1. THE BUSINESS FACTS IN COSTA RICA FOR EU COMPANIES

A. SIZE of the Market
- GDP in 2014: € 39.7 billion (Source: World Bank)
- Annual Growth Rate in 2014: 3.5% (Source: World Bank)
- EU export in goods to Costa Rica (2014): € 828.7 million (Source: DG Trade)
- EU import in goods from Costa Rica (2014): € 3770.7 million (Source: DG Trade)
- Total trade in goods €4.6 billion (Source DG Trade)

B. Key INDUSTRY SECTORS:
Costa Rica is mainly a services-based economy (73.9% of GDP) being tourism, energy and water supplying, transports, communications, financial, insurances and real estate the most relevant sectors.

The main EU exports to Costa Rica are pharmaceuticals, cars and electrical components while imports from Costa Rica are led by plantains and pineapples followed by microelectronic components (circuits) and medical devices.

The EU’s leading exporter to Costa Rica is Germany, followed by Italy and Spain.

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Project implemented by:
- Latin America IPR SME Helpdesk
- University of Alicante, Campus San Vicente del Raspeig, Edificio Torre de Control, 03690 Alicante, Spain
- Head Office: helpline@latinamerica-ipr-helpdesk.eu

For more information please contact the Helpdesk:
- E-MAIL:  info@latinamerica-ipr-helpdesk.eu
- TEL: +34 965 805 460
- WORKING HOUR: Monday - Friday 9:00 -16:30 (CEST)
- ADDRESS: University of Alicante, Campus San Vicente del Raspeig, Edificio Torre de Control, 03690 Alicante, Spain
- Project implemented by: European Union
B. How does Costa Rican IP legal framework compare to INTERNATIONAL STANDARDS?

The Registro Nacional is responsible for Intellectual Property matters. Costa Rica is signatory to the following international conventions and agreements:

- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (more information here)
- Berne Convention (more information here)
- Paris Convention for the Protection of Industrial Property (more information here)
- Patent Cooperation Treaty (PCT) (more information here)
- Phonograms Convention (more information here)
- Rome Convention (more information here)
- International Convention for the Protection of New Varieties of Plants (UPOV- 1991 act) (more information here)
- World Intellectual Property Organization (WIPO) Convention (more information here)
- WIPO Copyright Treaty (WCT) (more information here)
- WIPO Performances and Phonograms Treaty (WPPT) (more information here)

Although Costa Rica's IPR legal framework is modern and enforceable, there are still challenges to its implementation, in particular with regards to the prevention of online infringement and the limited effectiveness of customs measures. Costa Rica is currently on the IP Watch List of the US Trade Representative's Special 301 Report. The main concerns mentioned in the 2015's edition are a lack of resources allocated for effective IP protection, deficiencies in proceedings to prevent online IP infringement, lack of relevant IPR online databases, issues with data protection of pharmaceutical products and the limited effectiveness of customs measures.

Other challenges to be taken into account are:

- Lack of specialised courts.
- Lack of clarity and consistency of IP Laws, which are often amended to comply with international standards
- Lack of awareness and knowledge of IP matters among judges, customs authorities and even legal practitioners
- Delays in Patent proceedings
3. IP Rights in Costa Rica: THE BASICS

A. Copyright and related rights

What are Copyright and related rights?

Copyright protects original intellectual creations of literary, artistic or scientific nature (“works”). Some examples of works that can be protected by Copyright are: books, documents, websites, drawings, software or scientific papers.

Related rights protect the right of those persons that – without being authors- somehow contribute to the creation, embodiment or communication of the work. Some examples are the musician that plays in a concert, an actor or the editor of a book.

For Copyright protection, works must meet the originality requirement, in the meaning of unique, ingenious and/or creative.

- Economic rights, derived from the property of a copyrighted work, grant the author (or owner) the right to prevent third parties from: communicating to the public, reproducing, distributing and transforming the work. Economic rights can be transferred or licensed in order to allow third parties to exploit the work.

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

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

HOW LONG DOES legal protection LAST?

The exclusive right granted by Copyright start at the moment of creation and last for the life of the author plus 70 years.

In some cases the starting date of the protection may vary (e.g. if the author is unknown, the 70-year term begins on the publication date).

HOW do I register?

Copyright registration is not mandatory in Costa Rica. The work is protected against any infringement from its creation, even without formal registration. Nevertheless, registration may very useful in enforcement actions as a proof of ownership, and of the date of creation or the content of the work itself (e.g. the protected source code).

In Costa Rica, works are registered with the National Copyright Registry at the National Registry. The procedure is simple and inexpensive:

a) Fill out the registration forms in Spanish. There are different registration forms depending on the type of work. Forms are available for download from Registro Nacional website
b) Pay the fee
c) Submit a copy and/or a description of the work
d) Legal deposit (one copy) of the published work with the public universities’ libraries, the National Library, National Archives and the Congress. If the work is unpublished it must be signed by the author and certified by a lawyer
e) In case of published works, publication of the application in the Official Gazette
f) Signature of the Registry Book at the National Copyright Registry

SOFTWARE CONFIDENTIALITY

To register software before the Registro Nacional you are allowed to attach the source code in a sealed envelope to preserve its confidentiality.
WHO can register?

Any natural person who is the author of the work or any legal or natural person holding the rights can apply for registration, either personally or duly represented. It is not mandatory to appoint a representative.

Any natural Costa Rican person can act as a representative.

If an editor, printer, translator or any other right holder applies for registration; evidence of transfer of the rights (i.e. transfer agreement) must be attached.

For notification purposes, foreigners (either natural or legal person) must provide a local address or fax number.

HOW much does it cost?

There is a unique fee of €3.86 plus publication fees (€0.026/per character)

B. Patents

What are patents?

Costa Rican legislation provides two different types of protection for inventions:

- **Patents:** to protect those technical solutions that consist in a process (e.g. a process to improve wood slicing) or a product (e.g. a new type of glue or an automated syringe).

- **Utility Models:** to protect minor inventions, namely any new shape, setting or layout that provides a new effect or leads to an incremental improvement in use (e.g. an improved mechanical tool or a waste container that prevents direct access to its content).

Patents in COSTA RICA: What you need to know

To benefit from patent protection, your new invention must fulfil the following requirements:

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

**Inventive step:** An invention is regarded as involving an inventive step if the invention is neither obvious nor obviously derived from the state of the art for an expert with average skills in the technical field concerned
HOW LONG does legal protection last?

Patents are granted for twenty (20) years from the application date. The granting procedure takes between five and six years.

In the case of utility models, the term is ten (10) years from the application date. The granting process tends to be shorter than in case of Patents (approximately 9 years).

HOW do I Register?

1. Application

Download the form on the Registro Nacional website:

   a) A description of the invention including claims and an abstract
   b) Drawings, if relevant
   c) Proof of payment of the prescribed fees
   d) If the applicant is not the inventor, a declaration from the inventor authorising the applicant to file the application
   e) Power of Attorney, if necessary

2. Formal examination and publication

   If the examiner notices any formal deficiency, you will be given a thirty (30) days extra period to amend your application.

   Costa Rica is one of the few countries in the world where publication does not take place 18 months after the application. Publication takes place immediately after the formal examination has been conducted; it is therefore advisable to monitor the process closely.

   Once your application has fulfilled all the formal requirements, the Registro Nacional will ask you to pay the publication fee within one (1) month.

3. Third parties’ oppositions

   The application will be published (where?) on three consecutive days. This publication starts a three-month period during which third parties can oppose the patent on the basis of lack of substantive requirements (usually lack of novelty or inventiveness).

   Regardless of whether oppositions are filed, the Registro Nacional will conduct the substantive examination within thirty (30) months,

Exclusions from patentability: The following are not considered inventions and cannot be protected as patents nor as utility models: discoveries, scientific theories and mathematical methods; aesthetic and literary works; business or economic methods, plans; combination of known products, variation of forms or use, size or materials, unless that combination complies with an inventive step.

Inventions whose commercialisation is against public order, moral or human or animal health, diagnostic and surgical methods, plants, animals and the biological processes used to obtain them, and microorganisms as they are in nature are also excluded from patentability.

Second use Patents (see Glossary) are not allowed under Costa Rica Patent Legislation.

Obligations of the Patent holder: Costa Rica imposes certain obligations that must be taken into account when managing and applying for your Patent in Costa Rica:

• Information: you must provide the Registro Nacional with information about any Patent application for the same invention in any third country. It is mandatory to report the results of the Preliminary Search Reports, the granting or refusal of the Patent, as well as details of any other disputes or litigations related to the invention. Failing to comply with this obligation may lead to the rejection of the application.

• Exploitation: once granted, you must commercialize or import your Patent within the three years after the date of granting. Non-compliance with this obligation may imply the obligation of granting compulsory licenses and/or the expiration of the Patent.
following the date when the application has been sent to the competent examination authority.

Taking into account the result of the examination, the Registro Nacional will issue its final decision, granting (totally or partially) or rejecting the application.

**PRELIMINARY SEARCH REPORT**

In Costa Rica, the Preliminary Search Report (see Glossary) is conducted simultaneously to the substantive examination and its conclusions are published together.

**WHO can register?**

Any natural or legal person, whether the inventor in person or a third party to whom the rights have been assigned, may apply for a Patent in Costa Rica. There is no need to appoint an attorney; however, the signature of the applicant must be certified by a lawyer (cost around €25).

Any natural Costa Rican person can act as a representative.

For notification purposes, foreigners (either natural or legal person) must indicate a local address or fax number.

**HOW much does it cost?**

<table>
<thead>
<tr>
<th>Cost</th>
<th>Individuals and Micro and Small companies</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patent Application</td>
<td>€162</td>
<td>€540</td>
</tr>
<tr>
<td>Utility model application</td>
<td>€81</td>
<td>€81</td>
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<tr>
<td>Analysis</td>
<td>€432-€648</td>
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<tr>
<td>Registration</td>
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<td>€540</td>
</tr>
<tr>
<td>Annuity (renewal fees)</td>
<td>€162 each year ¹</td>
<td>€540 each year</td>
</tr>
<tr>
<td>Divided application</td>
<td>€162</td>
<td>€162</td>
</tr>
<tr>
<td>Opposition</td>
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<td>€27</td>
</tr>
<tr>
<td>Term extension</td>
<td>€162</td>
<td>€162</td>
</tr>
<tr>
<td>Appeals + notification</td>
<td>€13,19</td>
<td>€13,19</td>
</tr>
<tr>
<td>Publication*</td>
<td>€200-270</td>
<td>€200-270</td>
</tr>
</tbody>
</table>

* Publication fees stated are estimates. They include three publications at the Official Bulletin + publication in one national newspaper and depend on the number of characters and the chosen newspaper

¹ Plus 30% if paid during grace period.

**C. Industrial Designs and Models**

Costa Rica provides for two different types of protection:

- **Industrial Designs** protect the arrangement of lines or colours that gives a special appearance to an industrial or artisanal product.

- **Industrial Models** protect plastic forms which can be used as manufacturing mould.

**Requirements**: The requirements for protection are Novelty and Originality, meaning that the Model/Design has not been previously disclosed in any part of the world by any means.

**SCOPE of PROTECTION**

Your registered Model or Design protects the external appearance but not any of the technical features or functionalities.

**HOW LONG does legal protection last?**

The protection lasts for ten (10) years from the filing date. The granting procedure takes between two and three years.

**HOW do I Register?**

1. **Application**

Download and fill in the form from the Registro Nacional website and submit:

a) Five copies of the graphic representation (15x15cm)

b) Description (no more than 100 words)

c) Proof of payment of the fees

d) Transfer of ownership (translation if it is not in Spanish), if necessary

e) Power of attorney, if necessary

The requirements to be considered a Micro or Small company in Costa Rica are set by Law 8262. Contact our helpline to know more.
2. Formal examination and publication

If the examiner notices any formal deficiency you will be given a thirty (30) day period to amend your application. Once the application passes such examination it will be published (Publication fees are to be paid).

The application will be published on three consecutive days in the Official Gazette plus a national newspaper.

3. Third parties’ oppositions

Once the application has been published, third parties have 30 days from the publication date to file their oppositions against your application; opposition should be based on the lack of fulfilment of requirements (usually lack of novelty and/or originality).

4. Substantive examination and final decision

Whether or not oppositions are filed, the Registro Nacional will conduct the substantive examination. Taking into account the result of the examination, the Registro Nacional will issue its final decision, granting or rejecting the application.

WHO can register?

Any natural or legal person, whether the designer or a third party to whom the rights have been assigned, may apply for an Industrial Design/Model in Costa Rica. It is not mandatory to appoint a representative; however, the signature of the applicant must be certified by a lawyer (cost around €25).

Any natural Costa Rican person can act as a representative. For notification purposes, foreigners (either natural or legal person) must indicate a local address or fax number.

HOW much does it cost?

The fees are the following:

<table>
<thead>
<tr>
<th>Fees</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industrial Design application per class</td>
<td>€ 81</td>
</tr>
<tr>
<td>Industrial Model application per class</td>
<td>€ 81</td>
</tr>
<tr>
<td>Opposition fee</td>
<td>€ 27</td>
</tr>
<tr>
<td>Publication fee*</td>
<td>€200-270</td>
</tr>
</tbody>
</table>

* Publication fees are estimates. This includes three publications in the Official Bulletin + publication in one national newspaper and depends on the number of characters and the chosen newspaper.

D. Trademarks

WHAT is a Trademark?

A Trademark is any sign or combination of signs that serves to identify the origin of goods and services.

Costa Rica also protects Tradenames (to identify business) and advertising Slogans. Exclusiveness over a Tradename is acquired by the first use while Slogans must always be linked to a Trademark registration or application.
Trademarks in Costa Rica: What you need to know?

In Costa Rica three-dimensional or shape, scent or smell and sound Trademarks can be registered.

The law establishes that Trademarks shall not protect signs that (grounds for refusal):

- “Lack of distinctiveness” in relation to the protected service or product (e.g. “chocolate” for sweets)
- Consist of the usual shape of goods or a shape that provides a technical advantage or a functionality to the object concerned
- Consist of general statements used in the course of trade (e.g. the best, the most valuable, etc.)
- May cause confusion or deception to the public or the business sector concerned
- Conflict with third party rights such as prior Trademarks, Copyrights or Industrial Designs, as well as emblems, personal names and other rights
- Are against morals, public order or can be deemed offensive

HOW LONG does legal protection last?

The exclusive right granted to Trademarks last for ten (10) years starting on the registration date. These can be indefinitely renewed for subsequent ten-year periods. It takes around six months to register a Trademark, subject to the absence of third party oppositions or objections by the Registro Nacional.

HOW do I Register?

You can download the application form here.

The application must contain, at least, the following information:

a) Applicant’s identifying information
b) The trademark for which registration is sought, or a reproduction of the trademark in the case of a word mark with special graphic elements, shape or colour, or a figurative, composite or three-dimensional mark with or without colour
c) Translation of the Trademark to Spanish (if the sign is in a language other than Spanish)
d) The goods or services to be protected
e) The class/classes in which you want to register
f) Proof of payment of the fees

After the first publication of the application in the Official Gazette and within the following two months, any person with a legitimate interest may file a founded opposition, on the basis of any grounds for refusal (see What you need to know above).

Regardless of whether oppositions are filed, the Trademark Office will perform the substantive examination and will determine whether there are grounds for refusing the application.
WHO can register?

Any natural or legal person may apply for a Trademark in Costa Rica. It is not mandatory to appoint a representative.

Any natural Costa Rican person can act as a representative.

For notification purposes, foreigners (either natural or legal person) must indicate a local address or fax number.

HOW much does it cost?

The fees are as follows:

<table>
<thead>
<tr>
<th>Fees</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trademark application fee per class</td>
<td>€54</td>
</tr>
<tr>
<td>Tradename</td>
<td>€54</td>
</tr>
<tr>
<td>Advertising slogan</td>
<td>€54</td>
</tr>
<tr>
<td>Transfer of rights, license, cancellation, change of name</td>
<td>€27</td>
</tr>
<tr>
<td>Opposition</td>
<td>€27</td>
</tr>
<tr>
<td>Renewal fee</td>
<td>€54</td>
</tr>
</tbody>
</table>

E. Geographical Indications and Appellations of Origin

A Geographical Indication (GI) is the name of a given country, region or place or a name, which is used to identify a product originating therein when its quality, reputation or other characteristics are essentially attributable to its geographical origin.

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

The application must include:

a) Name and address of the applicants and domicile.
b) Name of the Geographical Indication and Appellation of Origin
c) Geographic production area
d) Name or type of products
e) Summary of the quality or characteristics of the products

The applicant must submit two documents that will regulate the use of the DO or GI, the Specification (Pliego de Condiciones) and the Regulation of Use (Reglamento de Uso).

The minimum contents for the Specification are: (i) characteristics of the products, (ii) maps, (iii) description of the process, (iv) controls and traceability, (v) analysis or technical studies.

Regulation of Use must include: (i) requirements for the producers, (ii) rights and obligations, (iii) control mechanisms, (iv) the designation of the Regulatory Council, (v) logo, (vi) internal proceedings to modify Specification and the Regulations of Use, and (vii) sanctions.

Any third party may oppose registration of a Geographical Indication or Appellation of Origin.

The fee for the registration is €54.

PROHIBITIONS

The registration of a GI or DO can be denied if it incurs in any legal prohibition, such as:

- Common or generic term applied to distinguish the product
- Contrary to practices in the market or public policy
- The denomination is confusing or misleading in relation to another DO or GI
- It is confusingly similar to a previously applied trademark, in good faith, or to a previously registered trademark
4. ENFORCING your IPRs

In Costa Rica there is a specific law that deals with IPRs’ infringement (Law Nº 8039). IPRs can be enforced through civil judicial actions and criminal prosecution.

Although administrative measures to deal with IPR infringement are covered by the law they have been suspended by the General Attorney’s Office due to lack of clarity.

The remaining administrative actions are only possible through the Customers Ombudsman on the basis of unfair competition regulations; however, clear harm to consumers must be proven in order to process the action. Therefore, administrative actions are not very useful in practice.

Criminal prosecution is not very useful in Costa Rica since the General Prosecutor does not prosecute those crimes on its own. Hence the injured party must file a complaint to bring criminal proceedings.

Civil Law provides for preliminary injunctions that may be useful for IP holders such as:
- The immediate cessation of the acts constituting the alleged infringement
- The withdrawal of the goods resulting from the alleged infringement from commercial channels
- The suspension of the import of the goods
- A financial guarantee from the alleged infringer

5. Using CUSTOMS to Block Counterfeits

Customs in Costa Rica: What you need to know

Border measures enable IP holders to enforce their rights and prevent the import of infringing products into the territory of Costa Rica.

The main border measure available against counterfeited goods is to apply for a preliminary injunction, requesting a judge to postpone customs clearance of allegedly counterfeited goods.

In order to apply for a preliminary injunction, owners must fulfil the following requirements:

a) Proof of the right to request the injunction
b) File a bond or guarantee
c) Information concerning the infringing goods
d) Evidence of the infringement

The customs office will seize the goods (postpone clearance of imported goods) at the request of the IPR owner or ex officio for ten (10) days, during which the owner must file a civil (or criminal) suit, otherwise the customs office will lift the seizure.

CUSTOMS LIST

If the Customs office detects suspicious counterfeited goods it may notify the holder and allow the IPR holder to inspect the goods. Although the customs authorities in Costa Rica do not have an official Register of IPR holders, there is an informal list where you may apply to be included.

SPECIALIZED COURTS

Remember that there are no IP specialised judges under neither Civil nor Criminal jurisdiction
6. RELATED LINKS and Additional Information

For more information, see the following websites:

- Copyright Registry http://www.registronacional.go.cr/derechos_autor/index.htm
- General Directorate of Customs – DGA: http://www.hacienda.go.cr/contenido/284-servicio-nacional-de-adiuanas
- General Directorate of Statistics and Censuses: http://www.inec.go.cr/
- Foreign Trade Agency - PROCOMER: http://www.procomer.com/
- CINDE: http://www.cinde.org/en

7. GLOSSARY

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

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

Preliminary Search Report: Report that includes the results of the search of the relevant Patent documents and other technical literature that should be taken into account to evaluate the relevant State of the Art, the Novelty or the Inventiveness of the application.

Claim: Part of a Patent application or specification that defines the matter for which protection is sought in terms of technical features.

All the requirements hereby are updated to the Law in force at this date. Amounts are expressed in Euros and may vary according to the exchange rate and/or ulterior modifications of the regulation in force.
MANAGE YOUR INTELLECTUAL PROPERTY IN LATIN AMERICA

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

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

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

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

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

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

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

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

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

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

Project implemented by:


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