

INTERIM REPORT

ON

**IMPLEMENTATION OF COMMITMENTS
IN THE AREAS OF SERIOUS CONCERN
OF BULGARIA'S PREPARATION FOR MEMBERSHIP IN
THE EUROPEAN UNION**

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EXECUTIVE SUMMARY

1. Introduction

On 5 December 2005, the Open Society Institute – Sofia and the Minister of European Affairs Meglena Kuneva signed an Agreement on Monitoring of the work of the state administration on the recommendations of the European Commission in the five “red areas” of Bulgaria's preparation for accession to the EU. In these five areas, the delay of reforms raises “serious concern:” company law, freedom to provide services, agriculture, regional policy, and justice and home affairs.

With this regard, the Open Society Institute – Sofia formed five expert groups tasked with monitoring the honouring by the Bulgarian Government of the commitments assumed and with informing the authorities in Sofia and Brussels and civil society of the actual progress achieved **simultaneously with and independently of the Government.**

Several steps were taken in implementing the monitoring:

- ⇒ Identifying the areas of serious concern according to the Report from the European Commission;
- ⇒ Establishing the actions planned by the Government in response to the critical remarks;
- ⇒ Correlating the specific problems to the relevant group identified;
- ⇒ Gathering information on the effect of the measures taken;
- ⇒ Summarising the information.

On the basis of collected written information and interviews with officials of the principal ministries, the expert groups have prepared this Interim Report which evaluates progress in implementing the commitments assumed in the five areas **until 15 January 2006.**

A scale of four values has been adopted to measure implementation of any given measure:

- ⇒ **Not implemented:** the deadline for implementation has been missed and work on implementation of the measure has not started;
- ⇒ **Rather not implemented:** the deadline for implementation has been missed, work on implementation of the measure has started, but implementation is at an initial stage;
- ⇒ **Rather implemented:** the deadline for implementation has been missed, work on implementation of the measure has started, and implementation is at a final stage;
- ⇒ **Implemented:** the measure has been implemented by the deadline.

2. Evaluation of the Adequacy of the Measures Planned by the Government

The lists of measures planned by the Government in response to critical remarks contained in the Monitoring Report of the European Commission, released in October

2005, bring together actions of disparate scope, nature, extent of detail, and significance. The expert teams are of the opinion that the measures planned are rather adequate and cover a large part of the Commission's critical remarks, requiring corrective action, and even extend them further in certain respects.

The measures in the area of company law – protection of intellectual property, involve predominantly the creation of prerequisites for effective protection of intellectual property (establishment of coordination bodies, information exchange with the European Commission, etc.), but implementation of measures thus formulated is not a sufficient indicator of the tangible protection of right-holders or of the volume and pace of creation and distribution of works in violation of intellectual property protection legislation.

The expert team on agriculture identified a need for six additional measures.

The Analysis of the EC Monitoring Report on the state of preparedness of Bulgaria for EU membership and the measures proposed to address the critical remarks in the Report, list nine key critical remarks in the problematic issue of milk, related to the common market organisation for milk. These critical remarks concern: adoption of legislation regulating the main mechanisms, including allocation and administration of milk quotas; establishing mechanisms for the common market organisation for milk and milk products; setting up of a National Milk Board and Regional Milk Board; distribution of tasks and responsibilities between the bodies involved in implementing the milk quota system; approval of milk purchasers; installation and accreditation of independent laboratories for fat content analysis; taking political decisions on principles for administering the national reserve and the principles for transfer of quotas; elaboration of transitional arrangements for marketing milk in Bulgaria for the period ending April 2009.

The list of Government measures addresses only one of these remarks, and the expert team of the Open Society Institute – Sofia proposes evaluation of six additional measures.

The expert team in the area of justice and home affairs found that the bulk of the measures proposed by the Government of the Republic of Bulgaria under Chapter 24: *Justice and Home Affairs* stress the making of efforts towards a specific end, rather than on the result of those efforts. A number of measures are rather self-serving and can hardly demonstrate that, when implemented, they will lead to attainment of a specific objective. Notably, the measures in key areas, such as the structure and functioning of the judicial system and the fight against corruption, seem like an *ad hoc* response to the Monitoring Report, rather than following clear priorities of development in the relevant area. Just as visibly, the system of measures pays insufficient attention to the pre-trial phase of criminal proceedings, the fight against organised crime, and anticorruption: areas identified as cause for serious concern both in the political criteria and in Chapter 24: *Justice and Home Affairs*.

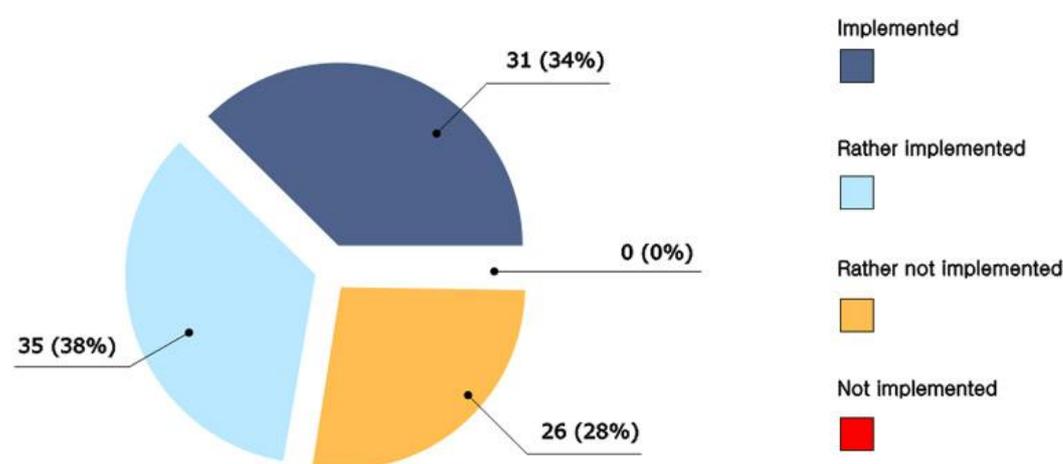
In the course of the monitoring, the expert team found that control over implementation of the measures lacks a clear structure.

3. Evaluation of Progress in Implementing Planned Measures

The quantitative evaluation of implementation of the measures planned by the Government in response to the critical remarks contained in the Monitoring Report from the European Commission released in October 2005 shows that **not a single measure in any of the five areas of serious concern has been assessed as “not implemented” (i.e. the deadline for its implementation has been missed and work on its implementation has not started).**

Of a total of 92 measures, 31 (or 34 per cent) are “implemented,” 35 (or 38 per cent) are “rather implemented,” and 26 (or 28 per cent) are “rather not implemented.”

Extent of Implementation of the Measures in the Five Areas Identified as Cause for “SERIOUS CONCERN” in the EC Monitoring Report (October 2005)



A quantitative analysis of the extent of implementation of the measures show that **the most substantial progress in overcoming the delay of reforms has been achieved in the area of serious concern “Protection of Intellectual Property Rights,” where none of the measures are not implemented or rather not implemented** while 66 per cent of the measures are implemented and 34 per cent are rather implemented. It should be borne in mind that the ascertainment of the implementation of these measures is just ascertainment of the creation of prerequisites but does not imply tangible effectiveness of coordination or tangible effectiveness of the awareness-raising campaign. This remains to be monitored in future.

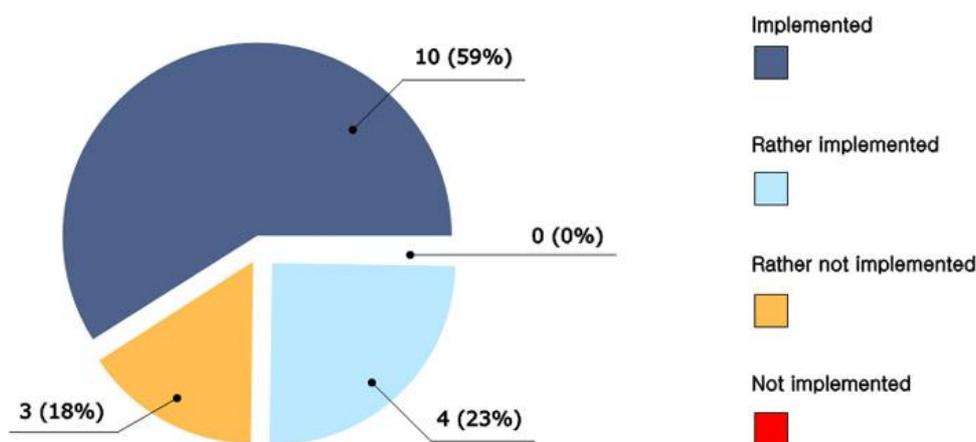
On the basis of “implemented” and “rather implemented” measures, satisfactory progress has been achieved in overcoming the delay of reforms in the **areas of regional policy** (where 93 per cent of the measures are implemented or rather implemented) and **freedom to provide services** (82 per cent of measures are implemented or rather implemented).

The least progress in overcoming the delay of reforms has been achieved in the areas of **justice and home affairs** and **agriculture**, where 41 per cent of the measures **are still rather not implemented.**

The evaluation of each of the five monitored areas is as follows:

Figure 1

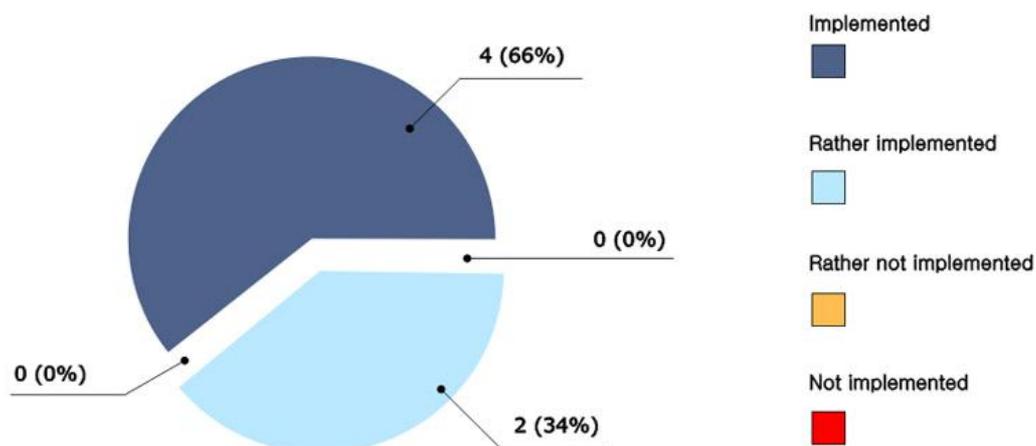
Extent of Implementation of Measures under Chapter 3: Freedom to provide services



Out of 17 measures planned to strengthen the enforcement of the compulsory motor insurance, 14 (or 82 per cent) are “implemented” or “rather implemented.”

Figure 2

Extent of Implementation of Measures under Chapter 5:
Company law - Protection of intellectual property rights

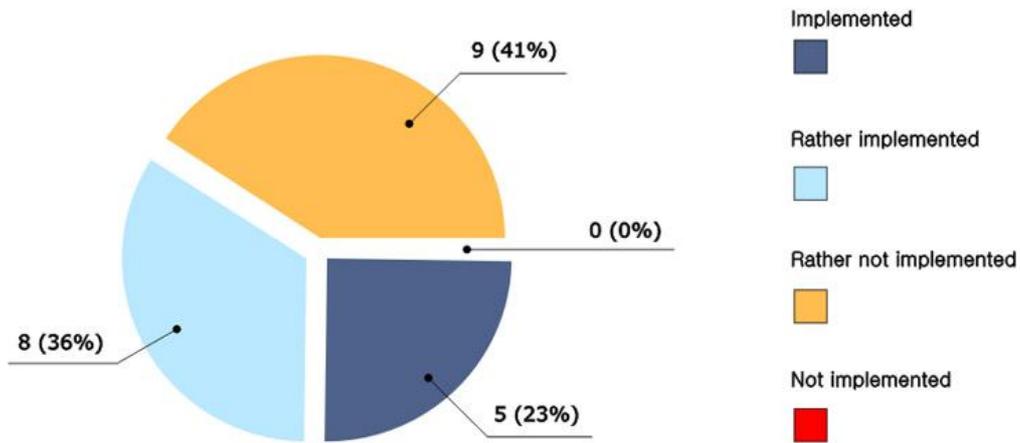


Formally, there are no delays or non-implementation. Measures of the Action Plan have been implemented on schedule, too (establishment of a Council for Protection of Intellectual Property).

The **principle of public consultation process** must be observed. An impression is created that the adoption of the acts revising the Copyright and Neighbouring Rights Act and the Radio and Television Act was rushed and not all parties concerned were invited to express opinions.

Figure 3

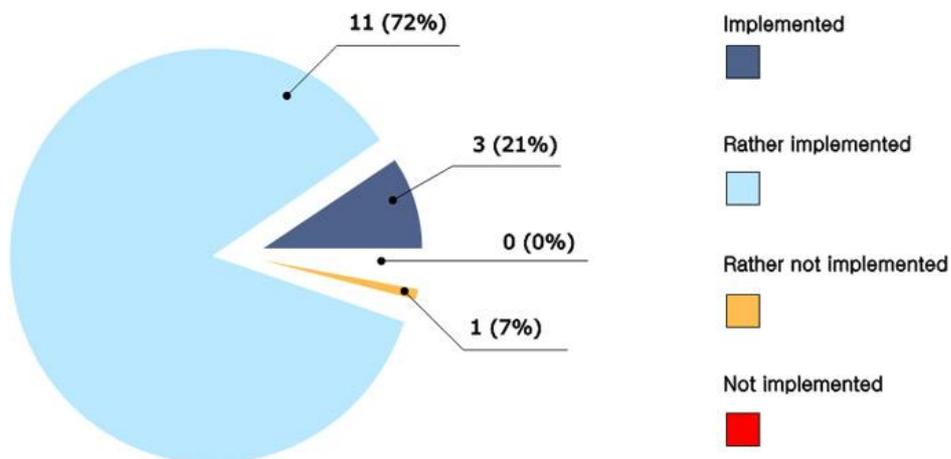
Extent of Implementation of Measures under Chapter 7: Agriculture



An overall analysis has been made of the measures responding to 22 critical remarks in the “red area.” Sixteen of these are addressed in the to-do-list under Chapter 7: *Agriculture*, and six measures are included on the relevant critical remarks of the Analysis of the Monitoring Report from the European Commission on the state of preparedness for EU membership of Bulgaria and the measures proposed to address the critical remarks in the Report. Corrective measures have been taken on practically all critical remarks. By 16 January, the results of the analysis show the following distribution (see Figure 3): the measures on five of the critical remarks are fully implemented; the measures on eight of the critical remarks are rather implemented; the measures on nine of the critical remarks are rather not implemented, and not a single measure is not implemented.

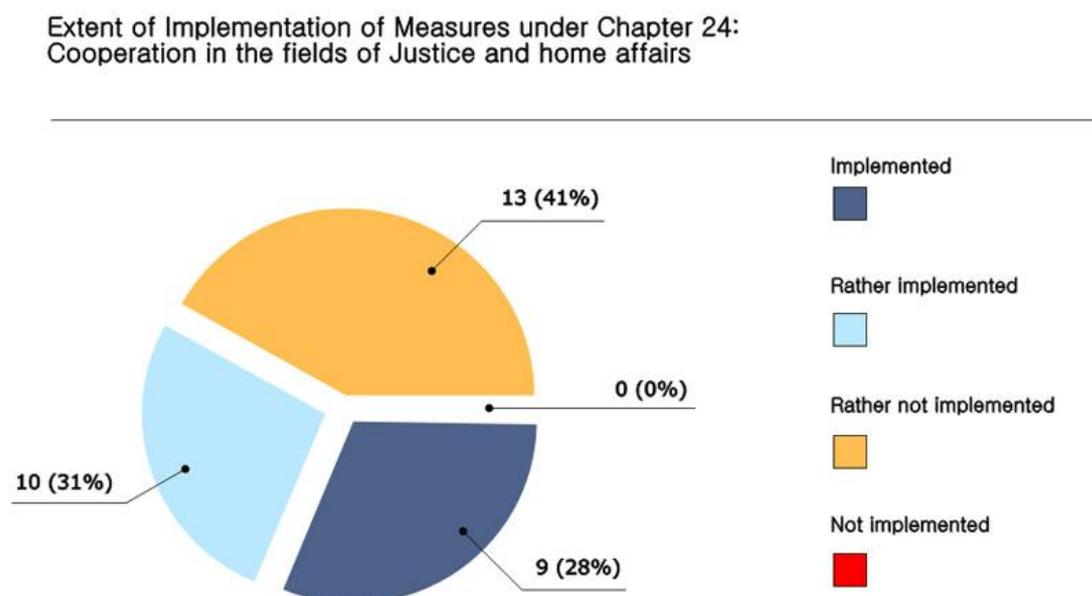
Figure 4

Extent of Implementation of Measures under Chapter 21: Regional policy and coordination of structural instruments



It could be said that by 16 January 2006, three of the measures planned by the Bulgarian Government were fully implemented, eleven were rather implemented, and one was rather not implemented (see Figure 4).

Figure 5



By 16 January 2006, no measure was detected that could qualify as not implemented (see Figure 5). Taking of action has been identified on all measures. The monitoring showed that nine of the measures could qualify as fully implemented on the basis of the data obtained.

As many as 72 per cent of the measures under Chapter 21: *Justice and Home Affairs* are qualified in this Report as rather implemented (31 per cent) and as rather not implemented (41 per cent).

4. Conclusion

The analysis of implementation of the measures in the five areas shows that progress in the area of **Protection of intellectual property rights prompts the assumption that, formally, the requirements of the European Commission have been met.** The instruments adopted could be commented in terms of expected effectiveness and interconnection of the separate enforcement authorities.

The same applies to the area of **freedom to provide services.** There are prerequisites to implement over 90 per cent of the measures to increase the compulsory motor insurance compliance until the end of March 2006. With this record of performance, there is no reason why the number of insured vehicles should not be over 90 per cent of those subject to insurance until the end of March 2006, by which Bulgaria will meet the European Commission's EU membership criteria.

The evaluation in the area of **regional policy** showed that there is just one measure which is rather not implemented, but its implementation is particularly important for Bulgaria's successful preparation of membership in January 2007 (Presentation of the drafts of Operational Programmes and the draft of a 2007-2013 National Development Plan to the European Commission for consultation). The respective institutions in charge aspire to implement all their commitments within a relatively short time limit, but this requires further serious and consistent work and sustained coordination of efforts.

Evaluation of the implementation of measures in the **area of agriculture** is mixed. The reason for this is the interdependence and the need of rigorous succession in implementing the measures.

The delay in the implementation of measures requiring substantial financial and human resources and technological time gives cause for serious concern: the Land Parcel Identification System (LPIS), the installation of independent laboratories for fat content analysis; establishment of border veterinary inspection posts etc.

Regardless of the large number of measures falling into the “rather not implemented” category, the experts' observations show the existence of fine synchronisation between the institutions in charge, which gives grounds for guarded optimism about the availability of a capacity to implement the measures once they are adopted.

The fact that 72 per cent of the measures under the **Chapter 24: Justice and Home Affairs** cannot be listed under the “implemented” heading is cause for serious concern considering the short time left. Since the peer review on this chapter is due in February 2006, the competent institutions evidently have just a few more weeks to demonstrate progress on the commitments assumed. The positive finding of the Interim Report is that there are no measures that cannot be implemented, but the delay raises doubts about the quality of the results that the measures will produce.

In conclusion, the Interim Report prompts an assessment of the measures planned by the Government to overcome delays in the implementation of reforms in the five critical spheres as rather adequate.

The pace of implementation of the measures suggests that all measures planned can be implemented by the deadline. The status in the areas of agriculture and justice and home affairs is cause for concern, as by the cut-off date of the Interim Report no sufficient progress was achieved there to guarantee that the delays will be overcome.

The effectiveness and quality of implementation of the measures remain an issue of concern, owing to the pace at which the reforms are carried out.

The principal conclusion of the Interim Report is that Bulgaria keeps its chances of implementing on time the measures for accession to the EU on 1 January 2007, but a substantial increase of efforts is required to overcome the delay in the areas of agriculture and justice and home affairs, as well as closer attention to quality in the implementation and enforcement of the measures planned.

INTRODUCTION

Bulgaria's accession to the European Union affects the life and fate of all Bulgarian citizens. The publicity and transparency of this process is therefore exceedingly important and indispensable.

Considering the broad public support for Bulgaria's EU membership as from 1 January 2007 and the short time left, redoubled efforts are required to enhance partnership between civil society and government institutions, as well as to monitor constantly and exercise active control over the activities carried out by government institutions in connection with the accession.

Mindful of this need, on 5 December 2005 the Open Society Institute – Sofia and the Minister of European Affairs Meglena Kuneva signed an Agreement on Civil Monitoring of the work of the state administration on the recommendations of the European Commission in the five “red areas” of Bulgaria's preparation for accession to the EU.

The Agreement establishes this country's first mechanism for monitoring and control over compliance with the measures whose implementation is a *sine qua non* condition for Bulgaria's effective EU membership as from 1 January 2007.

The Monitoring Report from the European Commission, released in October 2005, identified five areas in which the delay of the reforms gives cause for **serious concern**: company law, freedom to provide services, agriculture, regional policy, and justice and home affairs.

With this regard, the Open Society Institute – Sofia formed five expert groups tasked with monitoring the honouring by the Bulgarian Government of the commitments assumed and with informing the authorities in Sofia and Brussels and civil society of the actual progress achieved **simultaneously with and independently of the Government**.

The monitoring of the implementation of the measures under the relevant chapters is conducted by the following experts:

Monitoring Project Director: Assya Kavrakova, Programme Director, European Integration and Regional Stability, Open Society Institute – Sofia

Monitoring Project Coordinator: Zvezda Vankova, Programme Coordinator, Open Society Institute – Sofia

Chapter 3: *Freedom to Provide Services*: Kalin Dimitrov, Managing Director, INSURANCE.BG

Chapter 5: *Company Law*, Protection of Intellectual Property Rights: Assoc. Prof. Nelly Ognyanova, Head of European Studies Department, St. Kliment Ohridski University of Sofia

Chapter 7: *Agriculture*: Prof. Plamen Mishev D.Sc. (Econ.), Optional Courses Centre, University of National and World Economy, and Senior Research Associate Dr. Nedka Ivanova

Chapter 21: *Regional Policy and Coordination of Structural Instruments*: Belin Mollov, Chairman, Board of Directors, Balkan Assist Association, and Slaveya Hristova, Executive Director, Balkan Assist Association

Chapter 24: *Justice and Home Affairs*: Martin Gramatikov, Legal Programme Coordinator, Open Society Institute – Sofia, Ivanka Ivanova, Legal Programme Coordinator, Open Society Institute – Sofia, and Rada Smedovska-Toneva, Legal Programme Coordinator, Open Society Institute – Sofia

The experts attended the meetings held by the Council for Coordination and Monitoring with the Council of Ministers. On the basis of collected written information and interviews with officials of the principal ministries: the Ministry of Regional Development and Public Works, the Ministry of Finance, the Ministry of Environment and Water, the Ministry of Agriculture and Forestry, the Ministry of Justice, the Ministry of Interior, the Ministry of Labour and Social Policy, the Ministry of Culture, the Ministry of Economy and Energy and the Ministry of State Administration and Administrative Reform, the expert groups prepared this Interim Report which evaluates progress in implementing the commitments assumed in the five areas until 15 January 2006. The final progress report will be completed and presented by the Open Society Institute at the end of March 2006.

The Interim Report is structured as follows: Executive Summary, Introduction, Monitoring Methods, Analysis of Implementation of Commitments according to the EC Monitoring Report of October 2005 (Evaluation of the Adequacy of the Measures, Evaluation of Implementation of the Measures, Conclusions on Implementation of the Measures), and overall Conclusion by the monitoring team.

Monitoring Methods

Objectivity and impartiality are the underlying **principle** of the Monitoring of Bulgaria's progress in respect of the commitments assumed within the negotiating process in the five areas identified as giving cause for serious concern in the European Commission's Monitoring Report of October 2005. Monitoring is not a political assessment but seeks to arrive at an expert conclusion about the extent of implementation of the measures which the Bulgarian Government has planned and implemented. The evaluation focuses on the tangible results of the measures taken, which is why their planning will be treated as just a point of departure rather than as a result in its own right.

Outlining the scope of the observation, evaluation of the implementation of the commitments assumed falls into three categories:

- ⇒ Implemented commitments to adopt legal standards or to align effective legal standards with the *acquis communautaire*;
- ⇒ Practical application of already harmonised legal standards;
- ⇒ Activities that defy statutory regulation (administrative capacity, partnership, operational interaction etc.).

1. Implementation of commitments to adopt legal standards or to align effective legal standards with the *acquis communautaire*

The purpose of monitoring under this category is to establish whether the standards have been adopted and, if not, to identify the stage of the standard-setting and law-making process which they have reached and who is responsible for overcoming the delay.

1.1. Indicators:

- ⇒ Statutory instrument which has entered into force or revisions of existing statutory instruments;
- ⇒ Stage which the draft instrument has reached;
- ⇒ Specific entity responsible for adoption of the instrument.

1.2. Information sources:

- ⇒ Analysis of the Official Section of the *State Gazette*;
- ⇒ Analysis of the bills laid before the National Assembly and their position in the law-making process;
- ⇒ Interviews with officials of executive authorities, where non-implementation concerns a statutory instrument of secondary legislation.

2. Practical application of harmonised legal standards

The EC Commission contains specific critical remarks regarding adopted but unenforced legal standards. Such cases of “dormant” legal standards can be due to the following key reasons:

- ⇒ Lack of statutory instruments of secondary legislation;
- ⇒ Lack of administrative authorities to enforce the legal standards;
- ⇒ Lack or insufficiency of human, organisational and financial resources for practical implementation of policies.

2.1. Indicators:

- ⇒ Functioning administrative structures;
- ⇒ Existing political will and administrative culture to achieve the purposes of legislation;
- ⇒ Functioning system of institutional and control over the results achieved.

2.2. Information sources

- ⇒ Interviews with heads and employees of the administrations which are supposed to enforce the relevant legal standards;
- ⇒ Analysis of the administrative capacity of existing structures with a view to achieving the purposes of the statutory instruments;
- ⇒ Interviews with end product users;
- ⇒ Review of the effective or draft statutory instruments of secondary legislation, where application of the law depends on secondary legislation.

3. Practices of existing government authorities in the application of various policies

Establishment of the effectiveness of the measures taken to overcome such practices is most complicated and ambivalent, considering the lack of a clear subject of monitoring. The legal conformity of many criticised practices presents a difficulty as well, along with the omissions in respect of effectiveness, efficiency, transparency, democracy and other dimensions which cannot be objectified. Nevertheless, the measures to overcome problems in the sphere of controversial practices must be monitored and analysed.

3.1. Indicators

- ⇒ Change in established decision-making and decision-implementing mechanisms in the organisations criticised in the Report;
- ⇒ Achievement of better end results without compromising values such as transparency, predictability and accountability;
- ⇒ Free and open public debate on the change of practices, involving civil-society organisations and the media;
- ⇒ Regulatory framework revision, where necessary for change of controversial practices.

3.2. Information sources

- ⇒ Expert evaluation of the operation of the institutions criticised;
- ⇒ Self-appraisal on the part of the institutions regarding the practices criticised;
- ⇒ Public opinion.

Several steps were taken in implementing the monitoring:

- ⇒ Identifying the areas of serious concern according to the Report from the European Commission;
- ⇒ Establishing the actions planned by the Government in response to the critical remarks;
- ⇒ Correlating the specific problems to the relevant group identified;
- ⇒ Gathering information on the effect of the measures taken;
- ⇒ Summarising the information.

A scale of four values has been adopted to measure implementation of any given measure:

- ⇒ **Not implemented:** the deadline for implementation has been missed and work on implementation of the measure has not started;
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- ⇒ **Rather implemented:** the deadline for implementation has been missed, work on implementation of the measure has started, and implementation is at a final stage;
- ⇒ **Implemented:** the measure has been implemented by the deadline.

CHAPTER 3: FREEDOM TO PROVIDE SERVICES

MOTOR INSURANCE AGAINST THIRD PARTY LIABILITY

Part I. Evaluation of the Adequacy of the Measures Planned by the Government in Response to the Recommendations Contained in the EC Monitoring Report of October 2005

The list of measures taken on the part of the Bulgarian Government in implementation of the recommendations on Chapter 3: *Freedom to Provide Services* shows that the Government is very seriously committed to addressing one of the most critical issues identified in the latest Monitoring Report from the European Commission: the weak enforcement of the compulsory motor insurance against third party liability. According to the Report in question, **just some 55 per cent of the cars circulating in Bulgaria are insured, whereas over 90 per cent as a minimum hold such insurance in the EU Member States.** In connection with the paramount importance and serious social effect of the problem noted by the EC, the state administration took urgent measures to address the issue promptly and adequately. The Minister of Finance issued Order No. 1271 dated 24 November 2005 establishing an *ad hoc* inter-institutional working group of ten members representing eight different government institutions. In turn, the working group quickly elaborated an action plan listing 17 urgent measures which have to be taken to address the problem of the weak enforcement of motor insurance against third party liability. In the process of work in implementation of the specific measures, outside experts were recruited as well in addition to the members of the inter-institutional group.

Monitoring of implementation has to address, in the first place, the question of the adequacy of the measures proposed and taken on the part of the Government. Their list evidently brings together actions of disparate scope, nature and extent of detail and significance. From the reference point of the Monitoring Report from the European Commission of 25 October 2005, however, an evaluation of the type, necessity, promptness and implementation of the measures proposed arrives at mixed conclusions.

For years, the exact number of insured motor vehicles in Bulgaria has been an unknown quantity. This fact, however, has never been seen by practically anybody as a serious problem. The only ones that have repeatedly alerted the public about the low percentage of compulsory motor insurance have been the insurance companies themselves. Motor insurance against third party liability is of great social significance, which presupposes a greater interest on the part of the State in its scope, coverage and the financial stability of the companies providing this service. So far the State has limited its participation in the process of insurance of motor vehicles registered in Bulgaria to an administrative fixing of minimum premium rates (a measure that came

to be imposed as a deterrent to rate dumping by insurers and as an enhanced safeguard of the interests of insured parties and the financial stability of the domestic insurance market) and to financial supervision of the insurance companies which sell such insurance. On the other hand, the State has been exercising control over motorist road-users as to whether they have contracted civil liability insurance. The overall assessment of the action taken by the various state administration units in connection with the problematic motor insurance until November 2005 is less than satisfactory. This explains, to a certain extent, the weak enforcement of this insurance class.

The measures taken on the part of the Government in connection with the negative verdict in the EC Report are intended to overcome the weaknesses showed so far and to improve the efficiency of operation of the state administration so as to increase the percentage of motorists holding civil liability insurance.

Part II. Review and Evaluation of Progress in Implementing Planned Measures

1. Adoption of Insurance Code

Responsible institution: Financial Supervision Commission

Deadline: December 2005

The Insurance Code was conclusively passed on 8 December 2005, it was gazetted on 23 December 2005 and entered into force on 1 January 2006. The effective date of some of the provisions is suspended for three to six months.

The newly adopted Insurance Code introduced a categorical and clearly formulated prohibition on driving within the national territory without a valid civil liability insurance policy, and vested the Traffic Police with powers to conduct checks, impose fines and suspend from operation any motor vehicle without such insurance. The Code also introduced a mandatory period of one year for civil liability insurance and an obligation to renew the insurance once it has expired. Apart from the positive things that were achieved by the adoption of the new statutory instrument, we must note that some provisions of the Code contain a number of omissions and oversights. Alternatively, instead of speeding up the adoption of the Insurance Code, certain revisions could have been made in the Insurance Act that was effective until the end of 2005 and the other measures that were taken to guarantee a heightened compliance with the civil liability insurance obligation.

It would be most reasonable if the Insurance Code were adopted a little later and in less hurry, so as to examine and streamline all wordings, and solicit an even more active involvement of the experts working in the insurance industry in the process of drafting the statutory instrument.

The working group forecasts that some, albeit minor, amendment to the provisions of the Insurance Code will have to be made before the end of 2006. Curiously, the previous instrument regulating the insurance business in Bulgaria – the Insurance Act, had to be amended and supplemented on 18 occasions since its adoption on 26 September 1996, or twice annually on the average.

Status: Measure implemented

2. Establishment of an inter-institutional working group consisting of representatives of the Ministry of Finance, the Financial Supervision Commission, the Ministry of Interior and the Traffic Police. The remit of the working group is to propose measures for strengthening the enforcement of civil liability insurance.

Responsible institution: Ministry of Finance

Deadline: November 2005

The Minister of Finance issued Order No. 1271 dated 24 November 2005 establishing an inter-institutional working group composed of representatives of the Ministry of Finance, the Financial Supervision Commission, the Ministry of Interior and the Traffic Police. The remit of the working group was to propose measures for strengthening the enforcement of civil liability insurance. Working on a tight schedule, the group succeeded in outlining the most important measures that have to be taken to increase the percentage of motorists holding the compulsory insurance. The measures in question were provided to the agencies and persons concerned for discussion, after which the relevant statutory instruments were issued and implementation went ahead. The inter-institutional working group as a whole and some of its members have devised, initiated or shared in the debate on most of the measures listed below for strengthening the enforcement of civil liability insurance.

Status: Measure implemented

3. Coordination and cooperation mechanism among the Ministry of Finance, the Financial Supervision Commission and the Ministry of Interior regarding control over application of the rules concerning compulsory civil liability insurance.

Responsible institution: Ministry of Finance and Ministry of Interior

Deadline: December 2005

The Minister of Finance and the Minister of Finance, acting in consultation with the Financial Supervision Commission, issued Order No. 1336 dated 8 December 2005 establishing a mechanism for exchange of information among the separate institutions concerned with a view to achieving a frequency and coverage (on a weekly basis) of the information gathered concerning the motor vehicles used and the civil liability insurance policies issued. The coordination and cooperation mechanism among the Ministry of Finance, the Financial Supervision Commission and the Ministry of Interior was established for the purpose of enforcement of the rules concerning civil liability insurance.

The monitoring of the measure in question shows that the measure works and is effective and has already produced the first positive results. The three government institutions have established a good working relationship, they assist each other adequately at the expert level, exchange the requisite information and exercise running control as to the action taken to strengthen the enforcement of civil liability insurance.

Status: Measure implemented

4. Revision of Ordinance No. 18 on Compulsory Insurance, abolishing the mandatory minimum premium levels so as to liberalise the market of this class of insurance and enable insurers to differentiate premiums depending on the risk profile of each insured.

Responsible institution: Financial Supervision Commission

Deadline: 10 December 2005

Ordinance No. 18 was amended on schedule. The revision abandoned the practice of administrative fixing of minimum premium levels. The market of this class of insurance was thus liberalised, and insurers were enabled to differentiate premiums depending on the risk profile of each insured individual. Assessing the extent of implementation of the measure, we can say that it has been implemented and moreover on time. Besides this, we must note that liberalisation of civil liability premium rates is a very positive measure which had to be introduced as a precondition for Bulgaria's admission as a full EU member. The problem is that insurance companies proved somewhat unprepared for the freedom of rate-setting they were granted. In late December and early January, in a bid to attract as many clients as possible, the companies engaged in a real war of rates. As a result of this "outbidding" among companies, offers of BGN 40 appeared on the market for an annual policy covering an insurer's liability of BGN 1,200,000. Considering that the Financial Supervision Commission set the amount of BGN 89 as the minimum admissible premium rate for civil liability insurance in November 2004, charging half that price now that the insurance companies' liability limits have doubled in 2005-2006 cannot be serious. Still, the insurance market will hopefully get this situation under the control and manage to protect the interests of the insured persons as well as the financial stability of the insurance companies.

The monitoring shows that at least for the time being, the Financial Supervision Commission makes the necessary efforts (exercising current control and taking the relevant measures against offenders) to regulate all processes on the domestic insurance market.

Status: Measure implemented

5. Launch of a national campaign intended to highlight the importance of the compulsory civil liability insurance. The idea is to explain to motor vehicle owners and users the benefit and necessity of this insurance.

Responsible institution: Ministry of Finance, Ministry of Interior, Financial Supervision Commission, Traffic Police

Deadline: 15 December 2005

The national campaign was launched at a news conference organised by the Ministry of Finance, the Ministry of Interior and the Financial Supervision Commission on 15 December 2005. Senior officials of these government institutions took part: advisors to the ministers of finance and of interior, the Chairperson and members of the Financial Supervision Commission, the Traffic Police Chief and others. Participation of so many representatives of so important government institutions can be assessed as

setting a positive precedent. This fact shows that the state administration is concerned about a fast and favourable solution of the civil liability issue.

The Government allocated BGN 60,000 for the conduct of a campaign to raise public awareness of the importance of compulsory motor insurance. This financing, however, proved absolutely insufficient for the objects pursued by this measures. The campaign proved even counterproductive. Vehicle owners were confused and did not realise the need of contracting civil liability insurance but, worse yet, they wondered why the State was so ardently “protecting” the financial interests of private insurance companies by forcing them to take out insurance. The measures taken to popularise the compulsory motor insurance were rather inadequate and ill-timed and their implementation left much to be desired in terms of professionalism. If those measures did produce any positive effect, it was due to the realisation on the part of motorists of the need to get insurance rather than to the fear instilled in them that they risk incurring severe financial and administrative sanctions.

Status: Measure rather not implemented

6. Issuance of an express order by the Minister of Interior on taking measures intended to tighten control by the Traffic Police over motorist road-users as to holding of civil liability insurance.

Responsible institution: Ministry of Interior

Deadline: 15 December 2005

On 17 December 2005, the Minister of Interior issued Order No. 1 b-1399, stating specific measures intended to intensify the regular checks and weekly reporting of the motor vehicles found without civil liability insurance. The order in question also established a working group to work out a coordinating mechanism for comparison of the number of motor vehicles in the Traffic Police register with:

- the database of the number of vehicles with paid transport vehicle tax as provided by the Ministry of Finance;
- the database of the Ministry of Transport regarding the number of motor vehicles which have passed an annual technical inspection;
- the database of the Guarantee Fund regarding the number of holders of compulsory civil liability insurance.

The mechanism in question regarding a comparison of the data storages of the two ministries and the Guarantee Fund has already been discussed and adopted. Most of the information has been gathered as well, and is being analysed.

According to the same Order No. I b-1339 of the Minister of Interior, the Traffic Police must analyse traffic accidents involving uninsured vehicles by region. The Traffic Police authorities must take specific measures to tighten the control over vehicles operated without a valid civil liability insurance policy.

The information on the number of vehicles checked and found without civil liability insurance, disaggregated by region, must be transmitted monthly to the Coordination, Information and Analysis Directorate of the Ministry of Interior.

The monitoring check shows that all measures required for tightened control of road traffic have been taken. The information on the vehicles checked and found without civil liability insurance, the number of road traffic accidents and their consequences is gathered by the Traffic Police. The information in question is processed and the relevant analyses are made every week. The results of the first month of 2006 will be summarised and reported in early February. This information is accessible to all institutions concerned, and part of it is also made available to the general public through the mass media.

Status: Measure implemented

7. Revision of Ordinance No. I-45 of 2000 on Registration, Reporting, Authorisation and Suspension from Operation of Motor Vehicles and Trailers Attached thereto, ensuring measures for de-registration of vehicles without civil liability insurance.

Responsible institution: Ministry of Interior, Ministry of Finance

Deadline: 23 December 2005

In early December 2005, the Ministry of Interior approved revisions in Ordinance No. I-45 of 2000 on Registration, Reporting, Authorisation and Suspension from Operation of Motor Vehicles and Trailers Attached thereto, ensuring measures for de-registration of vehicles without civil liability insurance. In this way, a large number of automobiles that are theoretically roadworthy but have been disused for years will be stricken off the records of the Ministry of Interior. After re-registration more accurate data will be available on the actual status of Bulgaria's motor vehicle fleet: the authorities will know the actual number of roadworthy cars, how many of them are in operation, and what percentage of the automobiles in operation have the compulsory civil liability insurance.

According to the above-mentioned revision, owners of vehicles registered before 31 December 1975 must obtain their new registration number plates until 31 March 2006 and, to this end, must present a valid civil liability insurance policy.

The expected deadline for automatic striking of each automobile without new registration number plates off the records of the Traffic Police has been advanced from 1 January 2007 to 1 April 2006.

The revisions of Ordinance No. I-45 of 2005 were gazetted on 4 January 2006.

Status: Measure implemented

8. Informing the public about the revisions in Ordinance No. I-45.

Responsible institution: Ministry of Interior

Deadline: starting 15 January 2006

A check regarding this measure showed that the revisions have been broadly publicised through a public campaign launched by the Traffic Police. To explain the new points in the motor vehicles registration and de-registration ordinance, the

Interior Ministry authorities skilfully use the potential of the electronic and print media, so that the information would reach the broadest possible range of people. Observations show that there is hardly a car owner who is not familiar with the changes in question.

The assessment of the measure is positive. This measure, however, should include not only informing the public about Ordinance No. I-45, but also the ensuring tasks. The only concern about the full-scale implementation of the measure is prompted by the rather short time left for replacement of the plates. Car owners are already waiting in rather long lines in front of the Traffic Police stations to have their registration plates replaced. In a bid to improve the standard of service to members of the public and to meet the deadline for re-registration of automobiles, the Traffic Police said their stations will work extended hours and even on weekends. Besides this, they have put on more staff. Despite the efforts made, there are still fears that the replacement of registration plates will not be completed on time. It has even been reported that the company manufacturing registration plates has requested an extension of the deadline because they cannot cope with production of such quantities within such little time.

Daily, some 3,000-4,000 plates are replaced countrywide, and their total number in the first two weeks of January alone topped 30,000. On the other hand, some 10,000 owners have suspended their vehicles from operation since the beginning of 2006.

The results of this measure are more than adequate for the time being, and even if its implementation is delayed, the rest of the measures taken are sufficient to increase the percentage of motorists holding civil liability insurance.

Status: Measure rather implemented

9. Revision of Ordinance No. I-167 of 2002 Establishing Terms and Procedure for Interaction among the Control Authorities of the Ministry of Interior, the Insurance Companies and the Financial Supervision Commission upon Occurrence of Insured Events Involving Motor Vehicles, introducing a new approach in calculating the percentage of compliance with the civil liability insurance obligation, based on the number of road traffic accidents caused by uninsured automobiles.

**Responsible institution: Ministry of Interior, Financial Supervision Commission
Deadline: 15 February 2006**

The Financial Supervision Commission has adopted draft revisions of Ordinance No. I-167 of 2002 Establishing Terms and Procedure for Interaction among the Control Authorities of the Ministry of Interior, the Insurance Companies and the Financial Supervision Commission upon Occurrence of Insured Events Involving Motor Vehicles, introducing a new approach in calculating compliance with the civil liability insurance obligation, based on the number of road traffic accidents caused by uninsured automobiles.

The draft in question has been adopted by the Financial Supervision Commission on first reading and has been submitted for coordination to the Ministry of Interior and the other institutions concerned. The Financial Supervision Commission will

conclusively adopt the instrument in early February. One month has been allowed for coordination of Ordinance No. I-167 of 2002, and the deadline for its issuance is 15 February 2006.

Given the existence of a draft revision of the statutory instrument and the readiness on the part of the institutions to consider and adopt it, the deadline for implementation of this measure is feasible. At this point, there are no serious remarks regarding the provisions of the Ordinance.

Status: Measure rather implemented

10. Analysis of the existing database of registered motor vehicles and of motor vehicles suspended from operation with a view to obtaining reliable and accurate information about the number of motor vehicles insured against third party liability.

Responsible institution: Ministry of Interior

Deadline: 10 January 2006

In connection with this measure, back in November 2005 the Ministry of Interior started a search of the existing database of the motor vehicles registered in Bulgaria. According to the latest data, 3,301,570 motor vehicles and trailers are registered in Bulgaria at this point of time. Of these, 858,482 are suspended from operation, which means that 2,443,088 motor vehicles subject to insurance circulate on the roads of this country. By December 2005, 1,725,252 automobiles or 70.62 per cent of the total had contracted civil liability insurance.

According to all experts, the actual number of vehicles circulating on the roads is substantially smaller than the number cited above. The difference is due to the fact that quite a few car owners have not been using their vehicles for years. Accordingly, they do not pay taxes on the cars, do not go through an annual technical inspection and do not contract civil liability insurance. Because of the lax controls and the lack of any sanctions against such owners, they have not de-registered their automobiles. This leads to a distortion of the information regarding the actual automobile fleet in this country: the number of roadworthy motor vehicles and, respectively, the percentage of insured vehicles. To address this issue, measures have been taken to update the data storages by realistic data. One such measure is the re-registration and de-registration of motor vehicles. The results of this effort have made themselves felt, as the owners of some 10,000 automobiles submitted documents for their de-registration within the space of just 15 days.

Status: Measure implemented

11. Building and launch of a database on the Internet site of the Financial Supervision Commission providing information on the civil liability insurance policies contracted by motorists. Access to this database will be individual, requiring entry of the serial number of the engine and/or the frame of the automobile.

Responsible institution: Financial Supervision Commission

Deadline: 15 January 2006

The number of PC users in Bulgaria is not that large, and the number of Internet users is a fraction of the latter. From this point of view, the measure is not exactly effective. Besides this, no campaign has been launched so far to inform the public about the possibility of checking the Internet site of the Financial Supervision Commission as to whether their civil liability insurance policy is regularly issued and valid. This omission can be explained to a certain extent by the fact that the information system in question was still not operational by 16 January 2006. The Financial Supervision Commission blamed technical problems for the delay, promising to have them sorted out within days and pledging to have the information system uploaded on their site by the end of January at the latest.

Status: Measure rather not implemented

12. Exchange of the information gathered on the roadworthy automobiles and the civil liability insurance policies issued on a weekly basis between the Guarantee Fund, the Ministry of Interior/Traffic Police and the Financial Supervision Commission.

Responsible institution: Guarantee Fund, Ministry of Interior/Traffic Police, Financial Supervision Commission

Deadline: continuous

In connection with this measure, the Financial Supervision Commission has prepared a draft Ordinance on the Forms and Manner of Interaction between the Information Centre on Compulsory Civil Liability of Motorists and Accident Insurance of Passengers, the Ministry of Interior and the Ministry of Transport. The instrument in question has already been adopted at first reading by the Commission and has been submitted for coordination to the Ministry of Interior and the Ministry of Transport. The Ordinance is expected to be conclusively passed by mid-February, after which it will be gazetted and will enter into force.

The purpose of this Ordinance is to regulate the forms and manner of exchange of information and interaction between the Information Centre, referred to in Article 292 of the Insurance Code, and the Ministry of Interior and the Ministry of Transport. The exchange of the information in question between the government institutions is intended to identify the owners of motor vehicles who hold compulsory civil liability insurance, as well as the common carriers of passengers which have not contracted compulsory accident insurance of passengers. Moreover, the statutory instrument makes it possible to assist persons who seek a benefit under a compulsory motor insurance against third party liability or under a compulsory accident insurance of passengers to exercise their rights.

We must say that the Ordinance in question for the first time addresses seriously the issue of control over contracting another compulsory insurance, against accident of passengers in public transport. At this point, the compliance with this just as socially important insurance can hardly be identified with any measure of accuracy. Its inclusion into the statutory framework for monitoring and control shows a serious commitment on the part of the State to regulation of the compulsory insurance market.

Even though an effective statutory instrument does not yet exist, the Ministry of Interior, the Ministry of Transport and the Financial Supervision Commission already cooperate and exchange the information they need in connection with the motor vehicle fleet in this country and the compulsory classes of motor insurance.

Status: Measure rather implemented

13. Enhancement of the Traffic Police control and number of checks for holding of valid civil liability insurance policies.

Responsible institution: Traffic Police

Deadline: continuous

The monitoring check shows that with the issuance of the relevant intra-agency instruments, the Traffic Police has taken the requisite measures and has mobilised all its available personnel for exercise of enhanced control on the roads, for the purpose of establishing whether motor vehicle drivers hold valid civil liability insurance policies. The Traffic Police authorities exercise preventive control permanently, but it has been intensified considerably since the beginning of 2006. As a result of this control, the drivers of some 80,000 motor vehicles were checked in the first two weeks of the year, and 790 of them proved non-compliant. These figures show that the number of drivers without compulsory insurance account for approximately 1 per cent of the drivers checked, which is a very good indicator. Checks continue on a daily basis, and their results are processed and reported every week.

Status: Measure implemented

14. Joint reports by the Ministers of Finance and of Interior to the Government, on a monthly basis, on the progress achieved in implementation of the measures provided for in this action plan for civil liability insurance.

Responsible institution: Ministry of Finance, Ministry of Interior

Deadline: on a monthly basis

The monitoring check showed that at each government institution which is directly or indirectly involved in the implementation of the adopted to-do-list to strengthen enforcement of compulsory civil liability insurance, there are persons authorised to monitor compliance with the decisions made and, accordingly, to liaise and interact with the various institutions. The Ministry of Finance and the Ministry of Interior are no exception in this respect, either. Right from the outset, when they were assigned specific tasks related to an increase of the percentage of motorists holding compulsory insurance, they have been actively involved in the decision-making, the design of measures (including the drafting of requisite statutory instruments) and their implementation. One of these tasks is the preparation of joint monthly reports to be presented at a meeting of the Council of Ministers. Such reports have already been produced for 2005, and work is currently under way on the report for January, which will be presented at the end of the month or at the beginning of February at the latest. Apart from intermediate information on implementation of the measures to improve

compliance with the civil liability insurance obligation, these reports also contain proposals for making specific decisions and taking further action.

The check shows seamless interaction among the institutions and their employees in handling the measures assigned to them for implementation.

Status: Measure implemented

**15. Preparation of a Motor Insurance Review (Sofia, 20-21 February 2006).
Presentation of the action plan and the draft schedule for the visit to the EU.**

Responsible institution: all institutions concerned

Deadline: 10 January 2006

Considering that the greater part of the measures outlined for an increase of the percentage of motorists holding compulsory civil liability insurance have been implemented, and the rest are in a rather advanced stage, one could safely say that the Bulgarian government institutions are ready for the motor insurance review planned for 20-21 February. Appropriate arrangements have been made for preparation of the review in question, specific tasks have been assigned and deadlines have been set, and everything is going according to plan for the time being, so as to report the specific results of the action at the end of February.

Status: Measure implemented

16. Supplying the EU with up-to-date information on civil liability insurance compliance according to two methods (based on the number of registered motor vehicles and on the number of road traffic accidents involving automobiles without civil liability insurance). Supplying the EU with information on a monthly basis.

Responsible institution: Guarantee Fund and Ministry of Interior/Traffic Police

Deadline: 10 January 2006, 15 February 2006, and on a monthly basis

As mentioned above, the Financial Supervision Commission has adopted draft revisions of Ordinance No. I-167 of 2002 Establishing Terms and Procedure for Interaction among the Control Authorities of the Ministry of Interior, the Insurance Companies and the Financial Supervision Commission upon Occurrence of Insured Events Involving Motor Vehicles, introducing by this draft, *inter alia*, a new approach in calculating the percentage of compliance with the civil liability insurance obligation, based on the number of road traffic accidents caused by uninsured automobiles. Using the old method, which measured the number of the insured as a percentage of the number of registered motor vehicles, it turned out that 29.4 per cent of the vehicles were uninsured. This method is not very accurate and precise and is not used in almost any European country. Besides this, once accurate statistics about the number of motor vehicles in operations are not available, the percentage of uninsured automobiles is strongly distorted. For the sake of greater objectivity in calculating civil liability insurance compliance, the Financial Supervision Commission proposed a new method based on the number of road traffic accidents. Last year, 2,676 road traffic accidents were caused by uninsured motor vehicles and

3,299 by uninsured drivers. The total number of road traffic accidents was 83,855. The accidents caused by uninsured vehicles account for 3.2 per cent of the total number of such accidents, and 3.9 per cent of the total number of accidents involved an uninsured driver.

Another interesting figure shows that 20,809 administrative violations concerning motor vehicles without civil liability insurance were ascertained, compared to a total of 529,709 violations ascertained according to the report of the Traffic Police. The reported violations related to non-compliance with the civil liability insurance obligation account for 3.9 per cent of the total number of violations.

The proposal to alter the method of calculation of the percentage of motorists holding civil liability insurance is not a mathematical (or statistical) trick to inflate the results and meet certain targets. The truth is that the method used so far in Bulgaria, as mentioned above, is imprecise and uncommon.

There is no uniform method of calculating this percentage in Europe. As many as seven different methods are used, and the new method that will be adopted shortly is among the widest spread and regarded as very accurate. The method in question is used in Belgium, Germany, Denmark, France, Italy, Lithuania, Austria and Hungary.

The results cited above and the proposal to alter the method for calculation of the civil liability insurance compliance rate are included in a report delivered to the EC. Besides this, a commitment has been assumed to provide information on a monthly basis about the number of compulsory motor insurances contracted and the implementation of the measures taken to strengthen the enforcement of civil liability insurance. There is readiness to go ahead with this, and no prerequisites at this point whatsoever would impede the honouring of the commitment assumed.

Status: Measure implemented

17. Presentation of the draft revisions of essential legislation and the measures to expedite the process of suspension from operation of de-registered automobiles.

Responsible institution: Ministry of Environment and Water, Ministry of Interior

Deadline: 1 February 2006

The application of de-registration of disused cars as one of the measures to increase the civil liability insurance compliance rate has led to another problem: disposal of the motor vehicles suspended from operation.

The idea is to prevent the abandonment of such automobiles in private yards and gardens or leaving them unattended in the streets because, although suspended from operation, they continue to pose a hazard. One of the measures that can be taken in this case is to deliver de-registered motor vehicles for recycling or to sites for storage and treatment. Experts of the Ministry of Environment and Water are currently preparing a draft of additional legislative measures to accelerate and facilitate the process of management of waste from end-of-life vehicles. The idea is that the owners

of automobiles, who determine that they will no longer use them and de-register them, be able to dispose of such vehicles as easily as possible.

The package of measures in question must be ready by 26 January 2006, and the *ad hoc* working group handling the measures to address the weak enforcement of civil liability insurance must consider the package by 31 January. After adoption of the measures in question, relevant action is to be taken for their implementation.

Status: Measure rather not implemented

Part III. Findings

The monitoring conducted by experts of the Open Society Institute – Sofia in respect of implementation of the measures made it possible to identify tendencies regarding the extent of implementation, the publicity and efficiency of the operation of the administration (see Figure 1). No measure which can be defined as not implemented by 16 January 2006 has been detected. Action has been taken on all measures. The monitoring shows that 10 of the 17 measures (or 59 per cent of the total) qualify as “implemented” on the basis of the data obtained. Four of the measures (23 per cent of the total) can be treated as “rather implemented.” These measures cannot be assessed as categorically implemented above all because of the tight schedule. However, very serious work on them is in progress and there is no reason why they should not be implemented as well until the end of February. Only Measure 8 spells a risk of a possible delay in its implementation. The deadline for that measure is 31 March, but there is nevertheless a strong likelihood that this deadline will be missed because commitments are numerous and the time for implementation is short. Only three measures (18 per cent of the total) merit an evaluation as “rather not implemented,” and with two of them the reason is again primarily the rather tight deadlines for implementation.

We encountered certain difficulties in determining the extent of implementation of some of the measures. The measures in question, 1 and 4, are *de facto* implemented, but we have considerable reservations about the quality of their implementation. Measure 5 is *de facto* implemented as well, but implementation thereof was at a very low level, and the effect was near zero, which made it easier for us to assess it as “rather not implemented.” The insurance companies themselves share the blame for the failure to implement this measure, as they proved unable to find a formula for partnership with the state administration in popularising the need of insurance and, in particular, of contracting civil liability insurance.

Summing up the assessments, we must say that 14 of the 17 measures planned to increase the compulsory motor insurance compliance rate (82 per cent of the total) are “implemented” and “rather implemented.” This is a very good result and, moreover, there are prerequisites to implement over 90 per cent of these measures until the end of March. With this record of performance, there is no reason why the number of insured vehicles should not be over 90 per cent of those subject to insurance until the end of March, which will meet the European Commission's EU membership criteria.

Regarding the monitoring process itself, it could be concluded that the greater part of the administrations of the executive authorities committed to implementation of the specific measures were adequately cooperative.

Part IV. Conclusion

Objectively, the percentage of compulsory motor insurance could be increased even with the statutory framework in place at the end of November 2005 but, naturally, this would have required more efforts on the part of the administration, greater precision and effective action. This ascertainment should by no means belittle the work done by civil servants over the last two months to systematise the measures to strengthen enforcement of civil liability insurance. Most of the measures taken were urgent indeed. In fact, however, after application of just one of the measures in question, *viz.* the change of the method of calculating the percentage of motorists holding compulsory insurance, it turned out that the proportion of insured vehicles in Bulgaria is not 55 per cent, as alleged in the report of the European Commission, nor 71 per cent, as calculated according to the older method, but between 96 and 97 per cent. This invites the question as to whether all other measures which were taken over the last couple of months are essential, timely and, above all, is there a capacity to implement them and verify compliance with them. With an adequate legal framework, we have very often witnessed unsatisfactory results because of its inadequate application and lack of effective control. The performance so far does not give grounds for such concerns, but we are almost at the very beginning of the process of application of the measures for strengthening enforcement of motor insurance against third party liability. The overall assessment of the current measures is very good, but it should be borne in mind that a lot more remains to be done.

We find a positive side effect of the measures taken: coming to grips with one problem (the civil liability insurance compliance rate), the state administration is compelled by circumstances to address several other pressing problems which used to be postponed time and again. One of these problems (the lesser one) is clearing the Ministry of Interior databases of disused motor vehicles which are kept on record there and the fine information cooperation among the separate government institutions. The other (the more important one) is the State's commitment to find a solution to the numerous motor vehicles abandoned in streets and gardens.

Looking for ways to strengthen enforcement of civil liability insurance, however, has given rise to yet another problem that was not included in the list of measures since it emerged in early 2006. Because of some legal glitch, it turned out that no part of the state administration has in its remit the collection of fines imposed by the Traffic Police at large and, in particular, fines for non-compliance with the compulsory motor insurance. It is a different story that compliance with the fines imposed by the Traffic Police in recent years has been as low as 10 per cent. Considering that civil liability insurance is sold above all on pain of a possible sanction rather than because of a realised necessity of insurance, the State must find a solution to these problems as soon as possible.

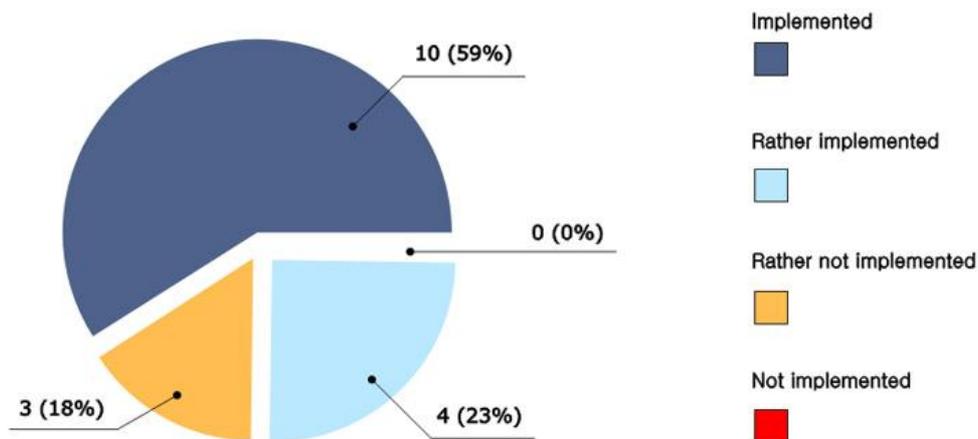
The monitoring of the measures taken showed that insurance industry experts regard some of the measures as superfluous, and to others their adoption, like the passing of the Insurance Code, was overhasty. Experts also believe that there are other forms and ways to improve the effectiveness of the compulsory motor insurance.

It should also be borne in mind that despite the large number and variety of government institutions committed to the search for a solution to the civil liability case, there was fine tuning and coordination of the actions of their representatives, as well as expeditious and productive decision-making.

For the first time in many years, the state administration assumed its own **responsibility** in the process: this is arguably the best result of the measures taken to strengthen enforcement of civil liability insurance. Before, the state administration rather ignored the social effect of this insurance and believed that its sale affected only the business interests of insurance companies. That is why the state administration was not so directly involved in raising public awareness of this insurance class and in tracing its compliance rate.

Figure 1

Extent of Implementation of Measures under Chapter 3: Freedom to provide services



CHAPTER 5: COMPANY LAW

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Part I. Evaluation of the Adequacy of the Measures Planned by the Government in Response to the Recommendations Contained in the EC Monitoring Report of October 2005

1. Review of the Progress of Bulgaria's Preparation for EU Membership

The Comprehensive Monitoring Report from the European Commission on Bulgaria¹ containing a review and an assessment of Bulgaria's ability to assume the obligations of membership in the EU, is structured according to the chapters into which the *acquis communautaire* is divided. The European Commission identifies issues that “give cause for serious concern.” One such area of concern is the protection of intellectual property rights. **Problems are identified** both in the legal framework and in its enforcement. According to the conclusion, “[u]rgent attention is needed to improve the implementation and enforcement of **the protection of intellectual and industrial property rights**, which is an area of serious concern.”

1.1. Regarding **alignment of legislation** with Community law, the Commission recommends the following:

- Bulgaria has to amend the Copyright and Neighbouring Rights Act, with a view of **implementing** the Directive on artist's resale right and the Directive on enforcement and aligning further the Bulgarian legislation with certain copyright provisions regarding satellite broadcasting and cable retransmission, rental and lending rights, the legal protection of databases, copyright in the information society.
- Furthermore, limited legislative improvements are still needed with regard to **industrial designs**.
- The Law regarding parallel imports should be clarified and the **principle of Community exhaustion** must be applied upon accession.

1.2. Regarding **enforcement**, the Report contains the following recommendations:

- Particular efforts remain necessary **to improve inter-institutional cooperation** and to effectively implement the Memorandum of Understanding on enhanced measures for protection of IPR, which was signed in June 2005.
- Although some efforts have been made in order to strengthen enforcement bodies, Bulgarian authorities should ensure stronger enforcement of intellectual and industrial property rights, in particular by means of **an effective pre-litigation system, enhanced border enforcement, specific training for enforcement**

¹ SEC (2005) 1352, Brussels, 25 October 2005

bodies (custom officers, prosecutors, judges and the police) and awareness campaigns.

- Also, Bulgarian authorities should ensure a better **cooperation with industry**.
- Furthermore, there is a need to disrupt **street sales**.
- The **levels of counterfeiting** (notably in textile products and luxury goods) still give cause for serious concern.
- **Judicial enforcement** should become much more efficient and the authorities should ensure that provisional and precautionary measures are effectively adopted and implemented.
- **Border controls** should be considerably strengthened and coordination between customs, police and the judiciary and inter-institutional cooperation improved.

2. Two Instruments for Planning Remedial Action

Two instruments have been used for effective implementation of the recommendations by the EC:

- Adopting measures in the field of intellectual property as part of the **2006 Action Plan** for Implementation of the Commitments Assumed in the Process of Negotiations on Accession to the EU.
- Adopting measures subject to immediate implementation (**to-do-list**).

2.1. On the basis of the assessments under the Chapter on company law, a catalogue of all recommendations contained in that part of the Report has been prepared and, after consolidation, the following measures have been included in the 2006 Action Plan:

Table 1

196 Act to Amend and Supplement the Patents Act (proposing introduction of summary proceedings in patent infringement cases and transposition of Regulation 1283/2003 in its part regarding the term “goods in transit” Deadline: December 2006 Responsible institution: Ministry of Education and Science, Patent Office
198 Establishment of an inter-institutional body to administer, maintain and develop a national cooperation and information exchange network for protection of intellectual and industrial property rights Deadline: February 2006 Responsible institution: Ministry of Culture
199 Establishment of an inter-institutional advisory body involving senior officials of central state-administration authorities, of the law enforcement authorities, experts and representatives of industry. Deadline: February 2006 Responsible institution: Ministry of Culture
200 Delivery of training to customs officers in applying intellectual property legislation. Deadline: continuous, reported on a quarterly basis Responsible institution: National Customs Agency

<p>201 Delivery of training to experts of the Ministry of Economy and Energy in the technology of manufacture of optical disks, the placing of a SID Code, the existing information memory of production lines and other specific peculiarities of this manufacture.</p> <p>Deadline: continuous, reported on a quarterly basis Responsible institution: Ministry of Economy and Energy</p>
<p>202 Delivery of training to the employees of the central and territorial units of the Economic Police for improvement of their occupational skills regarding control of offences against intellectual property.</p> <p>Deadline: continuous, reported on a quarterly basis Responsible institution: Ministry of Interior</p>
<p>203 Analyzing the results of cases of intellectual property infringement detected by the customs authorities.</p> <p>Deadline: 28 February 2006 Responsible institution: National Customs Agency</p>
<p>204 Holding a discussion with representatives of the institutions and non-governmental organisations concerned regarding the results of the evaluation of the impact of application of the Act on Administrative Regulation of the Manufacture and Trade in Optical Disks, Stampers and Other Storage Media Loaded with Subject Matter of Copyright and Neighbouring Rights [OD Act].</p> <p>Deadline: June 2006 Responsible institution: Ministry of Economy and Energy</p>
<p>205 Developing a database at the Ministry of Economy and Energy on the polycarbonates and equipment imported for manufacture of optical disks, stampers for their manufacture and other storage media,</p> <p>Deadline: 30 March 2006 Responsible institution: Ministry of Economy and Energy, National Customs Agency</p>

Measure No. 199 of the 2006 Action Plan: Establishment of an inter-institutional advisory body involving senior officials of central state-administration authorities, of the law enforcement authorities, experts and representatives of industry.

Responsible institution: Ministry of Culture

Deadline: February 2006

Such inter-institutional body has been established by Council of Ministers decision: a **Council for Protection of Intellectual Property with the Minister of Culture**. This re-establishes the practice that existed in Bulgaria in connection with the activation of the Government's efforts to have this country removed from the Special 301 Watch List of the US Trade Representative.

The Council comprises:

(a) a Deputy Minister of Culture, a Deputy Minister of Justice, a Deputy Minister of Economy and Energy, a Deputy Minister of Interior, designated by the relevant ministers;

(b) one representative each of the General Tax Directorate, the National Service for Combating Organised Crime and the National Police Service of the Ministry of Interior, the Patent Office, designated by the relevant heads;

(c) one representative each of the Sofia City Court and of the Supreme Cassation Prosecution Office, designated by the relevant heads;

(d) the chairpersons of the Council for Electronic Media, the Commission for the Protection of Competition and the Communications Regulation Commission.

The powers of the Council are defined as follows:

(a) to coordinate the activity of the ministries, departments and other authorities in connection with the protection of intellectual property;

(b) to identify priority measures and actions for improvement of the efficiency of the practical application of statutory instruments regulating relations in connection with intellectual property;

(c) to consider drafts of statutory and other instruments regulating relations in connection with intellectual property;

(d) to assist cooperation with not-for-profit legal entities active in the field of intellectual property;

(e) to assist the implementation of significant national and regional projects in connection with the protection of intellectual property;

(f) acting on a motion by the chairperson, to fulfil other tasks as well in connection with the protection of intellectual property.

The Council meets at least once monthly. The meetings are serviced in administrative and technical terms by the Copyright and Neighbouring Rights Directorate of the Ministry of Culture. The Director of the Directorate serves as Secretary of the Council.

Status: Measure implemented.

The following issues could be raised in connection with the implementation:

- The Council was established by a non-statutory instrument: a Council of Ministers decision. Establishment by a statutory instrument would have been a better option, as was the case when the Council of Ministers established the predecessor Council for Protection of Copyright and Neighbouring Rights by Decree No. 120 of 1997² whereby the composition of the Council was determined as well (only the name list is determined by a Council of Ministers decision, and a representative designated by the Prosecutor General of the Republic of Bulgaria is added), and Rules of Organisation were adopted and annexed to the same Decree.

- The above finding leads to the next: the predecessor body was **under the Council of Ministers**, and its chairperson was a Deputy Prime Minister, whereas the new Council is with the Minister of Culture.

² Promulgated in *State Gazette* No. 27 of 1 April 1997; amended in No. 45 of 1997, No. 30 of 1999, No. 38 of 8 May 2000

- The powers of the Council and of its chairperson are more limited (cf. Article 2 of the Rules of Organisation of the Council of 1997)³.

Activity related to Measure 199: In addition to the information related to the coordination of the activities of various institutions, the traditional activity of the non-governmental sector in this field should be mentioned as well: the collective rights management organisations and the industrial property agents in Bulgaria united in a Chamber of Industrial and Intellectual Property Agents (December 2005). The Sofia City Court registered the Chamber of Industrial and Intellectual Property Agents as a not-for-profit association for pursuit of public benefit activities. All industrial and intellectual property agents, who are entered into the Register of the Patent Office, are eligible for membership in the Chamber.

2.2. Along with the 2006 Action Plan, considering the urgency of the tasks the activity of institutions is planned within a short-term range as well, for the period immediately after the release of the Report or measures for continuous implementation, through the so-called “**to-do-list.**”

In its part concerning intellectual property, the **to-do-list** prepared under the Chapter on company law covers:

- measures for further transposition of Community legislation;
- enforcement measures, some of which have deadlines as early as 2005.

Table 2

Adoption of an Act to Amend and Supplement the Copyright and Neighbouring Rights Act
Issuance of an Instruction Establishing the Terms and Procedure for Allocation of the Source Identification Code (SID Code), the Manners of Designation and Placing of the Said Code
Presentation to the European Commission of an Action Plan for Protection of Intellectual Property Rights
Proposal to the Commission for the Protection of Competition and the Ministry of Economy and Energy for accession to the Memorandum of Understanding
Supplying the European Commission on a regular basis with information regarding the implementation of joint actions for enforcement of the intellectual property protection legislation according to the Action Plan
Supplying the European Commission on a regular basis with information regarding the training of the authorities enforcing the protection of intellectual property rights

³ 1. to elaborate programmes for the prevention and cessation of the illegal use of subject matter protected by the Copyright and Neighbouring Rights Act;
 2. to coordinate the activities and measures undertaken by the state bodies, organizations and institutions in the field of copyright and neighbouring rights, as well as by the bodies of local self-government;
 3. to collect, process and analyse information regarding the state and tendencies of the domestic and foreign market;
 4. to assist the copyrights and neighbouring rights protection or management organizations;
 5. to lay revisions of national legislation before the Council of Ministers for consideration;
 6. to make reasoned proposals for accession to international agreements in the field of intellectual property.

Establishment of a working group for elaboration of a programme for conduct of a mass-scale campaign to raise public awareness of legislation on the protection of intellectual property

The use of two techniques, in particular the systematisation of immediate tasks in a separate catalogue, is a positive practice as it focuses attention on the timely addressing of tasks, working down a priority list and verifying compliance with the measures on a day-to-day basis.

This review covers the progress of implementation of the measures under the **to-do-list** (Table 2) (apart from Measure 199 of the 2006 Plan, which has already been implemented), because the deadline of the rest of the measures under the 2006 Plan has not yet arrived (see Table 1).

3. Do the Measures Contribute to Development of the Relevant Policy?

The Government aspires to press ahead with the efforts for protection of intellectual property. Apparently, there is awareness of the importance of the protection of intellectual property rights and the measures envisaged directly respond to *specific recommendations* of the European Commission contained in the Monitoring Report and the peer reviews. In the overall picture of the “ideal system” of protection of intellectual property rights, measures fall into **three areas**:

- updating and improving legislation in the field of intellectual property;
- strengthening the capacity and increasing the effectiveness of enforcement;
- raising the level of public awareness.

At the same time, it should be clearly stated that the **to-do-list** measures create only legal, organisational and information **prerequisites** for effectiveness of intellectual property protection. The monitoring will further need tangible indicators of the effectiveness of the effort against infringements (piracy) so as to find out how the instruments adopted and the institutional mechanisms that are already in place work in practice.

Part II. Review and Evaluation of Progress in Implementing Planned Measures

The evaluation will cover implementation of the measures listed in Table 2, because the deadlines for the rest of the measures in the Action Plan 2006 have not yet arrived.

Legislation in the field of intellectual property

Three instruments of primary legislation and one instrument of secondary legislation, adopted while the 1st Session of the 40th National Assembly was in progress, are intended to lead to enhanced protection of copyrights and neighbouring rights. The three laws are:

- an Act to Amend and Supplement the Copyright and Neighbouring Rights Act⁴
- an Act to Amend and Supplement the Radio and Television Act⁵
- an Act on Administrative Regulation of the Manufacture and Trade in Optical Disks, Stampers and Other Storage Media Loaded with Subject Matter of Copyright and Neighbouring Rights⁶

The secondary legislation instrument is Ministry of Economy and Energy Instruction No. 1 dated 21 October 2005 Establishing the Terms and Procedure for Allocation of the Source Identification Code (SID Code), the Manners of Designation and Placing of the Said Code [OD Act]⁷.

1. Adoption of an Act to Amend and Supplement the Copyright and Neighbouring Rights Act.

Responsible institution: National Assembly

Deadline: 30 December 2005

According to the reasoning of the bill laid before Parliament by the Council of Ministers, the latest in a series of acts amending and supplementing the Copyright and Neighbouring Rights Act is prompted by the need to transpose the provisions of two new directives of the European Union in this field, and to wit:

- Directive 2001/84/EC on the resale right for the benefit of the author of an original work of art,

and

- Directive 2004/48/EC on the enforcement of intellectual property rights.

The EU Member States must bring into force their laws, regulations and administrative provisions necessary to comply with Directive 2001/84/EC before 1 January 2006 and with Directive 2004/48/EC before 29 April 2006.

Directive 2001/84/EC requires from Member States to make provisions in their legislation guaranteeing the authors of works of graphic and plastic art, photographs and certain expressly specified works of applied art (tapestries, ceramics, glassware) the right to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.

The right in question has already been regulated in Article 20 of the Act and is called there “right upon subsequent sale.” The Directive, however, regulates the matter in far greater detail. It also sets out the mandatory rates of the royalty as a percentage of the sale price. The only thing left to the discretion of a Member State is to set a minimum sale price below which royalties do not apply. The Directive requires that this minimum do not exceed the equivalent of EUR 3,000. Considering the practice in Bulgaria and after consulting the competent artists associations, the Bulgarian draft set a minimum threshold of the equivalent of EUR 300.

Directive 2004/48/EC concerns the measures and procedures applied in civil proceedings which Member States must provide for so as to ensure full respect for

⁴ Promulgated in *State Gazette* No. 99 of 9 December 2005, effective 10 January 2006

⁵ Promulgated in *State Gazette* No. 93 of 22 November 2005

⁶ Promulgated in *State Gazette* No. 74 of 13 September 2005

⁷ Promulgated in *State Gazette* No. 92 of 18 November 2005

intellectual property rights, including copyright and neighbouring rights. Customary conventional practices of administration of law, established to settle disputes over rights *in rem*, prove insufficient and even ineffective in cases involving intangible assets such as intellectual property. Even before the revision, the Act made provisions to this effect. They were incorporated there in 2000 by virtue of the TRIPS Agreement concluded within the framework of the World Trade Organisation. Directive **2004/48/EC** of the European Union details considerably the previous framework. It provides for:

- facilitating the persons entitled to seek application of the measures, procedures and remedies in proving their authorship or ownership;
- facilitating such persons in obtaining evidence;
- a broader range of measures which not only terminate infringements but also prevent further infringements;
- measures against other intermediaries whose services are being used for infringement of intellectual property rights;
- more flexible ways to determine the amount of the compensation;
- broad publicity of decisions in intellectual property infringement cases, etc.

The Act to Amend and Supplement the Copyright and Neighbouring Rights Act also provides a far more detailed regulation of the procedural powers of the authorities of the Ministry of Culture which enforce administrative measures against such infringements.

At the same time, the Act introduces certain specifications in connection with the application of **other EU directives** in the same area. These are matters regarding satellite broadcasting, cable retransmission, lending or rental of audio and video storage media etc. Hence the need to revise certain **definitions** set out in the law.

⇒ The amount of **fin**es facing infringers is increased;

⇒ Revisions are introduced in the private international law provisions related to Bulgaria's forthcoming accession to the European Union. They cannot enter into force immediately, which is why the Transitional Provisions of the bill set their effective date at the date of entry into force of the Treaty concerning the accession of the Republic of Bulgaria to the European Union.

⇒ Along with that, the Supplementary Provisions of the bill includes a clause regarding the administration and maintenance of a National System for Information Exchange in the Sphere of Intellectual and Industrial Property, which was financed and developed under Project Phare BG 0201.07.

A provision in the Act to Amend and Supplement the Copyright and Neighbouring Rights Act (§ 61 of the amending Act) amended the Telecommunications Act, which regulates the rights and obligations of cable telecommunication network operators. A new provision (§ 2 (4) of the Supplementary Provisions of the Telecommunications Act) reads that “the obligations of the operators referred to in Paragraph (3) shall not prejudice the obligations thereof under the Copyright and Neighbouring Rights Act, related to settlement of copyright and neighbouring rights to subject matter included in the national and regional programme services of the Bulgarian National Television and the Bulgarian National Radio.”

The reference is to the gratuitous cable retransmission of the programme services of the Bulgarian National Television and the Bulgarian National Radio. The amending standard specifies that even though the cable operators do not owe a royalty to BNT and the BNR (the so-called must carry obligation in the public interest), this gratuity does not extend in respect of the holders of copyrights and neighbouring rights to the subject matter included in the national and regional programme services of the Bulgarian National Television and the Bulgarian National Radio. Indeed, this specification comes to address an ambiguity in the previous framework.

Status: Measure rather implemented. Formally, the revisions introduced are fully consistent with the cited directives. The wording of the provisions, however, could lead to certain difficulties in their practical implementation. Thus, the revisions concerning cable retransmission (three new paragraphs in Article 21 and an amendment in Article 91 (5)) are indispensable because the effective framework was never enforced. Still, the transposition of directives is not an end in itself, and the link between the Telecommunications Act and the Copyright and Neighbouring Rights Act could be streamlined. Non-compliance with the Copyright and Neighbouring Rights Act on the part of cable telecommunication operators does not affect their registration with the Communications Regulation Commission. The few fines imposed (and their amount, too) under the Radio and Television Act do not achieve a deterrent effect. The risks remains that the effectiveness of the protection of intellectual property rights would not be substantially enhanced despite the transposition of Community law.

Activity related to Measure 1: Adoption of an Act to Amend and Supplement the Radio and Television Act

An amending Act⁸ introduced new provisions in the Radio and Television Act, intended to increase the effectiveness of the control over respect for copyright and neighbouring rights in the electronic media. The regulatory framework was improved in the following areas:

A provision is made to impose an obligation on broadcasters in their **licences** to broadcast programme services solely after the copyrights and neighbouring rights have been settled in advance. So far this standard was formulated in general terms in the Act (Article 19).

New obligations are introduced for all operators [broadcasters, cable and satellite operators] in connection with the maintenance of a register of right-holders: every year radio and television operators must present to the Council for Electronic Media, upon request, **evidence of the commercial rights and the copyrights granted** in respect of protected works in their programme services and of the neighbouring rights granted for the provision for broadcasting of foreign programme services. Within one month after receipt of such data, the Council for Electronic Media must consolidate the information referred to in Paragraph (2) and must transmit it to the competent

⁸ Promulgated in *State Gazette* No. 93 of 2005

officials under the Copyright and Neighbouring Rights Act (new Paragraphs (2) and (3) in Article 19).

Infringements in the field of copyright and neighbouring rights are listed among the grounds for **revocation of a licence**, if systematic (Article 122).

To improve coordination between the regulatory body and the officials under the Copyright and Neighbouring Rights Act, the Council for Electronic Media **must notify these officials of an infringement within seven days** (Article 127).

In principle, the revisions introduced can be assessed **in positive terms**. The problems with the respect for copyright and neighbouring rights, as well as intellectual property rights at large, in the electronic media programme services concern mainly the coordination between the Council for Electronic Media, the officials under the Copyright and Neighbouring Rights Act and the telecommunications regulatory body and the revisions take a step towards clarification of competence. The new subject matter in the Radio and Television Act, however, foregrounds two issues:

⇒ A new provision is added in the Radio and Television Act: “The administrative penalty provisions of the Copyright and Neighbouring Rights Act shall be applicable to any violations under Article 19 (1) herein” – Article 126 (3). This provision merits a more detailed interpretation.

So far the Council for Electronic Media has been exercising two types of supervision: as to compliance with the Act (in respect of all operators) and as to compliance with the licence (in respect of broadcasters which have been granted an individual licence). The need to protect copyrights and neighbouring rights has led to the inclusion of requirements **both in the Act** (Article 19 of the Radio and Television Act) **and in the licences** (more concrete requirements). Therefore, violations can be of both the Act and the licences. As a result of the monitoring of programmes services, the officials of the Council for Electronic Media propose to the Chairperson of the Council for Electronic Media to issue a penalty decree on violations of either the Act or the licences, depending on the violation.

The new provision (Article 126 (3) of the Radio and Television Act) **transfers the competence for sanctioning violations under Article 19 of the Radio and Television Act to the Ministry of Culture, the idea being to make the Ministry of Culture the only authority penalising infringements of copyright and neighbouring rights**. When they have reason to believe that an infringement has been committed, the officials of the Council for Electronic Media do not notify the Chairperson of the Council for issuance of a penalty decree but the officials of the Ministry of Culture, who “apply the administrative penalty provisions of the Copyright and Neighbouring Rights Act,” i.e. impose administrative sanctions for violation of Article 19 of the Radio and Television Act.

At the same time, however, the legislator's objective is not entirely achieved:

- According to Article 126a of the Radio and Television Act, “[a]ny violation of the terms and conditions of a licence as granted, which does not constitute a violation under Article 126 herein, shall be punishable by a pecuniary penalty of BGN 500 or

exceeding this amount but not exceeding BGN 5,000.” According to this provision, the competence of the Council for Electronic Media to impose administrative sanctions for infringements of copyrights and neighbouring rights **is not transferred to the Ministry of Culture** when the requirements of the licence are violated.

- The sanction under the Radio and Television Act ranges from BGN 2,000 to **BGN 15,000**, whereas the sanction under the Copyright and Neighbouring Rights Act ranges from BGN 300 to **BGN 3,000**. Thus, the reference to the Copyright and Neighbouring Rights Act actually introduces a privileged legal treatment of copyright infringements compared to the other violations of the Radio and Television Act because of the substantially lower upper limit of the sanction provided for under the Copyright and Neighbouring Rights Act.

⇒ Insofar as the revisions of the Radio and Television Act empower the Council for Electronic Media **to revoke the licence** on the grounds of systematic violations, for which there must be effective penalty decrees issued by the Ministry of Culture, the Ministry of Culture must **“refer any such violation back”** to the Council for Electronic Media.

2. Issuance of an Instruction Establishing the Terms and Procedure for Allocation of the Source Identification Code (SID Code), the Manners of Designation and Placing of the Said Code

Responsible institution: Ministry of Economy and Energy

Deadline: 30 December 2005

In pursuance of Article 40 (2) in reference to § 5 OD Act, the Ministry of Economy and Energy issued a statutory instrument of secondary legislation regulating the manner of incorporation of the Source Identification Code (SID Code) as allocated into the stamper or optical-disk manufacturing capacities by the licensed manufacturers of optical disks and stampers for their manufacture.

The statutory instrument of secondary legislation (instruction) belongs to adjective law, it regulates one of the prerequisites for implementation of the licensing system under the OD Act: the certificate of registration on allocation of a Source Identification Code (SID Code). Under the Act, manufacturers of optical disks or stampers for their manufacture are required to submit such a certificate for the issuance of a licence, and the Source Identification Code (SID Code) is stated in the licence.

Status: Measure implemented. The formal prerequisites for application of the Optical Disks Act, which are to be regulated under the Instruction, are in place. Next, the requisite human resources have to be provided for the proper enforcement of the OD Act.

Strengthening the capacity for and increasing the effectiveness of the enforcement of legislation

In response to the recommendations of the European Commission, corrective measures have been planned to strengthen the capacity for enforcement of legislation. These measures **target**:

- strengthening the interaction (coordination) between the national and Community levels;
- improving the coordination between the national institutions;
- strengthening the information infrastructure for protection of intellectual property, including the development of a database of the right-holders and rights management.

3. Presentation to the European Commission of an Action Plan for Protection of Intellectual Property Rights

Responsible institution: Ministry of Justice

Deadline: 21 October 2005

Status: Measure implemented with the adoption by the Government of the 2006 Action Plan. The measures envisaged under Chapter 5 are treated as an Action Plan for Protection of Intellectual Property.

4. Supplying the European Commission on a regular basis with information regarding the implementation of joint actions for enforcement of the intellectual property protection legislation according to the Action Plan.

Responsible institution: the line central-government departments

Deadline: continuous, reported on a quarterly basis

5. Supplying the European Commission on a regular basis with information regarding the training of the authorities enforcing the protection of intellectual property rights.

Responsible institution: the line central-government departments

Deadline: continuous, reported on a quarterly basis

Status: Measures 4 and 5 are of a permanent nature. They are implemented according to a routine mechanism: the information originates from the specialised administration of the competent central-government departments and reaches the European Commission administration care of the Council of Ministers European Integration and Relations with International Financial Institutions Directorate. Along with that, information is provided directly upon request care of the Delegation of the European Commission in Sofia or during peer reviews.

6. Proposal to the Commission for the Protection of Competition and the Ministry of Economy and Energy for accession to the Memorandum of Understanding

Responsible institution: Ministry of Justice

Deadline: 31 October 2005

The Memorandum is a basis for effective coordination of the principal central-government departments vested with competence in the field of protection of intellectual property. The signing of the Memorandum is prompted by the need to commit the ministries to successful implementation of the information system maintenance project (National System for Information Exchange in the Sphere of Intellectual and Industrial Property or **NSIESIIP**) in respect of the right-holders. The commitments are assumed at high level (heads of central-government department).

The proposal has to be addressed to the Commission for the Protection of Competition and the Ministry of Economy and Energy because of their important powers in this field. The proposal has been drafted, transmitted and accepted.

A. The purpose of the accession is that all principal institutions vested with powers in the field of intellectual property protection become parties to the Memorandum. The statutory grounds are described in Article 3.

B. In terms of **provision of data**, the obligations of the parties are regulated in detail.

Status: Measure rather implemented (no data is available of an updating of the Memorandum).

Activity related to Measure 6. Additionally, for achievement of the same objective, a Memorandum between the Ministry of Culture, the Communications Regulation Commission and the Council for Electronic Media is being drafted and its coordination is in progress. The two regulatory bodies exercise parallel control over electronic communications, in particular over the content (of the programmes broadcast by terrestrial transmitter, by cable and by satellite).

Public awareness

7. Establishment of a working group for elaboration of a programme for conduct of a mass-scale campaign to raise public awareness of legislation on the protection of intellectual property.

Responsible institution: Line ministries and central-government departments

Deadline: December 2005

Status: Measure implemented. A working group has been established for conduct of an awareness-raising campaign. A plan of the campaign is being prepared, and sources of financing are being ensured.

Part III. Findings

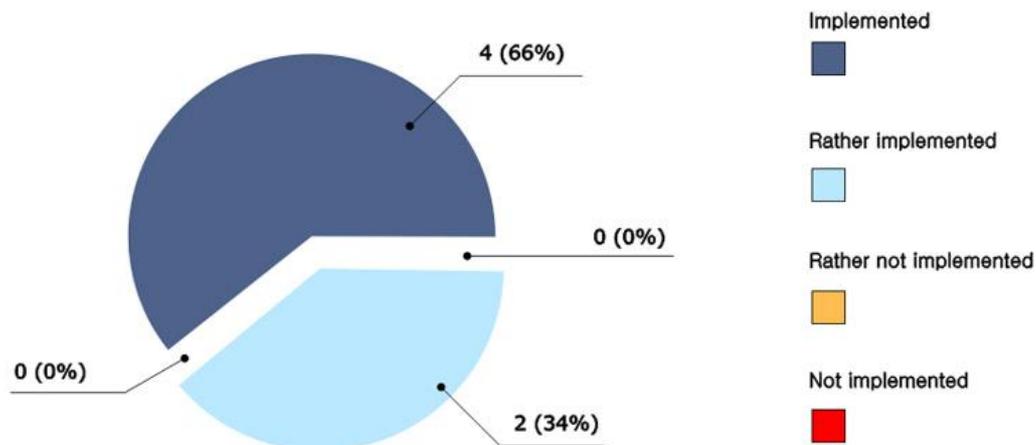
Implementation of the **to-do-list** is proceeding on schedule (see Figure 2). The statutory instruments have been adopted. The coordination measures have been fulfilled. **Formally**, there are no delays or non-implementation. The instruments adopted could be commented in terms of expected effectiveness and interconnection of the separate enforcement authorities. Measures of the Action Plan have been implemented on schedule, too (establishment of a Council for Protection of Intellectual Property).

The **principle of public consultation process** must be observed. An impression is created that the adoption of the acts revising the Copyright and Neighbouring Rights Act and the Radio and Television Act was rushed and not all parties concerned were invited to express opinions.

As to the effectiveness of enforcement of the instruments adopted, the measures planned (establishment of a Council, establishment of a working group for conduct of campaign) are merely a **prerequisite for effectiveness of enforcement**. Hence the ascertainment of implementation of these measures is just **ascertainment of the creation of prerequisites but does not imply tangible effectiveness of coordination or tangible effectiveness of the awareness-raising campaign. This remains to be monitored in future.**

Figure 2

Extent of Implementation of Measures under Chapter 5:
Company law - Protection of intellectual property rights



CHAPTER 7: AGRICULTURE”

Part I. Evaluation of the Adequacy of the Measures Planned by the Government in Response to the Recommendations Contained in the EC Monitoring Report of October 2005

Chapter 7: *Agriculture* is the largest of the negotiation chapters, because legislation in this area comprises more than 50 per cent of the *acquis*. Chapter 7: *Agriculture* consists of two sections. The first concerns legislation related to the Common Agricultural Policy (CAP), which establishes the mechanisms for regulating the marketing of different agricultural products, the support schemes for boosting the income of agricultural producers, and the development and funding of rural areas. This covers also the creation of some institutions such as the Paying and Intervention Agencies, the establishment of an Integrated System for Allocation and Control, the introduction of trade mechanisms (licensing system, export subsidies, etc.), the adoption of the EU Quality Policy, the development of organic farming, the establishment of farm accounting systems, the provision of state aid.

The remaining EU legislation on agriculture relates to the functioning of a common internal EU market. It aims at protecting consumers within the entire Community and ensuring the safety of foods. These regulations also address veterinary and phytosanitary issues.

Negotiations on Chapter 7: *Agriculture* were provisionally closed on June 4, 2004. The overall integration policy in agriculture involves alignment of national legislation with the *acquis* and development of administrative capacity to ensure enforcement.

The EC Monitoring Report has identified some areas of serious concern with regard to complete transposition, implementation and enforcement of the *acquis*. The main areas that have been highlighted in the report include veterinary legislation; common market organisation for milk and especially the development of a system for allocation and administration of milk quotas; the establishment of the necessary legal framework and institutions to implement the CAP and the direct payment scheme to farmers.

Other issues that have been outlined in the Report concern trade mechanisms, the organisation of the wine sector, quality control for fruit and vegetables, etc.

Critical comments of the EC, which have not been addressed in the list of measures

A comparative analysis of the EC Comprehensive Monitoring Report and the measures planned by the Government to address critical comments made in the Report revealed that there are nine issues related to the common market organisation for milk, which still need to be addressed. These include: implementing legislation for the main mechanisms including the allocation and administration of milk quotas;

introducing mechanisms for the common market organisation for milk and milk products; creation of National Milk Board and regional milk boards; distributing tasks and responsibilities between all the bodies involved in implementing the milk quota system; approval of wholesale milk purchasers; installation and accreditation of independent laboratories for fat content analysis; adoption of political decisions on principles for administering the national reserve and for transferring quota; provision of transitional arrangements for marketing milk in Bulgaria until April 2009. The to-do-list addresses only one of these critical comments.

Implementation of legislation regulating main mechanisms, including the allocation and administration of milk quotas

Responsible institution: Ministry of Agriculture and Forestry

Deadline: January 2006

The Bill to Amend and Supplement the Agricultural Producers Support Act, which was passed on first reading, regulates the mechanism of the milk quota allocation and administration system. The final adoption of this Act in mid January would provide the legal framework for passing a Regulation that would specify the details of the milk quota system: approval of wholesale milk purchasers, allocation of quotas, etc. The bylaws are currently being developed but their successful implementation would depend on the final adoption of the Bill to Amend and Supplement the Agricultural Producers Support Act.

Status: Given that the deadline expires in the end of January 2006, **the measure is rather not implemented.**

Introduction of mechanisms for the common market organisation for milk and milk products

Responsible institution: Ministry of Agriculture and Forestry

Deadline: May 2006

Since the logistics for implementing this measure are already in place, it can be assumed that by the next phase of monitoring, which is scheduled for the second half of February 2006, the main bylaws regulation common market organisation for milk would be adopted.

Status: Given that the deadline for implementing this measure has not expired yet, currently it can be assessed as **rather implemented.**

Creation of National Milk Board and regional milk boards

The National Milk Board (NMB) and the eight regional milk boards (RMB) were established in 2005. Training has been provided for the experts who work in this area (approximately 320 persons).

Status: Measure implemented

Distribution of tasks and responsibilities between all the bodies involved in implementing the milk quota system

Responsible institution: Ministry of Agriculture and Forestry

Deadline: January 2006

There is clear vision on the distribution of tasks and responsibilities between the Ministry of Agriculture and Forestry, the Paying Agency and the National Milk Board. Necessary regulations are currently being drafted. The introduction of bylaws on the distribution of tasks and responsibilities between all implementation bodies depends on the adoption of the Bill to Amend and Supplement the Agricultural Producers Support Act.

Status: Given that the deadline expires in the end of January 2006, **the measure is rather not implemented.**

Approval of wholesale milk purchasers

Responsible institution: Ministry of Agriculture and Forestry

Deadline: January 2006

Actual work on identifying and approving wholesale milk purchasers can begin only after the adoption of the Bill to Amend and Supplement the Agricultural Producers Support Act. Nevertheless, registers of food producers and milk collecting centres have been developed and updated to reflect actual status.

Status: Measure rather not implemented

Installation and accreditation of independent laboratories for fat content analysis

Responsible institution: Ministry of Agriculture and Forestry

Deadline: not specified

Some problems might be expected with establishing independent laboratories for fat content analysis in individual milk processing factories and securing the necessary premises and material resources for the RMBs to become operational. Currently, one independent laboratory for fat content analysis is being installed under a Phare-funded project (in Sliven) and another one is scheduled to be established with funding from the Ministry of Agriculture and Forestry (in Dobrich). The capacity of the two laboratories would be 1,5 million samples, which is far less than the required minimum. Eleven of the existing laboratories administered by the National Veterinary Service will also be used, but still overall capacity would remain at half the required minimum. This would definitely continue to create problems in enforcing milk quality control legislation.

Status: Although some progress has been made, given the lack of enough laboratories for fat content analysis, **the measure can be assessed as rather not implemented.**

Adoption of political decisions on principles for administering the national reserve and for transferring quota

Responsible institution: Ministry of Agriculture and Forestry

Deadline: not specified

According to existing primary and secondary legislation, the National Reserve shall be administered by the Ministry of Agriculture and Forestry, which would allocate milk quotas among producers upon a proposal by the National Milk Board.

Status: Measure rather implemented

Provision of transitional arrangements for marketing milk in Bulgaria until April 2009

Status: Since the deadline for this measure expires at the end of 2006, it is not included in the present assessment.

Part II. Review and Evaluation of Progress in Implementing Planned Measures

Trade mechanisms

1. Cooperation agreements and procedures to be formally adopted

Responsible institution: Ministry of Agriculture and Forestry, Customs Agency, State Fund “Agriculture”, National Veterinary Service

Deadline: December 2005

The cooperation agreement has been signed.

Status: Measure implemented

Paying Agency (PA) and Integrated Administration and Control System (IACS)

2. A Framework law on the activities of the Paying Agency and the application of the IACS to be approved by the Council of Ministers

Responsible institution: Ministry of Agriculture and Forestry

Deadline: December 2005

The main critical remarks with regard to the Paying Agency involve: adoption of legislative measures for setting up the PA, as well as decision-making on the Single Payment Scheme, the minimum size of eligible agricultural holdings and the complementary national direct payments.

Initially the 2005 Action Plan stipulated that the Framework Act should be adopted by September 15, 2005 but subsequently the deadline was extended to November 2005.

Later on it was decided that the framework legislation for the Paying Agency, IACS and the SAPS would be incorporated into the Agricultural Producers Support Act (APSA) and a comprehensive Bill to Amend and Supplement the APSA was drafted and submitted to Parliament. At the end of 2005 the Bill was passed on first reading. The optimistic scenario is that it would be finally adopted in mid January, i.e. four months later than initially planned and approximately two months later than the extended deadline.

Judging by the version that was made available to the monitoring team, the Bill to Amend and Supplement the Agricultural Producers Support Act regulates issues related to the accreditation, organisation and activity of the Paying Agency; the establishment of IACS and the choice of a payment scheme.

When adopted, the Bill is expected to fulfil its intended goals. The slight delay in passing the Act, however, raises some concerns.

The Bill stipulates that the SAPS would be used as a scheme for supporting agricultural producers. Political consensus exists on the minimum size of eligible agricultural holdings (1 ha of cultivated farm land or 0.5 ha for vegetables, orchards, vineyards and other permanent crops and tobacco), as well as on the minimum size of eligible plots (0.1 ha). These decisions are subject to approval by the Council of Ministers upon agreement with the EC.

Status: With a view to speeding up the legislative process, the Bill was submitted to the National Assembly by an MP. Nevertheless, the measure can be assessed as **rather not implemented even though the deadline was extended.**

3. Activities to be implemented for the building up of the Paying Agency and IACS (including the Land Parcel Identification System) according to the schedule of the comprehensive Master plan for the establishment of PA and IACS and the contracts signed for acquisition of ortophoto images of the country
Responsible institution: Ministry of Agriculture and Forestry
Deadline: March 2006

The adoption of the framework act is only the first necessary step in establishing the CAP implementation system. Given that the act, which would provide legal grounds for creating a Paying Agency has not been adopted yet, actual work on structuring the Agency cannot begin at this stage. Nevertheless, efforts on establishing PA and IACS, as well as drafting the procedures for their operation, are already being made. Progress in structuring the Paying Agency is rather optimistic. The staff for its main unit has been trained, the internal documents (rules, procedures, checklists, etc.) have been drafted and prepared for the upcoming peer review by EC experts in January. Six regional units of the PA have also been established, but are not fully staffed yet. In total, 11 regional units are envisaged to manage payments and control the fulfilment of obligations made by agricultural producers. The selection of experts for these units has already begun and there is a plan for training regional staff.

Fifteen new PA units, structured by product lines and function, are envisaged to implement SAPS and common market organisation measures after the adoption of the

PA act. Procedures for their operation have also been developed: organigrams, application forms, detailed instructions for applicants, report forms, monitoring and control procedures, checklists, etc. After the adoption of the Bill to Amend and Supplement the Agricultural Producers Support Act they will be incorporated into the Regulation on the Structure and Operation of the State Fund on Agriculture. The bylaws required to ensure adequate implementation of the law also need to be developed: The PA Accreditation and Disaccreditation Regulation; Regulations on the special eligibility criteria for the support schemes, etc.

Given the experience accumulated in the implementation of the SAPARD Programme, the State Fund on Agriculture (the future Paying Agency) is quite prepared to implement measures under the second pillar.

The leadership of the State Fund on Agriculture is convinced that 2006 Budget allocations guarantee the creation of the PA, the IACS and the land parcel registration system. Tenders for technical support and software adaptation required to implement the IACS have already been organised. Work on adapting the software is expected to complete by the end of June 2006. The only problem at the current stage seems to be the staffing of the PA and especially the allocation of premises and office space for both central and local units.

Progress in implementing the Land Parcel Identification System, which falls within the responsibilities of the Ministry of Agriculture and Forestry, still raises some serious concerns. Although the regulatory framework for the establishment and operation of the system was adopted in the beginning of 2005 (CoM Decree 1/2005), lack of coordination between the implementing institutions (the Ministry of Agriculture and Forestry and the Ministry of Regional Development and Public Works) necessitated several changes according to which the acquisition of ortophoto images only for Northern Bulgaria was initially assigned to the Ministry of Agriculture and Forestry (May 2005), while since December 2005 (Decision No. 963 of December 16, 2005) the assignment was extended to cover the whole territory of the country. The need to clarify clearance procedures for giving access to classified information to applying companies caused further delays. Currently contracts have been signed for the acquisition of ortophoto images of 200 territories in 22 municipalities in Northern Bulgaria. Images have been obtained for less than 7 per cent of the country's territory (7300 sq. km) and digitalisation is currently underway. This means that not only the deadline for establishing the Land Parcel Identification System (December 2005) was not met, but a serious delay may be expected.

To overcome this delay, other possibilities have been explored to secure the necessary mapping material from the Ministry of Defence; currently this information is being adapted to the needs of the Land Parcel Identification System. In the meantime, a tender has been organised to assign the acquisition of ortophoto images for Southern Bulgaria. A pilot project for identifying ownership and use of agricultural land is being carried out in Ispereh. Training of district and municipal staff on using the software and managing the verification process is scheduled to begin in the second half of January 2006; meanwhile, preliminary registration of potential beneficiaries is underway.

A digital map of the country will be produced, using satellite images of those parts of the territory for which contracts for orthophoto image acquisition have not been signed. The satellite images will complement orthophoto images and will serve as a basis for preliminary land parcel registration; later on they will be further particularised and corrected based on orthophoto image acquisition results. Funding will be provided from the State Budget.

Finally, it can be concluded that, despite a certain delay in implementation, some progress has been made in speeding up activities in areas of high concern such as the establishment of the PA. This suggests that the delay would be overcome and by the end of 2006 the Land Parcel Identification System would become operational.

Status: Given that the deadline for carrying out these activities expires in March 2006, one can assume that **the measure is rather not implemented.**

Common market organisation for milk

4. By April 2006 to be completed the producer database and milk quotas to be indicatively allocated to the individual farmers

Responsible institution: Ministry of Agriculture and Forestry

Deadline: April 2006

The deadline for addressing the critical remark has been extended by one month. Serious efforts are being made to overcome delays in the creation of a milk register. Currently, the register is already in place and two surveys have been carried out of all fresh milk producers, wholesale purchasers and milk processing establishments. The first survey covered nearly 136 thousand producers; the second – 120 thousand. Approximately 5000 active producers have declined registration, claiming that they would suspend production by 2007. All milk processing establishments and wholesale purchasers were also surveyed in October 2005. Survey results show that the quantities of milk purchased for processing exceeds the quota allocated to our country by approximately 30 000 tons, while direct sales milk production falls short of the quota by nearly 150 000 tons. Indicative quota distribution has not yet started.

Status: Given that the deadline for this measure is April 2006, currently **the measure can be assessed as rather implemented.**

5. Specialised training to be provided to farmers

Responsible institution: Ministry of Agriculture and Forestry, Institute for Public Administration and European Integration

Deadline: March 2006

The instruction of municipal agriculture service staff who will provide training to farmers has already completed. Training courses for farmers are expected to be organised as planned.

Status: Measure rather implemented

Veterinary and health issues

6. The new Framework Law on Veterinary Activity (LVA) to be adopted by Parliament.

Responsible institution: National Assembly

Deadline: December 2005

The Law on Veterinary Activity (LVA) was adopted in October 2005 (and promulgated in November 1, 2005).

Status: Measure implemented

7. Secondary legislation under the LVA to be adopted

Responsible institution: Ministry of Agriculture and Forestry

Deadline: January 2006

Out of 47 secondary legislation acts envisaged in the LVA, 24 have already been adopted and the adoption of 2 regulations is pending (they have been scheduled for consideration by the Collegium of the Ministry of Agriculture and Forestry on January 17, 2006). By the end of January 2006 two bylaws transposing Hygiene package legislation (Regulation 853/2004 and Regulation 854/2004) will be adopted. Work is underway on the remaining secondary legislation under the LVA; adoption is envisaged by the end of March 2006.

Status: Given that more than half of the required secondary legislation acts have been adopted, one can conclude that **the measure is rather implemented.**

8. Activities to be implemented for the building of the second (state-owned) rendering plant according to the schedule of the Phare project.

Responsible institution: Ministry of Agriculture and Forestry

Deadline: March 2006

Since the beginning of 2006 the control system for specified risk material and dead animals has covered most of the country's territory. Currently, one rendering plant is operational and an environment impact assessment report has been produced for the second plant.

Status: Given that the deadline expires in March 2006 and progress is being made, **the measure can be assessed as rather implemented.**

9. An Order introducing the feed ban to be issued by the Minister of Agriculture and Forestry

Responsible institution: Ministry of Agriculture and Forestry

Deadline: December 2005

The Order introducing the feed ban was issued in the beginning of 2006 and is being enforced. A list of authorised fodder supplements has been adopted.

Status: Given that the Order has been issued and is being enforced, it is evident that **the measure is implemented.**

10. The necessary equipment, database and control of animal movement to be fully in place and implemented.

Responsible institution: Ministry of Agriculture and Forestry

Deadline: December 2005

Registration of swine breeding farms was completed by the end of 2005, but small farm animals have not been registered. Measures have been taken to strengthen control of animal movement through ongoing monitoring.

Status: Measure rather implemented

11. Activities to be implemented for the building of the seven remaining long-term border inspection posts according to the schedule of the Phare projects and the procurement procedure for the post on Sofia Airport

Responsible institution: Ministry of Agriculture and Forestry

Deadline: March 2006

Reconstruction has completed in only one out of eight border inspection posts (the one at Kapitan Andreevo). Work is still underway on building border inspection posts at Kalotina, Varna Port and Bourgas Port under a Phare-funded project. Contracts for building posts at Bregovo, Zlatarevo and Gueshevo were signed at the end of November 2005; construction is scheduled to be completed by the second half of 2006 and then procedures for EC accreditation would begin. The construction of the last of the eight post envisaged, the one at Sofia Airport, will be financed by the National Veterinary Service. Planning and design is already underway and the preliminary project is being coordinated with the SANCO Directorate General. On the whole, it can be concluded that the delay in implementing veterinary border control and quarantine measures, which was registered in the fall of 2005, was not overcome, although some progress has been made.

Status: Given that delays still exist, **the measure can be assessed as rather not implemented.**

12. Health emergency fund to be legally established with the new LVA and the necessary financial resources from the state budget to be allocated with the adoption of the Law on the State Budget for 2006

Responsible institution: Ministry of Agriculture and Forestry

Deadline: December 2005

The legal framework is already in place and funds have been allocated in the State Budget for 2006 to create an animal health emergency fund.

Status: Measure implemented

13. The vaccination ban (for Classical Swine Fever) to be introduced and the eradication measures to be implemented

Responsible institution: Ministry of Agriculture and Forestry

Deadline: December 2005

The vaccination ban for Classical Swine Fever was introduced and is being enforced. Vaccinations were suspended and a monitoring programme to control the disease is implemented. Results are currently being analysed.

Status: Measure implemented

14. The requirements of the new Hygiene Package concerning food of animal origin to be transposed with an Ordinance under the new LVA

Responsible institution: Ministry of Agriculture and Forestry

Deadline: January 2006

Currently, two regulations are being drafted, which will transpose the Hygiene Package legislation (Regulation 853/2004 and Regulation 854/2004). They are expected to be adopted by the end of January 2006.

Status: Measure rather implemented

15. Law on amendment of the Food Law for transposition of the other requirements of the Hygiene package to be approved by the Council of Ministers

Responsible institution: Ministry of Economy and Energy, Ministry of Agriculture and Forestry, Ministry of Health

Deadline: January 2006

The initial deadline (end of 2005) was extended by one month. Currently, amendments to the Food Law are being drafted.

Status: Measure rather not implemented

16. The present plan for upgrading of the agri-food industry to be updated in order to take into account the new requirements of the Hygiene package

Responsible institution: Ministry of Agriculture and Forestry

Deadline: December 2005

The deadline for implementing this measure has been extended twice: to January 2006 and then to June 2006. As of today the list of agri-food industry establishments has been updated but the deadline for their upgrading was extended.

Status: Measure rather not implemented

Part III. Findings

The present report assesses progress in addressing 22 critical remarks. Sixteen of them have been addressed in the to-do-list under Chapter 7: *Agriculture*, while six measures have been proposed based on an analysis of critical remarks made in the EC Comprehensive Monitoring Report. In effect, efforts are being made to address all critical remarks. As of January 16, assessment results (see Figure 1) reveal that:

1. Measures to address five critical remarks are fully implemented;
2. Measures to address eight critical remarks are rather implemented;
3. Measures to address nine critical remarks are rather not implemented;
4. There is no measure than can be considered not implemented.

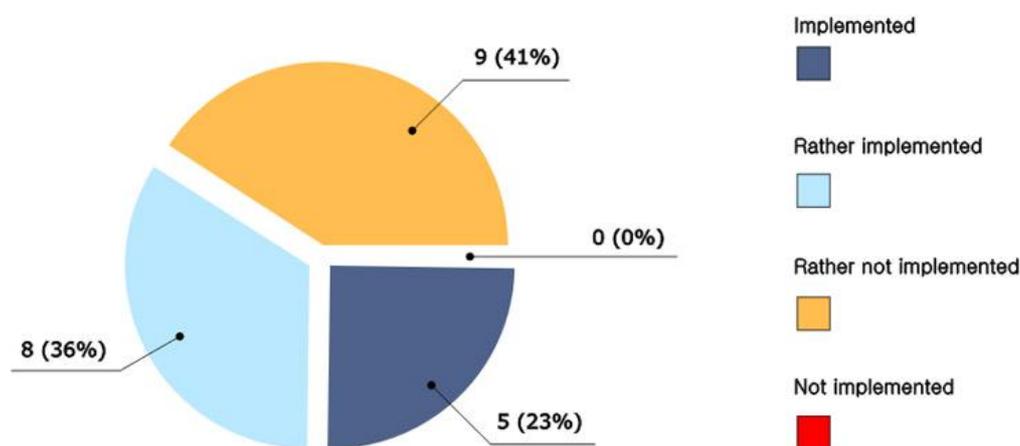
Nevertheless, it should be noted that the progress in implementation raises some concerns, because measures are mutually dependent and need to be implemented in strict succession. Much of the secondary legislation, for which the adoption deadline has expired or is expiring, has been in fact developed, but cannot be introduced before the adoption of the Bill to Amend and Supplement the Agricultural Producers Support Act, which holds back implementation of subsequent measures.

The delay in the implementation of measures that require considerable financial and human resources, as well as time, raises serious concerns. This is the case with the Land Parcel Identification System, the establishment of independent laboratories for fat content analysis, the construction of border inspection posts, etc.

Although many measures have been assessed as rather not implemented, experts' observations suggest that there is good coordination among responsible institutions, which generates moderate optimism that capacity for implementing the measures does exist.

Figure 3

Extent of Implementation of Measures under Chapter 7: Agriculture



CHAPTER 21: REGIONAL DEVELOPMENT AND COORDINATION OF STRUCTURAL INSTRUMENTS

Part I. Assessment of the relevance of measures planned by the Government in response to recommendations issued in the EC Comprehensive Monitoring Report of October 2005

1. Assessment of progress made in meeting commitments under 21: *Regional Development and Coordination of Structural Instruments* in areas of “serious concern” according to the EC Comprehensive Monitoring Report of October 2005

- **Administrative capacity**
- **Financial management and control capacity**

The findings of the assessment of progress made in meeting commitments under Chapter 21: *Regional Development and Coordination of Structural Instruments* in areas that raise **serious concern** according to the Comprehensive Monitoring Report of the European Commission, can be summarised as follows:

- ⇒ Urgent action is needed with regard to the development of an operational programme to strengthen institutional capacity and the efficiency of public administration – Administrative Capacity Operational Programme.
- ⇒ Weaknesses notably in administrative capacity are a serious concern, in particular as regards the level and skills of staff in the Managing Authorities and Intermediate Bodies. Preparing and implementing efficient human resource development strategies for all bodies involved in Structural Funds implementation is therefore an urgent priority.
- ⇒ There are serious concerns in relation to institutional structures and administrative capacity in the area of financial management and control, including with regard to public procurement. Financial management and control systems need to be brought in line with adopted legislation by the end of 2005.
- ⇒ Substantial weaknesses in the management of the pre-accession funds are raising serious concerns regarding Bulgaria’s capacity to manage the Structural Funds and the Cohesion Fund in a sound and efficient way.

2. Assessment of progress made in meeting commitments under Chapter 21: *Regional Development and Coordination of Structural Instruments* in areas, which require “increased efforts” according to the EC Comprehensive Monitoring Report of October 2005

Areas, which require increased efforts, include:

- **Legislative framework**
- **Programming**
- **Establishment of a pipeline of projects**

- **Monitoring and evaluation**
- **Coordination**

Assessment findings reveal that the following problems exist in implementing measures that require “increased efforts”:

- ⇒ Attention should be given to urgently harmonising legislation on public procurement. In the context of public procurement legislation, EU provisions relating to work concessions have not yet been transposed. Considerable and sustained efforts are needed to ensure quality and timely delivery of documents.
- ⇒ Considerable and sustained efforts are needed to establish a pipeline of projects ready to be implemented under the Structural Funds and the Cohesion Fund.
- ⇒ In relation to **monitoring and evaluation**, monitoring units have not yet been established in all designated managing authorities or intermediate bodies.
- ⇒ There are serious delays in the design and setting-up of the management information system.
- ⇒ In relation to monitoring and evaluation, increased efforts are needed with regard to the setting-up of a functional management information system by accession, covering all Operational Programmes.
- ⇒ Urgent efforts are needed to coordinate overall fund management preparations more efficiently and more pro-actively with a clear definition of responsibilities in this field.

The Government has outlined a series of measures to address critical remarks made in the EC Comprehensive Monitoring Report of October 2005. As regards Chapter 21: *Regional Development and Coordination of Structural Instruments* these measures are classified into four groups:

- ⇒ Legislative framework
- ⇒ Planning and programming documents
- ⇒ Administrative capacity
- ⇒ Partnership

Responsible institutions have been identified and deadlines have been set for the implementation of each measure. The measures have not been clearly classified by level of concern expressed by the European Commission, but on the whole, they address most of the critical remarks in areas raising “serious concern” or requiring “increased efforts”, and to a great extent correspond to, or in some cases even extend, the corrective actions suggested by the Commission.

- ⇒ With regard to the **legislative framework** it strikes as odd that the Government has not formulated a measure to explicitly address recommendations for adoption by the Council of Ministers of a Bill to Amend and Supplement the Public Procurement Act. The responsible institutions on this issue include the Ministry of Economy and Energy, the Ministry of Regional Development and Public Works and the Public Procurement Agency. Notification is expected on the adoption of amendments to the Public Procurement Act, notably whether the amended Act covers issues related to remedies and electronic public procurement.

On November 10, 2005 the Government adopted a National Programme for the development of public procurement and concessions for 2005-2007, following commitments made in the negotiations on Bulgaria's accession to the EU. The Programme is intended to optimise these sectors in the last stage of the country's preparation for joining the common European market. The performance of tasks laid down in the strategy will develop and strengthen the legal and institutional framework, improve the business climate and create more favourable conditions for observing the principles, stipulated in the Public Procurement Act and the Law on Concessions. Furthermore, the implementation of the Programme is expected to curb corruption practices.

The main goal of the Strategy is to ensure conditions for observing the principles of public awareness, transparency, free and fair competition, equality of all applicants and intolerance to discrimination in the assignment of public procurement contracts and concessions. This would be achieved by improving the regulatory framework and aligning it with the EU acquis; strengthening and developing administrative capacity; guaranteeing public awareness, transparency, and equality of all applicants in the assignment of public procurement contracts and concessions.

The introduction of an integrated practice in the application of public procurement and concession laws would help prevent common flaws and violations in the organisation of procedures for assigning public procurement contracts and concessions.

The existence of a Public Procurement Register and a Concessions Register in compliance with EU requirements would guarantee public awareness, transparency, and equality of all applicants in the assignment of public procurement contracts and concessions. The organisation of training and information campaigns on the functional capacity of the two registers and the regularly updated and detailed information that they would provide, will enhance the competences of the all entities involved in public procurement and concessions.

The strategic goals will pursued in cooperation with the Public Procurement Agency, the Phare Programme, the USAID, the Institute of Public Administration and European Integration, sectoral organisations and NGOs.

⇒ With regard to **planning and programming documents**, the Government has not explicitly formulated as a task the clear division of responsibilities among institutions that will act as intermediate bodies for Operational Programmes. This task involves elaboration and implementation of development strategies for authorities managing Operational Programmes and it should be noted that performance in this area will be monitored by the EC. This task falls within the responsibility of the administration in line ministries.

Currently, the Government is not fully prepared to submit the draft Operational Programmes and the National Plan for Development, 2007-2013, to the European Commission for review, although these documents have already been approved by the Council of Ministers. The Commissions expected that they would be submitted for review on November 18, 2005.

The Government's to-do-list does not include proposals for creating an expert taskforce to coordinate and manage the Phare 2005 project for drafting lists of projects for the Regional Development, Competitiveness, and Human Resource Development Operational Programmes. This task falls within the responsibility of the Ministry of Finance with support from the Ministry of Regional Development and Public Works, the Ministry of Labour and Social Policy and the Ministry of Economy and Energy.

No action seems to have been taken with regard to the EC requirement for having an indicative project pipeline list for all Operational Programmes submitted to the Ministry of Finance. This falls within the responsibility of the Ministry of Regional Development and Public Works (MRDPW), the Ministry of Environment and Water (MEW), the Ministry of Labour and Social Policy (MLSP), the Ministry of Transport (MoT), the Ministry of Economy and Energy (MEE), and the Ministry of State Administration and Administrative Reform (MSAAR). A Financial Memorandum with the EC on the provision of technical assistance in elaborating project pipeline lists is about to be signed.

Instructions on the cash-flow scheme for the next 3 years, sent by the National Fund to Managing Authorities, suggest that the existing scheme, in which co-funding by the State Budget is provided through a National Fund (budgeting and fund allocation to MAs), would be preserved.

⇒ With regard to **administrative capacity** actions need to be taken to establish monitoring and evaluation units and strengthen their capacity. Such actions, however, are not explicitly included in the Government's to-do-list. The responsible institutions in this respect are MRDPW, MEW, MLSP, MoT, MEE and MSAAR.

Part II. Review and assessment of progress in implementing planned measures

Comments in this section are structured according to the measures formulated in the Government's to-do-list on Chapter 21: *Regional Development and Coordination of Structural Instruments*.

Legislative framework

1. Law on amendment of the Organic Budget Law, which introduces the multi-annual budgeting, to be adopted

Responsible institution: National Assembly

Deadline: 24 December 2005

The problematic aspects of financial management and control, internal audit in second level spending units, budget projections and adoption of spending limits for the next three years have been resolved with the **amendments and supplements to the Organic Budget Law: SG, No. 87 of November 1, 2005; SG, No. 89 of November 8, 2005; SG, No. 105 of December 29, 2005.**

A legislation package has been proposed under Chapter 28: *Financial Control*, which will regulate the principles of good financial management of public funds and will improve the control environment in the Republic of Bulgaria by introducing clear division of responsibilities among leaders of public sector institutions, internal auditors and State financial inspectors.

The Bills included in the package – Bill on Public Sector Financial Management and Control, Bill on Internal Auditing in Public Sector Institutions, and Bill on State Financial Inspection – have been submitted to Parliament by the COM and are scheduled for first reading.

The **Act to Amend and Supplement the Organic Budget Law** sets forth the preparation, approval, implementation, and reporting on the State Budget of the Republic of Bulgaria, the relationship between the State Budget and municipal budgets, as well as procedures concerning extra-budgetary financial resources.

The most important amendments to the Law, which fit within recent commitments and recommendations made, are:

Art. 10. (3) (New – SG, No. 87 of 2005, to be enforced after 01.01.2006) *Internal audit in second level spending units shall be carried out in conformity with active legislation.*

Art. 14. (3) (New – SG, No. 87 of 2005, to be enforced after 01.01.2006) *With the budget projections stipulated in paragraph 2, the Council of Ministers shall adopt spending limits for the next three years for each first level spending unit.*

Art. 20. (4) (Amended – SG, No. 87 of 2005, to be enforced after 01.01.2006) *The draft State Budget shall be accompanied by a consolidated fiscal programme.*

Status: An assessment of newly adopted amendments in substance is still pending. However, from a formal point of view, **the measure can be assessed as rather implemented.**

2. New draft Law on concession, which introduces the EU provisions, to be adopted by the Council of Ministers

Responsible institution: Ministry of Regional Development and Public Works

Deadline: 30 November 2005

The new Act on Concessions and the notification on adopted amendments to the Public Procurement Act have been **approved by the Council of Ministers on December 8, 2005 and have been submitted to Parliament for review.** The two acts are expected to be adopted by the end of February 2006 and to enter into force by June 2006. The same deadlines apply to secondary legislation. The acts will include provisions on review systems. With regard to electronic public procurement, the Public Procurement Bill transposes into the national legislation all provisions of

Directive 2004/17/EC and Directive 2004/18/EC, which provide for the application of a dynamic purchasing system.

The Bill stipulates the main principles and rules in assigning, executing, and terminating concessions. Further specification of provisions and detailed procedures for assigning concessions will be set forth in the Implementing Regulations to the Act.

The new Act on Concessions will enter into force three months after promulgation in State Gazette.

Status: From a formal point of view, **the measure can be assessed as rather implemented.**

3. Decision on designation of IBs of the Operational Programmes to be adopted by the Council of Ministers

Responsible institution: Ministry of Finance

Deadline: 30 November 2005

The Council of Ministers adopted a decision (CoM Decision No. 965/16.12.2005), designating the Central Coordination Unit, the Operational Programmes Managing Authorities and Intermediary Bodies that will manage EU Structural Funds in Bulgaria. The Central Coordination Unit for EU Structural Funds will be the Management of European Union Funds Directorate at the Ministry of Finance. The decision also specifies the administrative structures, which will be responsible for managing Structural Fund resources in Bulgaria for the period 2007-2013.

A translation of CoM Decision No. 965/16.12.2005 has been e-mailed to the Regional Policy Directorate-General and the Enlargement Directorate-General of the EC on December 22, 2005.

A CoM Decision of December 27, 2005 stipulates that the National Fund will be the Certifying Body and the Paying Authority for EU funds.

Details on CoM Decision No. 965/16.12.2005

Six directorates in different line ministries have been designated to act as Managing Authorities for Operational Programmes. These are:

- ⇒ **Programming of Regional Development Directorate-General** at the Ministry of Regional Development and Public Works (MRDPW);
- ⇒ **Pre-accession Programmes and Projects Directorate** at the Ministry of Economy and Energy (MEE);
- ⇒ **European Funds, International Programmes and Projects Directorate** at the Ministry of Labour and Social Policy (MLSP);
- ⇒ **Programme and Project Coordination Directorate** at the Ministry of Transport (MoT);
- ⇒ **Environment Cohesion Policy Directorate** at the Ministry of Environment and Water (MEW);
- ⇒ **Projects and Programmes Management Directorate** at the Ministry of State Administration and Administrative Reform (MSAAR).

The Intermediary Bodies that will work with the EU Cohesion and Structural Funds have also been designated. These are:

Under the Managing Authority of the National Regional Development Operational Programme, the Programming of Regional Development Directorate-General at the Ministry of Regional Development and Public Works (MRDPW):

- ⇒ **The territorial units of the MRDPW Programming of Regional Development Directorate-General, established in the centres of all planning regions;**

Under the Managing Authority of Operational Programme “Competitiveness of Bulgarian Economy”, the Pre-accession Programmes and Projects Directorate at the Ministry of Economy and Energy (MEE):

- ⇒ **Executive SME Promotion Agency;**

Under the Managing Authority of the Human Resources Operational Programme, the European Funds, International Programmes and Projects Directorate at the Ministry of Labour and Social Policy (MLSP):

- ⇒ **Directorate “Coordination of Educational and International Projects and Programmes” at the Ministry of Education and Science,**
- ⇒ **Employment Agency and Social Assistance Agency;**

Under the Managing Authority of the Transportation Operational Programme, the Programme and Project Coordination Directorate at the Ministry of Transport (MoT):

- ⇒ **Road Executive Agency,**
- ⇒ **National Railroad Infrastructure Company,**
- ⇒ **Maritime Administration Executive Agency;**

Under the Managing Authority of the Environment Operational Programme, the Environment Cohesion Policy Directorate at the Ministry of Environment and Water (MEW):

- ⇒ **EU Environment Funds Directorate at the MEW,**
- ⇒ **MRDPW Directorate “PIU – ISPA Programme: Public Works and Water Supply and Sewerage Systems”;**

Under the Managing Authority of the Administrative Capacity Operational Programme, the Projects and Programmes Management Directorate at the Ministry of State Administration and Administrative Reform (MSAAR):

- ⇒ **European Coordination and International Cooperation Directorate at the MSAAR.**

Until September 30, 2006 the Managing Authorities are entitled to designate other Intermediary Bodies according to the priorities of each Operational Programme.

Status: The measure can be assessed as implemented.

4. Ordinance on the management, monitoring, evaluation and control of the implementation of the Operational Programme “Regional development” to be adopted

Responsible institution: Ministry of Regional Development and Public Works

Deadline: 15 January 2006

The Ordinance is being drafted under Art. 32 of the Regional Development Act. The draft Ordinance is currently being coordinated, as stipulated in to Art. 58, paragraph 1 of the CoM Rules of Organisation, and is expected to be adopted in January 2006.

Status: The measure can be assessed as rather implemented.

Planning and programming documents

5. Adoption of Regional Development plans

Responsible institution: Ministry of Regional Development and Public Works

Deadline: 15 December 2005

With CoM Decisions No. 1014, 1015, 1016, 1017, 1018 and 1019 of December 30, 2005 the Government approved the development plans of the six planning regions, which cover the period from Bulgaria’s accession to the EU to 2013. They define the med-term vision and priorities of regional policy over the next few years. The ultimate goal is to develop a competitive economy; modernise transportation and engineering infrastructure; revive rural areas and encourage sustainable development of agriculture; reach European employment standards; introduce management approaches, develop partnership and regional cooperation; strengthen institutional capacity for absorption of EU funds.

The six regional plans take into account the National Development Plan, National Strategy for Regional Development 2005-2015, the district strategies, the municipal development plans and the financial framework of the Regional Development National Operational Programme.

The National Strategy for Regional Development of Bulgaria 2005-2015, adopted in April 2006, stipulates that the country’s regional development in the coming years is related to the construction of European transport corridors, the increase in foreign direct investment, the development of clusters as a factor for attracting FDI in various sectors, the use of pre-accession and structural funds, and the Cohesion Fund for developing regional infrastructure, integrating cross-border areas, etc.

EU Structural and Cohesion Funds and Public-Private Partnerships will be the major instrument for implementing regional development projects. Currently, the involvement of the private sector in implementing regional development programmes is limited to co-funding of projects, which benefit SMEs. The partnership principle is a mechanism for strengthening the capacity for absorption of EU funds.

With its decisions, the Council of Ministers assigns to the Minister of Regional Development and Public Works to elaborate an integrated system of indicators for monitoring and evaluating progress in the implementation of regional development plans, as well as special monitoring and evaluation indicators for each planning region. By May 15 each year, the Minister must inform the Council of Ministers on the monitoring results for each of the six regional plans.

Status: The measure can be assessed as implemented.

6. Adoption of the Operational Programmes

Responsible institution: MRDPW, MEW, MLSP, MoT, MEE, MSAAR

Deadline: 30 December 2005

On December 27, 2005, with CoM Minutes No. 55, the Government adopted the preliminary versions of the Operational Programmes under the National Development Plan for Bulgaria covering the period 2007-2013 as a basis for negotiations with the European Commission.

Six operational programmes have been drafted under the National Plan. They were prepared by the ministries responsible for implementing the strategic priorities. Apart from Operational Programmes, programmes for the development of rural regions, fishery and aquacultures are also being drafted. The documents came as a result of broad discussions with social, economic and regional partners, local governments, etc. The requirements of existing EU regulations and strategies, different national strategic documents, as well as recommendations of foreign experts have been taken into consideration in formulating these programmes.

Work on approving the ex-ante evaluation of Operational Programmes is expected to begin in February 2006. ToR for ex-ante evaluation of the Administrative Capacity Operational Programme have been developed and sent to the EC Delegation for approval.

Status: Measure rather implemented

7. Adoption of the NDP 2007-2013

Responsible institution: Ministry of Finance

Deadline: 30 December 2005

On December 27, 2005, with CoM Minutes No. 55, the Government adopted a preliminary version of the National Development Plan for Bulgaria, 2007-2013, as a basis for negotiations with the European Commission.

The Government adopted the National Development Plan for Bulgaria, 2007-2013, as a basis for negotiations with the European Commission. The preliminary versions of the Operational Programmes under the Plan have also been endorsed. The document was drafted in compliance with the commitments taken under Chapter 21: *Regional Policy and Coordination of Structural Instruments*. It outlines the paths which

Bulgaria intends to follow in its overall social and economic development, as well as the priority areas that will be proposed to the EC to be funded from Structural Funds. The main goal of the document is to present the Government's policy in overcoming the country's lagging behind in economic indicators, compared to EU Member States.

The ex-ante evaluation of the National Development Plan (NDP), 2007-2013, began in February 2005 and the deadline was extended to April 2006.

Status: Measure rather implemented

Administrative capacity

8. Establishment of administrative structure and procedures for the implementation of the specific financial control provisions as laid down in Regulation 438/2001 and 448/2001

Responsible institution: Ministry of Finance

Deadline: 30 December 2005

Internal Audit Directorate and Audit of EU Funds Directorate are being established directly under the Minister of Finance

On December 27, 2005 the Government adopted amendments to the Rules of Organisation of the Ministry of Finance, which assign new functions to 10 MoF Directorates: Property Finance and Management Directorate, Human Resources Directorate, State Expenditures Directorate, Real Sector Finance Directorate, Local Government Financing Directorate, Treasury Directorate, Government Debt Directorate, National Fund Directorate, Central Financing and Contracting Unit Directorate, and European Integration and Monitoring Directorate. The restructuring of MoF administration is expected to strengthen the administrative capacity of the Ministry and follows recommendations issued by the European Commission.

Two new directorates are being established: Internal Audit and Audit of EU Funds. They will report directly to the Minister of Finance.

The Internal Audit Directorate will be responsible for auditing all structures, programmes, activities and processes within the Ministry, including units managing EU funds. Currently, these functions are being performed by the Public Internal Financial Control Agency.

The Audit of EU Funds Directorate will manage, organise and supervise the operation of all units managing resources under EU funds and programmes. It will also act as a Certifying Body for the SAPARD Programme.

The Internal Audit Directorate will be staffed by 10 employees, while the Audit of EU Funds Directorate will employ 14.

With the adopted amendments to the Rules of Organisation, the MoF staff will increase by 52 people. This, however, will not exceed overall staffing limits for the entire structure of the Ministry.

MEW: A fifth department is being established at the Intermediary Body of the Environment Operational Programme (EU Environment Funds Directorate). It will be responsible for the ex-ante control, evaluation and approval of tender documents under the ISPA and Phare Programme projects, managed by the Directorate.

MoT: An Ex-ante Evaluation Department, staffed by 6 full-time employees, is being established at the Programme and Project Coordination Directorate, which acts as an ISPA Executive Agency for the transportation sector. Staff selection and appointment procedures will begin in January 2006.

MEE: Newly adopted amendments to the MEE Rules of Organisation (promulgated in SG, No. 47 of 01.06.2005) a new internal control department was established to manage ex-ante quality assessment and assurance. Two experts have already been appointed to the department.

MoF, National Fund: Ex-ante control units have been established in the Phare and ISPA Executive Agencies. The ex-ante control model has been decentralised and endorsed with CoM Ordinance No. 257 of 08.04.2005 for the Phare Programme and CoM Decision No. 42 of 20.10.2005 for the ISPA Programme.

MSAAR: According to the Ministry's Rules of Organisation, ex-ante control functions are assigned to the Projects and Programmes Management Directorate. Staff selection and appointment procedures will begin in January 2006.

Status: Measure rather implemented

9. Preparation of Organisational Development Strategies for all MA

Responsible institution: line Ministers

Deadline: 15 November 2005

Organisational Development Strategies for all MAs have been developed and e-mailed to the Regional Policy Directorate-General and the Enlargement Directorate-General of the EC. Organisational Development Strategies have a complementary function and are designed to guarantee more efficient and flexible organisation of MAs, so that they might adapt to changes.

Each strategy includes the following main components:

- ⇒ Organisational development theory and principles;
- ⇒ Assessment of the current organisational status;
- ⇒ MSAAR vision, MA mission and strategic goals;
- ⇒ Human resource development and assessment of training needs;
- ⇒ Strategy implementation plans;
- ⇒ Risk assessment.

EC comments and recommendations are currently being expected and will be reflected in the final version of the strategies.

Status: Measure rather implemented

10. Elaboration of job-descriptions and starting recruitment procedures for staffing of the administrative structures, determined as MA and IB of the OP “Administrative capacity”

Responsible institution: MSAAR

Deadline: 30 November 2005

With CoM Decree No. 215 of 12.10.2005 the Projects and Programmes Management Directorate (PPM) has been designated to act as Managing Authority of the Administrative Capacity Operational Programme.

PPM Directorate consists of two departments, employing a total of 19 experts:

⇒ Management, Programming and Control – 12 experts

⇒ Financial Management – 7 experts

The designated Intermediary Body is the European Co-ordination, Procurement and Contracts Department at the European Co-ordination and International Co-operation Directorate. The department employs 7 experts.

Since the Rules of Organisation were adopted in October 2005, a staff selection and appointment procedure with high selection criteria and requirements is still underway in both the MA and the IB. The MA and IB are expected to be fully staffed in February 2006. Job descriptions have been elaborated for all experts, detailing the functions of each MA and IB employee.

Training provided to OP “Administrative Capacity” MA and IB:

⇒ November 22–25, 2005: Training in Structural Fund Management under the Twinning project “Preparing MRDPW’s Central and Regional Structures for Managing Future ERDF-type Programmes and Projects”.

⇒ November 28 – December 2, 2005: The Managing Authority and the Intermediary Body co-operated with a consultant from the Dutch company ECORYS on developing the Administrative Capacity Operational Programme.

⇒ December 5–21, 2005: MA and IB teams benefited from technical assistance provided by experts of the Ministry of Finance and Economy of the Republic of Italy.

⇒ December 12–13, 2005: Training on institutional development projects under the Phare Programme “EU Enlargement. Twinning Project Management”. The seminar was organised by the Embassy of the Kingdom of Spain to Bulgaria and the FIIAPP.

⇒ December 12–16, 2005: MA and IB teams benefited from technical assistance provided by the Dutch Government under a project managed by the Ministry of Finance.

⇒ December 15, 2005: Seminar on the OP technical assistance component under the Twinning project “Preparing MRDPW’s Central and Regional Structures for Managing Future ERDF-type Programmes and Projects”.

Planned training sessions for OP “Administrative Capacity” MA and IB:

⇒ A project for strengthening the capacity of OP “Administrative Capacity” MA and IB is expected to be launched in January 2006 with funding from the MATRA-Flex Programme.

⇒ In the beginning of February 2006 MA and IB staff will attend a project writing course, organised by the British Council in Sofia.

⇒ A project involving capacity building training for MA and IB is expected to be approved under Twinning Light (PHARE 2005 Unallocated).

- ⇒ Training under TAIEX, FORMEZ, EIPA (Maastricht).
- ⇒ Training in the Institute of Public Administration and European Integration and the Public Finance School of the Ministry of Finance.
- ⇒ Training sessions under bilateral agreements with Governments of EU Member States.

Status: Measure rather implemented

11. Regular reporting to the EU Commission on the process of recruitment of staff for the structures, determined as MAs and IBs at central and regional level

Responsible institution: line Ministers

Deadline: continuous

Status: This measure has a permanent nature and is being consistently pursued chiefly by the Management of European Union Funds Directorate at the Ministry of Finance, based on information provided on a regular basis by the Managing Authorities of Operational Programmes.

12. Designation of the tasks of the structures, determined as IBs (where it's not completed yet)

Responsible institution: line Ministers

Deadline: 30 December 2005

Details will be provided after talks with all Managing Authorities.

Status: Measure rather implemented

13. Adoption and implementation of a new training Programme on project-management cycle and management of EU Funds

Responsible institution: Institute of Public Administration and EU Integration

Deadline: 30 October 2005

The catalogue of training options provided by the Institute of Public Administration and European Integration for 2005 included three professional development programmes in European Integration, of which the European Experience Programme is offered for the first time.

- PREPARATION FOR MEMBERSHIP IN THE EU Programme
- ABSORPTION OF EU RESOURCES Programme

Basic course: Management of the project cycle	6 days	48 hours
Schemes for grants under the EU Phare programme	2 days	16 hours
Educational programmes of the EU	1,5 days	12 hours
Management of European projects in a real environment – New	4 days	32 hours
Possibilities for foreign donor programmes	1,5 days	12 hours

sponsorship – New		
Practical preparation for project cycle management	5 days	40 hours

- EUROPEAN EXPERIENCE Programme
- MANAGEMENT SKILLS Programme

Status: Measure implemented

14. Regular reporting to the EU Commission on the training of experts in the MAs and IBs

Responsible institution: line Ministers

Deadline: continuous

Status: This measure has a permanent nature and is being consistently pursued chiefly by the Management of European Union Funds Directorate at the Ministry of Finance, based on information provided on a regular basis by the Managing Authorities of Operational Programmes.

Partnership

15. To organise discussion of the priorities and draft OP with interested public authorities, regional stakeholders, social partners, NGOs and academics

Responsible institution: line Ministers

Deadline: 30 October 2005

In the spring of 2005 joint working groups, bringing together all stakeholders, were established to further elaborate and discuss the priorities of Operational Programmes. Each working group held three meetings at which partners expressed their views and rallied around generally accepted priorities.

On December 14, 2005 all working groups met for a joint session and reached consensus on the priorities of Operational Programmes, as well as on the National Development Plan of the Republic of Bulgaria, 2007-2013.

Status: Measure rather implemented

16. To organise discussion of the draft NDP 2006-2013

Responsible institution: Ministry of Finance

Deadline: 15 November 2005

In the spring of 2005 a public forum was organised, bringing together all stakeholders – ministries, representatives of the business, and NGO. In three consecutive sessions, the forum discussed the National Development Plan of the Republic of Bulgaria,

2007-2013 and on December 14, 2005 convened for a final session to reach consensus on the priorities of Operational Programmes and the National Development Plan of the Republic of Bulgaria, 2007-2013. The forum was organised by the Agency for Economic Analysis and Forecasting at the Ministry of Finance with the assistance of the Swiss Agency for Development and Cooperation (SDC).

After approval by the Government and after evaluations of assessors are received, which expected to happen by the end of February 2006, recommendations will be incorporated and the National Development Plan will be finalised, so that negotiations with the European Commission might begin. This could happen in March or April 2006.

Status: Measure rather implemented

17. Draft NDP and draft OPs to be submitted to the EU services for comments.

Responsible institution: line Ministers

Deadline: 18 November 2005

The deadline for this measure was extended to the end of March 2006.

Status: Measure rather not implemented

Part III. Findings

The assessment of measures under Chapter 21: *Regional Development and Coordination of Structural Instruments*, included in the Government's to-do-list, justifies the following conclusions:

Legislative framework

The problematic aspects of financial management and control, internal audit in second level spending units, budget projections and adoption of spending limits for the next three years have been resolved with the amendments and supplements to the Organic Budget Law: SG, No. 87 of November 1, 2005; SG, No. 89 of November 8, 2005; SG, No. 105 of December 29, 2005.

The new Act on Concessions and the notification on adopted amendments to the Public Procurement Act have been approved by the Council of Ministers on December 8, 2005 and have been submitted to Parliament for review. The two acts are expected to be adopted by the end of February 2006 and to enter into force by June 2006.

With regard to public procurement, further efforts need to be made to establish an adequate system for efficient and transparent absorption of EU funds through competitive bidding procedures. With regard to transparency, the Bulgarian public procurement legislation is to a great extent harmonised with Community directives.

The strategy for restructuring public sector financial control agencies need to be actively pursued. The Bills addressing these issues – Bill on Public Sector Financial Management and Control, Bill on Internal Auditing in Public Sector Institutions, and Bill on State Financial Inspection – have been submitted to Parliament by the COM and are scheduled for first reading.

Efforts are being made to assign the internal audit of line ministries and other units to the best auditors. With CoM Decision No. 988 of December 27, 2005 the Council of Ministers designated the National Fund at the Ministry of Finance to assume the functions of Certifying Body and Paying Authority for EU funds.

The Council of Ministers adopted a decision (CoM Decision No. 965/16.12.2005), designating the Central Coordination Unit, the Operational Programmes Managing Authorities and Intermediary Bodies that will manage EU Structural Funds in Bulgaria. The Central Coordination Unit for EU Structural Funds will be the Management of European Union Funds Directorate at the Ministry of Finance. The decision also specifies the administrative structures, which will be responsible for managing Structural Fund resources in Bulgaria for the period 2007-2013. Until September 30, 2006 the Managing Authorities are entitled to designate other Intermediary Bodies according to the priorities of each Operational Programme.

In pursuance of Art. 32 of the Regional Development Act, the Ministry of Finance and the MRDPW have drafted an Ordinance on management, monitoring, evaluation and control of the implementation of the Regional Development National Operational Programme. The draft Ordinance is currently being coordinated, as stipulated in to Art. 58, paragraph 1 of the CoM Rules of Organisation, and is expected to be adopted in January 2006.

Planning and programming documents

With CoM Decisions No. 1014, 1015, 1016, 1017, 1018 and 1019 of December 30, 2005 the Government approved the development plans of the six planning regions, which cover the period from Bulgaria's accession to the EU to 2013. They define the med-term vision and priorities of regional policy over the next few years. The ultimate goal is to develop a competitive economy; modernise transportation and engineering infrastructure; revive rural areas and encourage sustainable development of agriculture; reach European employment standards; introduce management approaches, develop partnership and regional cooperation; strengthen institutional capacity for absorption of EU funds. The six regional plans take into account the National Development Plan, National Strategy for Regional Development 2005-2015, the district strategies, the municipal development plans and the financial framework of the Regional Development National Operational Programme.

The Minister of Regional Development and Public Works is to elaborate an integrated system of indicators for monitoring and evaluating progress in the implementation of regional development plans, as well as special monitoring and evaluation indicators for each planning region. By May 15 each year, the Minister must inform the Council of Ministers on the monitoring results for each of the six regional plans.

On December 27, 2005, with CoM Minutes No. 55, the Government adopted the preliminary versions of the Operational Programmes under the National Development Plan for Bulgaria covering the period 2007-2013 as a basis for negotiations with the European Commission.

Work on approving the ex-ante evaluation of Operational Programmes is expected to begin in February 2006. ToR for ex-ante evaluation of the Administrative Capacity Operational Programme have been developed and sent to the EC Delegation for approval.

The ex-ante evaluation of the National Development Plan (NDP), 2007-2013, began in February 2005 and the completion deadline was extended to the end of April 2006.

Still much work needs to be done to ensure that the National Plan and the Operational Programmes would be approved and endorsed by the EC.

Administrative capacity

Administrative structures and procedures have been established for the implementation of the specific financial control provisions as laid down in Regulation 438/2001 and 448/2001. Procedures are currently being implemented in line ministries.

Organisational Development Strategies for all MAs have been developed and e-mailed to the Regional Policy Directorate-General and the Enlargement Directorate-General of the EC. EC comments and recommendations are currently being expected and will be reflected in the final version of the strategies.

Job descriptions are being elaborated and a competitive selection procedure is being designed for appointing experts at the Projects and Programmes Management Directorate (PPM) of the MSAAR, designated to act as Managing Authority of the Administrative Capacity Operational Programme.

Amendments to the Rules of Organisation are pending for those line ministries in which Managing Authorities for Operational Programmes have been structured. Regular information needs to be provided to the European Commission on the progress of competitive selection procedures for appointing additional experts in structures, designated to act as Managing Authorities or Intermediary Bodies for Operational Programmes. The functions of units designated to act as Intermediary Bodies for Operational Programmes need to be defined and finalised.

The new training programme on project cycle management and management of EU funds has been launched, but the quality of training provided has to be monitored on an ongoing basis. The European Commission should be regularly informed on the training of experts working in structures, designated to act as Managing Authorities or Intermediary Bodies for Operational Programmes.

Partnership

Discussions have been organised with stakeholders on the draft Operational Programmes and the draft NDP, 2006-2013. On December 14, 2005 the Public Forum convened for a final session to reach consensus on the priorities of Operational Programmes and the National Development Plan of the Republic of Bulgaria, 2007-2013. The forum was organised by the Agency for Economic Analysis and Forecasting at the Ministry of Finance with the assistance of the Swiss Agency for Development and Cooperation (SDC).

After approval by the Government and after evaluations of assessors are received, which expected to happen by the end of February 2006, recommendations will be incorporated and the National Development Plan will be finalised, so that negotiations with the European Commission might begin. This could happen in March or April 2006.

What needs to be done in 2006

- ⇒ By November 2006 the National Assembly should adopt an Act to Amend and Supplement the Regional Development Act.
- ⇒ By March 2, 2006 the Council of Ministers should adopt a decision to amend and supplement the Strategy for the Participation of Bulgaria in EU Structural Funds and the Cohesion Fund. This is in line with commitments made under Chapter 21 and in pursuance of CoM Decision No. 238 of March 26, 2004.
- ⇒ By November 30, 2006 rules and procedures should be adopted to specify the responsibilities of different institutions in the preparation for absorbing resources from EU Structural Funds and the Cohesion Fund. This is in line with commitments made under Chapter 21 and in pursuance of CoM Decision No. 238 of March 26, 2004.
- ⇒ By November 11, 2006 the Rules of Organisation of the Ministry of Finance should be amended to allow for strengthening the capacity of the Management of European Union Funds Directorate at the MoF by appointing 7 additional experts.
- ⇒ By March 31, 2006 the capacity of the National Fund Directorate at the MoF should be strengthened; this involves adopting amendments to the MoF Rules of Organisation; certifying expenses on all Operational Programmes financed by EU Structural Funds and the Cohesion Fund; and appointing 10 additional experts to the Directorate.
- ⇒ By June 30, 2006 the administrative capacity of the Programming of Regional Development Directorate-General at the MRDPW should be strengthened; amendments to the MRDPW Rules of Organisation should be adopted; and the Directorate should begin to act as a Managing Authority for the Regional Development Operational Programme and the programmes under Objective 3: European Territorial Co-operation.
- ⇒ The administrative capacity of the ISPA Executive Agency Directorate at the MRDPW should be strengthened by increasing its staff and assigning new functions to the Directorate.
- ⇒ By November 30, 2006 the Council of Ministers should adopt an Ordinance to amend the MRDPW Rules of Organisation; the Directorate should manage ISPA Programme projects according to the Extended Decentralisation model and should

act as Intermediary Body for the Environment Operational Programme; the staff of the Directorate should be increased.

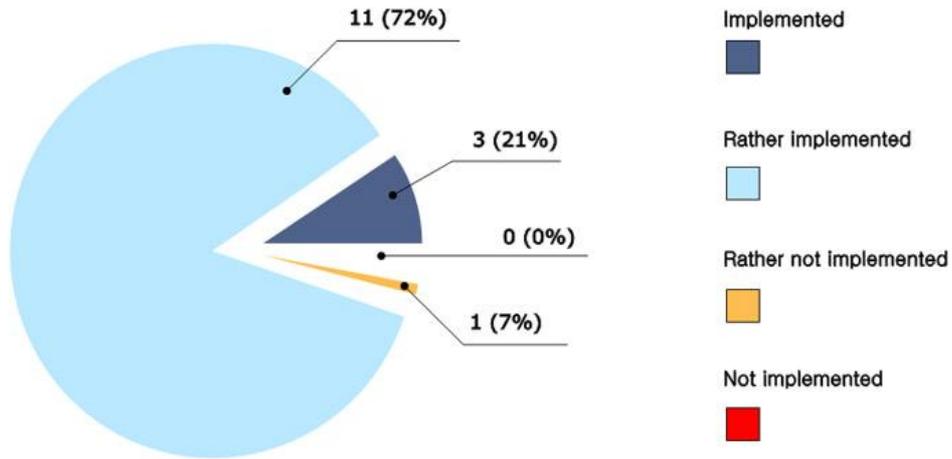
- ⇒ By October 31, 2006 the administrative capacity of the Managing Authority for OP Competitiveness should be strengthened; job descriptions should be revised; training should be provided under a twinning project.
- ⇒ By October 31, 2006 the administrative capacity of the Executive SME Promotion Agency should be strengthened; job descriptions of the IB for OP Competitiveness should be revised training should be provided under a twinning project.
- ⇒ A Management Information System (MIS) should be established to monitor OP Competitiveness. The Management Information System (MIS) should be delivered and training should be provided by the supplier.
- ⇒ The capacity of the Environment Cohesion Policy Directorate should be strengthened. Amendments to the MEW Rules of Organisation should be adopted. The Directorate should assume the functions of Managing Authority for the OP Environment. The staff of the Directorate should be increased by 9 experts.
- ⇒ The capacity of the EU Environment Funds Directorate should be strengthened. Amendments to the MEW Rules of Organisation should be adopted. The Directorate should assume the functions of Intermediary Body for the OP Environment. the staff of the Directorate should be increased by 19 experts.
- ⇒ The information system for managing and monitoring resources under EU Structural Funds should become operational.
- ⇒ Ex-ante evaluation of the NDP and the National Regional Development Strategy should be carried out. This is in line with the general provisions of the EU on the Structural Funds. The Supplementary information to Chapter 21 (19.03.2003) require that Bulgaria presents to the Commission a Development Plan and draft Operational Programmes, incorporating all elements stipulated in Art. 16, Art. 18 and Art. 19 of Council Regulation 1260/1999 laying down general provisions on the Structural Funds. According to the Supplementary information the Agency for Economic Analysis and Forecasting is assigned with elaborating the NDP. Council Regulation 1260/1999 requires that an ex-ante evaluation of the NDP is performed for the purposes of the Structural Funds. Annex 10 to the Supplementary information to Chapter 21 (19.03.2003) stipulates that the ex-ante evaluation of the NDP shall be performed by the MoF Management of European Union Funds Directorate and the Agency for Economic Analysis and Forecasting.

Part IV. Conclusion

As of today (January 17, 2006) three of the measures planned by the Bulgarian Government can be assessed as fully implemented, 11 as rather implemented and one as rather not implemented (see Figure 4). The deadline for the latter has not expired yet, but its implementation is of particular importance for the country's preparation for membership in January 2007.

Figure 4

Extent of Implementation of Measures under Chapter 21:
Regional policy and coordination of structural instruments



Efforts are being made by all responsible institutions and units to fulfil commitments in a relatively expedient way, but serious and persistent work, as well as ongoing coordination of activities are still needed.

The monitoring team will present its comprehensive assessment in the final report at the end of March 2006.

CHAPTER 24: JUSTICE AND HOME AFFAIRS

Part I. Evaluation of the Adequacy of the Measures Planned by the Government in Response to the Recommendations Contained in the EC Monitoring Report of October 2005

The to-do-list, adopted by the Bulgarian government to ensure fulfilment of commitments under Chapter 24 *Justice and Home Affairs*, address two of the most critical sections of the latest Comprehensive Monitoring Report issued by the European Commission: “Political Criteria” and “Justice and Home Affairs”. Hence, the list includes measures that vary significantly in terms of scope, nature, degree of specification, and importance. The number of involved institutions alone (13) validates the complexity and comprehensiveness of the proposed 32 measures.

Performance monitoring first of all involves assessing the relevance of proposed measures. If the starting point for such an assessment is the Comprehensive Monitoring Report issued by the European Commission on October 25, 2006, then the type and number of proposed measures give rise to some controversial conclusions. The Report repeatedly emphasises the need for enforcing legal provisions in compliance with the principles of the third pillar of the European Union. Thus, the European Commission explicitly indicates that alignment of legislation and actual law enforcement should be closely related. In many areas it is clearly suggested that the adoption of legal regulations should be accompanied by relevant enforcement measures. One cannot help noticing that most of the measures proposed by the Government of the Republic of Bulgaria under Chapter 24: *Justice and Home Affairs* focus on the efforts being made to achieve a certain objective, rather than on the result of these efforts. Many measures are rather means than ends in themselves and can hardly demonstrate that once implemented, they would actually lead to the fulfilment of a specific objective. In this respect, it should be noted that measures such as creating a working group, drafting a report or adopting a piece of legislation are only elements of the mechanism for fulfilling the conditions that have been laid down.

The measures cover a number of policy areas related the overall goal of creating an environment of freedom, security, and justice: criminal justice, refugees, migration, personal data protection, fight against drugs, border control, fight against organised crime, etc. It cannot go unnoticed, however, that in some key areas such as judicial system structure and functioning, and anti-corruption the measures seem to be an *ad hoc* answer to issues raised in the Monitoring Report, rather than a consequence of clear priorities for development in the respective area. Equally noticeable is the inadequate focus of the system of measures on the pre-trial phase of criminal proceedings, the fight against organised crime and the curbing of corruption: areas, which are identified as critical in both the political criteria and the *Justice and Home Affairs* Chapter.

For the sake of objectivity it should be noted that a substantial part of the measures under Chapter 24 concern bodies of the judiciary, which by Constitution are

independent from the executive branch. Other measures relate to the legislative authority of the National Assembly. The division of powers to a great extent predetermines the nature of measures, which the executive branch can commit to and fulfil. The limited possibility of the Government and of other executive agencies to influence the legislature into implementing measures under Chapter 24: *Justice and Home Affairs* should be borne in mind, when commenting on the relevance and adequacy of these measures. Nonetheless, the system of measures should clearly outline Bulgaria's vision and priorities in justice and home affairs, as well as the general trend of necessary structural reforms in the judiciary.

The great number of institutions involved in the implementation of measures under Chapter 24: *Justice and Home Affairs* raises the issue of managing accession negotiations and making decisions on the formulation, execution, and validation of measures. Under several measures the expected outcome of the pledged action is precisely the co-ordination among stakeholder institutions. In the course of monitoring it was established that no clear structure exists to control the execution of proposed measures.

Part II. Review and Evaluation of Progress in Implementing Planned Measures

Judicial System

1. Initiate amendments and supplements to the Constitution of the Republic of Bulgaria.

Responsible institution: Council of Ministers

Deadline: December 2005

The Bill to Amend and Supplement the Constitution of the Republic of Bulgaria was approved by the Government and was submitted to the Records Office of the National Assembly on December 22, having been signed by 107 MPs. Given the wording of the measure – “Initiate amendments to the Constitution” with responsible institutions the CoM and given the fact that the Bill was approved by the Government, it can be assumed that the measure has been implemented. The initiation of amendments, however, can hardly be considered a sufficient step. The criterion for successful execution of the measure should be the adoption of the Bill by the National Assembly. In this sense, one can deduce that **the measure has remained rather not implemented.**

The Bill, which has been submitted to the National Assembly, is pending for consideration by the Legal Affairs Standing Committee and the full house of Parliament. Preliminary statements by political party representatives, however, suggest that only some amendments can be expected to win the required majority of three-thirds, so that they might be considered in the short procedure. Those amendments, which do not obtain a two-thirds majority, may be reconsidered and voted again after two months. If this turns out to be the case, there is a risk for constitutional reform to be delayed, which would mean that the amendments would not be reflected in the EU Monitoring Report in April.

Status: Measure rather not implemented

2. Draft and submit to the National Assembly, through the Council of Ministers, a Bill to Amend and Supplement the Judiciary Act, which addresses EU recommendations and requirements, such as introducing compulsory competition-based appointment for magistrates and establishing, if feasible, a mechanism, which would allow the National Institute for Justice to defend its budget before the Supreme Judicial Council.

Responsible institution: CoM and Ministry of Justice in co-ordination with the SJC

Deadline: December 2005

Bill to Amend and Supplement the Judiciary Act was approved by the CoM and was submitted to Parliament on December 29, but has not been yet assigned to the relevant Parliamentary Standing Committee. Given the wording of the measure, which limits its scope only to drafting and submitting a Bill, it can be assumed that the measure has been implemented. This assumption, however, rest solely upon formal indicators because the submission of a Bill, taken alone, can be considered as an inadequate step. Debates on the Bill in Parliament are still pending.

Meanwhile, a working groups has been created to draft an entirely new Judiciary Act, which is expected to be adopted in the beginning of next year.

Status: Measure rather implemented

3. Develop and adopt comprehensive criteria to monitor the enforcement of the Criminal Procedure Code in order to periodically assess its impact on the efficiency and expedience of pre-trial and trial phases, after the Code becomes effective.

Responsible institution: Ministry of Justice and Ministry of the Interior in co-ordination with the SJC

Deadline: January 2006

A working groups has been created at the Ministry of Justice, with president one of the Deputy Ministers of Justice and members: the Chief Judicial Inspector (MoJ), the Head of Judicial Activity Directorate (MoJ), the Chairperson of the Council for Criminological Research under the Minister of Justices, representatives of the International Legal Co-operation and European Integration Commission and the Legislative Policy Commission at the Supreme Judicial Council, representatives of the Attorney General and the Ministry of the Interior. The working group has held two sessions, at which comprehensive criteria for monitoring the enforcement of the Criminal Procedure Code are discussed. A third session is scheduled for January 20, 2006, at which the final version of identified monitoring criteria would be approved or submitted for approval to the competent body.

Status: As of January 1, 2006 the measure is **rather implemented**, provided that at its last session the working group does approve the monitoring system.

4. Create a working group to review the organisation of prosecutors' everyday work in carrying out their duties and main functions order to optimise performance

Deadline: November 2005

Responsible institution: Ministry of Justice in co-ordination with the SJC and the Attorney General

An inter-institutional working group has been established. According to MoJ representatives, certain proposals for changes in rules and regulations have been submitted to the working group for consideration. No reference has been made, however, as to who drafted these proposals. It is logical to assume that they would be a result of the working groups' activity. A letter has been sent to all appellate prosecution offices and their subordinate units locally asking them to give their opinion on the issue. Meanwhile the prosecution offices of 10 EU member states have been contacted to study international practice and experience. It is unclear whether proposed changes in rules and regulations have been inspired by the replies received from these European countries. No indication has been made on the specific changes planned.

The act of creating a working group by itself does not seem an adequate measure. The concrete results, which this working group has to achieve, need to be specified. Again in formal terms, one can assume that the measure is rather implemented. It remains to be seen during the second phase of monitoring, what would be the outcome of the working group's activity, what would be the comments of the approached institutions and what is the progress in putting proposed changes through.

Status: Measure rather implemented

5. Develop an Action Plan with concrete deadlines and schedules for training magistrates to implement the new Criminal Procedure Code

Deadline: November 2005

Responsible institution: Ministry of Justice and National Institute for Justice

The training of magistrates is carried out under a Phare project for Improving Penal and Civil Procedures, which includes the component "Training of magistrates and court administration in accordance with the new Criminal Procedure Code. Training is expected to be completed before the entry of the new CPC into force and would be carried out using the training-of-trainers method. It would be provided in close co-operation with the National Institute for Justice and would be based on a concept, a concrete training programme, and a specially developed training kit. Approximately 700 judges, prosecutors and investigators are expected to be trained between November 28, 2005 and April 2006. Austrian and Bulgarian experts have visited many courts across the country to collect comprehensive and relevant information on the status quo and the need for training in accordance with the new penal procedure legislation. A needs assessment was conducted and served as a basis for the concept, curriculum, and plan for training magistrates and court administration. Training materials – brochures, etc., are currently being prepared in co-operation with the

National Institute for Justice. The first of a series of seminars included in the training programme was conducted in mid December.

Status: Measure implemented

6. Assess the implementation of the Strategy for Reform in the Bulgarian Judicial System and update the Programme for Implementing the Strategy for Reform in the Bulgarian Judicial System for 2006-2007 in order to reflect recommendations issued over the last three years.

Deadline: December 2005

Responsible institution: CoM and MoJ in co-ordination with SJC

The Minister of Justice has prepared a report on the implementation of the Strategy for Reform in the Bulgarian Judicial System and a draft Programme for implementing the strategy. These documents will be submitted to the CoM on January 19, 2006. Once they are approved by the Government, they would be submitted to the Supreme Judicial Council for consideration and approval. Currently, the measure can be considered rather not implemented.

Status: Measure rather not implemented

7. Adopt an Act on the Ministry of the Interior, which regulates criminal police and introduces a new career development mechanism.

Deadline: December 2005

The Council of Ministers submitted the Bill on the Ministry of the Interior to Parliament on September 7, 2005. On October 6, 2005 it was passed on first reading. As of January 16, 2006 voting on second reading is pending.

The Bill provides for a new organisation of the main structural units within the Ministry of the Interior, establishing three national services: Security, Police, and Fire Safety and Civil Protection. The National Police Service comprises the General Police Directorate and District Police Directorates. Further details on the structure of the General Police Directorate would be regulated in the Implementation Regulations to the Bill. At the time when the present report was written, there were no indications that the Criminal Police activities would be regulated. The Bill also contains no provisions on the place and powers of police investigators in the overall structure of the National Police Service.

The Bill regulates the demilitarisation of MoI staff and the introduction of merit-based career service. A particularly positive step is the adoption of competition-based appointment and promotion, equal opportunities for career development and non-discrimination.

Status: Given that the Bill on the Ministry of the Interior is still pending final approval in Parliament and does not contain provisions regulating criminal police, as of January 16, 2006 **the measure**, as it is formulated, **is rather not implemented.**

8. Issue a proposal to the SJC for re-appointing investigators to prosecutor positions, submitted by the Minister of Justice on behalf of the CoM.

Deadline: November 2005

Responsible institution: CoM and MoJ

In November the CoM assigned the Minister of Justice with submitting to the SJC a proposal for re-appointing investigators to prosecutor positions. The proposal was submitted to the SJC, which however refused to consider it with the argument that re-appointment proposals have not been discussed by the Proposals and Attestation Commission. At its session on December 14, 2005 the SJC decided to postpone the consideration of submitted proposals for opening new positions in the Prosecution Service of the Republic of Bulgaria and appointing investigators to prosecutor positions. The proposal was deliberated on January 11, 2006. out of 68 investigators proposed for relocation, 63 were appointed to prosecutor positions. Two were refused appointment because they are currently under investigation. Other three have meanwhile resigned and declined reappointment.

Status: Measure implemented

9. Adopt a Code of Administrative Procedure

Deadline: December 2005

The draft Code of Administrative Procedure has been passed on first reading. Second reading by the Legal Issues Standing Committee in Parliament began in mid December. Public statements by politicians suggest that the Code would be voted on second reading in the beginning of the current year. This has not happened yet.

Status: Measure rather not implemented

10. Draft a new Civil Procedure Code and submit it to CoM for consideration.

Deadline: 31 March 2006

Responsible institution: MoJ

As of 16th of January 2006 the deadline is still 74 days away. The draft Civil Procedure Code is being prepared by a working groups under a twinning project carried out in co-operation with the Austrian Centre for Legal Competence (CLC), which is committed to encouraging legal competence in the countries of Eastern Europe and Central Asia (BG/03/IB/JH/01-A). The working group includes prominent experts in civil procedure law and is expected to submit the draft Civil Procedure Code to the Ministry of Justice by the end of February 2006. A national conference bringing together a wide circle of Bulgarian experts is scheduled for February 23-24, 2006 to discuss the draft.

By the end of March 2006, the final version of the draft Civil Procedure Code, based on the original proposal of the working group, should be submitted to the Ministry of Justice. Within the same deadline, a Bill should be drafted, co-ordinated with relevant

institutions, approved by the CoM and submitted to Parliament. It is expected that the new Civil Procedure Code would be adopted by the end of June 2006. At the time when the present Interim Civil Report was written, there is good progress in the implementation of this measure, as well as quite a high probability for the draft Civil Procedure Code to be finalised within the specified deadline.

Status: Measure rather implemented

11. Create a unified court case management system, a documentation and workload management system, a unified register system, and a system for issuing Conviction Status Certificates under a 2002 Phare project. Develop a concept for creating a unified data collection system, which would be used as a judicial system management tool.

Deadline: December 2005

Responsible institution: MoJ

It is extremely difficult to assess unequivocally whether progress has been made in implementing this measure, mainly because the creation of a system is an undertaking, which involves a variety of individual steps that need to be followed. According to information provided by the Ministry of Justice software products for the above mentioned systems have been developed and are being introduced at a different pace. The Supreme Judicial Council has voted⁹ the MoJ proposal for approving the software and has endorsed a schedule for its installation in courts.

However, still much needs to be done to make sure that these systems would actually begin to operate. Currently, it is impossible to predict when would this happen.

It is unclear what is the status of the “unified data collection system, which would be used as a judicial system management tool”. The development of such a system was first mentioned in the Updated Programme for Implementing the Strategy for Reform in the Bulgarian Judicial System issued in March 2003. The stipulated deadline for establishing the system was the first quarter of 2004 with responsible institution – the Supreme Judicial Council. According to the Government plan, reviewed here, the deadline has been changed to December 2005, while the action involves developing a concept for the system, which in fact should have preceded the creation of the system that was scheduled for an earlier date. There is no public information what arguments or reasons have necessitated this change. Meanwhile, responsibility for implementing the measures has been shifted from the SJC to the Ministry of Justice.

The above example suggests that individual steps of the process are planned for their own sake; progress is not monitored, while essential parameters such as responsible institutions or expected outcomes are being changed on the run.

In the above measure, the Government has not included the completion of the unified information system for combating crime. Given that much of the criticism expressed in the latest EC Monitoring Report was directed to criminal procedure, it can be assumed that the creation of this particular system would be an issue of utmost importance. Moreover, it has been planned 10 years ago in one of the first strategic judicial reform management plans. Progress in implementing the system should be summarised and reported.

⁹ See SJC Session Minutes dated November 4, 2005.

Status: Although the required software for the systems specified in the measure has been developed and approved by the SJC, given the importance of the goals, which the introduction of IT in courts pursues, it must be said that progress in this area is slow and highly unsatisfactory. **The measure is rather not implemented.**

12. Create a special body (a Council and a Bureau) under the Law on the Protection of Persons Threatened in Connection with Criminal Procedure, as well as under the provisions of its Implementing Regulations.

Deadline: November 2005

Responsible institution: MoJ

The Law on the Protection of Persons Threatened in Connection with Criminal Procedure stipulates that a Council for Protection of Threatened Persons and a Bureau for the Protection of Threatened Persons should be created. The composition of the Council is provided for by law and this body may be considered effectively established with the entry of the Act into force. According to Art. 14 of the Act, a special Bureau for the Protection of Threatened Persons should be established under the Ministry of Justice. On January 1, 2006 a new staff roster became effective at the MoJ; it provides for the creation of a new unit – the Magistrate and Witness Protection Section within the Chief Security Directorate, with the necessary structure and human resources to act as a Bureau for the Protection of Threatened Persons. The establishment of this unit into a special independent division, as stipulated in Art. 9, Par. 1 of the Act's Implementing Regulations, requires an amendment to Ordinance No. 1 of 30.01.2003 on the Structure, Organisation, and Activity of Judicial System Security Bodies. In its session on January 11, 2006 the Supreme Judicial Council approved the proposed amendments to the Ordinance, which were submitted by the Ministry of Justice for endorsement. It can be expected that by the end of January 2006 the Minister of Justice would issue an order to amend Ordinance No. 1 of 30.01.2003, which would pave the way for establishing the Bureau for the Protection of Threatened Persons as a separate division within the Chief Security Directorate, provided with its own structure and human resources.

Status: Measure rather implemented

13. Prepare the adoption of the random case assignment system in courts.

Deadline: January 2006

Responsible institution: MoJ

The administration of the Supreme Judicial Council has developed a software application for random selection of reporting judge and random case assignment. The application was approved with a SJC decision on September 21, 2005, which advises courts to implement the software product. By the end of February 2006 the efficiency of already implemented products should be reviewed to proceed with standardisation. This is required because of the lack of a unified documentation management system. The random case assignment module should be an element of an entire integrated system. Information from courts reveals that some use a module of their own documentation management system to ensure random assignment, others have

implemented the SJC application, and yet others do not practice random assignment at all.

Status: Defined as *preparation for adoption* the measure can be considered **implemented** at the time the present report was written.

Border control and the Schengen *acquis*

14. Produce a report on the implementation of specific measures, stipulated in the Schengen Action Plan. Based on report findings, update the Schengen Action Plan for 2006-2007 and adopt updated version by the Council of Ministers. Submit the report and the Schengen Action Plan to the European Commission.

Deadline: January 2006

Responsible institution: Ministry of the Interior

The National Action Plan for the Adoption of the Schengen *Acquis* (Schengen Action Plan) was drafted at the very beginning of negotiations under Chapter 24 in 2001. The EU requires that the Plan be updated annually. The latest updated version of the Plan was adopted by the Council of Ministers on February 9, 2005.

As of January 16, 2006 a new updated version of the Schengen Action Plan has not yet been approved by the CoM. The report, on which the updated version of the Action Plan for 2006-2007 would be based is currently being coordinated with relevant institutions and is expected to be voted by the CoM by the end of January. Both the report and the updated Schengen Action Plan would be then submitted to the European Commission. A careful reading of several “updated” versions of the Plan reveals that in some areas the same measures envisaged appear in all versions, but with different, extended deadlines.

Status: Given the stipulated deadline for the measure – January 31, 2006 and the progress that has been made until now, one can conclude that **the measure is rather implemented** provided that the two documents are indeed adopted by the CoM and submitted to the European Commission by the end of January.

15. Develop and adopt an Integrated Border Management Strategy

Deadline: 20 December 2005

Responsible institution: Ministry of the Interior

The draft Integrated Border Management Strategy was finalised and discussed by the Security Council at the Council of Ministers in December 2005. The document has been sent to the European Commission for comments. The adoption of the Integrated Border Management Strategy by the Council of Ministers is pending.

Status: Considering that the European Commission may have some comments and recommendations on the Integrated Border Management Strategy, and that the deadline for the adoption of the Strategy was December 20, 2005, the measure can be assessed as **rather not implemented** within the stipulated deadline, but still very likely to be implemented in January or February 2006.

16. Submit information to the European Commission on the Border Police staff and more specifically the number of border patrols

Deadline: 15 November 2005

Responsible institution: Ministry of the Interior

The context of this measure is quite controversial. On one hand, the exchange of information as described above is part of the regular communication between the Bulgarian Government and the European Commission and it is rather bewildering why should such an action be specified as a measure that needs to be implemented under Chapter 24. On the other hand, any information on Border Police staff and border patrols is considered classified under the provisions of the Classified Information Protection Act. Exchange of information on this issue does exist between the Ministry of the Interior and the European Commission, but in the context of the current monitoring it is impossible to assess to what extent the content of this exchange may be considered relevant to the measure. The ultimate purpose of this measure is to identify the number of border patrols and to ensure that they are adequate and capable of implementing the border control acquis. Since this is classified information, the only thing that can be assessed here is the act of submitting or non submitting it to the European Commission, but not the content of the information itself.

Status: The measure is implemented, but it does not belong to the list of commitments under Chapter 24.

Visa Policy

17. Full alignment with the EU positive visa list

Deadline: June 2006

Responsible institution: Ministry of Foreign Affairs

Full alignment with the EU positive visa list is expected to be achieved by June 2006. Currently available information suggests that the MFA Consular Relations Directorate is working on ensuring alignment with the list. Given that progress is being made and the deadline is still several months away, one can assume that the measure would most probably be implemented.

Status: The deadline has not expired yet, but there are indication that **the measure would be implemented**.

Refugees

18. Ensure the necessary financial resources for establishing Eurodac system by the date of membership. As of January 1, 2007 Bulgaria should be able to effectively implement the Dublin Convention, using the Eurodac System.

Deadline: November 2005

Responsible institution: Ministry of the Interior and the Agency for Refugees

The Eurodac is a centralised system of the European Union for registration of fingerprints of asylum seekers and illegal immigrants. It has been operational since January 2003.

In order for the system to be implemented in Bulgaria, co-ordination should be established among a variety of institutions, mainly within the MoI system. More specifically, these include the MoI Co-ordination, Information and Analysis Directorate, the National Forensic Science and Criminology Institute, the Migration Directorate, the National Border Police Service, and the State Agency for Refugees (SAR). The MoI has already taken the necessary steps to ensure that such co-ordination would be achieved and implementation of the measure is being actively pursued.

A decision has been made on the financial resources required to establish the system; they would be secured under a EU-funded project with some contribution from the Bulgarian Government.

Since April 2005 the SAR has been taking fingerprints and other identification features of foreigners, seeking protection in the Republic of Bulgaria. Given these developments and the fact that decision on financing has been made, progress in the implementation of the measure might be assessed as good and the system is likely to be established within the set deadline.

Status: Measure rather implemented

Migration

19. Improve the capacity of the MoI Migration Directorate

Deadline: February 2006

Responsible institution: MoI

No capacity development plan for the Directorate exists, or if it does, it is not publicly accessible. The wording of the measure is rather general and progress in implementation cannot be assessed accurately in the absence of such a plan.

Meetings held revealed that the implementation of the measure is seen mainly as appointing representatives of the Directorate in all regional divisions of the Ministry, which is hardly sufficient. It is not only the people that make an administration. In this particular case, the Directorate was established as early as 2003, which means that two entire years have elapsed since it became operational. The fact that it is still opening new positions and appointing new people is not a good reference for its capacity.

This comment, however, is rather provisory, since it is impossible to assess progress in this field, mainly because the number and allocation of MoI staff is still considered classified information.

Other factors that might testify to the capacity of the Directorate include:

- the administrative structure of the Directorate at the central level;
- the adoption of specific procedures for the numerous functions of the Directorate, especially with regard to communication with embassies and the MFA Consular Relations Directorate on issuing identification documents of illegal aliens who have no such papers;

- the provision of adequate funding (especially for covering deportation) and the establishment of accommodation centres for illegal aliens.

Divisions have already been created within the central administration of the Directorate, but this action alone cannot ensure adequate progress.

No information is available on procedures and budget. Still, the fact that acts issued by the Directorate are rather easily revoked or amended in court, testifies, albeit indirectly, to the absence or inefficiency of procedures. It is impossible to establish, however, what percentage of the acts are being appealed and what is the outcome of such appeals.

Status: Slow and limited progress. As of today **the measure is rather not implemented.**

20. Open an accommodation centre in Sofia (Busmantsi).

Deadline: December 2005

Responsible institution: MoI

The centre would provide temporary accommodation to illegal aliens and its establishment is being managed by the MoI Migration Directorate. Currently the centre has not yet become operational. It is expected to be opened in mid March 2006. Given that no property issues or legal disputes on the establishment of the centre exist and all that needs to be done is to renovate and adapt already existing buildings, it can be expected that this second deadline would be met.

Status: Measure rather implemented

Data protection

21. Ensure final alignment of the Personal Data Protection Act with the *acquis*. Draft and submit to Parliament a relevant Bill to Amend and Supplement the Personal Data Protection Act

Deadline: December 2005

Responsible institution: MoF, Personal Data Protection Commission, MoI

The Law to Amend and Supplement the Personal Data Protection Act was promulgated in State Gazette on December 23, 2005. The amended Personal Data Protection Act is essentially aligned with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. With the Telecommunications Act the provisions of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector have also become part of the national legislation.

Status: The measure, as it is formulated, can be considered **implemented.**

22. Improve the efficiency of the Personal Data Protection Commission; fill up vacant positions.

Deadline: December 2005

Responsible institution: Personal Data Protection Commission

Improving the efficiency of the Personal Data Protection Commission is a necessary prerequisite for implementing the data protection *acquis*. The Personal Data Protection Act gives broad powers to the Commission and its enforcement to a great extent depends on the capacity of this administrative body. The members of the Commission were appointed with a decision of the National Assembly dated May 23, 2002, but there are serious difficulties in the development of a predictable and consistent administrative practice with regard to enforcement.

As of January 16, 2006 competitions have been announced for 8 administrative positions, i.e. approximately 11 per cent of the entire administration, as specified in the Rules of Operation of the Personal Data Protection Commission and its Administration. It is feasible to expect that vacant positions would be filled in by the end of January 2006 at the earliest. The difficulties, which the Commission faces because of limited office space, also deserve to be noted because they affect its administrative capacity.

Status: Given that the deadline has been missed, the office space problem has not been resolved, and the staff, which is expected to be appointed, would subsequently have to be trained and organised accordingly, one can conclude that **the measure is rather not implemented.**

Anti-corruption

23. Draft a report on the implementation of the National Strategy for Combating Corruption with a focus on measures taken to curb high-level corruption

Deadline: December 2005

Responsible institution: Anti-corruption Co-ordination Commission

On October 20, 2005 the Minister of Justice in his capacity of Chairman of the Anti-corruption Co-ordination Commission has submitted to the CoM a draft report on the implementation of the National Strategy for Combating Corruption. The final version of the Commission's report was submitted to the Council of Ministers on January 3, 2006. On the same date the Minister of Justice presented to the CoM a report on the progress in performing the tasks envisaged under the National Strategy Implementation Programme for 2004–2005. The delay in the execution of the above measure, i.e. draft and submit a report by the end of December 2005, is insignificant and in terms of deadlines, the measure can be assessed as **implemented.**

However, a review of three different versions of the report (an official version has not been made public) leads to the conclusion that none of the three versions focuses on measures taken to curb high-level corruption and none recognises the importance of the need to make special efforts in this area. The only measure reported on is the adoption of a Code of Ethics of Persons at High-Ranking Positions within the Executive. In fact, there are no effective measures to counteract political corruption¹⁰. Moreover, no mechanisms for curbing high-level corruption are proposed to be included in the new anti-corruption strategy of the Government.

¹⁰ The above conclusion is part of a draft report, obtained through unofficial channels. It would have to be further corroborated when an official version of the Commission's report becomes available.

Status: The report on the implementation of the National Strategy for Combating Corruption has been produced within the stipulated deadline. It is questionable, however, whether its content is adequate to the commitment made. The measure is **implemented** in terms of deadlines and **rather not implemented** in terms of content.

24. Draft a new National Strategy for Combating Corruption (2006-2008), adopt the Strategy at the Council of Ministers, develop an Action Plan for 2006.

Deadline: December 2005

Responsible institution: Anti-corruption Co-ordination Commission

The first National Strategy for Combating Corruption was adopted with CoM Decision No. 1671 of 01.10.2001, while the programme for its implementation was developed in February 2002. Currently, these are the main documents, formulating the Government's anti-corruption policy.

On February 24, 2005 the Council of Ministers adopted supplements to the 2001 National Strategy for Combating Corruption, which envisage measures for curbing high-level corruption. On December 23, 2005 a Code of Ethics of Persons at High-Ranking Positions within the Executive was adopted.

The draft National Strategy for Combating Corruption for the period 2006-2008 and the Draft Action Plan for 2006 were submitted to the Council of Ministers on January 5, 2006, and a decision was taken to assign a working group of experts with drafting further proposals by January 10, 2006 and submitting them to the Council of Ministers for review on January 12, 2006

The National Strategy for Combating Corruption for the period 2006-2008 was in fact discussed and adopted by the Council of Ministers on January 12, 2006, while the development and approval of the Action Plan is still pending.

Status: The measure can be assessed as **rather implemented**, because the initial deadline, December 2005, was not met but in the first half of January partial progress has been made and the envisaged Action Plan is expected to be developed the end of the month. Therefore, work under this measure is underway and will be completed soon.

25. Hold meetings with representatives of law-enforcement bodies in order to adopt a systematic planning approach to investigating serious cases of corruption

Deadline: December 2005

Responsible institution: MoI, MoJ and CoM administration

At its session on January 11, 2006 the Supreme Judicial Council discussed the need to adopt adequate measures for uncovering and investigating serious cases of corruption and to pursue a strict criminal justice policy against organised crime and corruption. The Minister of the Interior, the Deputy Director of the National Investigation Service, the heads of the Organised Crime and Anti-Corruption Divisions at the Supreme Cassation Prosecution Office, the Chief Inspector under Art. 35b of the Judiciary Act and the Head of the Judicial Activity Directorate at the Ministry of Justice were also invited to attend the SJC session.

Status: As of January 16, 2006 it can be concluded that the measure is **rather not implemented** because the first of a series of meetings with representatives of law-enforcement bodies was held shortly after the deadline had expired.

26. Submit to Parliament a Bill to Amend and Supplement the Law on making public the property of persons occupying high State positions in order to eliminate provisions limiting transparency.

Deadline: October 2005

Responsible institution: Ministry of Finance

In pursuance of the updated 2001 National Strategy for Combating Corruption on October 31, 2005 the CoM submitted to Parliament a Bill to Amend and Supplement the Law on making public the property of persons occupying high State positions. Amendments envisaged in the Bill provide for mechanisms to ensure greater transparency and access to information.

Status: In terms of deadline, the measure may be assessed as **implemented**.

27. Draft a written plan for inspections with regard to money laundering in order to ensure that comprehensive and regular information would be received from all reporting persons (attorneys, notaries public, casino managers, etc.)

Deadline: December 2005

Responsible institution: MoF

The measure is proposed to be implemented by the Inspectorate Directorate of the Financial Intelligence Agency and envisages independent and joint inspections of the FIA in co-operation with the Financial Supervision Commission, the State Commission on Gambling, and the Bulgarian National Bank. According to information provided by the FIA the measure has been implemented; a written plan for inspections with regard to money laundering has been developed, which provides for joint inspections of the above institutions with the active involvement of FIA. The inspections are scheduled to begin January 16, 2006.

Status: Given that the above information was confirmed in a series of meetings and talks, the measure can be assessed as **implemented**.

Police co-operation

28. Develop a concept for a unified digital communication system for police co-operation

Deadline: 31 December 2005

Responsible institution: MoI

The concept for a unified digital communication system for police co-operation was developed in 2005 and adopted on December 28, 2005. Since the concept contains classified information, its content, as well as its potential for integrating the

information resources and data bases of different police institutions cannot be evaluated.

Status: Measure implemented

Fight against organised crime

29. Organise meetings with the Supreme Judicial Council and other key judicial system institutions to discuss the implementation of a strict criminal justice policy against organised crime and corruption.

Deadline: December 2005

Responsible institution: MoJ and MoI

The measure is rather general and is unlikely to contribute to curbing organised crime and corruption in the short term or even in the midterm. It is unclear how the implementation of the envisaged criminal justice policy or the commitment of the involved institutions to pursue it would be ensured. No reference has been made as to what issues would be discussed at these meetings or what results would be expected.

As envisaged in the measure, a meeting was held among representatives of the Ministry of Justice, SJC members and the Minister of European Affairs, while the Minister of the Interior took part in the SJC session on January 10, 2006. Most interviewed experts state that these meetings are useful and should continue, but expected outcomes should be clearly identified.

Serious work on the envisaged goal of the measure (strict criminal justice policy) could begin only after a new Attorney General is appointed because the Attorney General is responsible for implementing the State's criminal justice policy and acts as a liaison between the SJC and the Executive (by exercising control over investigative activities performed by MoI bodies).

Criminal justice policy is neither the only, nor the most efficient mechanism for curbing organised crime and corruption. Criminal activity related to these two phenomena is extremely difficult to uncover and substantiate. Those convicted for participation in criminal groups or for bribing comprise less than one per cent of all convicted persons and are never the masterminds of these criminal groups. The investigation of such crimes requires huge investment mainly in terms of highly qualified staff, expensive equipment, use of undercover agents, and time.

The effective policy against organised crime does not rest upon the criminal prosecution of perpetrators. It attacks the conditions that allow for such crime to develop. These conditions result from deficits in the political system, inadequate economic activity regulations and poor governance, and these are precisely the areas in which special measures need to be taken. These are also the areas in which more immediate and more visible results are likely to be achieved.

Status: Measure rather not implemented

Fight against drugs

30. Produce a report on the implementation of specific measures, stipulated in the National Anti-drug Strategy and Action Plan. Based on report findings,

update the Action Plan for 2006-2008 and adopt updated version by the Council of Ministers. Submit the report and the Action Plan to the European Commission.

Deadline: December 2005

Responsible institution: National Council on Narcotic Drugs, Ministry of the Interior and Ministry of Healthcare

The logistics required to implement the measure are already in place. The MoI Co-ordination, Information and Analysis Directorate has produced a report on the implementation of the Strategy; proposals for updating the Strategy have also been developed, but approval by the Council of Ministers is still pending.

There is no information on the content of the report or the proposed updates.

Status: Measure rather not implemented

31. Review existing Penal Code sanctions for possession of small quantities of drugs and reconsider these provisions in line with the best European Union practices.

Deadline: December 2005

Responsible institution: MoI and MoJ

A working group has been created, sanctions were reviewed and a draft Bill to Amend and Supplement the Penal Code was developed, which suggests options for optimising the sanctions. The draft has gone through a circle of reviews, but serious comments and concerns were expressed and it would have to be discussed further. It is difficult to predict when would this process be completed and the draft submitted to the Council of Ministers for approval.

Even if the Bill is approved by the Council of Ministers, it would have to be coordinated with a broader circle of organisations before being submitted to Parliament. In 2003 when the so-called “one-time dose” was revoked, there was a strong majority in Parliament in favour of strict penal repression. A proposal to reverse this might not rally enough support among legislators. That is why the reasons for this policy shift should be clearly formulated.

Status: Measure rather not implemented

32. Enhance the administrative and financial capacity of the National Focal Point to liaise with the European Monitoring Centre for Drugs and Drug Addictions.

Responsible institution: Ministry of Healthcare

Deadline: January 2006

A separate budget line and an independent auditing mechanism are being established for the National Focal Point. Currently, its budget is run by the Ministry of Healthcare and is impossible to control adequately. Rules of operation for the NFP have been adopted by the National Council on Narcotic Drugs at the end of December 2005. Amendments to the Regulations on the Activity and the Structure of the NFP are pending. Inadequate staffing is still a problem that is not being addressed.

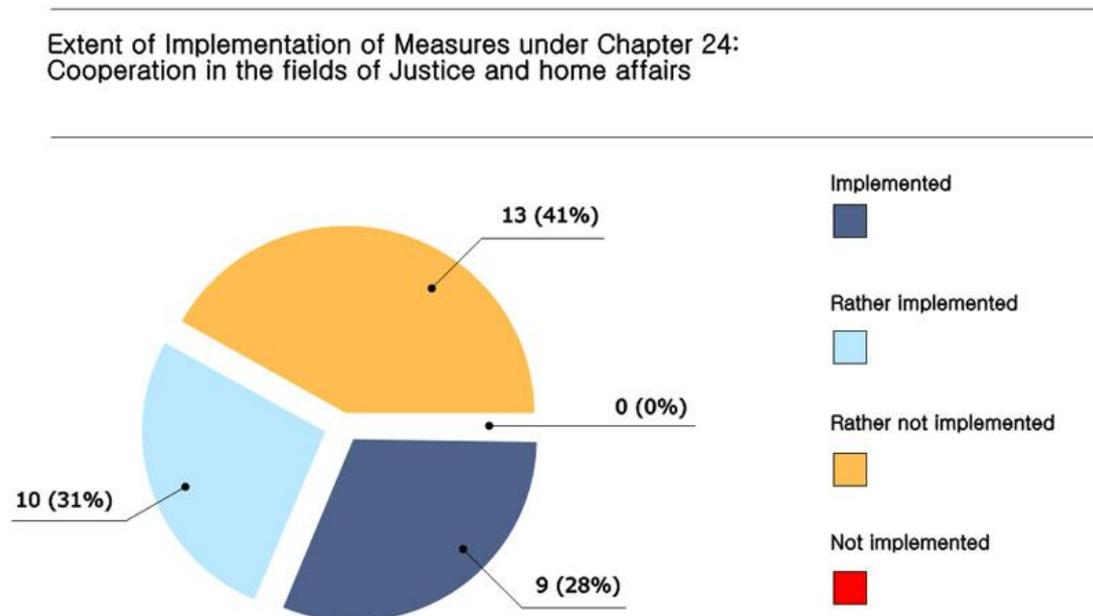
Status: Progress has been made in implementing the measure and the deadline would probably be met. **Measure rather implemented**

Part III. Findings

The monitoring conducted by experts of the Open Society Institute – Sofia revealed some tendencies in the performance, transparency and efficiency of the executive branch. As of January 16, 2006 no measures were identified that can be considered not implemented (see Figure 5). Progress is reported on all measures. The monitoring revealed that based on available information, nine of the measures can be assessed as implemented. It should be underlined, however, that most of these measures involve putting in place the required logistics for achieving a certain goal: e.g. measure 13: Prepare the adoption of the random case assignment system in courts is a case in point. Given its wording, the measure can be assessed as implemented, but to what extent the ultimate goal, i.e. random case assignment in Bulgarian courts, is achieved still remains to be seen. Later on, in the final report of the Open Society Institute – Sofia the impact of each measure will be analysed in detail, taking into consideration its content and the developments it has brought about in the respective area.

Other implemented measures involve the adoption of legal regulations (measure 21, for instance), but it should be explicitly noted that the focus of the next Monitoring Report of the European Commission will be the progress in enforcing legislation.

Figure 5



The majority of measures under Chapter 24: *Justice and Home Affairs* (72 per cent) are assessed in the present report as rather implemented (31 per cent) or rather not implemented (41 per cent). Although the deadline for some measures has not expired yet, experts have made their assessment based on the information that was made available to them. The large number of measures that cannot be assessed as implemented suggests that responsible institutions face serious challenges, especially

in view of the fact that the deadlines in which they would be expected to demonstrate progress are extremely short. Constitutional amendments raise particular concerns with regard to both deadlines and overall transparency and democratism of the process. Amendments to the Constitution and the Bill on MoI are sad examples of how national policies are formulated without the involvement of stakeholder groups and organisations.

Some of the most important outstanding measures concern the pillars of rule of law in the country: amendments to the Constitution, new Code of Civil Procedure, new Act on MoI, the Code of Administrative Procedure. Their implementation should be the outcome of consistent efforts on behalf of policy makers, administrators and experts; emphasis should be placed on legitimacy, on the impact of these measures on the overall legal system of the country, on the existence of administrative capacity, and last but not least, on the democratic nature of law-making.

Another conclusion that can be made is that measures under Chapter 24: *Justice and Home Affairs* are likely to have a limited impact on the fight against corruption and organised crime. With regard to corruption, the Progress Reports of the European Commission have repeatedly indicated that this phenomenon should not only be condemned, but counteracted with concrete results. The monitoring of anti-corruption measures reveals that the efforts of the Government in this area are focused mainly on drafting reports and strategies. Here again the dialog with civic organisations needs to be enhanced.

As far as the monitoring process is concerned, one can conclude that the administration of executive agencies, which are involved in implementing individual measures, are rather reluctant to provide information. Therefore, it is quite possible some measures, which the experts assess as partially implemented, to have been actually finalised, but no information to this effect to have been made available. Informing the Bulgarian society on the efforts of the Executive to fulfil negotiated commitments in the process of Bulgaria's accession to the European Union is equally important as providing information to the European Commission and its experts.

Part IV. Conclusion

The fact that 72 per cent of the measures under Chapter 24: *Justice and Home Affairs* cannot be considered implemented raises serious concerns, given the short period of time left for them to be completed. Considering the fact that the next peer review on Chapter 24 is scheduled for February 2006, Bulgarian institutions have only a few weeks to demonstrate progress in meeting commitments. A positive finding of the Interim Report is that there no measures, which cannot be implemented, but the delay raises concerns as to the quality of the outcomes.

In order for commitments to be met, it is essential to optimise the mechanism and the logistics for implementing planned measures. The monitoring team identified some serious problems in the co-ordination among individual institutions, as well as deficiencies in the institutional control system.

CONCLUSION

Bulgaria keeps its chances of implementing on time the measures for accession to the EU on 1 January 2007, but a substantial increase of efforts is required to overcome the delay in the areas of agriculture and justice and home affairs, as well as closer attention to quality in the implementation and enforcement of the measures planned.

Evaluation of the implementation of measures in the area of agriculture is mixed. The reason for this is the interdependence and the need of rigorous succession in implementing the measures. A substantial part of the ordinances the deadlines for which have expired or are passing are practically ready, but their adoption depends on the adoption of the Act to Amend and Supplement the Agricultural Producers Support Act, which practically blocks the implementation of the succeeding measures.

The delay in the implementation of measures requiring substantial financial and human resources and technological time gives cause for serious concern: the land parcel identification system (LPIS), the installation of independent laboratories for the analysis of the fat content; establishment of border veterinary inspection posts etc.

Regardless of the large number of measures falling into the “rather not implemented” category, the experts' observations show the existence of fine synchronisation between the institutions in charge, which gives grounds for guarded optimism about the availability of a capacity to implement the measures once they are adopted.

The fact that 72 per cent of the measures under the chapter on justice and home affairs cannot be listed under the “implemented” heading is cause for serious concern considering the short time left. Since the peer review on this chapter is due in February 2006, the competent institutions evidently have just a few more weeks to demonstrate progress on the commitments assumed. The positive finding of the Interim Report is that there are no measures that cannot be implemented, but the delay raises doubts about the quality of the results that the measures will produce.

Some of the most important measures that have not been implemented concern the fundamentals of law and order in this country: the revisions of the Constitution, the new Criminal Procedure Code and Ministry of Interior Act, the Administrative Procedure Code. These measures should be the result of a sustained effort of politicians, administrators and experts and their implementation should emphasise legal conformity, the reflection on the overall national legal system, the existence of administrative capacity and, last but not least, the democratic nature of the standard-setting and law-making process.

Another conclusion that can be drawn refers to the limited effect of the measures under the chapter on justice and home affairs on the fight against corruption and organised crime. Concerning corruption, the reports from the European Commission on Bulgaria's progress have repeatedly noted the need of tangible results in countering corruption and not just its nominal condemnation. The monitoring of the measures intended to fight corruption shows that the efforts of the executive are concentrated

mostly on drafting reports and strategies. Again, just as with the important revisions in the regulatory framework, dialogue with the civil society organisations on countering corruption is not at the appropriate level.

In respect of the monitoring process itself, it could be concluded that the administration of the executive authorities committed to implement the specific measures are rather reluctant to provide information. Keeping the Bulgarian public informed of the activities of the executive on honouring the Treaty commitments in Bulgaria's accession to the European Union is not less important than supplying information to the European Commission and its experts.

With a view to implementing the commitments assumed, it is particularly important to streamline the mechanism and structure of the measures implementation management. In the course of the monitoring, serious problems were detected in respect of inter-institutional coordination and flaws in the system of institutional control over the implementation of the measures.

The analysis of implementation of the measures in the area of **Protection of intellectual property rights prompts the assumption that, formally, the requirements of the European Commission have been met.**

The statutory instruments have been adopted. The coordination measures have been implemented. The instruments adopted could be commented in terms of expected effectiveness and interconnection of the separate enforcement authorities. Measures of the Action Plan have been implemented on schedule, too (establishment of a Council for Protection of Intellectual Property).

The **principle of public consultation process** must be observed. An impression is created that the adoption of the acts revising the Copyright and Neighbouring Rights Act and the Radio and Television Act was rushed and not all parties concerned were invited to express opinions.

As to the effectiveness of enforcement of the instruments adopted, the measures planned (establishment of a Council, establishment of a working group for conduct of campaign) are merely a **prerequisite for effectiveness of enforcement**. Hence the ascertainment of implementation of these measures is just **ascertainment of the creation of prerequisites but does not imply tangible effectiveness of coordination or tangible effectiveness of the awareness-raising campaign. This remains to be monitored in future.**

In the area of freedom to provide services there are prerequisites to implement over 90 per cent of the measures to increase the compulsory motor insurance compliance until the end of March 2006. With this record of performance, there is no reason why the number of insured vehicles should not be over 90 per cent of those subject to insurance until the end of March 2006, by which Bulgaria will meet the European Commission's EU membership criteria.

We find a positive side effect of the measures taken: coming to grips with one problem (the civil liability insurance compliance rate), the state administration is compelled by circumstances to address several other pressing problems which used to be postponed time and again. One of these problems (the lesser one) is clearing the

Ministry of Interior databases of disused motor vehicles which are kept on record there and the fine information cooperation among the separate government institutions. The other (the more important one) is the State's commitment to find a solution to the numerous motor vehicles abandoned in streets and gardens.

It should also be borne in mind that despite the large number and variety of government institutions committed to the search for a solution to the civil liability case, there was fine tuning and coordination of the actions of their representatives, as well as expeditious and productive decision-making.

For the first time in many years, the state administration assumed its own **responsibility** in the process: this is arguably the best result of the measures taken to strengthen enforcement of civil liability insurance. Before, the state administration rather ignored the social effect of this insurance and believed that its sale affected only the business interests of insurance companies. That is why the state administration was not so directly involved in raising public awareness of this insurance class and in tracing its compliance rate.

The evaluation in the area of regional policy showed that by the cut-off date of the Interim Report (16 January 2006), there was just one measure which was rather not implemented (Presentation of the drafts of Operational Programmes and the draft of a 2007-2013 National Development Plan to the European Commission for consultation), but its implementation is particularly important for Bulgaria's successful preparation for membership in January 2007. The respective institutions and units in charge aspire to implement all their commitments within relatively short time limits, but this requires further serious and in-depth work and sustained coordination of efforts.

Regarding the public procurement system, further efforts are needed to create the required system for effective and transparent absorption of the EU resources through competitive bidding procedures.

The strategy for restructuring of Public Financial Control must be implemented at an accelerated pace.

The European Commission must be supplied on a regular basis with information regarding the progress of competitive examination procedures for appointment of additional expert personnel in the structures designated as Managing Authorities and Intermediate Bodies of the Operational Programmes. The functions of the structures designated as Intermediate Bodies of the Operational Programmes must be conclusively defined as well.

The new programme for training in management of the project cycle and management of resources of the EU funds has not yet started. The European Commission must be supplied on a regular basis with information regarding the training of experts of the structures designated as Managing Authorities and Intermediate Bodies of the Operational Programmes.

In conclusion, the pace of implementation of the measures suggests that all measures planned can be implemented by the deadline. The status in the areas of

agriculture and justice and home affairs is cause for concern, as by the cut-off date of the Interim Report no sufficient progress was achieved there to guarantee that the delays will be overcome.

The effectiveness and quality of implementation of the measures remain an issue of concern, owing to the pace at which the reforms are carried out.