in solving civil and commercial cases.

In the Regular Report 2001, the EC noticed that “Since the last report there have been no major development with regard to the total number of judges or the total number of judicial vacancies. The average number of cases dealt with by each judge has decreased slightly from 514 in 1999 to 511 in 2000, but the workload remains heavy which limits the ability of judges to carry out their functions effectively. Compared to 1999, the number of pending cases in Courts of the first Instances and in the Courts of Appeal dropped in 2000. However, over the same period, there was a slight increase in pending cases before Tribunals. “

2.4 Contribution to National Development Plan
- not applicable

2.5 Cross Border Impact
- not applicable

3. Description

3.1 Background and justification:

The programme is structured in 4 main components aimed to provide measures to improve the independence and the functioning of the Romanian judiciary. Strengthening the role of SCM, improvement of the knowledge of magistrates and auxiliary staff, by focusing on principle of train the trainers, increasing of capabilities of the Romanian judges in solving specialised cases related to minors, labour, commercial and criminal cases and relaxing the judicial procedures and workload of the judges by introducing alternatives means of conflict resolution will equally contribute to the improvement of the justice quality and its independence.

A. The independent and impartial exercise of justice represents the objective assumed in the Government Programme for 2001-2004 in the chapter allocated for the judiciary with focus on SCM role.
Several legislative initiatives were already accomplished in order to continue the reform of the justice. The current MoJ’s approach on the Law 92/1992 regarding the judicial organization increases substantially the role of the Superior Council of Magistracy (SCM). A first step was the amendment of the Judicial Organisation Law by the Emergency Ordinance (EO) no 20/2002. According to the provisions of EO 20/2002, the number of the SCM’s members has been increased from 15 to 17, having in mind the necessity of a democratic criteria establishing a representation not only of the superior courts but also of the tribunals. The SCM is composed by:

- 3 Supreme Court Judges
- 2 Supreme Court prosecutors
- 6 Court of Appeal Judges
- 3 Court of Appeal Prosecutors
- 2 Tribunal Judges
- 1 Tribunal Prosecutor

All the candidates are nominated by the general ensembles of the indicated courts and prosecutors offices, and the list of candidates is presented by the existing SCM to the two chambers of the Parliament, for being appointed.

The Ministry of Justice is planning to continue the reform of justice by amending the Judicial Organisation Law in order to further increase the competencies of the SCM with a view of granting enough autonomy appropriate for a representative body of the judiciary. The SCM will have broad responsibilities with respect to the selection process, appointment, promotion or sanction of magistrates. Its competencies will increase considerably, the MoJ’s competencies decreasing proportionally. The SCM will also play an important role in the process of budget allocation for the courts.

Until recently, the SCM did not have its own headquarter. Presently, the SCM was allocated with a distinct venue for a proper development of its activities. However, the administrative personnel for SCM is provided by the staff of a specialized division of the MoJ. (The proposed amending of the Judicial Organization Law provides that the SCM will have its own administrative staff. The members of the staff will be appointed by the Secretary General of the SCM.)

The SCM will be directly involved in any legislative initiative related to the judiciary by conferring not just the right to make proposals, but also having the right to formulate a legal opinion on the respective draft law.

On the other hand, de lege ferenda, the inspectors’ body of the MOJ should be reorganized as inspectors’ body of the judiciary under the authority of the SCM and they will be in charge with controlling the administrative side of the activity carried out by judges, and not the solution issued in each particular case.

A leading role will be conferred to the SCM with respect to the organization of the entrance and final exam at the graduation from NIM and the exam required to become a sitting magistrate.
The modification of the Judicial Organizational Law in the sense envisaged above, will take into consideration the recommendation issued under the Phare 1998 Twinning programme. A part of them were already incorporated, other ones will be carefully analyzed and adapted to the Romanian realities while amending the Judicial Organization Law. The main recommendations of the Twinning programme were: involvement of external personalities in the SCM, a better representation of the judges in the composition of SCM, direct appointment of the CSM members by the body of magistrates, a clarification of the role of Public Ministry within the structure of SCM, the balance of roles between SCM and Ministry of Justice, confer powers of control to SCM over the professional activity of judges, increased competences of SCM on disciplinary procedures over the judges, improvement of the working conditions of SCM in terms of staff, headquarter, budget, working methods (increasing the number of regular meetings).

A second set of recommendations addressed the issue of improving the statute of magistrates by strengthening the powers of the president of the courts of appeal regarding the competence of issuing the sanction of warming for small disciplinary offences, better clarification of the incompatibilities with the political mandates, the adoption of the deontological norms, the clarification of the legal consequences of the resignation of magistrates, protection of magistrates and engagement of their responsibilities, strengthening the creation of associations of judges.

Other activities aimed at strengthening the independence of the judiciary are the following:

In September 2001, SCM adopted the Deontological Code for the Magistrates in order to define standards of conduct for the magistrates and providing their main general obligation - to defend the independence of the justice and to exercise their profession with objectivity and impartiality.

According to the Judicial Organisation Law, the main access way to the judiciary is the National Institute of Magistrates, after the graduation of a 2 year course. The provisions regarding the entrance exam at the NIM require high qualifications for becoming an auditor of justice (the NIM trainees), based mainly, on previous high results during the faculty. Additionally, a written exam is provided as eliminatory criteria, on the following topics civil and criminal law, civil and criminal procedure. The initial curricula for magistrates, as well as the one for the continuous courses, (detailed presented bellow), reflect the efforts of raising the professional knowledge and skills of magistrates as important component of appropriate functioning of justice.

Through the Minister Order no 2958/ 10.12.2001 the In-house rule was approved in order to establish the conditions of promotion in a executing position for magistrates. The principle of promotion in an upper level of jurisdiction or on the same function but with higher status aims “to guarantee the objectivity in evaluating the professional competence of the magistrates to be promoted”.

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The promotion exam is organised mainly biannually, for the magistrates with appropriate seniority and with high professional status attested by the president of the court of appeal or, respectively, by the general prosecutor of the prosecutor’s office attached to the court of appeal. The exam is structured on a written paper in a legal issue that generated a controversy in practice and on an oral exam.

The administration of justice is also an important element in reforming the judiciary. Beside the ongoing efforts to set up the automation of the case filing and tracking system and distribution and indexing of the legislation and jurisprudence, the MoJ recently adopted an internal rule for a pilot court aimed to test a new case assignment based on objective criteria (alphabetically feature of the file) before widely spreading in the whole system.

It is important to bare in mind that all the references above to the amendment of the Judicial Organization Law were not yet submitted, discussed and approved by the Parliament, therefore all these provisions could suffer modifications in the future.

B) In the process of EU accession, Government continues its efforts to engage in legislative approximation and harmonization programme. Therefore the judiciary sector, mainly the judges who will have to apply the new rules following the future accession, permanently need to be upgraded in particularly EU matters.

The National Institute of Magistrates, the sole entry form in magistracy for young law graduates and the only institution responsible with the initial training for magistrates, has been permanently involved in improving the knowledge of magistrates in new legal fields related to EU accession. Also, the NIM is in charge with the continuous training of sitting magistrates as far as the latest changes and evolutions in the Romanian legislation and jurisprudence.

The curricula for initial and continuous training courses was elaborated and constantly revised by NIM experts under Phare 97 programme, and, presently it is under the permanent assistance of the EU experts, in the framework of the ongoing Phare 99 programme.

As far as the training activities in the field of EC Law, the Phare programmes described in the following sections provided only the general training for a limited number of judges. Through the previous 2 Phare projects, the initial training was extensively assisted - curricula development, training for the initial trainers, etc, but the necessary number of trainers for the continuous training for judges, is not enough trained. For the continuous training activities, NIM intends to create a 60 judges network (4 judges in each court of appeal specialized in EU, ECHR, penal law and civil law) and the same is intended for the prosecutors. The correspondents will be included in the NIM network of trainers for continuous training.

In the future, the continuous training activities will cover the whole country and will also be carried out in the regional centers of NIM (Barlad, Sovata and Timisoara), that are already used as locations for the continuous training courses developed by NIM, and also in the 2 training centres of the MoJ (Amara, Eforie).
In the nearest future the NIM will enrich the existing continuous training plan according to the Phare Horizontal recommendations, that will not replace the existing curricula for continuous courses, but will enhance the techniques and the means for developing the continuous training.

All the activities undertaken so far through other projects proved, on one hand, the capacity and willingness of the Romanian magistrates to assimilate the new EU legal provisions and, on the other hand the crucial impact of the international assistance in this effort. It also generated the need for further assistance able to ensure the continuous information of judges with the new tendencies and evolution of EC Law.

The reports of various EC Experts based on the suggestions of the participants led to the conclusion that a significant part of the Romanian judges achieved the basic level of Community Law (History, Principles, Institutions, The 4 Liberties, Sources, The Main Procedures). Still, many of the judges suggested that they did not have a good understanding of the specific fields of EC Law, that fit the needs according to their speciality. **As a general conclusion**, training of judges in EC law is a long-term process that cannot be completed through one programme. Consequently, the international assistance programmes need to be characterized by continuity and coherence as far as the subject matter of the training is concerned.

The big number of magistrates (3000 judges and about 2000 prosecutors) and the continuous approximation of the national laws require a permanent national and international training effort.

The new approach of focusing on train the trainers concept in structuring the in-service training strategy means the improvement of the knowledge of the trainers and their further involvement in all the training courses for the magistrates, especially in EC Law. The assignment and of trainers network, in the EC law and judicial cooperation, with the support of 2 previous Phare projects, proved to be successfully and has to continue on a broader scale. The idea of NIM is to use the Romanian trainers as moderators in the in/service regionally courses and workshops.

Even if very important, the training of magistrates is not the only component of the judicial reform in Romania. **A policy of human resources for courts is also one of the priorities of the Ministry of Justice.** In order to ensure the appropriate training for the auxiliary staff, the **Training Centre for Clerks (TCC)** was set up through the Governmental Decision no. 423/1999.

A preliminary course curricula was elaborated by TCC experts. The training for clerks is mainly concentrated on the following areas: organization and management of courts, drafting of procedural documents, basic civil and criminal substantial law, as well as basic civil and criminal procedure, computer knowledge, deontology.

A first training for 12 potential TCC trainers took place in December 1999. It was organised by NIM and financed by “Open Society Foundation”. NIM edited 250 brochures for basic TCC training covering the following fields: fundamental principles in civil and penal trials, procedural practice, professional ethics and computer knowledge. Under Phare 97 Programme, 4 judges were trained in France to become experts at the TCC.
Presently, the TCC started its activity in 2001-2002, having 44 trainees and about 20 trainers. The admission exam focused on Law on Judicial Organization. Also, TCC developed a continuous training cycle of seminars for computer literacy for to the sitting clerks working in Bucharest Courts. More than 100 clerks will participate in the 18 hours course. Through the previous assistance programmes, the basis of a new structure has already been created. By order of the Minister of Justice no 1303/C, the In house rule of the TCC was approved in order to set up the conditions for carrying out both initial and in service training of auxiliary staff. But, in order to ensure a proper functioning of the new institution, continuation of the assistance is necessary. Its importance resides in fact that before TCC was created, no other specialized institution existed for the professional training of clerks. The sitting clerks were trained on the job, without a pre-established curricula. The significance of the training developed by TCC is considerable and offers the opportunity of combining the theoretical and practical aspects in an organized framework.

C. Another important issue of reforming the judiciary is to speed up the procedures in solving cases.

MoJ has initiated a Civil Procedure Code reform which aims to improve the system and to solve some of the causes of the judicial process' slowness. The Government Ordinance no.138/2000 brings improvements with respect to: the communication of sub-poenas, the appeal procedures, the commercial procedures and the enforcement of judicial decisions.

However, additional measures are needed aiming to encourage the **better use of alternative dispute methods** in order to relax the workload of judges and to contribute to a better administration of justice.

**Arbitration** is not new in the Romanian legal system and is operating in commercial and intellectual property cases.

The **Romanian Code of Civil Procedure** regulates at present the arbitration in "Book IV - On arbitration", provisions that represent the common provisions for all types of private arbitration. The principle is set by the article 340 of the Code of Civil Procedure, which stipulates "the persons with full capacity of exercise may agree to solve by arbitration the assets litigation between themselves, except those regarding rights on which the law does not allow any transaction".

On the other hand, there are also special provisions, concerning the arbitration performed by the **International Trade Arbitration Court attached to the Romanian Chamber of Commerce and Industry**.

As regards the institutional arbitration, it could be mentioned that an International Trade Arbitration Court is functioning within the Romanian Chamber of Commerce and Industry, carrying out its activity according to the Regulation on organising and functioning of the International Trade Arbitration

According to the Regulation on organizing and functioning of the International Trade Arbitration Court with the Romanian Chamber of Commerce and Industry, this institution provides the following services: arbitration, conciliation procedures, counseling, international co-operation, studies and research in the field of arbitration, domestic co-operation within the Romanian Chamber arbitration system. This way, under article one of the Regulation of the International Trade Arbitration Court has as task to promote, in Romania, the internal and international trade arbitration and also the conciliation procedure and other alternatives way of litigation solving.

The applicable procedure is provided in the Rules of arbitrary procedure, approved by the Board of the Arbitration Court by the Decision no. 3/10 September 1999 and drafted according the provisions of the Code of Civil Procedure - Book IV "On Arbitration" (articles 340 - 370/3). It could be mentioned that, generally, during these proceedings, prior, it can be appeal at conciliation. Thus, the Chamber of Commerce and Industry of Romania provides for its members and other interested traders an optional procedure of conciliation, according to the Rules optional conciliation, with a view to solving amiably different disputes between them, raised during the trade relations, as well as to avoiding judicial or arbitration litigation.

It must also be mentioned that the institution of mediation is not an absolute novelty, for our legal system. Besides the isolated dispositions, comprised in special legal acts, such as Law no. 51/1995 on the organization and the exercise of the lawyer’s profession, according to which exercising the profession of lawyer is compatible with the position of arbitrator, mediator or conciliator, according to the provisions of this Act (art. 13), the procedures set up by the Law no. 168/1999 on solving employment conflicts must be highlighted. Thus, Law no. 168/1999 sets up 3 alternative methods to solve conflicts of interest: conciliation, mediation and arbitration.

The Ministry of Justice together with Centre for Legal Resources and 2 local NGO/s experimented in 2000 a project in a pilot court aimed to promote the mediation among the outside parties. Informative brochures were designed, an introductive course for the judges was organized aiming to promote the concept of mediation mainly in civil and family issues. American Bar Association also organized a 2 session training course of 1 week each, for about 30 persons possible future mediators. These initiatives were too small in impact.

Because the institution of mediation is not enough understood, the approach of testing such alternative mean should start with a much broader awareness on its features and advantages in solving civil and family disputes.

3.2. Linked activities:
3.2.1 Phare activities

Phare project **RO 9705-01** was designed to provide support to the NIM. The programme for assistance to the NIM involved only a small component of training in general EC law (4 training sessions for in-service magistrates in different towns of Romania) with the purpose of introducing the main topics to selected judges and prosecutors. In addition to covering basic issues of EU institutions, sources and principles of EC law, and the role of national judges, the sessions also touched on 2nd and 3rd Pillar issues (Common Foreign and Security Policy, and Justice and Home Affairs), as well as Economic and Monetary Union. About 120 magistrates were trained under the programme. Practical exercises (workshops, case studies) were organised for most of the topics. A reader was produced for the use of the NIM students by a German expert in consultation with a Romanian expert. The reader is available in Romanian. Also, Phare 97 programme supported the development of the Institute and two regional centres by providing equipment and furniture.

The following programme, **RO 98/IB/JH/01/04** - the two year twinning programme that ended in mid November 2001 – continued the training process. The programme had a module connected to EC Law training of the Romanian magistrates. The module had 2 important components:
The training component covered ‘General training in EC Law’. In the first part of year 2000, the French, Romanian and German parties elaborated a reader consisting of 14 technique fiches (85 pages). The reader was distributed to all the participants in the training seminar. It consisted of a synthetic presentation of the EC Institutions, sources, the 4 freedoms and the principles of EC Law, the role of the national judge in the application of EC Law. The seminars were held in sept.2000 – oct.2001. 16 training seminars have been organized at decentralized level (in each court of appeal). A total number of 953 judges were trained in general EC Law. The MoJ and NIM involved in the organisation of these seminars requiring each Court of Appeal to designate judges from the courts under its jurisdiction; most of the participants were young judges (first instance court).

The creation of the **community correspondents network** – with the purpose of disseminating the EC Law information at the level of each court of appeal throughout the country. The correspondents participated in a training course in Paris (11-22 December 2000), at the ‘Ecole Nationale de la Magistrature’. These persons are charged with the training of magistrates in Community law in Romania, and related duties. In particular they identify documentation sources and the most important decisions of the ECJ, assure the circulation of information between the Ministry of Justice and the magistrates, collaborate with the Ministry of Justice in the process of judicial system reform in order to progressively meet the criteria for membership, and participate in work-shops twice a year to be organised by the Ministry of Justice and the NIM in order to improve and up-date their knowledge in Community law and to replicate this information to the magistrates of the courts.

The 17 correspondents are also included among the 24 beneficiaries of the ‘train of trainers’ seminars in EC Law (2 series of 3 days each) organized in the framework of the **Phare 99 Horizontal Programme**. The 17 correspondents were included as Romanian moderators, beside the EU experts, during the 16
general seminars on EC Law under Phare 1998 Twinning Programme. Some EC correspondents already started to replicate their knowledge in various forms: as trainer in EC Law at NIM initial course, as university teachers at the Faculty of Law in several counties, creation of a intranet exchange EC information network at the Timisoara Court of Appeal‘ s jurisdiction.

The on-going programme Phare **RO-9905-01** continues the components of Phare 97 in terms of training, procurement, and institutional building. The main objectives of the project are:

- continuation of the strengthening of the NIM and TCC with respect to their legally institutional set up, operation, human resources (staff and trainers) development and in terms of infrastructure
- sustainable development for NIM and TCC initial and continuous course curricula and delivery of training for trainees, sitting magistrates, legal experts of the MoJ and court support staff. Within the framework of this project there will be 5 seminars on EC Law and related fields (consumer protection, intellectual property, competition law, and environmental law) that will provide training to a number of aprox. 150 magistrates, both judges and prosecutors.

Another component of the RO9806.02 Twinning Covenant aimed to support the elaboration of the deontological code of the magistrates. Additionally, a member of the French SCM visited Romania and issued some recommendation aimed to strengthen the Romanian SCM. There were also created 3 twin courts (one per each level of jurisdiction) in order to make recommendation on improving the functioning and court management of the Romanian 3 pilot courts.

Phare 1999 Horizontal Programme “Building Capacity for Training of Judges in EC Law” The implementation started early 2000 and aims to provide training for 24 judges in EC law and to support the elaboration of a EC practical manual for judges, as well as the elaboration of a set of recommendations for a future Training Strategy for Sitting magistrates.

3.2.2 Other donors in the field

Netherlands Helsinki Committee in co-operation with SSR (Dutch training centre for the magistrates), which provides both training for magistrates and NIM trainers and material support;
United States Agency for International Development through the American Bar Association office in Bucharest, which provides training and technical assistance to NIM;
Department for Justice and Home Affairs of the Swiss Confederation-material support for NIM;
Council of Europe which provided support for the NIM library;
German Foundation for International Co-operation (IRZ), that offers training for sitting judges
British Council, that offers training for sitting judges
World Bank conducted a diagnosis analysis of the legal and judicial reform and will further support the enforcement of several recommendations related to the legislative mechanism and reform of the judiciary.
Centre for Legal Resources will provide assistance in a project related to juvenile justice.
UN Centre for International Crime Prevention will provide assistance in an anti-corruption project “Strengthening the Integrity of the Judiciary” as soon as the fund raising procedure will be completed.

3.3 Results:

Component A - Institutional capacity and functioning of SCM enhanced in line with EU requirements

- Result 1 – Legal framework of the SCM status improved
- Result 2 - Organizational structure plan of SCM set up
- Result 3 - Secondary legislation relating to the functioning of SCM – drafted;
- Result 4 – Action Plan to monitor the enforcement of the Deontological Code of Magistrates set up

Component B - Further development of NIM and TCC:

- Result 1 - A National Strategy of NIM in-service training in line with EU requirements - drafted
- Result 2 – In service training curricula of NIM improved
- Result 3. - The system of trainers for in-service training of magistrates set up in line with EU models;
- Result 4. - Training for magistrates in both EC and national legal matters delivered in line with EU standards
- Result 5 - Legal documentation on best practices, jurisprudence and relevant EU legislation designed for each training seminar
- Result 6 – Institutional policy of TCC developed to guarantee autonomous functioning
- Result 7 - The system of trainers for in-service training of auxiliary staff set up in line with EU models;
- Result 8 - A National Strategy of TCC for in-service training of auxiliary staff in line with EU requirements – drafted
- Result 9 - Training for auxiliary staff in both EC and national legal matters delivered to be delivered in line with EU standards
- Result 10 – Legal documentation on best practice, procedural techniques and legal provisions designed for training courses

Component C - Creating and strengthening conflict analysis and resolution capacities by introducing alternatives means to the judiciary in solving civil and commercial cases.
Result 1 – Recommendation of improving the existing legal framework on alternatives means to the judiciary in solving civil and commercial cases drafted in line with EU requirements
Result 2 – Best Practice Manual stressing on the features and advantages of mediation in civil, family and commercial disputes drafted
Result 3 – Proposals for a draft law on mediation submitted
Results 4 – Awareness of large segments of beneficiaries (magistrates, lawyers, civil society, students) of the concept and advantages of using alternative means in solving civil, family and commercial cases

3.4 Activities:

3.4 A - Institutional capacity and functioning of SCM enhanced in line with EU requirements

Results 1 to 4 will be accomplished through twinning arrangements

The activities to be carried out under the twinning arrangement will be the following:

Result 1 – Legal framework concerning the SCM status improved
- to assess the legal framework and the amending proposals related to increasing the SCM’ competencies

Result 2 - Organizational structure plan of SCM set up
- to design and monitor proposals related for a new organizational structure, institutional capacity and functioning of SCM

Result 3 - Secondary legislation related to the functioning of SCM–drafted;
- to elaborate proposals for the secondary legislation related to the competencies and the functioning of the SCM

Result 4 – Action Plan to monitor the enforcement of the Deontological Code of Magistrates set up
- to design an action plan aiming to monitor the proper enforcement of the Deontological Code of Magistrates and to identify specific remedies in monitoring process

Tasks of the Pre-accession Advisor (PAA):
- to provide technical advice to MoJ and SCM in supporting the legal reform aiming to strengthening the role of SCM
- to co-ordinate the short term technical assistance from the EU Member States, required to effectively carry out the activities of the project;

Short-term expertise will be required in order to cover all the activities under results 1 to 4 and other activities as may be decided during covenant negotiations.

Profile of the PAA:
- Judge with solid legal and managerial background in administration of justice,
- sound communication skills and previous experience of working in a multi-disciplinary and multi-national team;
- previous experience as project coordinator/project manager;
- sound knowledge of English. Knowledge of French is an advantage.

**Duration of the assignment of the PAA**: The PAA is supposed to be seconded to the SCM for a period of 18 months.

### 3.4. B Further development of NIM and TCC:

*Results 1 to 10 will be accomplished through twinning arrangements*

The activities to be carried out under the twinning arrangement will be the following:

**Result 1** - A National Strategy of NIM in-service training in line with EU requirements - drafted
- to design a National Strategy of the in-service training for magistrates following the principle of train the trainers and the recommendation for such strategy initiated in the framework of Phare Horizontal 1999 “Building Capacity for Training of Judges in EC Law” in the middle 2002 year.

**Result 2** – In service training curricula of NIM improved
- to improve the design of the in service training curricula of NIM following the direction of the above National Strategy

**Result 3**. - The system of trainers for in-service training of magistrates set up in line with EU models;
- to strengthen the existing 24 EC trainers network by adding the 5 magistrates trained under Helsinki Committee programme, NIM specialized training staff and judges from the other courts in the country and by creating specialized trainers in other fields of law

**Result 4** - Training for magistrates in both EC and national legal matters delivered in line with EU standards
- to organize training courses mainly for the sitting magistrates involving both EU and national trainers. The training seminars will offer both the EC and the national perspective of the subject matter. The topics addressed should be:
  - **EC Law** (Consumer protection law, Competition law, Banking and financial law, Environmental law, Labor and social protection, Intellectual property law);
  - **Human Rights** (application of the European Convention of Human Rights in the European states);
  - regional/international cooperation in the fight against organized crime;
  - judicial cooperation in criminal matters, new crime areas (computer crimes, economic crime);
  - the evolution of the main concepts in civil law (property law, concept of natural and moral person, moral damages, protection of disabled, various types of contracts-including insurance), the
INTERNET law. Justice – an independent power (Judicial independence and judicial responsibility, Ethics of judges, Administration of justice and organization of courts, Access to justice for citizens, Evaluation of the quality of justice, The Relation of the judiciary with the civil society, Justice system and mass media.)

Result 5 - Legal documentation on best practices, jurisprudence and relevant EU legislation designed for each training seminar
- to design and distribute practical manuals as tools to be used for each topic debated during training courses

Result 6 – Institutional policy of TCC developed to guarantee autonomous functioning
- to assess and make recommendation of the institutional capacity and functioning of TCC in line with EU standards

Result 7 - The system of trainers for in-service training of auxiliary staff set up in line with EU models;
- strengthening the existing trainer network by adding and training new trainers among the TCC staff and other personnel from the Romanian judiciary and auxiliary staff

Result 8 - A National Strategy of TCC for in-service training of auxiliary staff in line with EU requirements – drafted
- to design National Strategy of the in-service training for auxiliary staff following the principle of train the trainers

Result 9 - Training for auxiliary staff in both EC and national legal matters delivered to be delivered in line with EU standards
- organize training courses for the auxiliary staff (trainees and sitting clerks) involving both EU and national trainers. The following topics will be discussed during these training courses: basic civil/criminal procedure, activities developed by the register’s office and by the archives, techniques of drafting procedural documents, computer literacy, deontology and ethics, judicial independence and judicial responsibility, administration of justice, organization of courts and evaluation of quality of justice.

Result 10 – Legal documentation on best practice, procedural techniques and legal provisions designed for training courses
- to design and distribute practical manuals as tools to be used for each topic debated during training courses

Tasks of the PAA:

- assist in further development of the training of Romanian magistrates and auxiliary staff
- evaluate the current state of NIM and TCC; comparing the results with the EU standards and existing resources;
- assist in implementation of the training programme
- provide daily advisory services to the NIM and TCC staff
- co-ordinate the activities of other short-term experts assigned to the project.
Profile of the PAA

- having at least 10 years experience in public service and a minimum of five years experience with training of magistrates;
- having in-depth knowledge of and practical experience with training of magistrates/lawyers/auxiliary;
- practical experience in management of training activities and management of courts;
- capable of assessing training needs for NIM trainees and sitting judges, as well as the staff within the Romanian judicial system;
- able to quickly adapt to the local environment and understand the constraints and opportunities of it;
- having adequate computer skills;
- fluency in English and French would be an advantage.

Duration of the assignment for the PAA

The PAA is supposed to be seconded to the NIM and TCC for a period of 18 man / month.

3.4 Creating and strengthening conflict analysis and resolution capacities by introducing alternatives means to the judiciary in solving civil and commercial cases.:

Results 1 to 4 will be accomplished through twinning arrangements

The activities to be carried out under the twinning arrangement (Twinning Light) will be the following:

Result 1 – Recommendation of improving the existing legal framework on alternatives means to the judiciary in solving civil and commercial cases drafted in line with EU requirements
- To assess the existing legislation on alternative conflict resolution (mainly the provisions on arbitration in commercial issues)

Result 2 – Best Practice Manual stressing on the features and the advantages of mediation in civil, family and commercial disputes drafted
- To draft a detailed Manual by using the EU model perspectives on the concept of each of alternative conflict resolution. This Manual could be a serious practical documentation incorporating not only legal provision of other EU member state but also practical experiences faced by those countries in using such alternative means and consequences related to the use the judicial procedures (workload of judges, costs etc)
Result 3 – Proposals for a draft law on mediation
- to draft proposals for the future legislation on mediation

Results 4 – Awareness of large segments of beneficiaries (magistrates, lawyers, civil society, students) of the concept and advantages of using alternative means in solving civil, family and commercial cases
- to organise an Awareness Forum for representatives of different categories of legal professions, civil society, other professions (sociologist, psychologist), students etc. The result of the study mentioned above should be discussed together with the action plan drafted by the EU experts.

Tasks of the Short term expert:
- to provide technical advice to MoJ in identifying best practical ways to introduce alternative means to judiciary procedures in solving civil, family and commercial disputes

Short-term expertise will be required in order to cover all the activities of this component

Profile of the Expert:
- Legal expert with solid legal background in alternative dispute resolution,
- sound knowledge of relevant regulations and policies of the European Union;
- sound communication skills and previous experience of working in a multi-disciplinary and multi-national team;
- previous experience as project co-ordinator/project manager;
- sound knowledge of English. Knowledge of French is an advantage.

Duration of the Twinning Light: There will be several short term missions of an EU expert within a total period of 6 months.

3.5 Lessons learned:
On 30 March 2001 the MoJ received the annual assessment Report for assistance under Ro 9705. Ro 9806.02. Ro 9905.01 (among the other projects implemented by the Ministry of Interior). Chapter 5.3.1 states that “under Judiciary Institutional Building and training, the immediate objective Strengthening the NIM; develop training for magistrates, legal experts and support staff” are likely to be achieved in a satisfactory manner by the end of the assistance.
Also, the final report of the Twinning Program Phare Ro 9806.02 drafted by the French experts recommended further steps in enforcing the deontological provisions, on functioning of the courts, strengthening the role of SCM, initiating the in service training programme of magistrates in EC law.

4. Institutional Framework

The main institutions involved in the project are: Superiors Council of Magistrates, National Institute of Magistracy (NIM), Training Center for Clerks
(TCC), Ministry of Justice, the courts and prosecutorial offices, Union of Lawyers etc

SCM is the representative body of judiciary with competences in the appointment, promotion, sanctioning of magistrates and administration of justice.

There are 15 courts of appeal, 41 tribunals and 186 first instance courts and the Supreme Court of Justice in Romania and the prosecutor/s offices attached to these courts.

NIM is the specialized educational body that intensely train the law graduates for becoming judges and prosecutors and it is in charge with the continuous training of sitting judges and prosecutors. The significance of the training thereof is considerable and offers the opportunity of combining the theoretical and practical aspects.

TCC is a specialized institution for the training of future clerks; it is also in charge with the continuous training of sitting clerks. Union of Lawyers represents the interest of lawyers in Romania
5. Detailed Budget

*Strictly follow the following format.*

<table>
<thead>
<tr>
<th>COMPONENT</th>
<th>Phare support</th>
<th>Total Phare (=I+IB)</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Investment Support*</td>
<td>Institution Building**</td>
</tr>
<tr>
<td>COMPONENT A - &quot;Institutional capacity and functioning of SCM enhanced in line with EU requirements:&quot;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1A. &quot;Institutional capacity and functioning of SCM enhanced in line with EU requirements&quot; (twinning)</td>
<td>-</td>
<td>0,75</td>
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<tr>
<td>TOTAL A</td>
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<td>0,75</td>
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<tr>
<td>COMPONENT B - Further development of NIM and TCC</td>
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<tr>
<td>1B. &quot;Further development of NIM and TCC&quot; (twinning)</td>
<td>-</td>
<td>0,9</td>
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<tr>
<td>TOTAL B</td>
<td></td>
<td>-</td>
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<tr>
<td>COMPONENT C - Creating and strengthening conflict analysis and resolution capacities by introducing alternatives means to the judiciary in solving civil and commercial cases.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1C. &quot;Creating and strengthening conflict analysis and resolution capacities by introducing alternatives means to the judiciary in solving civil and commercial cases.&quot; (twinning light)</td>
<td>-</td>
<td>0,15</td>
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<tr>
<td>TOTAL C</td>
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<td>-</td>
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<tr>
<td>GRAND TOTAL</td>
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</tbody>
</table>

5.1. Detailed twinning budget (EURO)

<table>
<thead>
<tr>
<th>COMPONENT</th>
<th>PHARE SUPPORT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Institutional Building</td>
</tr>
<tr>
<td>COMPONENT A - &quot;Institutional capacity and functioning of SCM enhanced in line with EU requirements&quot; (twinning)</td>
<td>0,750.000</td>
</tr>
<tr>
<td>-Long-term assistance and overall twinning project management (PAA)</td>
<td>0,450.000</td>
</tr>
</tbody>
</table>
COMPONENT A „Institutional capacity and functioning of SCM enhanced in line with EU requirements” (twinning) 0,750.000
- Short-term assistance 0,150.000
- workshops, seminars 0,150.000

COMPONENT B - Further development of NIM and TCC (twinning) 0,900.000
- Long-term assistance and overall twinning project management (PAA) 0,450.000
- Short-term assistance 0,450.000
- workshops, seminars 0,450.000

COMPONENT C „Creating and strengthening conflict analysis and resolution capacities by introducing alternatives means to the judiciary in solving civil and commercial cases” (twinning light) 0,150.000
- Short-term assistance 0,075.000
- forum, workshops, assessment, study 0,075.000

TOTAL 1,800.000

* In cases of co-financing only
Note: expenditure for equipment should be put under Investment

6. Implementation Arrangements

6.1 Implementing Agency
- For the whole project the Implementing Agency will be Central Finance and Contracts Unit (CFCU) which will be responsible for tendering, contracting, administration, accounting, payments and financial reporting.
- The Implementing Authority (IA) is the MoJ
- The beneficiaries directly involved in the project will be SCM, MoJ, INM, TCC, courts
The PIU from the MoJ will be responsible for overall procedural and administrative management of the project. Responsible persons for each component will be appointed from the institutions directly involved in the respective components.

6.2 Twinning and Twinning Light

The main beneficiaries will be the SCM, NIM and the TCC, MoJ and the courts and prosecutorial offices. Contact persons are:

Prof. Univ. Dr. Marilena Uliescu – NIM Director
Bd. Regina Elisabeta, no.53, Sector 5 Bucharest
Phone: + 40 1 3102110
Fax: +40 1 3110234
Email: muliescu@just.ro
6.3 Non-standard aspects
The Phare Manual will strictly be followed;

Contracts
Is is expected to have 1 twinning Covenants, 1 twinning Light and 1 supply contract.

7. Implementation Schedule

7.1 Start of tendering/call for proposals
   September 2003

7.2 Start of project activity
   March 2003

7.3 Project Completion
   February 2005

8. Equal Opportunity

The Romanian MoJ is an equal opportunities employer.

9. Environment NOT APPLICABLE

10. Rates of return NOT APPLICABLE

11. Investment criteria NOT APPLICABLE

12. Conditionally and sequencing

   - The successful implementation of Phare 99 related to the institutional development of NIM and TCC
   - The Amending of Judicial Organisation Law no 92/1992
## Phare log frame

<table>
<thead>
<tr>
<th>Overall objective</th>
<th>Objectively verifiable indicators</th>
<th>Sources of Verification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contribution to the improvement of the operation of the Romanian judiciary system</td>
<td>The Romanian judicial system modernised and in line with the EU requirements in the areas addressed by this project</td>
<td>Reports and statistics; EC Commission &amp; MoJ; annual reports</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Project purpose</th>
<th>Objectively verifiable indicators</th>
<th>Sources of Verification</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Component A:</strong> Institutional capacity and functioning of SCM enhanced in line with EU requirements;</td>
<td>By 2005 the SCM will be strengthened in line with EU requirements</td>
<td>- Regular reports of the Commission, Governmental reports,</td>
<td>- The relevant legislation on judicial organisation, compliant with EU requirements</td>
</tr>
</tbody>
</table>
**Component B:** Further development of NIM and TCC

**Component C:** Creating and strengthening conflict analysis and resolution capacities by introducing alternatives means to the judiciary in solving civil and commercial cases.

<table>
<thead>
<tr>
<th>Results</th>
<th>Objectively verifiable indicators</th>
<th>Sources of Verification</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Component A:</strong> Institutional capacity and functioning of SCM enhanced in line with EU requirements Result</td>
<td></td>
<td></td>
<td>Full commitment of the parties involved.</td>
</tr>
<tr>
<td>Result 1 – Legal framework of the SCM status improved</td>
<td>SCM recognised as a representative and decision maker of magistrates</td>
<td>Legislation, reports; internal and international bodies; biannual</td>
<td>The recommendations of the EU partners are assimilated</td>
</tr>
<tr>
<td>Result 2 - Organisational structure plan of SCM set up</td>
<td>The organisational structure well designed</td>
<td>Legislation Statistics; MoJ and SCM; annual</td>
<td></td>
</tr>
<tr>
<td>Result 3 - Secondary legislation relating to the functioning of SCM – drafted;</td>
<td>The secondary legislation on functioning of the SCM</td>
<td>Reports; the EC experts; quarterly</td>
<td></td>
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<tr>
<td>Result 4 – Action Plan to monitor</td>
<td>Action plan for Deontological Code designed</td>
<td>Statistics; reports; Government; Commission; annual</td>
<td></td>
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</tbody>
</table>

By 2005, approx. 2000 Romanian judges will have the basic knowledge in EC Law, and also will be updated with the new national legislation and TCC will be strengthened and fully functional.

By 2005, alternative means will be better enforced.

Successful implementation of other previous and ongoing related projects.

Willingness of the NIM and TCC to assimilate the recommendations of the contractor partners.

Willingness to enforce alternative means of solving conflicts.
the enforcement of the Deontological Code of Magistrates set up

**Component B:** Further development of NIM and TCC

Result 1 - A National Strategy of NIM in-service training in line with EU requirements - drafted
Result 2 – In service training curricula of NIM improved
Result 3. - The system of trainers for in-service training of magistrates set up in line with EU models;
Result 4.- Training for magistrates in both EC and national legal matters delivered in line with EU standards
Result 5 - Legal documentation on best practices, jurisprudence and relevant EU legislation designed for each training seminar
Result 6 – Institutional policy of TCC developed to guarantee autonomous functioning
Result 7 - The system of trainers for in-service training designed and enforced

Strategy on in-service training designed and enforced
Curricula adjusted
The network of trainers operational
By 2005, magistrates trained in EC Law
Support documentation used during and after delivering training seminars

Legal and institutional framework of TCC enacted
The network of trainers operational
Strategy on in-service training designed and enforced
Clerks trained
Support documentation used

Reports, EU experts, NIM and TCC; annual, quarterly

• The training seminars are fully completed
• The CC network developed all the training activities
• NIM and TCC implemented the recommendations of the experts

Reports, EU experts, MoJ;
Service training of auxiliary staff set up in line with EU models;
Result 8 - A National Strategy of TCC for in-service training of auxiliary staff in line with EU requirements – drafted
Result 9 - Training for auxiliary staff in both EC and national legal matters delivered to be delivered in line with EU standards
Result 10 – Legal documentation on best practice, procedural techniques and legal provisions designed for training courses

Component C: Creating and strengthening conflict analysis and resolution capacities by introducing alternatives means to the judiciary in solving civil and commercial cases.

Result 1 – Recommendation of improving the existing legal framework on alternatives means to the judiciary in solving civil and commercial cases during and after delivering training seminars
Assessment of the existing legislation completed
Study on alternative means in EU country elaborated
Proposal for a draft law designed and approved
Evaluation Forms and proposals of the participants to the debates

Willingness to assimilate new concept not enough prior tested in Romania
Full commitment of the parties involved.
commercial cases drafted in line with EU requirements
Result 2 – Best practice manual stressing on the features and advantages of mediation in civil, family and commercial disputes drafted
Result 3 – Proposal for a draft law on mediation
Results 4 – Awareness of large segments of beneficiaries (magistrates, lawyers, civil society, students) of the concept and advantages of using alternative means in solving civil, family and commercial cases

<table>
<thead>
<tr>
<th>Activities</th>
<th>Means</th>
<th>Assumptions</th>
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</thead>
</table>
| **1A.** "Institutional capacity and functioning of SCM enhanced in line with EU requirements" (twinning)  
**1B.** "Further development of NIM and TCC" (twinning)  
**1C.** "Creating and strengthening conflict analysis and resolution capacities by introducing alternatives means to the judiciary in solving civil and commercial cases" | 1A twinning  
1B Twinning  
1C twinning light | Full commitment of the parties involved.  
- Timely and adequate resources available. |
commercial cases.” (twinning light)

Preconditions

- the evolution of the NIM and TCC in the framework of Phare 99
- elaboration of the draft Judicial organisation Law
## DETAILED TIME IMPLEMENTATION CHART FOR PROJECT NUMBER RO-2002/000-586.04.16

**Assistance in strengthening the independence and functioning of the Romanian Judiciary system**

| **Activities of the Project** |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |      |
| **1A.** Institutional capacity and functioning of SCM enhanced in line with EU requirements "(twinning)" | D | D | D | D | D | C | C | I | I | I | I | I | I | I | I | I | I | I | I | I | I | I | I | I | I | I | I |
| **1B.** "Further development of NIM and TCC" (Twinning) | D | D | D | D | D | C | C | I | I | I | I | I | I | I | I | I | I | I | I | I | I | I | I | I | I | I | I |
| **1C.** "Creating and strengthening conflict analysis and resolution capacities by introducing alternatives means to the judiciary in solving civil and commercial cases." (twinning light) | D | D | D | D | D | C | C | C | I | I | I | I | I | I | I | I | I | I | I |

D = Design  
C = Contracting  
I = Implementation
**PROJECT TITLE**
*Assistance in strengthening the independence and functioning of the Romanian Judiciary system*

**CUMULATIVE CONTRACTING AND DISBURSEMENT SCHEDULE (MEURO 1,7)**

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