

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

## **CONTENTS:**

- 1. EXECUTIVE SUMMARY**
- 2. INTRODUCTION**
- 3. CHAPTER 3: FREEDOM TO PROVIDE SERVICES, MOTOR INSURANCE AGAINST THIRD PARTY LIABILITY**
- 4. CHAPTER 5: COMPANY LAW, PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**
- 5. CHAPTER 7: AGRICULTURE**
- 6. CHAPTER 21: REGIONAL DEVELOPMENT AND COORDINATION OF STRUCTURAL INSTRUMENTS**
- 7. CHAPTER 24 : JUSTICE AND HOME AFFAIRS**
- 8. CONCLUSIONS**
- 9. RECOMMENDATIONS BY THE EXPERT TEAMS**

## 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 and Diana Kovacheva, Executive director, Transparency International.

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 Final Report on the **progress in implementing the commitments assumed in the five areas** until 15 March 2006.

At the end of January 2006, the Open Society Institute - Sofia presented an Interim Report, which evaluated progress in implementing the commitments assumed until 15 January 2006. The Interim Report stressed evaluation of the adequacy of the measures planned by the Government and the extent of their implementation.

Unlike the Interim Report, this Final Report evaluates both the extent of implementation of the measures and the effect of their application at present or in the medium term, and also formulates recommendations intended to guarantee achievement of the desired effect.

The Final Report is structured into an Executive Summary, Introduction, Monitoring Methods, Analysis of Implementation of Commitments according to the EC Monitoring Report of October 2005 (Evaluation of Implementation of the Measures, Expected Outcome of Implementation of the Measures, Recommendations to Guarantee Effectiveness, and Findings on Implementation of the Measures), and consolidated Conclusions 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;
- **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.

In addition to the evaluation of implementation of the measures, the expert teams also evaluated the effect of application of each measure and formulated recommendations for achievement of an adequate outcome of implementation of the measures.

# 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:**

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- 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 **Final Report on the progress in implementing the commitments assumed in the five areas until 15 March 2006.**

At the end of January 2006, the Open Society Institute - Sofia presented an Interim Report, which evaluated progress in implementing the commitments assumed until 15 January 2006. The Interim Report stressed evaluation of the adequacy of the measures planned by the Government and the extent of their implementation.

Unlike the Interim Report, this Final Report evaluates both the extent of implementation of the measures and the effect of their application at present or in the medium term, and also formulates recommendations intended to guarantee achievement of the desired effect.

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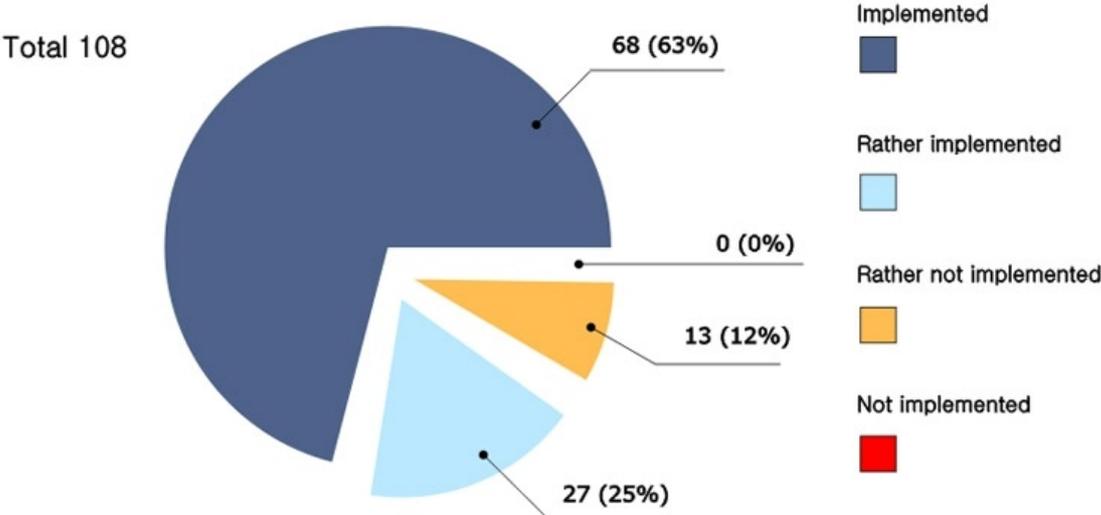
**The Report is structured into an Executive Summary, Introduction, Monitoring Methods, Analysis of Implementation of Commitments according to the EC Monitoring**

Report of October 2005 (Evaluation of Implementation of the Measures, Expected Outcome of Implementation of the Measures, Recommendations to Guarantee Effectiveness, and Findings on Implementation of the Measures), overall Conclusions by the civil monitoring team, and Recommendations to ensure greater public openness, transparency and accountability of the process of implementation of the Treaty commitments in Bulgaria's accession to the European Union.

**2. Review and Evaluation of Implementation of the Measures**

Of a total of 108 measures, 68 (63 per cent) were “implemented,” 27 (25 per cent) were “rather implemented,” and 13 (12 per cent) were “rather not implemented” by 15 March 2006.

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

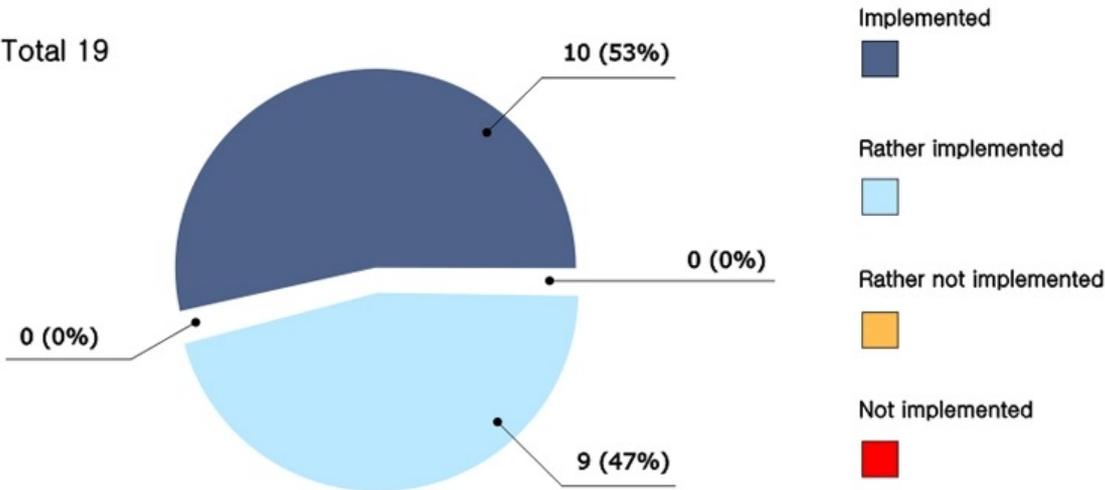


Seven of the “rather not implemented” measures are within the sphere of competence of the Ministry of Interior. That Ministry is single-handedly responsible for one of these measures and shares responsibility with other institutions for six. This invites the conclusion that better coordination is needed among the responsible institutions so as to improve effectiveness in implementing the reforms.

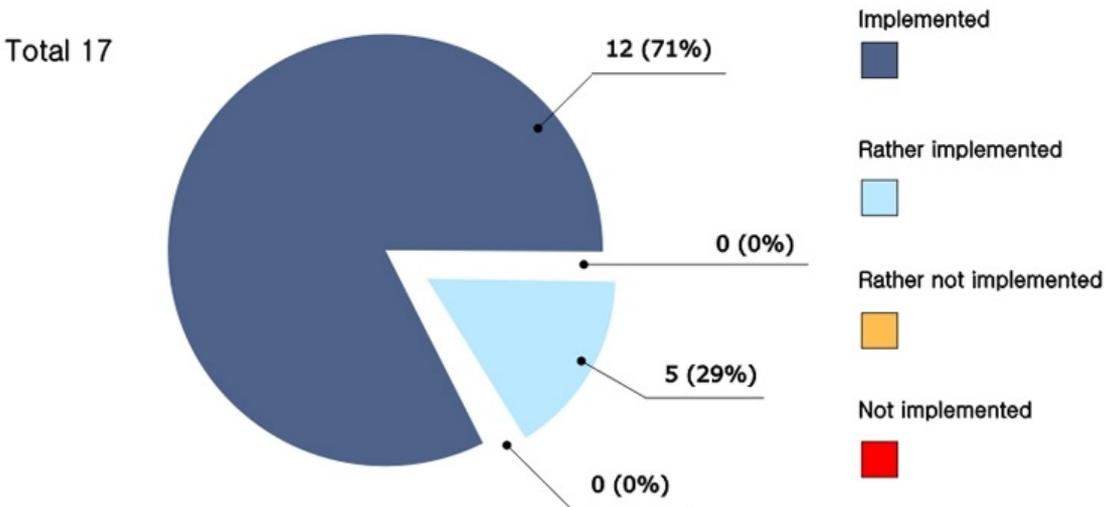
The Ministry of Agriculture and Forestry is single-handedly responsible for three of the “rather not implemented” measures. Other institutions, which assume sole or shared responsibility for the measures found to be “rather not implemented,” are: the Financial Supervision Commission (three “rather not implemented measures”), the Ministry of Health (two measures), the Ministry of Justice (two), the Ministry of Environment and Water (one), the Ministry of Finance (one), the Commission for Personal Data Protection (one), the National Council on Narcotic Substances (one), and the Guarantee Fund (one).

The quantitative analysis of implementation of the measures show that **no measures are “not implemented” or “rather not implemented” in the areas of Regional policy** (where 71 per cent of the measures are “implemented” and 29 per cent are “rather implemented”) and **Protection of intellectual property rights** (53 per cent “implemented” and 47 per cent “rather implemented”).

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



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



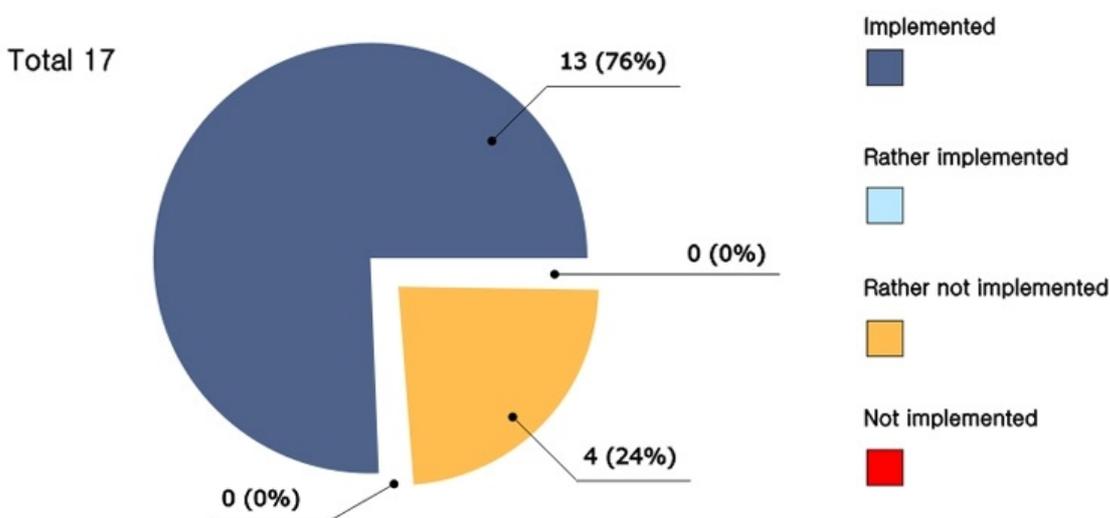
Therefore, even though the expert teams have certain recommendations regarding continued reforms, it could be concluded that **the critical minimum of progress has been reached in the areas of Regional policy and Protection of intellectual property rights which guarantees that these areas no longer give cause for “serious concern” and should not pose an obstacle to Bulgaria's full membership of the EU as from 1 January 2007.**

In the area of freedom to provide services, **four of the measures (24 per cent)** are grouped in the “**rather not implemented**” category.

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

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The following measures are “**rather not implemented:**”

- *Measure No. 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*
- *Measure No. 9. Revision of Decree/Ordinance 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*

- *Measure No. 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: permanent*

- *Measure No. 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*

In the **area of Freedom to provide services**, as many as 76 per cent of the measures planned are “implemented.” If the political will is there, three of the four “rather not implemented measures” can be implemented within two or three months.

**Therefore, there is good reason to expect compliance with civil liability insurance to be over 90 per cent by the end of May 2006, when the campaign for re-registration and de-registration of automobiles in Bulgaria is due for completion, which will meet the European Commission's requirement for EU membership as from 1 January 2007.**

Judging from the percentage of “implemented” and “rather implemented” measures, tangible progress in overcoming the delay of reforms has been achieved in overcoming the delay of reforms in the areas of Justice and home affairs (where 82 per cent of the measures are “implemented” and “rather implemented”) and Agriculture (87 per cent “implemented” and “rather implemented.”)

Of the 23 measures in the **area of Agriculture**, 12 were fully “implemented,” eight were “rather implemented” and three were “rather not implemented” by 15 March 2006.

The following measures are “**rather not implemented:**”

- *Measure No. 11. Implementing activities to establish a Paying Agency and IACS (including a Land Parcel Identification System) according to the schedule of the comprehensive Master Plan for the establishment of a PA and IACS and the contracts signed for acquisition of orthophoto images of the country.*

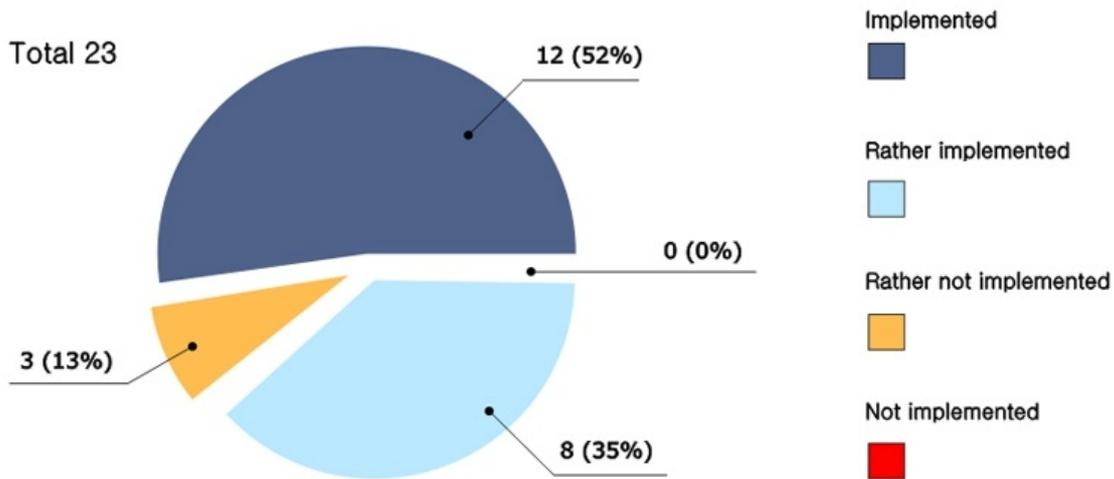
*Responsible institution: Ministry of Agriculture and Forestry*

*Deadline: March 2006*

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## Extent of Implementation of Measures under Chapter 7: Agriculture

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- *Measure No. 18. Implementing activities to build the remaining seven long-term border veterinary inspection posts according to the schedule of the Phare projects and the procurement procedure for the post at Sofia Airport.  
Responsible institution: Ministry of Agriculture and Forestry  
Deadline: March 2006*
- *Measure No. 23. Updating the present plan for upgrading the agri-food industry to comply with the new requirements of the Hygiene Package.  
Responsible institution: Ministry of Agriculture and Forestry  
Deadline: December 2005*

Even though just three of the measures are grouped in the “rather not implemented” category, **the delay in their implementation raises serious concern because these measures require considerable financial and human resources and technological time to implement. There is a potential to implement all three measures until the end of 2006.**

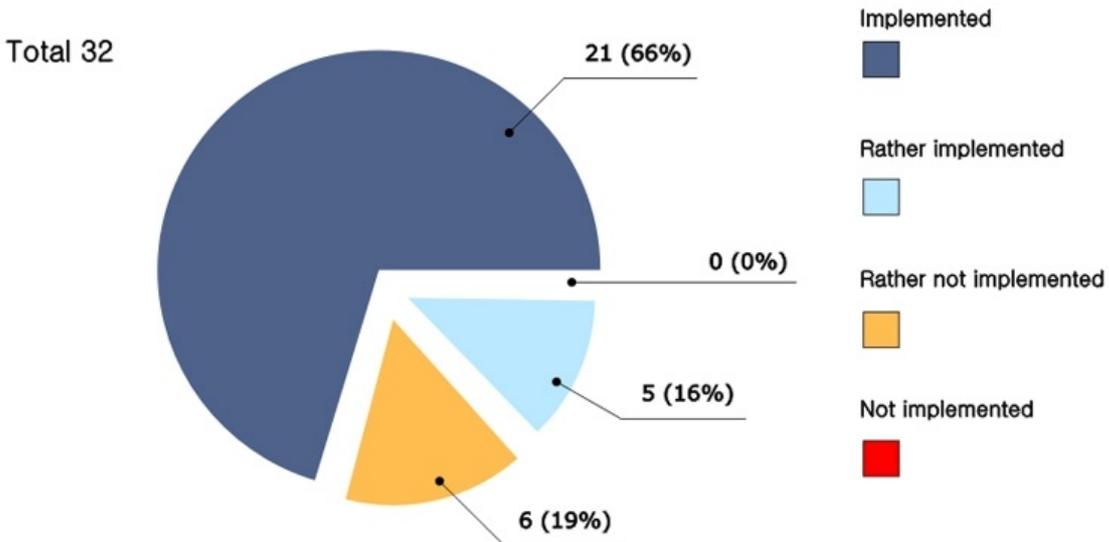
**Therefore, the area of Agriculture should not pose an obstacle to Bulgaria's membership in the EU as from 1 January 2007, even though the risk that an internal market safeguard will be applied is not overcome yet on account of the delay of important reforms in the sector.**

The quantitative analysis of implementation of the measures in the **area of Justice and home affairs** shows that the bulk of the promised measures can be treated as “implemented” (66 per cent) or “rather implemented” (16 per cent). Even though no measures qualify as “not implemented,” the monitoring conducted found reason to treat six measures (19 per cent) as “rather not implemented.”

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Extent of Implementation of Measures under Chapter 24:  
Cooperation in the fields of Justice and home affairs

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The monitoring of implementation of the measures under Chapter 21: *Cooperation in the fields of justice and home affairs* found that the criticism in the report from the European Commission has produced a significant effect on the executive, judicial and legislative authorities. The executive authorities in particular, and above all the Ministry of Justice and the Ministry of Interior, have accelerated the pace of their work with a view to closing the gaps. The fact that there is no measure on which at least some minimum action has been taken indicates the presence of political will and efforts by the administration to overcome the delay.

The following measures are “**rather not implemented:**”

- *Measure No. 11. Creating a unified court case management system, documentation and workload management system, a unified register system, and a system for issuing Conviction Status Certificates under a 2002 Phare project. Developing a concept for creating a unified data collection system to serve as a judicial system management tool.*  
*Responsible institution: Ministry of Justice*  
*Deadline: December 2005*
- *Measure No. 19. Improving the capacity of the Migration Directorate at the Ministry of Interior.*  
*Responsible institution: Ministry of Interior*  
*Deadline: February 2006*
- *Measure No. 22. Improving the efficiency of the Personal Data Protection Commission; filling vacant positions.*

*Responsible institution: Personal Data Protection Commission  
Deadline: December 2005*

- *Measure No. 29. Organising 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.  
Responsible institution: Ministry of Justice and Ministry of Interior  
Deadline: December 2005*
- *Measure No. 30. Production of a report on the implementation of specific measures stipulated in the National Anti-drug Strategy and Action Plan. Based on report findings, updating of the 2006-2008 Action Plan and adoption of updated version by the Council of Ministers. Submission of the report and the Action Plan to the European Commission.  
Responsible institution: National Council on Narcotic Drugs, Ministry of Interior and Ministry of Health  
Deadline: December 2005*
- *Measure No. 32. Enhancing 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 Health  
Deadline: January 2006*

The measures qualified as “rather not implemented” in the area of Justice and home affairs cannot be defined as critical within the context of the overall effort to integrate Bulgaria into the European area of freedom, security and justice. Despite the assessment of these measures as “rather not implemented” at this stage, if the representatives of the three branches of government and the political entities earnestly realise the problem and are willing to address it, substantial progress can be demonstrated in the areas of delay by 1 January 2007 and, therefore, **the area of Justice and home affairs should not pose an obstacle to Bulgaria's EU membership as from 1 January 2007.**

The popular opinion that the measures indicated as “rather not implemented” are of a logistical nature poses a serious risk. Each of the “not implemented” measures affects the judicial or law-enforcement systems of the Republic of Bulgaria, and the delay of their implementation compromises the state of preparedness under Chapter 24: *Cooperation in the field of justice and home affairs* and **spells a high risk of application of a justice and home affairs safeguard.**

### **3. Conclusion**

The civil monitoring conducted by the Open Society Institute - Sofia of the progress in honouring the commitments assumed in the five areas in which the delay of the reforms gives cause for serious concern, achieved in the period between December 2005 and March 2006, found that:

- 1. In all five areas: Company law, Freedom to provide services, Agriculture, Regional policy, and Justice and home affairs, progress in overcoming the delay has reached the critical minimum and, therefore, provided the brisk pace of**

**reforms is kept up, these spheres should not pose an obstacle to Bulgaria's membership in the EU as from 1 January 2007.**

- 2. Owing to a delay and inadequate effectiveness in the implementation of key reforms in the areas of Agriculture and Justice and home affairs, the risk that an internal market safeguard will be applied is not overcome yet, whereas the risk of application of a justice and home affairs safeguard remains high.**

## **CHAPTER 3: FREEDOM TO PROVIDE SERVICES**

### **MOTOR INSURANCE AGAINST THIRD PARTY LIABILITY**

The measures taken by the Bulgarian Government in implementation of the recommendations on Chapter 3: *Freedom to Provide Services* show a serious commitment to addressing one of the most critical issues identified in the 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.** The state administration has taken 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. The working group 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.

Although the exact number of insured motor vehicles in Bulgaria has been an unknown quantity for years, the problem has never caused serious concern in anybody except the insurance companies. Motor insurance against third party liability is of great social significance, which presupposes a greater interest on the part of the State in the matter. 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 by the Government in connection with the negative verdict in the EC Report are intended to increase the percentage of motorists holding civil liability insurance.

#### **Part I. 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 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 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 sufficiently broad 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.

**Status: Measure implemented.**

**Expected outcome:** Formally speaking, the first of the measures taken has been implemented on schedule. It could be said that the newly adopted Insurance Code outlined the legal framework regarding compulsory civil liability insurance far more precisely and clearly.

The noteworthy omissions are due largely to the tight schedule on which the Code was adopted. Insurers were not approached for a competent opinion on many of the “controversial” provisions, nor were these provisions subjected to a constructive and productive discussion between the two readings of the bill.

**Recommendations to guarantee effectiveness of the measure:** The Insurance Code has played its positive role for increasing the percentage of motorists holding civil liability insurance. This statutory instrument, however, regulates the whole insurance business rather than a single insurance class. The Code contains a number of ill-advised texts which face the industry with serious problems less than three months after the instrument was passed. Therefore, a series of secondary legislation instruments must be adopted urgently. The Insurance Code itself will certainly have to be revised quite soon as well. Thus, the Insurance Act, which previously regulated the insurance business in Bulgaria, had to be amended and supplemented on 18 occasions since its adoption on 26 September 1996, or twice annually on the average.

**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 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. The measures were discussed with the stakeholder institutions and individuals, 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.**

**Expected outcome:** The experts of the inter-institutional working group came up with 17 essential measures for achieving a broader coverage of the compulsory motor insurance. The group members were also committed to the elaboration, application etc. of these measures at all stages.

**Recommendations to guarantee effectiveness of the measure:** The working group must very strictly observe the implementation of the measures for heightened compliance with civil liability insurance. In case problems arise, the group should harness its full administrative capacity to identifying the right solutions for their elimination.

### **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 mechanism of coordination 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.

**Status: Measure implemented.**

**Expected outcome:** The monitoring of the measure in question shows that the measure works, as well as that it has already produced the first positive results. There is a high level of inter-institutional cooperation and information exchange, and running control is exercised as to the action taken to strengthen the enforcement of civil liability insurance.

**Recommendations to guarantee effectiveness of the measure:** This mechanism must include: a stable statutory framework, a reliable database, rigorous administrative control and effective sanctions against offenders. The Ministry of Finance, the Financial Supervision Commission, the Ministry of Interior and Traffic Police must pursue their cooperation in future, too, rather than limiting it to a single occasion of achieving a set result. Nor should control over the holding of civil liability insurance be relaxed after Bulgaria's accession to the EU. On the contrary, exercise of this control should be sustained. The insurers, too, should be enlisted in the process of interaction and control in connection with the enforcement of motor third party insurance.

### **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.

**Status: Measure implemented.**

**Expected outcome:** Liberalisation of civil liability premium rates is a positive measure. Problems arose with the companies' newfound freedom of rate-setting. They had to offer their clients rates of the compulsory motor insurance geared to the individual risk profile of each policy holder. Some of the companies tried to introduce such a practice, but most were tempted to resort to dumping so as to attract as many clients as possible. As a result of this "outbidding" among insurers, offers of as little as 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 is illogical.

Evaluating the measure, it should be borne in mind that according to experts of the insurance community, the way in which Ordinance No. 18 is implemented contributes quite negligibly to an increased compliance with the compulsory insurance. Categorically, insurers should have been given enough time to prepare and analyse the available data. It would be very useful if the Financial Supervision Commission can publish a more detailed analysis of the consolidated data and trends of civil liability insurance, which would enable the companies to make their own calculations and to be able to provide a service of better quality.

**Recommendations to guarantee effectiveness of the measure:** The Financial Supervision Commission should resort to all powers vested in it by the law in order to get the existing situation under control and to manage to protect both the interests of insured persons and the financial stability of the insurance market in Bulgaria. The monitoring shows that at least for the time being the Commission members make the requisite efforts by exercising running control over the insurance companies. As a result, the first breaches have been detected, and the measures necessary for imposition of sanctions on the offending companies have been taken as well. The Financial Supervision Commission possesses sufficiently broad powers not only to detect breaches and impose sanctions but also to prevent breaches. Supervision should probably focus on the preventive aspect of its work, because the consequences of the breaches are insignificant for the time being but in future they may well prove serious for both insurers and insured.

**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, the last day of the deadline set for this measure. Advisors to the ministers of finance and

of interior, the Chairperson and members of the Financial Supervision Commission, the Traffic Police Chief and other senior officials took part in that news conference. Participation of so many representatives of important government institutions can be assessed as setting a positive precedent. This fact shows the concern of the state administration about a fast and favourable solution to the civil liability problems. The problem, however, is in the way the measure is implemented, which lays itself open to much criticism.

**Status: Measure rather not implemented.**

**Expected outcome:** 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. Arguably, the campaign even proved counterproductive. Vehicle owners wondered why the State was so ardently “protecting” the financial interests of private insurance companies. The measures taken to popularise the compulsory motor insurance were rather inadequate, ill-timed and mishandled.

Raising awareness of the idea of civil liability insurance is probably the most important and meaningful measure launched by the inter-institutional group last year. Unfortunately, the national campaign was limited to holding a single news conference and inserting several advertisements in the print media which practically did not achieve any result. The positive effect on motor vehicle drivers - if any - is rather due to the pain of severe financial and administrative penalties.

**Recommendations to guarantee effectiveness of the measure:** The State must commit itself to popularisation of this insurance because its introduction is an international commitment. The campaign should focus on awareness of the social elements of that insurance class: the protection of the interests of injured parties. As an element of this system, the role of the Guarantee Fund should be accurately defined and explained to the public, which would contribute to fostering public intolerance to those who evade their obligations.

The measure in question would have any and moreover a lasting effect if, apart from the State, the insurers, too, make an effort to raise awareness of the idea of compulsory insurance. The awareness-raising process could start from insurance intermediaries and then target the rest of the population. The so-called national campaign should not be limited to explaining what civil liability is all about. Currently there are some 20 compulsory insurance classes in Bulgaria which, too, have a substantial social effect and are just as obscure as motor third party. Worse yet, the insurance classes in question are not only unclear to many of the people who are subject to insurance, but quite a few of them are not even aware that such insurances exist. Other classes of insurance are not compulsory but have a substantial social relevance, and the general public should be familiarised with them, too.

**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 working group

to design 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 for a comparison of the data storages of the two ministries and the Guarantee Fund has already gone into operation. Officials of the three institutions, however, continue to meet on a regular basis to sort out the details related to their partnership and cooperation. Most of the information has been gathered as well, and is being analysed. The database is steadily supplemented and updated. More comprehensive information on the taxes paid, technical inspections conducted and insurance policies contracted will be available in April.

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 control over vehicles driven without a valid civil liability insurance policy.

The information on the number of vehicles checked and detected as having no civil liability insurance, disaggregated by region, must be transmitted monthly to the Coordination, Information and Analysis Directorate of the Ministry of Interior.

**Status: Measure implemented.**

**Expected outcome:** The measure in question is expected to create the prerequisites necessary for interaction between the two ministries and the Guarantee Fund with a view to increasing compliance with civil liability insurance. In addition, the Traffic Police authorities will have to tighten control over motorists and, in this way, the practice of driving motor vehicles without compulsory third party insurance is expected to be discontinued. The monitoring check shows that all measures required for tightened control of road traffic have been taken. The information on vehicles checked and detected as having no civil liability insurance, the number of road traffic accidents and their consequences is gathered daily. The information in question is processed and duly analysed every week. There is a problem with public access to this information. Thus, the Traffic Police did not provide the information we needed for the monitoring check.

**Recommendations to guarantee effectiveness of the measure:** Effectiveness of the measure requires that the Traffic Police, the Ministry of Finance and the Guarantee Fund interact permanently. The information must be accessible to the public. The control exercised by the Traffic Police authorities should not be fitful, at the beginning of each quarter, but steady.

**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**

The new registration number plates were introduced by Ordinance I-45 of 24 March 2000, promulgated in the *State Gazette* No. 3 of 14 April 2000. Initially, the Ordinance set a five-year deadline for replacement of the plates. Later on, in 2002, this deadline was extended by one year and a schedule for the procedure for replacement of the old plates was applied. According to that schedule, all old plates were to be replaced until the end of 2005, leaving for 2006 the replacement of the plates of the vehicles initially registered before 31 December 1975 and all plates which had not been previously replaced by reason of suspension from operation.

In early December 2005, the Ministry of Interior approved revisions in Ordinance I-45, and they were promulgated in the *State Gazette* on 4 January 2006. According to the revisions, the deadline for replacement of the registration number plates in Bulgaria was advanced from 31 December 2006 to 31 March 2006. As re-registration of so many motor vehicles within so little time proved technically impossible, a decision was made in mid-March to extend the deadline for replacement of the plates by two months, until 31 March 2006.

**Status: Measure implemented.**

**Expected outcome:** The purpose of the revised Ordinance I-45 is to take off Interior Ministry record the automobiles which are theoretically roadworthy but are actually disused. Thus, after re-registration more realistic data will be available on the actual status of Bulgaria's motor vehicle fleet. This is just one of the reasons for which the Ordinance in question had to be revised.

According to insurance experts, the de-registration of uninsured motor vehicles and each administrative move barring them from the roads will contribute to lowering the number of accidents involving such automobiles, and will also help keep insurance premiums down. In their opinion, the real effectiveness of this measure depends on it being treated within the context of the integral administrative penalty legislation.

The monitoring check shows that the results of the application of this measure so far are very good.

**Recommendations to guarantee effectiveness of the measure:** The measure is part of a process that is supposed to be completed within the next couple of months (by 31 May 2006) and is being implemented in good faith by the competent authorities. The only recommendation is that the measure is pursued to the end.

## **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 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.

**Status: Measure implemented.**

**Expected outcome:** The assessment of this measure should be extended beyond informing the public about Ordinance No.I-45 and to the ensuing obligations. The only concern about the full-scale implementation of this measure and the one above (No. 7) is prompted by the short time left for replacement of the plates. For several months now, car owners have been waiting in rather long and unending 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 Ministry of Interior said the stations will work extended hours and even on weekends. Besides this, they have put on more staff.

As a result of the efforts made, between 1 January and 15 March 2006, the registration number plates of 202,579 motor vehicles were replaced and 38,148 vehicles were suspended from operation and their registration was terminated. An average 2,000 to 7,000 automobile owners daily have their plates replaced. Experts estimate the number of automobiles in Bulgaria whose plates have not yet been replaced at some 700,000. The deadline for implementation of this measure has been extended by two months, until 31 May 2006.

**Recommendations to guarantee effectiveness of the measure:** The Traffic Police authorities should persevere in performing their duties in connection with the implementation of this measure with the same accuracy.

**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 Decree/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 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. One month has been allowed for coordination of Ordinance No. I-167 of 2002, and the deadline for its conclusive adoption is 15 February 2006. By the cut-off date of this Report (15 March 2006), however, this has yet to be done.

**Status: Measure rather not implemented.**

**Expected outcome:** The object of this measure is, basically, to adopt and apply a new method of calculation of the percentage of compliance with the civil liability insurance obligation. The proposed method of calculation of the number of insured automobiles is far more accurate and objective than the method used so far.

**Recommendations to guarantee effectiveness of the measure:** The soonest possible adoption and application of the Ordinance.

According to insurance experts, the building of a reliable database and the exchange of information between insurers and the state bodies will make it possible to calculate and compare the results according to the various methods existing in the world. The results of these studies would help arrive at an accurate estimate of the resources required in the Guarantee Fund, which are ultimately paid by the insureds through the premium.

Regardless of which calculation method is adopted, it must be based on reliable information.

**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, in November 2005 the Ministry of Interior started a verification of the existing database of the motor vehicles registered in Bulgaria. By 1 March 2006, the total number of motor vehicles on record in the national register was 3,317,981. Of these, 1,592,208 have new registration number plates. After an analysis of the National Police Service Directorate, it was established that some 700,000 motor vehicles in total were subject to replacement of the plates by 31 March. The rest of the automobiles were either suspended from operation or de-registered. Of the automobiles remaining to be re-registered, another 200,000 or so are expected to be suspended from operation or to have their registration terminated at the request of the owners. This implies, on the one hand, that registration plate replacement is due for some 500,000 motor vehicles and. On the other hand, the likely total of registered automobiles that will be part of roads traffic is 2.1-2.2 million. By the end of February 2006, civil liability insurance was contracted for some 1.7 million automobiles, or roughly 80 per cent of the presumable final number of roadworthy automobiles.

**Status: Measure implemented.**

**Expected outcome:** One of the basic ideas of the re-registration of the motor vehicle fleet in Bulgaria is to remove the automobiles, which are theoretically roadworthy but are actually disused, from the Interior Ministry data storages.

This and some of the other measures (No. 7 and No. 8) are intended to provide comprehensive and accurate information on the actual number of automobiles in operation. With this information at disposal, it will be possible to check which motor vehicle owners pay taxes, which of them go through an annual technical inspection, and which and how many hold compulsory third party liability insurance. At the same time, it will be far easier to detect the offenders and to take specific measures for their penalisation.

The application of these and of the two other measures (No. 7 and No. 8) shows that about one-third of the automobiles on record until the end of last year are actually off-traffic.

**Recommendations to guarantee effectiveness of the measure:** The process of re-registration of the motor vehicle fleet in Bulgaria must be completed as scheduled. After that, the information on the number of registered and operative motor vehicles must be steadily updated, so that it would be clear what share of automobiles in Bulgaria are actually used and on what percentage of them the taxes are paid, annual inspection is certified and insurance is contracted. One of the preconditions for re-registration is that the automobile owners hold the

compulsory civil liability insurance. In June, 100 per cent of the automobiles registered in Bulgaria will have third party motor insurance. The state administration faces the issue of identifying mechanisms to keep compulsory motor insurance at this compliance level in future as well.

**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 Financial Supervision Commission has made the proper arrangements for the launch of a special page on its Internet site through which motorists can check the validity of their civil liability insurance policies. The system was activated on 20 February. The measure in question has no direct bearing on the increase of the percentage of motor insurance.

**Status: Measure implemented.**

**Expected outcome:** The system developed is intended to facilitate individuals in checking the civil liability insurance they have contracted. Besides this, it makes it possible to establish whether a driver who has caused a road traffic accident holds valid insurance. The system works for the time being, but errors occasionally occur. The system will take a little more time to improve the effectiveness of its operation. Besides this, insurance companies must submit prompt and reliable information on the civil liability insurance policies they contract.

**Recommendations to guarantee effectiveness of the measure:** The Financial Supervision Commission must take care of the hardware and software support for the possibilities to check the validity of insurance policies on the Internet. Besides this, the Commission must promptly take the appropriate measures upon detection of any discrepancy between the actual information and the data displayed on its Internet site. The measure in question would be more meaningful if the companies also process the information on concluded insurance contracts faster and submit it promptly to the Commission.

**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: permanent**

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 has already been adopted at first reading by the Financial Supervision Commission, and its coordination at the Ministry of Interior and the Ministry of Transport is in progress. The two ministries have already assigned their experts to peruse the draft ordinance. A working group of experts of all central-

government departments concerned with this process is expected to be formed and to discuss and adopt the Ordinance.

**Status: Measure rather not implemented.**

**Expected outcome:** 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. As a result, the rate of compliance with compulsory civil liability insurance, as well as the common carriers of passengers which have not contracted compulsory accident insurance of passengers, are supposed to be identified. 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.

For the first time, this Ordinance addresses the issue of control over the holding of another compulsory insurance, against accident of passengers in public transport. At this point, no specific information is available on the compliance with this insurance class. 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.

**Recommendations to guarantee effectiveness of the measure:** 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 information related to the motor vehicle fleet in this country and the compulsory classes of motor insurance. They must carry on their close interaction in future as well, with a view to exercising constant control over the compulsory motor insurance classes. The state administration, too, should take maximum advantage of the arrangements made for increasing the percentage of civil liability insurance and seek possibilities to heighten compliance with the taxes related to motor vehicle ownership and to enhance control over the conduct of annual technical inspections.

To this end, establishment of the Information Centre provided for in the Insurance Code must be expedited. The database of this Centre must be uniform and uninterruptibly interface the data storages of the public authorities and the insurers. Access to the base should be statutorily regulated and should guarantee that the data are up-to-date. The state administration should acknowledge the database as an official and reliable source of information, which is important for the proper functioning of the Centre.

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

**Responsible institution: Traffic Police**

**Deadline: permanent**

The monitoring check shows that with the issuance of the relevant intra-institutional 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 motorists hold valid civil liability insurance policies.

**Status: Measure implemented.**

**Expected outcome:** Tightened control by the Traffic Police authorities for the holding of civil liability insurance will undoubtedly lead to an increase in compliance. The results of these checks show that the number of drivers who do not hold or do not carry the insurance policy in question represents a rather insignificant proportion of the total number of drivers checked. The checks continue on a daily basis, and their results are processed and analysed every week, according to the Traffic Police.

**Recommendations to guarantee effectiveness of the measure:** Checks on the roads must be systematic and planned, and their results must be regularly summarised and analysed. This information should be accessible to all institutions concerned, as well as to the general public through the mass media.

**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**

This measure is mandatory because this is the only way to analyse the results of the joint actions taken by the various authorities and institutions. 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.

**Status: Measure implemented.**

**Expected outcome:** The check made shows seamless interaction among the institutions in handling the measures assigned to them for implementation. One of these tasks, related to an increase of the percentage of motorists holding compulsory insurance, 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 for January and February 2006. Work is currently under way on the report for March, which will be presented at the end of the month or at the beginning of April 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 on further action.

**Recommendations to guarantee effectiveness of the measure:** The separate government institutions, and in particular the Ministry of Finance and the Ministry of Interior, should keep up this level of cooperation.

**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**

The greater part of the 17 measures outlined for an increase of the percentage of motorists holding compulsory civil liability insurance have been implemented, and the remaining three

or four measures are in an advanced stage of implementation. This gives us grounds to note that the Bulgarian side was very well prepared for the peer review in connection with the problems of motor insurance in this country that took place on 20-21 February. During the review, the European experts met with officials of the Ministry of Finance, the Ministry of Interior, the Traffic Police Division under the National Police Service Directorate, the Financial Supervision Commission, the Guarantee Fund and the National Bureau of Bulgarian Motor Insurers. The representatives of the state administration and of the insurers' associations familiarised the reviewers with the measures and actions taken to increase the percentage of civil liability insurance.

During the peer review, the European experts raised the issue as to whether the Guarantee Fund has sufficient financial capacity to handle large and very large claims in connection with insured events covered by motor insurance against third party liability. In this connection, appropriate arrangements have been made to address adequately the issue raised.

**Status: Measure implemented.**

**Expected outcome:** The reviewers are expected to present shortly their report on the peer review in question. Account should have been taken of the efforts made on the part of Bulgaria to address the problem with the enforcement of the compulsory civil liability insurance for motorists and, as a consequence, there should be no more grounds to consider Chapter 3: Freedom to provide services as an area of serious concern in Bulgaria's accession. This implies that yet another possible reason for a postponement of Bulgaria's EU accession for after 1 January 2007 would be eliminated.

**Recommendations to guarantee effectiveness of the measure:** The state administration must press ahead with its efforts to address the problems related to Bulgaria's forthcoming admission to EU membership regardless of the evaluation that the European Commission will give in its forthcoming report and regardless of the date set for entry into the Community.

**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**

The Financial Supervision Commission has adopted draft revisions of Decree/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. This draft introduces 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. The method used in Bulgaria so far to calculate compliance with civil liability insurance is inaccurate and is not used in almost any European country.

According to the old calculation method, some 20 per cent of the motor vehicles appeared to be uninsured. For the sake of greater objectivity in calculating civil liability insurance compliance, the Financial Supervision Commission proposes 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 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.

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 in Bulgaria 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. A commitment has also 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.

**Status: Measure implemented.**

**Expected outcome:** The revisions of Ordinance I-167 of 2002 are expected to be coordinated and adopted. The European Commission will presumably agree to Bulgaria's arguments in favour of introduction of the new method. The results of calculating the percentage of compliance with the civil liability insurance obligation according to the new method are more than favourable and show that Bulgaria is not far behind Europe's most developed countries in this respect. Even if the new method is not approved, Bulgaria will still be able to meet the requirements for the EU Member States of a minimum 90 per cent compliance with the compulsory motor insurance during the next two or three months.

**Recommendations to guarantee effectiveness of the measure:** All institutions must make efforts for implementation of the measures planned. Once this is achieved, however, the State should not neglect its obligation, acting within the law, to monitor and regulate the domestic compulsory motor insurance market. Achieving and maintaining a 90 per cent-plus compliance with civil liability insurance must be regarded as an invariable annual target.

**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 de-registration of disused cars, applying one of the measures to increase the civil liability insurance compliance rate, has given rise to a problem with the disposal of the motor vehicles suspended from operation.

By the deadline set in the measure (1 February), experts of the Ministry of Environment and Water prepared a draft of additional legislative measures needed to accelerate and facilitate the process of management of waste from end-of-life vehicles. The draft proposed by the Ministry of Environment and Water is being considered at the expert level by representatives

of other stakeholder state-administration departments. Within the next couple of weeks, the experts are to propose specific revisions required in order to address the problem of de-registered automobiles.

**Status: Measure rather not implemented.**

**Expected outcome:** As a result of this measure, two or three of the effective laws are expected to be amended (Road Traffic Act, Waste Management Act, Local Taxes and Fees Act etc.). 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 assessment of this measure is very positive.

**Recommendations to guarantee effectiveness of the measure:** The state administration officials, who are the competent decision-makers on legislative revisions, should come up with the relevant regulatory proposals. Addressing the newly identified problem should not be rushed at the expense of the quality of legislative and other measures. A sustained solution to the issue, acceptable to all parties concerned, should be sought. It should be borne in mind that 40,000 automobiles have been de-registered since the beginning of the year, and experts expect this number to top 200,000 by the end of the de-registration process.

## **Part II. 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 and publicity of implementation and the efficiency of the operation of the administration (see Figure 1). No measure which can be treated as not implemented by 15 March 2006 has been detected. Some action has been taken on all measures. The monitoring shows that 13 of the 17 measures (or 76 per cent of the total) qualify as “implemented” on the basis of the data obtained. Two of the measures (No. 7 and No. 8), which involve revisions of Ordinance I-45 and raising public awareness of these revisions are reported as implemented. Formally speaking, they are: the revisions have been effected, and the public has been informed of them. The processes and actions ensuing from these measures, however, in the form of an ongoing re-registration of automobiles, are still in progress. The process, however, is irreversible, and completion of the campaign for re-registration and de-registration of automobiles in Bulgaria is just a matter of some more time.

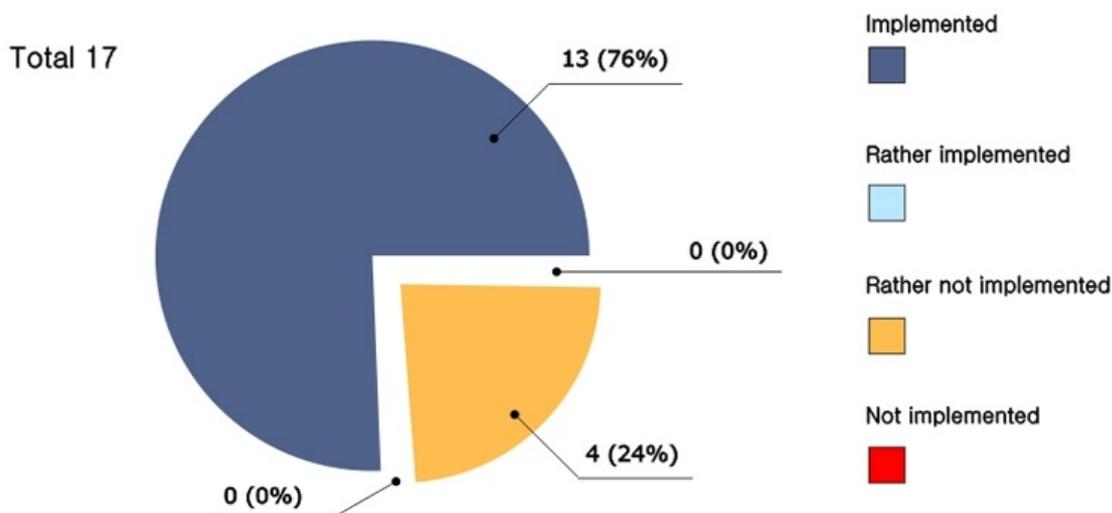
Just four of the measures (24 per cent of the total) can be treated as “rather implemented.” Two of them require revisions of legislation, which takes more time. The deadlines that the inter-institutional commission set itself have already been missed. No deadline has been set for one of the other not implemented measures, No. 12 (the deadline is permanent), and its implementation will really take a little longer. The idea is to build a common information base to be augmented and used by the authorities of the Traffic Police, the Ministry of Transport, the Guarantee Fund and the Financial Supervision Commission. Active work is in progress to address this measure, but still, its implementation requires some technological time.

Figure 1

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

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Measure No. 5 is also grouped in the “rather not implemented” category even though it is *de facto* implemented. The negative assessment is prompted by the lack of any positive outcome from the implementation of this measure.

Summing up the assessments, we must say that the larger part (76 per cent) of the outlined measures, qualify as “implemented.” At this point, there is absolutely no reason to call into question the implementation of three of the four not implemented measures. This will happen within the space of two or three months. With this record of achievement, we can well safely expect the number of insured vehicles to be over 90 per cent by the end of May, when the campaign for re-registration and de-registration of automobiles in Bulgaria is due for completion, which will meet the European Commission's EU membership criteria.

The immediate objective of the 17 measures undertaken by the State is to reduce the number of uninsured motor vehicles in this country and, respectively, to strengthen enforcement of compulsory motor insurance. In all likelihood, this objective will be attained. What matters more in this case is that the principal target will be met as a result of the fulfillment of this task: the maintenance of a working mechanism, including the relevant regulatory, administrative-control and market elements, through which the compulsory insurance system functions and will guarantee fair indemnification of all parties injured by a road traffic accident.

We find a positive side effect of the measures taken: coming to grips with one problem (civil liability enforcement), 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 is clearing the Ministry of Interior data storages of disused motor vehicles which are kept on record there, and the fine information cooperation among the separate government institutions. The other problem is the State's commitment to find a proper way of disposing of the numerous motor vehicles abandoned in streets and gardens.

The third problem into which the state administration has run in search of a solution to the problem of increasing the percentage of third party liability insurance is the low compliance with the fines imposed by the Traffic Police (merely 10 per cent of these penalties were paid last year). 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 urgently address these problems.

The state administration joined the process of strengthening the enforcement of civil liability insurance because of the threat that Bulgaria's admission to the EU would otherwise be postponed. The results of the gearing up of the state machinery are already making themselves felt. The point is to make this an established practice rather than leave it where it is as an isolated effort. Within this context, assessment of awareness raising as a failure has to be reiterated. The state administration declared a massive campaign to educate the public about the compulsory motor insurance, tried several times to do something about it and, once these attempts proved abortive, the officials assumed that paying lip service to this task was enough and they swept this responsibility under the carpet instead of seeking an alternative solution. Regardless of the outcome, the state administration must keep working for sustained results not only in raising public awareness of civil liability insurance but also in all other measures launched.

Still, the best result of the measures undertaken to heighten compliance with civil liability insurance is arguably the fact that for the first time in many years, the state administration has assumed, albeit under pressure, its own responsibility in this process. 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. For this reason, the state administration was also reluctant to commit itself so directly to raising public awareness of this insurance class and to keeping track of its compliance rate.

It should also be borne in mind that despite the large number and diversity of government institutions engaged in a 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.

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

## CHAPTER 5: COMPANY LAW

### PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

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**).

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.

The measures, especially those on the **to-do-list**, 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.

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.

#### **Part I. Review and Evaluation of Progress in Implementing Planned Measures**

##### **Legislation**

**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:

- an Act to Amend and Supplement the Copyright and Neighbouring Rights Act<sup>1</sup>
- an Act to Amend and Supplement the Radio and Television Act<sup>2</sup>
- 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 Rights<sup>3</sup>

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<sup>1</sup> Promulgated in *State Gazette* No. 99 of 9 December 2005, effective 10 January 2006

<sup>2</sup> Promulgated in *State Gazette* No. 88 of 4 November 2005

<sup>3</sup> Promulgated in *State Gazette* No. 74 of 13 September 2005

- 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] <sup>4</sup>

Two amending bills, which contain measures increasing the effectiveness of the protection of intellectual property, were adopted by the Council of Ministers (2006) and were laid before the National Assembly for debate and passage:

- an Act to Amend and Supplement the Patents Act;
- an Act to Amend and Supplement the Penal Code.

## **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 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 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.

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<sup>4</sup> Promulgated in *State Gazette* No. 92 of 18 November 2005.

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. The amount of **finances** 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. The Supplementary Provisions of the bill include 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.

**Recommendations:** The wording of the provisions could lead to certain difficulties in their 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. But since the transposition of directives is not an end in itself, 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 risk remains that the effectiveness of the protection of intellectual property rights would not be substantially enhanced despite the transposition of Community law.

## 2. Adoption of an Act to Amend and Supplement the Radio and Television Act.

**This measure is not expressly provided for** in the Action Plan, but it is related to copyright legislation. An amending Act, (Promulgated in *State Gazette* No. 93 of 2005) 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 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 license**, 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.

**Status: Measure rather implemented.**

**Recommendations:** The new subject matter in the Radio and Television Act, however, foregrounds certain issues such as:

- According to Article 126a of the Radio and Television Act, “[any violation of the terms and conditions of a license 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 license** 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.
- There are signs of hesitation in the interpretation of Article 19 (2) of the Radio and Television Act.

### **3. 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 license, and the Source Identification Code (SID Code) is stated in the license.

**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.

### **4. 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”).**

**Responsible institutions: Ministry of Education and Science, Patent Office**

**Deadline: December 2006**

A Bill to Amend and Supplement the Patents Act has been adopted **by the Council of Ministers** and has been laid before the National Assembly for debate and passage.

The Patents Act, in force since 1 June 1993, started the legal reform in the sphere of industrial property. Its purpose was to harmonise Bulgarian legislation with the *acquis communautaire* in respect of the protection of inventions and utility models and to create better conditions for encouragement of innovations and the competitiveness of Bulgarian enterprises. Revisions are proposed in several areas: a system of examination of patent applications, legal regulation of utility models and, last but not least, harmonisation of Bulgarian legislation with Community law in respect of biotechnological inventions and the supplementary protection certificates for medicinal products and plant protection products.

The amending bill introduces standards intended to harmonise Bulgarian legislation with Community law and specifically with Directive 98/44/EC of the European Parliament and of the Council of 1998 on legal protection of biotechnological inventions, with Council Regulation (EEC) No 1768/92 on establishment of a supplementary protection certificate for plant protection products, and with Directive 2001/83/EC on the Community code relating to medicinal products for human use. Articles 7 and 7a introduce requirements regarding the exceptions and the patentability of biotechnological inventions, with express provisions being made that patents will not be granted for methods for cloning of human beings, methods for modifying the genetic identity of human embryos, uses of human embryos for industrial or commercial purposes, and methods for modifying the genetic identity of animals (under certain conditions).

The requirements for harmonisation of Bulgarian legislation with Community law also prompt the formulation of legal standards regarding the territory of applicability of the provision of Article 20a (exhaustion of rights) after Bulgaria's accession to the European Union, as well as in respect of the measures for border control for protection of the rights arising from granted patents (Chapter Eight A), and the right of information in the context of proceedings concerning an infringement of such rights (Article 8 of Directive 2004/48/EC on the enforcement of intellectual property rights and Article 47 of the TRIPS Agreement).

A Chamber of Industrial Property Agents is established as an umbrella organisation of all agents entered into the register of the Patent Office. The proposal to establish a chamber with statutorily regulated status and operation is prompted by the need to standardise the national and European experience in the creation and regulation of the activities of professional organisations.

The Bill also provides clauses amending and supplementing the Marks and Geographical Indications Act and the Industrial Designs Act. These revisions are largely necessitated by omissions in the effective laws detected in the practice of their application, as well as by Bulgaria's forthcoming accession to the European Union. Thus, the Marks and Geographical Indications Act vests the President of the Patent Office with powers to determine that a mark is well-known but does not regulate the procedure for such determination and the appealability of the decisions made.

Experts of the European Commission have assessed the Bill in positive terms.

**Status: Measure rather implemented.**

Implementation of the measure is in progress, the deadline is December 2006.

**5. Adoption by the Council of Ministers of a Bill to Amend and Supplement the Penal Code: Articles 172a and 172b in the sphere of protection of intellectual property.**

The plan does not envisage such a measure, but it is related to the evolution of the framework in the sphere of intellectual property. The Bill to Amend and Supplement the Penal Code was adopted at a meeting of the Council of Ministers on 9 March 2006. It consists of 290 clauses, including two revisions for improvement of the effectiveness of the protection of intellectual property. This is the first initiative of the newly established Council for Protection of Intellectual Property for better protection of intellectual property by criminal law. New offences against intellectual property are criminalized by the bill.

**Status: Measure rather implemented.**

**Recommendations to guarantee effectiveness of the measure:**

1. Broader discussion of the revisions of the Penal Code, because an extension of the scope of criminal liability is involved.
2. Systematic nature of legislative revisions, “horizontal” alignment of the various legislative revisions.

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

Three types of measures have been planned in this area, **targeting**:

- strengthening **interaction between 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.

**6. 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 collegial 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 fulfill 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.

The Council has so far held a total of five meetings. An Action Plan of the Council for 2006 has been adopted. The plan formulates key priorities, including suppression of the street vending of pirated CDs and addressing problems of coordination in the electronic media sphere.

The measures adopted in the plan are implemented for the time being. The specialised authorities carried out two raids for elimination of street vending points: in Sofia (27 January 2006) and in the winter resorts (1 February 2006). The fifth meeting, held on 14 March 2006, focused on the problems in the electronic media sphere.

**Status: Measure implemented.**

**Recommendations to guarantee effectiveness of the measure:**

The Council was established by a Council of Ministers decision. Establishment by a higher-rank statutory instrument of secondary legislation, such as a decree, would have been a better option. That was the case, say, when the Council of Ministers established the Council for Protection of Copyright and Neighbouring Rights by Decree No. 120 of 1997<sup>5</sup>, whereby the composition of the Council was determined (only the name list is determined by a Council of Ministers decision) and Rules of Organisation were annexed to the same Decree. The predecessor body was a structure **under the Council of Ministers**, chaired by a Deputy Prime Minister, whereas the new Council is with the Minister of Culture. Accordingly, the powers of

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<sup>5</sup> Promulgated in the *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 Council and of its chairperson are more limited (cf. Article 2 of the Rules of Organisation of the Council of 1997).<sup>6</sup>

The effectiveness of the fight against intellectual property offences could also benefit from:

- improving the administrative capacity and motivation of the law-enforcement authorities (National Service for Combating Organised Crime, prosecuting magistracy, Economic Police etc.) to implement the decisions of the Council;
- broadening the power base of the fight against intellectual property offences, enlisting public support for the protection of intellectual property, balanced with raising awareness of the possibilities for free use of protected works.

### **7. 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.

### **8. 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: permanent, reported on a quarterly basis**

**Status: Measure implemented.**

### **9. 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: permanent, reported on a quarterly basis**

**Status: Measures No. 8 and No. 9 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

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<sup>6</sup> 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, organisations 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 organisations;

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.

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.

**Status: Measure implemented.**

**10. Establishment of an inter-institutional body for the administration, maintenance and development of National System for Information Exchange in the Sphere of Intellectual and Industrial Property.**

**Responsible institution: Ministry of Culture**

**Deadline: February 2006**

An Ordinance Establishing a Procedure and Manner of Interaction between the Ministry of Culture, the Ministry of Interior, the Ministry of Justice, the National Customs Agency and the Patent Office through the National System for Information Exchange in the Sphere of Copyright and Neighbouring Rights and Industrial Property and on the Operation of the Inter-Institutional Council for the Administration, Maintenance and Development of the National System was adopted by Council of Ministers Decree No. 33 dated 3 February 2006 (promulgated in the *State Gazette* No. 15 of 17 February 2006, effective 18 March 2006). This measure is envisaged in § 5 of the Transitional and Final Provisions of the Act to Amend and Supplement the Copyright and Neighbouring Rights Act.

This instrument creates the statutory framework for the functioning of the National System for Information Exchange in the Sphere of Copyright and Neighbouring Rights and regulates the interaction among five public administration units.

The statutory instrument institutionalises the effects of Project **Phare BG 0201/IB-FI-02**. An **Inter-Institutional Council** for the administration, maintenance and development of the system is established. The Council is chaired by a Vice President of the Patent Office and comprises a Deputy Minister of Culture, a Deputy Minister of Interior, a Deputy Minister of Justice, and a Deputy Director of the National Customs Agency. The Council meets not less frequently than twice a year.

**Status: Measure implemented.**

**Expected outcome:** The creation of a statutory framework for the functioning of the information system is an important element of the information support for the suppression of infringements. Ultimately, the system is intended to function in such a way that **accurate and reliable information on the right-holders should be available at any time** (the database should be kept up-to-date and comprehensive, and should be accessible to all participants in the enforcement of the Copyright and Neighbouring Rights Act etc.).

The Ordinance envisages functioning of the system “through the intra-institutional information systems interfaced with it;” therefore, the responsibility is shared among the participants and non-compliance by any of them with the standards of comprehensive, reliable and up-to-date information will affect the effectiveness of the system. To this end, it is planned to draft inter-institutional rules for use and administration of the national system, as well as to prepare technological, communication and information standards. Owing to the

extremely general nature of the obligations created by the Ordinance, its actual effectiveness has yet to be assessed.

#### **Recommendations to guarantee effectiveness of the measure:**

- According to Article 5 (3), “The institutions concerned with the maintenance and use of the National System shall ensure centralised administration of the components of the National System maintained thereby and of the communications of their own systems to the National System through **organisational entities designated by the said institutions**, which shall furthermore ensure the implementation, maintenance and development of the system at the relevant body.”
- In brief, the functioning of this important information system depends on the administrative capacity of the separate institutions and the strengthening of these “information structures” must be the next priority of the central-government departments listed.
- The so-called “**technological regulations**” (a procedure ensuring the operation of the National System for Information Exchange in the Sphere of Copyright and Neighbouring Rights and Industrial Property regarding the entry and correction of data, reference searches, access management, maintenance of the system's operability and security etc.), as well as “**technological, information and communication standards**,” provided for in the Transitional and Final Provisions of the Ordinance, must be clarified within the shortest possible time.
- The effectiveness of the protection of right-holders depends not only on the administration; working relationships should be established and strengthened with the relevant non-governmental organisations as well, so that protection of right-holders would turn into a priority of the whole nation.
- The system should allow multi-functional use, including use for the needs of training in the sphere of intellectual property.

#### **11. Accession of the Commission for the Protection of Competition and the Ministry of Economy and Energy 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. 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. 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).

## **12. Signing of a Memorandum between the Ministry of Culture, the Communications Regulation Commission and the Council for Electronic Media.**

This measure is not envisaged in the 2006 Action Plan, but is an expression of a will for coordination and merits a positive assessment. The **Memorandum** was signed on 14 March 2006. The two regulatory bodies exercise parallel control over electronic communications, in particular over the content (or the programmes broadcast by terrestrial transmitter, by cable and satellite).

**Status: Measure implemented.**

### **Recommendations to guarantee effectiveness of the measure:**

- Detailing the algorithm of interaction should continue, in particular regarding the electronic media, so as not to leave any problems in the grey area between the institutions and the various laws.
- The problems of previous experience should be taken into account in drafting future laws, and in particular the future Electronic Communications Act.

## **13. Delivery of training to customs officers in enforcing intellectual property legislation.**

**Responsible institution: National Customs Agency**

**Deadline: permanent, reported on a quarterly basis**

The deadline for training is permanent, there is information of awareness of the importance of training for the work of customs officers. Preparations are in progress for:

- a crash training course in Plovdiv in May, with international participation;
- a workshop within the Rouse: City of Rights Week in May, on matters concerning identification of pirated music products;
- training of customs officers in connection with the single information system on right-holders (May);
- training of customs officers in industrial property rights (May).

Meetings are held with representative of right-holder companies such as NOKIA, Lacoste, BIC and others, so as to familiarise the officers with the specific problems of the relevant company.

**Status: Measure rather implemented**, several events are due in the coming weeks and months (but tangible preparations are in progress and arrangements have been made for visits by lecturers from the European Commission, the World Intellectual Property Organisations, and Bulgarian lecturers.

### **Recommendations to guarantee effectiveness of the measure:**

1. The planned training is important, an added effect can be achieved by in-house training, by training officers systematically (rather than occasionally) on the job according to a specific schedule.

2. Information technologies may be used to multiply the effect of the training delivered, say, in Rouse, to all customs officers interested.

**14. 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.**

**Responsible institution: Ministry of Economy and Energy**

**Deadline: permanent, reported on a quarterly basis**

According to the Ministry, the experts are trained in applying the procedures provided in the law, and a training programme is in preparation.

**Status: Measure rather implemented.**

**Recommendations to guarantee effectiveness of the measure:** Invigoration of experts' training.

**15. Delivery of training to the employees of the central and territorial Economic Police units for improvement of their occupational skills regarding control of offences against intellectual property.**

**Responsible institution: Ministry of Interior**

**Deadline: permanent, reported on a quarterly basis**

A training programme is in preparation for the personnel of the Economic Police and the National Service for Combating Organised Crime, as key actors in the effort for effective protection of intellectual rights. A specialised sector for the suppression of intellectual property infringements has been established in the National Service for Combating Organised Crime (personnel: 28 in Sofia and 37 in the rest of the country). Experts from EU Member States have conducted training in specific matters (e.g. Internet).

**Status: Measure rather implemented.**

**Recommendations to guarantee effectiveness of the measure:** Invigoration of experts' training.

**16. Analysing the results of cases of intellectual property infringement detected by the customs authorities.**

**Responsible institution: National Customs Agency**

**Deadline: 28 February 2006**

According to information of the Agency, an analysis of the infringements detected by the Agency authorities has started. As a result of the analysis made, risk profiles will be prepared and entered into the Risk Analysis Module of the Integrated Customs Information System (BIMIS). This is expected to help a more effective and timely detection of potential infringements in this sphere.

**Status: Measure rather implemented.**

**Recommendations to guarantee effectiveness of the measure:** Set a deadline for review of conclusions and improvement of the effectiveness of prevention.

**17. 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.**

**Responsible institutions: Ministry of Economy and Energy, National Customs Agency**

**Deadline: 30 March 2006**

Effective 1 January 2006, 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 introduced requirements for notification of the importation and exportation of polycarbonates which are used in the manufacture of optical disks, machines, devices or instruments for their manufacture and of other storage media. Polycarbonates, which are used in the manufacture of optical disks, have been assigned a separate Customs Tariff heading. In connection with the new notification requirements under the Act introduced as from 1 January 2006, a database has already been built and is functioning and will be expanding over the next couple of months.

**Status: Measure implemented.**

### **Raising Public Awareness**

**18. 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.

**19. Awareness and training: conduct of an information campaign.**

**Responsible institutions: all central-government departments**

**Deadline: permanent**

The measure is not envisaged in Plan 2006 but it appears on the to do list. A series of events are being implemented to raise public awareness and educate the public in the sphere of intellectual property. A budget subsidy has been allocated, and opportunities are also being sought for extra **financing**: thus, two workshops will be held in March and June with the

support of TAIEX, and one workshop will be held in May 2006 with the support of the British Council.

A **plan**, drawn up by the Ministry of Culture and the Euro-Bulgarian Cultural Centre, has been adopted for the overall conduct of the awareness-raising campaign. The plan covers the period from March 2006 to the end of the year. Key target groups have been identified, including young people, right-holders, and users of various products. More than 20 partner organisations have been recruited for implementation of the programme. The **objectives** of the awareness-raising campaign are:

- Creating conditions for change in public attitudes to the problem of respect for intellectual property.
- Strengthening the capacity of the administrative and law-enforcement institutions, the collective rights management organisations, of the creative artists and right-holders themselves in the sphere of industrial designs and trade marks, to apply measures related to protection of intellectual property.
- Reconciling the interests of the right-holders and right-users in Information Society, including an eased access to resources and possibility for commercial distribution of products.
- Organising a discussion on the problems of protection of intellectual property among the various public groups, with resort to the arguments of legal, economic and sociological analysis.
- Creating opportunities for the stakeholders and the public, and above all young people, to use information resources of national and international organisations for the protection of intellectual property. This will highlight the international dimensions of the process and will add “European self-confidence” to the message.

A centrepiece of the programme is the **Rousse: City of Rights Week**, which will be held in May, with visiting lecturers from the European Commission and the World Intellectual Property Rights.

The Patent Office has worked out its own programme of workshops and conferences in which its experts will take part.

**Status: Measure rather implemented:** the principal events that have been planned are still due.

**Recommendations to guarantee effectiveness of the measure:** A high level of transparency has to be maintained in the planning and reporting of events, motivating the need of each element of the programme so as to maximise the effect of the resources invested, especially when they come from the public purse.

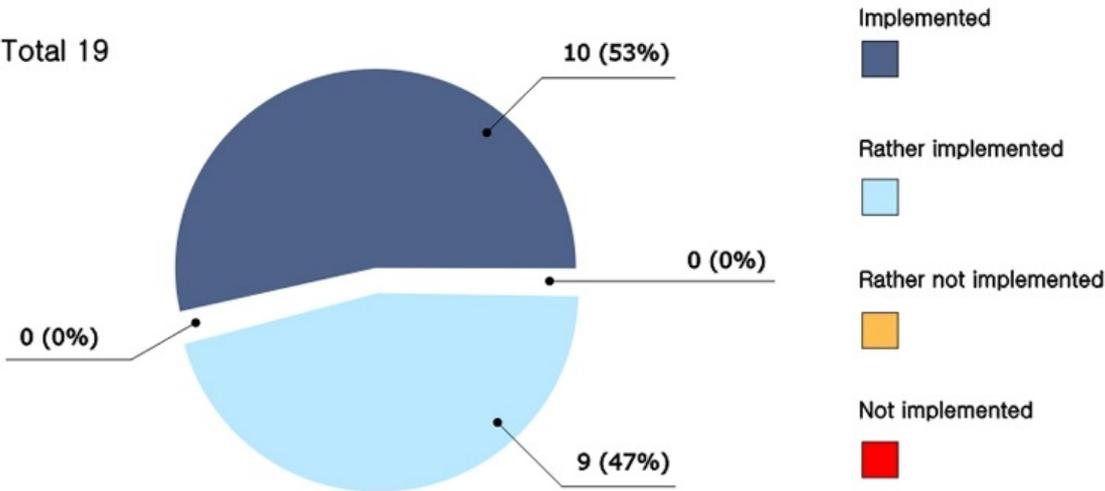
## **Part II. Findings**

**In the area of Protection of intellectual property rights** 10 of the measures are “implemented” - 53 per cent and 9 “rather implemented” - 47 per cent (Figure 2).

1. Bulgaria has problems in the sphere of protection of intellectual property, despite the overall assessment that the Copyright and Neighbouring Rights Act is of adequate quality.

The statutory framework has been updated (with the adoption of the Optical Disks Act), and the evolution of the statutory framework on the protection of intellectual property continues during this period with bills adopted by the Council of Ministers and laid before the National Assembly for passage: an Act to Amend and Supplement the Patents Act and an Act to Amend and Supplement the Penal Code. A public discussion of these two drafts has obviously yet to come, especially in the case of the Penal Code, insofar as the draft extends the protection by criminal law in the sphere of intellectual property (by amending Article 172a and inserting a new Article 172b).

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



The remark of the Interim Report **on the need of public consultation process** has to be reiterated. An impression is created that not all stakeholders have been invited to express opinions.

2. In the sphere of application of intellectual property legislation, the difficulties are to a certain extent of an objective nature because this is **horizontal rather than sectoral legislation**, insofar as the problems of innovation, creation of new protected subject matter etc., exist in various sectors of industry, education, the media. In this sense, if appropriate legislation is available, the effectiveness of the protection of intellectual property depends essentially on **the political will and the properly planned actions** of the various public administration components for:

- Translating plans into outcomes;
- Institutional strengthening of all central-government departments entrusted with intellectual property protection functions;
- Better coordination;
- Feedback and evaluation of the effectiveness of written law.

3. The measures which the Government has envisaged for protection of intellectual property rights are rather of a **procedural and administrative nature**, and their implementation (strategy, programme, campaign, information exchange) does not immediately and visibly produce a practical social outcome. Notwithstanding, implementation (no measure is not implemented, some are partly implemented) is a clear indication of a will and making efforts to strengthen the system for protection of intellectual property rights.

Apart from what was mentioned above, there has been a noteworthy increase in the number of police seizures of pirated products, special police raids and checks of outlets, successful operations of the National Service for Combating Organised Crime in the Veliko Turnovo - Gorna Oryahovitsa - Lyaskovets area; this year's first five preliminary proceedings under Article 172a of the Penal Code.

At the beginning of the term in office of the new Prosecutor General (elected in February 2006), the prosecuting magistracy is expected to abandon its traditional detachment from the protection of intellectual property rights. This will also depend on the fulfillment of the adopted 2006 Action Plan of the Supreme Cassation Prosecution Office on cases of offences against intellectual property rights. Everybody are convinced that prosecutors are a target group which badly needs training on dealing with intellectual property cases, whereas such training of judges already started some time ago but must vigorously continue, considering Bulgaria's approaching EU membership.

4. **Broadening the power base** of the suppression of piracy must continue. Any initiatives leading to sustained cooperation with the principal right-holders, with the non-governmental sector, with the educational institutions and the media would be of benefit.

5. **Technological advances** lead to changes in both the works protected and in the methods of intellectual property rights infringement. The rights protection system should be updated accordingly. Additional and special attention should be paid to training of the authorities engaged in protection of intellectual property rights in cyberspace and other high-tech areas: the National Service for Organised Crime Control, the Supreme Cassation Prosecution Office, judges, prosecutors etc. Training should better be delivered proactively or at least parallel to the new problems rather than reactively, say, regarding the methods of pirating copyrighted music online.

6. Protection of intellectual property rights is a matter of **changing public dispositions**. Awareness campaigns are therefore appropriate. They should evolve into sustained activities, including such figuring in the curricula of Bulgaria's secondary and tertiary schools. Provision of information, as well as training in intellectual property, should be organised in a sustainable way. Judicial case-law (in particular on matters concerning intellectual property protection), as well as the practice of the Patent Office and the Supreme Cassation Prosecution Office, should be freely accessible on the Internet for the purposes of education and training, as well as to keep the public informed.

At the same time, however, an emphasis must also be laid on the possibilities for free use of protected works. The legislator, the administration and the members of the public must be informed of the balances between the protection of intellectual property and the acceleration of innovation, so that protection of intellectual property would not turn into an obstacle to the free movement of information and innovations. In this sense, awareness campaigns must also

cover the issues of **open knowledge, open culture**, alternative systems for content licensing etc.

Therefore, it could be concluded that **the critical minimum of progress has been reached in the area of Protection of intellectual property rights which guarantees that this area no longer gives cause for “serious concern” and should not pose an obstacle to Bulgaria's full membership of the EU as from 1 January 2007.**

## CHAPTER 7: AGRICULTURE

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 Administration and Control System, 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 rest of the *acquis* 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 4 June 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 Comprehensive Monitoring Report has identified some areas of serious concern with regard to complete transposition, implementation and enforcement of the *acquis*, namely: 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.

### **Part I. Review and Evaluation of Progress in Implementing Planned Measures**

#### **Common market organisation for milk**

The mechanisms regulating the common market organisations for a range of agricultural products are a key component of the legislation that regulates the introduction of the CAP. The common market organisation for milk is a particularly sensitive area, highlighted also in the EC Comprehensive Monitoring Report. The Interim Report of the Open Society Institute – Sofia found that only one of the nine measures identified in the Commission’s Monitoring Report can be treated as implemented. Hence, the two months between the Interim and the Final Report were critical for making progress in this area. The findings of the Final Report concerning progress on measures to ensure a common market organisation for milk can be summed up as follows:

### **1. 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 Act to Amend and Supplement the Agricultural Producers Support Act, adopted by the National Assembly and promulgated on 28 February 2006, regulates the mechanism of the milk quota allocation and administration system. The Act provides the legal framework for the adoption of an Ordinance specifying the details of the milk quota system: approval of wholesale milk purchasers, allocation of quotas, management of the national reserve, etc. The Ordinance has been coordinated within the Ministry of Agriculture and Forestry and submitted for adoption to the Ministry's Collegium (on 21 March 2006).

**Status:** Although the original deadline (end of January 2006) was not met, the **measure can be treated implemented.**

**Expected outcome:** The Act to Amend and Supplement the Agricultural Producers Support Act ensures the adoption of ordinances that will make it possible to introduce the milk quota system. The relevant ordinances are expected to be adopted by the end of March.

**Recommendations to guarantee effectiveness of the measure:** Meet the deadlines for pilot testing the milk quota system to ensure that it will start functioning normally as of 2007.

### **2. Introduction of mechanisms for the common market organisation for milk and dairy products.**

**Responsible institution: Ministry of Agriculture and Forestry**

**Deadline: May 2006**

Considering that the Ministry of Agriculture and Forestry and its structures have made considerable progress in establishing the relevant mechanisms, such as creating registers of milk producers, of wholesale milk purchasers, of production enterprises, etc., the mechanisms for the common market organisation for milk can be expected to be introduced comparatively quickly. Pilot testing of the quota system is planned to start in mid-May.

**Status:** Given that the deadline is May 2006, as of now the **measure can be treated as implemented.**

**Expected outcome:** Adoption of the above-mentioned Ordinance specifying the details of the milk quota system will allow the introduction of mechanisms for the common market organisation for milk to commence.

**Recommendations to guarantee effectiveness of the measure:** Meet the deadline (May 2006) for pilot testing the mechanisms for common market organisation for milk.

### **3. Creation of a National Milk Board and regional milk boards.**

**Responsible institution: Ministry of Agriculture and Forestry**

**Deadline: 30 September 2005**

A National Milk Board (NMB) and eight regional milk boards (RMB) were established in 2005. Training has been provided for the experts working in this area (approximately 320 persons). Measures are being taken to make the regional milk boards operational: repair of allocated premises, purchase of computers, appointment of staff, etc.

**Status: Measure implemented.**

**Expected outcome:** The established National and regional milk boards will allow implementation of the milk quota system.

**Recommendations to guarantee effectiveness of the measure:** The measures taken to make regional milk boards operational are adequate and their timely implementation will allow timely allocation of regional milk quotas, planned to start at the beginning of April 2006, and pilot testing of the milk quota system as of May 2006.

#### **4. 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**

The tasks and responsibilities of the bodies involved in implementing the milk quota system are specified by the adopted Act to Amend and Supplement the Agricultural Producers Support Act, and by the Ordinance drafted for adoption by the Ministry of Agriculture and Forestry.

**Status:** Although the original deadline (January 2006) was not met, as of now the **measure can be treated as implemented.**

**Expected outcome:** Given that the legal framework for introducing the milk quota system is in place, preparations for pilot testing the system can begin.

**Recommendations to guarantee effectiveness of the measure:** Meet the deadlines for pilot testing the milk quota system.

#### **5. Approval of wholesale milk purchasers.**

**Responsible institution: Ministry of Agriculture and Forestry**

**Deadline: January 2006**

Registers of wholesale milk purchasers have been elaborated and are expected to be made public by the end May. The National Veterinary Service is also expected to approve wholesale milk purchasers by the end of April, and this will complete the process of establishing publicly accessible registers.

**Status: Measure rather implemented.**

**Expected outcome:** The approval of wholesale milk purchasers will make it possible to start pilot testing the milk quota system in order to prepare its introduction as of 2007.

**Recommendations to guarantee effectiveness of the measure:** Expedite National Veterinary Service approval of wholesale milk purchasers to prepare for pilot testing of the milk quota system.

## **6. Installation and accreditation of independent laboratories for fat content analysis.**

**Responsible institution: Ministry of Agriculture and Forestry**

**Deadline: not specified**

Significant progress has been made in the installation and accreditation of independent laboratories for fat content analysis. At the laboratory that is being installed in Sliven under a Phare-financed project, repairs are being completed, equipment has been contracted and part of the staff has been trained in Germany; the laboratory is expected to be completely ready by the end of October. The laboratory in Dobrich is being equipped too, with funding from the Ministry of Agriculture and Forestry. The capacity of the two laboratories will be approximately 35 per cent of the required minimum number of samples. The rest will be provided by the nineteen accredited laboratories of the National Veterinary Service, which will be independent and are expected to exercise effective control over milk quality. If completion works at the Sliven and Dobrich laboratories continue at the present pace, the entire system of laboratories is expected to be ready to go into operation by October 2007.

**Status:** Given the significant progress, **the measure can be treated as rather implemented.**

**Expected outcome:** With the completion of the installation and accreditation of laboratories for fat content analysis, the requirement concerning self-control over quality will be met.

**Recommendations to guarantee effectiveness of the measure:** Meet the deadlines for the start-up of the new laboratories.

## **7. Adoption of political decisions on principles for administering the national reserve and for transferring quotas.**

**Responsible institution: Ministry of Agriculture and Forestry**

**Deadline: not specified**

The political decisions on principles for administering the national reserve and transferring quotas have been taken and enshrined in the adopted Act to Amend and Supplement the Agricultural Producers Support Act, and the drafted and coordinated Ordinance. The Act and the Ordinance specify the ways of administering the national reserve and transferring quotas.

**Status:** Given that the Act to Amend and Supplement the Agricultural Producers Support Act has been adopted and that the draft Ordinance has been coordinated and is due to be passed by the Ministry of Agriculture and Forestry, **the measure can be treated as implemented.**

**Expected outcome:** The implementation of this measure allows the start of preparations for pilot testing of the milk quota system.

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

**Responsible institution: Ministry of Agriculture and Forestry**

**Deadline: not specified**

**Status:** A detailed Action Plan has been developed. Considering the distant deadline for implementing this measure, it is not included in the present evaluation.

## **8. Updating of the producer database, and indicative allocation of milk quotas.**

**Responsible institution: Ministry of Agriculture and Forestry**

**Deadline: April 2006**

Registers of all participants in the milk market have been prepared and updated, the main database being in place since 2004. Following the enforcement of the Ordinance (expected to be adopted on 21 March 2006), indicative allocation of milk quotas is expected to be carried out. The findings of the surveys conducted among milk producers show that the national quota will not be exceeded; seven per cent are to be allocated for the national reserve.

**Status:** Given that the deadline for this measure is April 2006 and that at present its implementation is proceeding on schedule, **the measure can be treated as implemented.**

**Expected outcome:** Ensure pilot testing of the milk quota system.

**Recommendations to guarantee effectiveness of the measure:** Meet the deadline - 31 March 2006- for pilot testing the system.

## **Trade mechanisms**

### **9. Conclusion and adoption of cooperation agreements and procedures**

**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.**

**Expected outcome:** Ensuring compliance with requirements concerning food quality control and safety in exports and imports of agricultural and food products. The first outcomes of this cooperation can be viewed as positive (stopped imports of meat of dubious quality).

**Recommendations to guarantee effectiveness of the measure:** Expedite the establishment and operation of border veterinary inspection posts.

## **Ensuring the implementation of CAP mechanisms**

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

The main critical remarks with regard to the Paying Agency involve: adoption of a statutory framework for the establishment of a Paying Agency; decision-making on the Single Area Payment Scheme, the minimum size of eligible agricultural holdings and the complementary national direct payments.

## **10. Council of Ministers approval of a framework law on the activities of the Paying Agency and the application of the IACS.**

**Responsible institution: Ministry of Agriculture and Forestry**

**Deadline: December 2005**

Initially the 2005 Action Plan stipulated that a framework law should be adopted by 15 September 2005, but the deadline was subsequently extended to November 2005. Later on it was decided that the framework law on the Paying Agency, IACS and SAPS would be incorporated into the Agricultural Producers Support Act (APSA), and a comprehensive Bill to Amend and Supplement the APSA was drafted, and subsequently adopted and promulgated on 28 February 2006.

The Act 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 an IACS and the choice of a payment scheme. There are grounds to assume that the adopted Act to Amend and Supplement the APSA will fulfil its intended goals.

The Act stipulates that the SAPS will 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:** Although considerably later than the original deadline, the Act to Amend and Supplement the Agricultural Producers Support Act has been adopted and the **measure can be treated as implemented.**

**Expected outcome:** The Act provides the statutory framework for enforcement of the Common Agricultural Policy and has “green-lighted” the adoption of the drafted secondary legislation.

**Recommendations to guarantee effectiveness of the measure:** Expedite the establishment of an IACS, which will allow applying the SAPS as a scheme for supporting agricultural producers.

## **11. Implementing activities to establish a Paying Agency and IACS (including a Land Parcel Identification System) according to the schedule of the comprehensive Master Plan for the establishment of a PA and IACS and the contract signed for acquisition of orthophoto images of the country**

**Responsible institution: Ministry of Agriculture and Forestry**

**Deadline: March 2006**

The adoption of the framework law is only the first necessary step in establishing the CAP implementation system. Action to establish a PA, IACS and the procedures required for their operation was taken even prior to the adoption of the Act to Amend and Supplement the Agricultural Producers Support Act. Progress in structuring the Paying Agency is quite optimistic. The staff for its main unit has been trained, and the internal documents (rules, procedures, checklists, etc.) have been approved. Six regional units of the PA have also been established, but are not fully staffed yet. In total, eleven regional units are envisaged to manage payments and control the fulfilment of obligations made by agricultural producers.

Competitive procedures for the selection of experts for these units are currently in progress and there is a plan for training regional staff.

In connection with the implementation of the SAPS and the common market organisation measures, competitive procedures are due to be initiated to recruit staff for fifteen new PA units structured by product lines and function. Procedures for their operation have also been developed: organigrams, application forms, detailed instructions for applicants, report forms, monitoring and control procedures, checklists, etc. The secondary legislation required to ensure adequate implementation of the law is also being developed: The PA Accreditation and Disaccreditation Ordinance; ordinances on the special eligibility criteria for the support schemes, etc.

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

The management of the State Fund Agriculture is convinced that 2006 Budget allocations guarantee the creation of the PA, the IACS and the Land Parcel Identification System. Tenders for technical support and software adaptation required to implement the IACS have already been conducted. Work on adapting the software is expected to be completed by the end of June 2006.

Progress in implementing 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 of the system was adopted at the beginning of 2005 (Council of Ministers 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 orthophoto images only for Northern Bulgaria was initially assigned to the Ministry of Agriculture and Forestry (May 2005), while since December 2005 (Decision No. 963 dated 16 December 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 applicant companies caused further delays. So far contracts have been signed for the acquisition of orthophoto images of 200 territories in twenty-two municipalities in Northern Bulgaria. Images have been obtained for less than seven per cent of the country's territory (7,300 sq km), of which digital models have been designed for 5,400 sq km and physical blocks covering 2,500 sq km have been digitised. Thus, the deadline for establishing the Land Parcel Identification System (December 2005) has not been met, and a serious delay may be expected.

A digital map of the country will be produced, using also satellite images of those parts of the territory for which contracts for orthophoto image acquisition have not been signed to date. The satellite images will complement orthophoto images and will serve as a basis for preliminary land parcel registration, which will be subsequently particularised and corrected based on orthophoto image acquisition results. Funding will be provided from the national 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 related to the PA. Considering that a strict timetable for the establishment of an LPIS has been drawn up, there are grounds to expect that the delay will be overcome and the Land Parcel Identification System will start operating effectively by the end of 2006.

**Status:** Given that the deadline for carrying out these activities expires in March 2006, **the measure can be treated as rather not implemented.**

**Expected outcome:** The measure ensures the application of the SAPS as a scheme for supporting agricultural producers but, owing to the delay in its implementation, cannot be expected to have a practical outcome for the moment.

**Recommendations to guarantee effectiveness of the measure:** Expedite the process of designing digital models for the territories of which orthophoto images have been acquired, and the digitisation of physical blocks. Increase readiness to resume activities on the acquisition of orthophoto images of those parts of the country's territory for which contracts have been signed, improving the conditions for.

#### **12. Providing specialised training 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 been completed. Training courses for farmers are to be organised as planned.

**Status:** Measure rather implemented.

**Expected outcome:** Preparing farmers to participate in Single Area Payment Scheme after Bulgaria's accession to the EU.

**Recommendations to guarantee effectiveness of the measure:** Expedite organisation of training courses for farmers and intensify communication campaign to explain why these courses are necessary.

### **Veterinary and health issues**

#### **13. Adoption of a new Framework Law on Veterinary Activity by Parliament**

**Responsible institution:** National Assembly

**Deadline:** December 2005

The Law on Veterinary Activity was adopted in October 2005 and promulgated on 1 November 2005.

**Status:** Measure implemented.

**Expected outcome:** The legal framework for the practice of veterinary activity is in place.

#### **14. Adoption of secondary legislation under the Law on Veterinary Activity.**

**Responsible institution:** Ministry of Agriculture and Forestry

**Deadline:** January 2006

Rapid progress is being made in the adoption of relevant secondary legislation. Out of forty-seven pieces of secondary legislation envisaged in the Law on Veterinary Activity, thirty-seven ordinances have been adopted by the Collegium of the Ministry of Agriculture and Forestry, including twenty-two promulgated in the *State Gazette*. Nine ordinances are ready and are being coordinated within the Ministry, and one ordinance is being drafted.

**Status:** Given that more than 75 per cent of the required secondary legislation has been adopted and only one ordinance is currently being drafted, the delay may be considered to have been overcome and **the measure can be treated as rather implemented.**

**Expected outcome:** The adopted ordinances ensure the enforcement of the Law on Veterinary Activity.

**Recommendations to guarantee effectiveness of the measure:** Expedite the adoption of the remaining ten ordinances to ensure full enforcement of the Law.

#### **15. Implementing activities to build a second (state-owned) rendering plant according to the schedule of the Phare project.**

**Responsible institution: Ministry of Agriculture and Forestry**

**Deadline: March 2006**

The National Veterinary Service has developed a concrete plan for the collection and disposal of specified risk materials on Bulgarian territory. Bulgaria currently has two rendering plants. According to Ministry of Agriculture and Forestry experts, their capacity is sufficient to implement the plan. Contracts on collection and disposal of specified risk materials from all parts of the country have been concluded with the rendering plants. The Phare-financed project on the construction of a new rendering plant is at the stage of competitive bidding to select a company that will conduct the pre-project study.

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

**Expected outcome:** Providing conditions for the collection and disposal of animal by-products in compliance with veterinary requirements.

#### **16. Issuance of an order by the Minister of Agriculture and Forestry introducing the feed ban.**

**Responsible institution: Ministry of Agriculture and Forestry**

**Deadline: December 2005**

An order introducing the feed ban was issued at the beginning of 2006 and is being enforced. A list of authorised fodder supplements has been endorsed.

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

**Expected outcome:** Ensuring safe animal feed.

**Recommendations to guarantee effectiveness of the measure:** Ensure effective control over the observance of the feed ban.

**17. Ensuring establishment and full operation of the necessary equipment, databases and control of animal movement.**

**Responsible institution:** Ministry of Agriculture and Forestry

**Deadline:** December 2005

The database on large ruminants is operating in real time. The small ruminants have been identified but the data have not been computerised yet. Identification of swines and registration of swine-breeding farms was completed by the end of 2005, and the data are being computerised.

**Status:** The measure can be treated as rather implemented.

**Expected outcome:** Control of large ruminant movement has been ensured in real time. Action has also been taken to ensure the operation of the system covering small ruminants and swine.

**Recommendations to guarantee effectiveness of the measure:** Expedite activity to complete the control system and ensure its operation in real time.

**18. Implementing activities to build the remaining seven long-term border veterinary inspection posts according to the schedule of the Phare projects and the procurement procedure for the post at Sofia Airport.**

**Responsible institution:** Ministry of Agriculture and Forestry

**Deadline:** March 2006

Of the planned eight border veterinary inspection posts, only the one at Kapitan Andreevo has been fully reconstructed to date. Of the six posts planned to be built with Phare funding, excavation works are in progress at four: Varna, Bourgas, Kalotina and Bregovo. Construction is scheduled to be completed by 1 September 2006 at Varna, Bourgas and Kalotina, and by 10 September 2006 at Bregovo, Gyueshevo and Zlatarevo. The construction of the last of the eight posts 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 identified in the autumn of 2005, has not been overcome, even though some progress has been made.

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

**Expected outcome:** This measure must ensure the enforcement of veterinary border control and quarantine measures, but owing to the delay in its implementation the outcome cannot be assessed at present. This can be done only after the relevant facilities are in place.

**Recommendations to guarantee effectiveness of the measure:** Expedite activities to build the border posts so as to overcome the delay and ensure the necessary veterinary control of imports and exports of animal agricultural and food products.

**19. Establishing a health emergency fund under the new Law on Veterinary Activity and securing target allocations under the 2006 National Budget of the Republic of Bulgaria Act.**

**Responsible institution: Ministry of Agriculture and Forestry**

**Deadline: December 2005**

The legal framework is already in place and allocations have been provided by the 2006 national budget to create an animal health emergency fund.

**Status: Measure implemented.**

**Expected outcome:** The budgeted allocations ensure the implementation of this measure.

**20. Introducing the vaccination ban (for Classical Swine Fever) and implementing eradication measures.**

**Responsible institution: Ministry of Agriculture and Forestry**

**Deadline: December 2005**

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

**Status: Measure implemented.**

**Expected outcome:** Observance of the vaccination ban for Classical Swine Fever.

**Recommendations to guarantee effectiveness of the measure:** None. The measure can be evaluated finally only upon completion of the analysis of the results of the implementation of the Classical Swine Fever monitoring programme.

**21. Transposing the requirements of the new Hygiene Package concerning food of animal origin by an Ordinance under the new Law on Veterinary Activity.**

**Responsible institution: Ministry of Agriculture and Forestry**

**Deadline: January 2006**

An Animal Feed Bill in conformity with the requirements of the new Hygiene Package concerning food of animal origin has been submitted to Parliament for adoption. Two of the ordinances transposing the Hygiene Package legislation (Regulation 853/2004 and Regulation 854/2004) have been drafted and will be promptly submitted for adoption upon passage of the Bill.

**Status: Measure rather implemented.**

**22. Approval by the Council of Ministers of a Bill to Amend and Supplement the Food Act transposing the other requirements of the Hygiene Package.**

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

**Deadline: January 2006**

The original deadline (end of 2005) was extended by one month. The Bill to Amend and Supplement the Food Act has been passed on first reading. It is expected to be adopted in April 2006.

**Status:** Although with a serious delay, the **measure can be treated as rather implemented.**

**Expected outcome:** The outcome can be assessed only after the adoption and enforcement of the Act to Amend and Supplement the Food Act.

**Recommendations to guarantee effectiveness of the measure:** Meet the extended deadline for the adoption of the Bill.

**23. Updating the present plan for upgrading the agri-food industry to comply with 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 now, the list of agri-food industry enterprises has been updated but the deadline for their upgrading has been extended.

**Status: Measure rather not implemented.**

**Expected outcome:** The implementation of this measure can be assessed only after the deadline expires.

**Recommendations to guarantee effectiveness of the measure:** Expedite the upgrading of agri-food industry enterprises to avoid another extension of the deadline.

## **Part II. Findings**

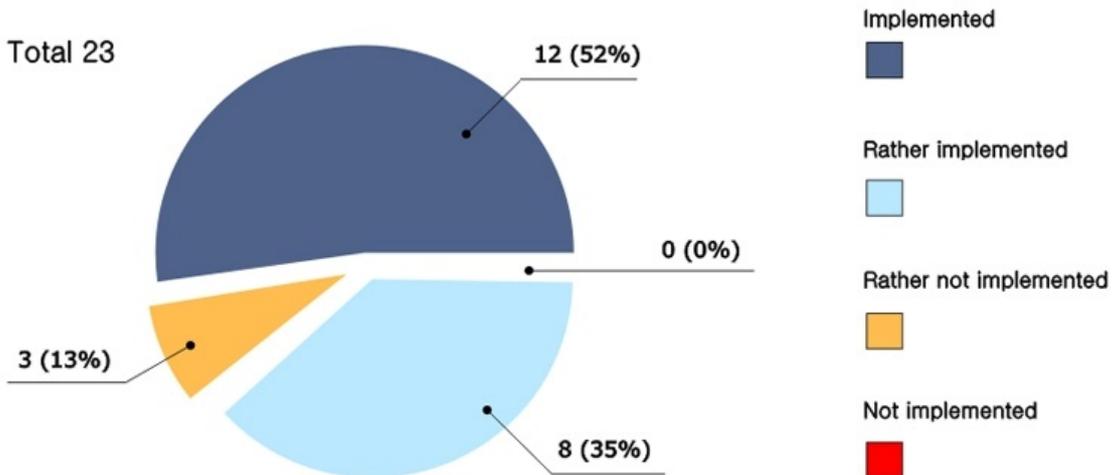
The present report assesses progress in addressing twenty-three critical remarks on areas of serious concern. In effect, efforts are being made to address all critical remarks. As of 15 March 2006, assessment results show the following picture of measures by extent of implementation (see Figure 3).

Measures to address twelve critical remarks are fully implemented;  
Measures to address eight critical remarks are rather implemented;  
Measures to address three critical remarks are rather not implemented;  
There is no measure that qualifies as not implemented.

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## Extent of Implementation of Measures under Chapter 7: Agriculture

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Nevertheless, it must be noted that the progress in implementation raises some concerns, because the measures are mutually dependent and need to be implemented in strict succession. Much of the secondary legislation was implemented or rather implemented after the relevant deadlines owing to the delay in the adoption of the Act to Amend and Supplement the Agricultural Producers Support Act, which held 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 veterinary inspection posts, and other measures that remain in the “rather not implemented” category.

It must be noted that the number of measures falling in the “rather not implemented” category has decreased significantly since the Interim Report, and that a considerable part of the measures that were in the “rather implemented” category are now fully implemented.

The area of Agriculture should not pose an obstacle to Bulgaria's membership in the EU as from 1 January 2007, even though the risk that an internal market safeguard will be applied is not overcome yet on account of the delay of important reforms in the sector.

To ensure normal implementation of the Common Agricultural Policy after Bulgaria's accession to the EU, it is critically important to:

1. meet the deadline for pilot testing the milk quota system;

2. expedite activities to establish the Integrated Administration and Control System and Land Parcel Identification System, as well as to complete the establishment of Paying Agency units.;
3. meet the deadlines for construction of border veterinary inspection posts so as to ensure the necessary border control of animal product imports and exports.

## CHAPTER 21: REGIONAL DEVELOPMENT AND COORDINATION OF STRUCTURAL INSTRUMENTS

The findings of the assessment of fulfilment of commitments under Chapter 21: *Regional Development and Coordination of Structural Instruments* in the areas of “serious concern” identified in the European Commission’s 2005 Comprehensive Monitoring Report have been included in the Roadmap for the final stage of Bulgaria’s preparation for accession under Chapter 21: *Regional Development and Coordination of Structural Instruments*. The Roadmap, adopted after the 10 January 2006 mission of EC DG Regional Development, reflects Bulgaria’s progress in overcoming problems and omissions, and sets out a to-do-list. The areas subject to monitoring and control are the following:

The Roadmap includes specific measures for:

1. Strengthening administrative capacity: completing the establishment of the required institutional framework and improving inter-institutional coordination at all levels;
2. Introducing multi-annual budget programming and making adequate co-financing arrangements for beneficiaries participating in absorption of EU Structural Funds: this applies above all to local authorities, i.e. municipalities;
3. Strengthening the financial management and control system: completing the harmonisation of relevant legislation and enforcing it in the practices of the Managing Authorities of Operational Programmes;
4. Strengthening the external audit system, checking payment claims, internal audit, accreditation for the Extended Decentralised Implementation System;
5. Guaranteeing transparency and accountability of public procurement;
6. Initiating the establishment of a pipeline of projects conforming to the preset priorities of Operational Programmes;
7. Recruiting staff: conducting transparent competitive procedures for the selection of staff for control, audit and public procurement bodies, Managing Authorities and Intermediate Bodies of Operational Programmes, as well as for municipal administrations as final beneficiaries of EU assistance.

These measures are designed to address serious concerns raised by weaknesses in:

- administrative capacity, in particular with respect to the level and skills of staff in the Managing Authorities and Intermediate Bodies of Operational Programmes;
- institutional structures and administrative capacity in the area of financial management and control, including in public procurement;
- pre-accession funds management has raised serious concerns about Bulgaria’s capacity to manage the Structural Funds and the Cohesion Fund in a sound and efficient way.

This Report assesses progress in implementing a series of measures identified by the Bulgarian Government to address critical remarks made in the EC Comprehensive Monitoring Report of October 2005. With respect to 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.

## **Part I. Review and Evaluation of Progress in Implementing Planned Measures**

### **1. Adoption of a Law to Amend and Supplement the Organic Budget Law, introducing multi-annual budgeting.**

**Responsible institution: National Assembly**

**Deadline: 24 December 2005**

In November 2005 the Bulgarian Parliament adopted a Law to Amend and Supplement the Organic Budget Law (promulgated in *State Gazette* No. 89 of 8 November 2005). To improve budget legislation and practices, Article 14 (3) introduces multi-annual budget programming aimed at ensuring stability and predictability of expenditure at the national budget level and at first-level spending units.

**Status:** In terms of improving the legal framework, the **measure qualifies as implemented**. At the same time, problems remain in effectively implementing multi-annual budget programming. Municipal capacity for co-financing projects under EU Structural Funds is a matter of particular concern.

**Expected outcome:** The revisions in the Organic Budget Law are expected to ensure some budgetary flexibility aimed at facilitating absorption of EU funds. The Government should ensure an adequate level of co-financing for municipalities in the first three years after accession, until the financial decentralisation system is fully introduced. The Minister of Finance should guarantee that there will be sufficient national budget allocations for co-financing all projects under Operational Programmes.

**Recommendations to guarantee effectiveness of the measure:** The problems in co-financing municipal projects are critically important for the successful participation of municipalities in the absorption of EU funds and implementation of a balanced regional development policy at the local level. They are directly related to multi-annual budget programming at both the national and local levels. These problems can partly be resolved by implementing the priorities and measures identified in the action plan for implementing the Decentralisation Strategy. The strategy and the action plan are being drafted by an inter-institutional working group chaired by the Minister of Regional Development and Public Works, and is due to be adopted by the Council of Ministers in April 2006.

We propose that the Council of Ministers (on the motion of the Minister of Finance) adopt by 30 June 2006 an express decision on co-financing arrangements for municipal projects in the first three years after Bulgaria's accession. Before it is adopted, the decision should be consulted with the National Association of Municipalities in the Republic of Bulgaria.

### **2. Approval by the Council of Ministers of a new Concessions Bill transposing the relevant *acquis*.**

**Responsible institution: Ministry of Regional Development and Public Works**

### **Deadline: 30 November 2005**

The new Concessions Bill and the Bill to Amend the Public Procurement Act were **approved by the Council of Ministers on 8 December 2005**. They are expected to be adopted by Parliament by the end of April 2006 and to enter into force on 1 July 2006. The same deadlines apply to the relevant secondary legislation. The Public Procurement Agency has already taken measures to build the administrative capacity required for enforcing the legislation at the national and regional levels.

**Status:** In purely formal terms, the measure qualifies as implemented because the new Concessions Bill and the Bill to Amend the Public Procurement Act were approved by the Council of Ministers on 8 December 2005. However, in terms of improving the legal framework **the measure qualifies as rather implemented** because the bills have not yet been adopted by Parliament and have not become effective. At the same time, as EU budget implementer, the European Commission may suspend payments (funds) if a Member State or candidate for membership (in this case, Bulgaria) does not provide the required and sufficient guarantees that EU funds will be spent as envisaged under the Common Agricultural Policy or Structural Funds. Hence, to avoid the possibility of imposition of protective measures by the European Commission as provided for in the *acquis* in the area of competition, it is vitally important that the Concessions Act and the Act to Amend the Public Procurement Act become effective as of 1 July 2006.

**Expected outcome:** The bills have been submitted for review to the relevant parliamentary committees. With regard to their quality at the present stage, one can say that they have been repeatedly coordinated with the Commission in Brussels and are in conformity with Community directives. With regard to electronic public procurement, the Public Procurement Bill transposes all provisions of Directive 2004/17/EC and Directive 2004/18/EC, which provide for the application of a dynamic purchasing system.

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

The expected outcomes can be evaluated only after the two laws are finally adopted and enforced. This also applies to the relevant secondary legislation.

**Recommendations to guarantee effectiveness of the measure:** We recommend that efforts be made to ensure strict implementation of harmonised legislation in the area of public procurement and concessions; careful perusal and compliance, by all stakeholders, with the regulations on participation in the Common Agricultural Policy and Structural Funds; and transparency in decision-making processes related to spending of EU funds. Strengthening and developing inter-institutional cooperation, and coordination and partnership among stakeholders is of key importance for the success of this measure.

With regard to the two laws whose adoption is pending, it must be noted that they have not been submitted to public debate. As civil society representatives, we propose finding ways to consult public opinion before the laws are adopted.

### **3. Adoption of a Council of Ministers Decision on designation of Intermediate Bodies under Operational Programmes.**

**Responsible institution: Ministry of Finance**

**Deadline: 30 November 2005**

By Decision No. 965 dated 16 December 2005, the Council of Ministers has approved and designated the units that will act as a Central Coordination Unit, Managing Authorities and Intermediate Bodies managing EU Structural Funds in Bulgaria.

Council of Ministers Decision No. 988 dated 27 December 2005 designates the National Fund Directorate at the Ministry of Finance as single Paying Authority (future Certifying Authority and Authority responsible for receiving payments from the Commission).

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

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

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

Under the Managing Authority of the National Operational Programme for Regional Development, 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:

- Bulgarian Small and Medium Enterprises Promotion Agency (BSMEPA);

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

- 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 Transport Operational Programme, the Programme and Project Coordination Directorate at the Ministry of Transport:

- Road Executive Agency,
- National Railway 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:

- EU Environment Funds Directorate at the Ministry of Environment and Water,
- 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.

The Managing Authorities are authorised to designate, by 30 September 2006, other Intermediate Bodies according to the priorities of each Operational Programme.

**Status:** Formulated as “adoption of a Council of Ministers Decision designating Intermediate Bodies under Operational Programmes”, the **measure qualifies as implemented**. At the same time, there are growing reasons and requirements for changes, and it is very likely that there will be new decisions of the Council of Ministers on this issue.

In compliance with the recommendations made in January during the meeting with Mr. Jean-Charles Leygues of European Commission DG Regional Policy, the following organisational changes are being made in the transport and environment sectors:

1. The Ministry of Transport is the only institution responsible for the Transport Operational Programme and concessions in the transport sector. The Managing Authority and Intermediate Body for the roads sector will be established at the Ministry of Transport. Agreement has been reached to transform the Road Executive Agency into an independent executive agency that will be registered as a state-owned enterprise according to national legislation and will have a responsible Board of Directors. The Minister of Regional Development and Public Works and the Minister of Transport will be jointly responsible for the appointment of the Executive Director of the state-owned enterprise. The independent agency will be one of the final beneficiaries in the roads sector under the Transport Operational Programme. This division of responsibilities will allow the Ministry of Regional Development and Public Works to concentrate on the Transport Operational Programme. The relevant political agreement has been reached. The transfer of human resources and expertise will be completed within two months.
2. In the environment sector, agreement has been reached to establish a Managing Authority and one Intermediate Body under the Environment Operational Programme at the Ministry of Environment and Water. The agreement was signed by the Minister of Environment and Water and the Minister of Regional Development and Public Works on 23 January 2006. The transfer of the relevant human resources and expertise from the Ministry of Regional Development and Public Works to the Ministry of Environment and Waters will be completed by the end of March 2006.

As of 1 January 2006, the Central Coordination Unit has new expert positions subject to job descriptions and personnel selection procedures according to the Civil Servants Act. Relations between central and local authorities are regulated by the provisions of the Ordinance on Management, Implementation, Monitoring and Evaluation of the Regional Development Operational Programme, promulgated in *State Gazette* No.19 of 2 March 2006.

In compliance with the partnership principle and the commitments made under the Official Agreement on Cooperation between the National Association of Municipalities in the Republic of Bulgaria and the Council of Ministers, signed on 12 October 2005, the following three priority areas have been designated: developing decentralisation of government and financing; extending the scope and improving the condition and management of municipal property and infrastructure; preparing municipalities for Bulgaria’s accession to the European Union. Agreement has been reached on the activities aimed at building adequate administrative and financial capacity at the local level.

To reduce staff turnover and guarantee administrative capacity, the Council of Ministers has drafted a Decree increasing the remuneration of experts employed under EU pre-accession funds, Structural Funds and the Cohesion Fund.

**Expected outcome:** The designation of Managing Authorities and Intermediate Bodies of Operational Programmes provides the institutional framework required for implementing activities under the Operational Programmes and, hence, for successful participation in EU Structural Funds. The Ministry of Finance is expected to assume responsibility for the taking of timely measures in compliance with the recommendations of the EC Comprehensive Monitoring Report. To ensure timely and adequate political decision-making, the Ministry of Finance must continue to organise regular monthly meetings, including at ministerial level, and to report regularly to the Council on European Integration.

**Recommendations to guarantee effectiveness of the measure:** The role of the Central Coordination Unit, the Managing Authorities and Intermediate Bodies for the Operational Programmes is key to the successful implementation of OP priorities. Rapid building of the necessary capacity for work in those units, information exchange and implementation of effective coordination and interaction mechanisms are particularly important for their effective operation. There is an urgent need to overcome the lack of transparency and information about their structure, tasks, responsibilities and mode of operation. Their structures, functions and staff must be immediately published on the websites of the relevant ministries to inform potential and actual beneficiaries of EU assistance and the general public about their activity. We recommend organising special informational meetings in Sofia and the other regions for their public presentation and introduction to stakeholders.

This is a necessary precondition for successful preparation and implementation of projects. Inter-institutional coordination must improve radically, especially with respect to interaction between the Central Coordination Unit, Operational Programme Managing Authorities and Intermediate Bodies, and regional and municipal administrations.

**4. Adoption of an Ordinance on Management, Monitoring, Evaluation and Control to Guarantee Effective Implementation and Information Support of the National Operational Programme for Regional Development. Responsible institution: Ministry of Regional Development and Public Works  
Deadline: 15 January 2006**

By a decision dated 2 February 2006, the Council of Ministers adopted an Ordinance on Management, Monitoring, Evaluation and Control to Guarantee Effective Implementation and Information Support of the National Operational Programme for Regional Development (promulgated in *State Gazette* No.19 of 2 March 2006). The Ordinance was adopted in pursuance of Article 32 of the Regional Development Act. It determines the general rules, functions, responsibilities and participants in the management and implementation of Structural Funds interventions provided for by the National Operational Programme for Regional Development.

**Status:** In terms of improving the legal framework, the **measure qualifies as implemented**. The organisational arrangements and staffing required for its implementation are pending.

**Expected outcome:** This Ordinance regulates the procedure, rights, obligations and functions of the main participants in the process of management, monitoring, evaluation, information

support and control guaranteeing effective implementation of the National Operational Programme for Regional Development. The outcomes of its implementation can be evaluated only after a certain period of time. The expected outcomes are: functioning of a reliable system of management and implementation of the Operational Programme, a well-functioning system of financial management and control, greater public awareness and transparency concerning implementation of measures to promote regional development.

**Recommendations to guarantee effectiveness of the measure:** We recommend that the Managing Authority and Intermediate Bodies engage in effective cooperation with the Regional Development Boards and the directorates administering the activity of the Boards, to provide technical assistance in areas, such as the following: implementation of the partnership principle at the regional level in managing the Operational Programme; ensuring that the Regional Development Boards are represented at the Operational Programme Monitoring Committee; carrying out activities to inform the public about the priorities, measures and possibilities for financing local authorities and other potential final beneficiaries in implementing the Operational Programme; designating experts to conduct feasibility studies of projects on the different measures under the Operational Programme in coordination with the Managing Authority and Intermediate Bodies; participation in activities related to ex-ante, mid-term and ex-post evaluation of the Programme and preparing the reports on its implementation.

As civil society representatives, we insist that the provisions of the Ordinance be implemented in a way that will guarantee the inclusion in the Monitoring Committee of representatives of all line ministries, as well as of Regional Development Boards, local government, socioeconomic partners – branch, environmental organisations and other individuals and legal entities covered by the Operational Programme.

The Ordinance must be published on the Ministry of Regional Development and Public Works website to make it accessible to the public. Measures need to be provided to inform the public regularly about the implementation of the Ordinance.

## **5. Adoption of Regional Development Plans.**

**Responsible institution: Ministry of Regional Development and Public Works**

**Deadline: 15 December 2005**

Regional Development Plans have been adopted by Council of Ministers decisions as follows: by Decision No. 1014 dated 30 December 2005, for the Northeastern Planning Region; by Decision No. 1015 dated 30 December 2005, for the South Central Planning Region; by Decision No. 1016 dated 30 December 2005, for the Southwestern Planning Region; by Decision No. 1017 dated December 30 December 2005, for the Northwestern Central Planning Region; by Decision No. 1018 dated 30 December 2005, for the Southeastern Planning Region; and by Decision No. 1019 dated 30 December 2005, for the North Central Planning Region.

**Status: The measure qualifies as implemented.**

The Regional Development Plans take into account the provisions of the National Strategy for Regional Development 2005–2015, regional strategies, and municipal development plans.

**Expected outcome:** The Minister of Regional Development and Public Works is expected to endorse a unified system of indicators for monitoring and evaluation of progress in implementing the Regional Development Plans (RDP), as well as special monitoring and

evaluation indicators for each planning region. By 15 May each year, the Minister must inform the Council of Ministers of the monitoring results for each of the six regional plans. At present, the involvement of the private sector in implementing regional development programmes is limited to co-financing of projects whose final beneficiaries are SMEs. Implementation of the partnership principle is expected to strengthen the capacity for absorption of EU funds.

**Recommendations to guarantee effectiveness of the measure:** We recommend strict observance of the adopted Ordinance on Management, Monitoring, Evaluation and Control to Guarantee Effective Implementation and Information Support of Regional Development Plans. This Ordinance regulates the terms and procedure for the establishment and operation of management, monitoring, evaluation and control systems guaranteeing effective implementation and information support of Regional Development Plans.

We also recommend strengthening the capacity of RDP management, monitoring, evaluation, control and information support systems, which are established and operate on the basis of effective management and division of powers between the managing authorities of Regional Development Plans, the National Operational Programme for Regional Development, and the Investment Programme for Development of Target Regions.

Regional Development Boards should ensure the participation of central and local authorities, organisations, individuals and legal entities in the monitoring process, while observing the principles of partnership, publicity and transparency in RDP implementation.

## **6. Adoption of the Operational Programmes.**

**Responsible institution: Ministry of Regional Development and Public Works, Ministry of Environment and Water, Ministry of Labour and Social Policy, Ministry of Transport, Ministry of Economy and Energy, Ministry of State Administration and Administrative Reform**

**Deadline: 30 December 2005**

At its meeting on 27 December 2005 the Council of Ministers adopted preliminary versions of the Operational Programmes. They were prepared by the ministries responsible for implementing the strategic priorities. In addition to Operational Programmes, national plans for the development of rural regions, fishery and aquacultures are also being drafted. These documents were elaborated following broad discussion with social, economic and regional partners, local government, 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. Even so, many NGOs think that the discussion was insufficiently representative, and that the principles and criteria by which some partners were selected are unclear and non-transparent. There are doubts about transparency in applying the requirements of regulations concerning designation of members of programme implementation Monitoring and Evaluation Committees.

**Status: The measure qualifies as rather implemented.**

Work on approving the ex-ante evaluation of Operational Programmes has begun. The results of this ex-ante evaluation must be made available to the public.

**Expected outcome:** According to the adopted Roadmap, the operational agreements on assignment of functions and delegation of responsibilities between the Managing Authority and Intermediate Bodies for each Operational Programme are expected to be completed by the

end of March. The procedures manuals and guidelines conforming with the new EC regulations are planned to be completed by November 2006, as the European Commission is expected to adopt the new regulations for the next planning period, 2007–2013, by mid-2006. The thus adopted Roadmap raises the unpleasant prospect that municipalities, as beneficiaries and end users of support, will be practically unable to start participating in EU Structural Funds before mid-2007.

**Recommendations to guarantee effectiveness of the measure:** Effective implementation of this measure requires significant efforts in different areas: institution building, administrative and programming capacity, and training. A critical assessment must be made on the basis of detailed information about training conducted to date and planned programmes. There is a need to conduct a training needs assessment for final beneficiaries and to prepare an adequate training programme in conformity with the manuals on Structural and Cohesion Funds. Information and communication campaigns and training seminars must be conducted. The top-priority task is to help municipalities develop feasible and effective projects. An indicative list of ready projects and of projects that will be further developed must be completed by the end of March, and a pipeline of projects applying for funds allocated for 2007 must be ready by the end of September 2006.

## **7. Adoption of the National Development Plan 2007–2013.**

**Responsible institution: Ministry of Finance**

**Deadline: 30 December 2005**

At its meeting on 27 December 2005, the Council of Minister adopted a preliminary version of the National Development Plan for the period 2007–2013. The document was drafted in compliance with the commitments made 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 for narrowing the economic gap between Bulgaria and EU Member States.

**Status: The measure qualifies as rather implemented.**

The ex-ante evaluation of the National Development Plan (NDP) 2007–2013 commenced at the beginning of February 2005; the deadline for its completion has been extended to April 2006.

In line with the proposal for a new General Regulation laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund, the Management of European Union Funds Directorate at the Ministry of Finance, jointly with the Agency for Economic Analysis and Forecasting, drafted a National Strategic Reference Framework (NSRF) which complies with the Community Strategic Guidelines. The draft NSRF has been discussed at National Development Plan working-group level. By the end of February 2006, two public discussions of the NSRF were held. The draft NSRF was reviewed and approved by the National Development Plan Coordinating Council. Its adoption by the Council of Ministers is pending.

**Expected outcome:** The National Strategic Reference Framework is to be agreed with the European Commission. It is expected that after the Commission officially adopts the new

regulations and budget for the next planning period, funding under the Reference Framework will be specified and Bulgaria will start participating in the absorption of EU funds.

**Recommendations to guarantee effectiveness of the measure:** Develop indicators for evaluation of the effectiveness and implementation of the National Development Plan. These indicators must be aligned to the Regional Development Plans and Regional Development Strategies, and implementation must be evaluated on a regular basis with the participation of all stakeholders.

## **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**

By Council of Ministers Decisions Nos. 869, 870 and 871 dated 8 November 2005, the following bills were approved and moved to Parliament for consideration:

- Public Sector Financial Management and Control Bill: passed by Parliament on first reading;
- Public Sector Internal Audit Bill: passed by Parliament on first reading;
- Public Financial Inspection Bill.

The bills are aimed at resolving the problematic aspects of financial management and control, and of internal audit in spending units.

Council of Ministers Decree No. 300 dated 29 December 2005 amended and supplemented the Rules of Organisation of the Ministry of Finance, assigning new functions to the National Fund Directorate and increasing the number of tenured positions in the Directorate by six.

The same Decree established an Audit of EU Funds Directorate, which will serve as a future Auditing Authority.

By a decree to amend and supplement the Rules of Organisation of the Ministry of Finance, reckoned as of September 2005, an Internal Control Directorate was established. The Directorate will serve as a central harmonisation unit with two divisions:

- financial management and control;
- internal audit.

As of now, eight of the Directorate's tenured positions are filled: Director, two department heads and five experts. A competitive procedure has been announced to recruit another five staff member. Development of the administrative capacity of the Internal Control Directorate is monitored mainly under Chapter 28.

### **Status: The measure qualifies as implemented.**

A detailed strategy has been elaborated to ensure enforcement of the relevant legislation. An Internal Control Directorate has been established at the Ministry of Finance and is fully operational as of January 1, 2006. The Directorate has assumed all functions related to coordination, harmonisation and methodology of financial management and control and internal audit.

Internal audit units have been established at the other ministries. The units have been staffed. Units at the regional level will become operational within five months.

By Council of Ministers Decree No. 300 dated 29 December 2005 amending and supplementing the Rules of Organisation of the Ministry of Finance, an Audit of EU Funds Directorate has been established. Its duties include organising and conducting specific audits

and checks of the activity of units managing resources under EU funds and programmes in compliance with the requirements of EC regulations.

Acting in its capacity as Certifying Authority, the National Fund Directorate at the Ministry of Finance has already developed and submitted to Operational Programme Managing Authorities instructions on the requirements concerning financial management systems in compliance with EC Regulations. The remaining manuals, guidelines and procedures (eligibility of expenditure, irregularities, recovery of amounts wrongly paid, etc.) will be developed, approved and submitted to Managing Authorities and Intermediate Bodies by the end of September 2006. This is in line with the timeframe coordinated with the EU competent bodies; the timeframe must cover the new EC legislation which is being deliberated by the Council of the European Union and the European Parliament.

In preparing for an Extended Decentralised Implementation System (EDIS) of the Phare and ISPA programmes, financial management and control systems have been established according to the minimum requirements laid down in Regulation (EC) No. 1260/1999. The systems are being implemented in the units of the designated Managing Authorities and Intermediate Bodies for Stage 3, "Compliance Assessment": they are at the negotiation process for the Phare Programme, and are being implemented for the ISPA Programme.

On 23–24 January 2006, advancement towards EDIS of the ISPA Programme was audited. All recommendations of the auditors will be met in due course.

The Bulgarian authorities will apply for accreditation for EDIS of the ISPA Programme by the end of March 2006, and of the Phare Programme by the end of May.

**Expected outcome:** National rules on eligibility of expenditure from EU Structural and Cohesion Funds are expected to be adopted by the end of September 2006. Until then, procedures for verifying the feasibility of payment claims under each Operational Programme must be set out. Procedures for reporting and monitoring of irregularities and for recovery of sums wrongly paid and development of systems for collecting reliable statistical, financial and monitoring information are due to be set out too. These rules and procedures must provide for participation of civil society representatives in the overall process of monitoring and reporting.

**Recommendations to guarantee effectiveness of the measure:** Internal audit and financial management and control systems in the public sector must be strengthened in conformity with the *acquis*. To that end, it is necessary to expedite the establishment of internal audit units and the preparation of a functional structure and job descriptions of staff. Ensuring timely detection and reporting of irregularities, and preventing fraud to protect EU financial interests is an important precondition.

## **9. Preparation of Organisational Development Strategies for all Managing Authorities.**

**Responsible institution: line Ministers**

**Deadline: 15 November 2005**

Organisational Development Strategies for all Managing Authorities 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 Managing Authorities, enabling them to adapt to changes.

Each strategy includes the following main components: organisational development theory and principles; assessment of the current organisational status; vision, mission and strategic

goals of the Managing Authority; human resource development and training needs assessment; strategy implementation plans; risk assessment.

**Status: The measure qualifies as implemented.**

EC comments and recommendations are currently being expected and the final versions of the strategies will be modified accordingly.

**Expected outcome:** The strategies are medium-term. Considering that the restructuring of Managing Authorities and Intermediate Bodies has not yet been completed, they can be divided into two phases. Phase one focuses on organisational structure, establishment of procedures and staffing to ensure adequate operation as of 1 January 2007. Phase two deals with actual management of the relevant Operational Programme for the entire 2007–2013 programming period.

**Recommendations to guarantee effectiveness of the measure:** Provide detailed information about conducted and planned training; conduct a training needs assessment for final beneficiaries and prepare a training programme; complete manuals on the Structural and Cohesion Funds; conduct information and communication campaigns, and training seminars for final beneficiaries.

We recommend developing cost-effective indicators for monitoring and evaluation of Organisational Development Strategy implementation, and setting out a plan for regular public reporting on outcomes and expenditure.

**10. Elaboration of job descriptions and initiating a competitive procedure for staffing the Programmes and Projects Management Directorate at the Ministry of State Administration and Administrative Reform, designated as Managing Authority of the Administrative Capacity Operational Programme.**

**Responsible institution: Ministry of State Administration and Administrative Reform**

**Deadline: 30 November 2005**

A new Ministry of State Administration and Administrative Reform (MSAAR) has been established to address the need of strengthening administrative capacity and implementing principles of good governance. The Ministry has the following priorities: implementing good governance principles; upgrading and organisational development of public administration; training and development of human resources; developing e-government; improving administrative services; increasing transparency and integrity in public administration.

Upon its establishment in August, the Ministry of State Administration and Administrative Reform was designated as Managing Authority of the Administrative Capacity Operational Programme. By Decree No. 215 dated 12 October 2005, the Council of Ministers designated the Ministry's Programmes and Projects Management Directorate as Managing Authority of the Administrative Capacity Operational Programme. The Directorate is fully staffed. With a view to institution-building and strengthening the capacity of the Managing Authority, the following documents have been elaborated: an organisational development strategy; an organigram of the Managing Authority; job descriptions for the Directorate staff; a training plan for Directorate staff.

Training sessions on various subjects included in the training plan are conducted on a regular basis.

Consultations on the development of an Administrative Capacity Operational Programme were officially launched in July 2005. After the Managing Authority was transferred from the

Ministry of Finance to the Ministry of State Administration and Administrative Reform, a new working group was appointed and started operating in October.

The Council of Ministers approved a preliminary version of the Administrative Capacity Operational Programme together with the National Development Plan and other Operational Programmes on 27 December 2005. The ex-ante evaluation of the Operational Programme is conducted under a Phare project. The project activities have started. The structure and functions of the Monitoring Committee are being designated under Project BG 2005/017-353.11.02 "Strengthening MSAAR Capacity for Administrative Capacity Operational Programme Management" financed under the Phare Programme: Unallocated Institution Building Envelope.

**Status: The measure qualifies as implemented.**

**Expected outcome:** The Ministry of State Administration and Administrative Reform will fulfil its responsible role as Managing Authority of the Administrative Capacity Operational Programme.

**Recommendations to guarantee effectiveness of the measure:** Evaluate the effectiveness of the information system by number of services provided to municipal authorities or citizens on a quarterly basis, and by level of client satisfaction.

#### **11. Regular reporting to the European Commission on the progress in recruitment procedures of the additional expert staff for the structures designated as OP Managing Authorities and Intermediate Bodies.**

**Responsible institution: line Ministers**

**Deadline: continuous**

**Status: The measure qualifies as implemented.**

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.

**Expected outcome:** Ensuring transparency in personnel selection while guaranteeing recruitment of the best experts who will contribute to the successful execution of the responsible tasks of OP Managing Authorities and Intermediate Bodies.

**Recommendations to guarantee effectiveness of the measure:** Introduce a personnel evaluation and motivation system and evaluate employees on an annual basis by specified minimum points; make changes if the evaluation is below the minimum. The evaluation should be conducted not only by the immediate supervisors from the relevant ministries, but also by representatives of partner institutions and organisations.

#### **12. Definition of the functions of the structures designated as Intermediate Bodies for Operational Programmes.**

**Responsible institution: line Ministers**

**Deadline: 30 December 2005**

***Intermediate Bodies for the National Operational Programme for Regional Development:***

As a result of the amendments to the Rules of Organisation of the Ministry of Regional Development and Public Works (MRDPW) made on 5 July 2005, six regional departments of the Programming of Regional Development Directorate General (MRDPW) were established in the centres of the planning (NUTS II) regions: Sofia, Plovdiv, Varna, Bourgas, Rousse and Vidin, each with six positions. By Council of Ministers Decision No. 965 dated 16 December 2005, the departments have been designated as Intermediate Bodies for the Operational Programme for Regional Development.

Following personnel selection procedures conducted in conformity with the Civil Servants Act, twenty-six experts were appointed at the six regional departments in November 2005. At present, a personnel selection procedure for the ten vacant positions is in progress.

By the end of May 2006, another six staff positions in each Intermediate Body will be opened and filled, bringing the total number of experts operating at the regional (NUTS II) level to seventy-two (twelve in each Intermediate Body). The new appointees will be included in the ongoing training programme.

***Intermediate Body for Operational Programme “Competitiveness”: Bulgarian Small and Medium Enterprises Promotion Agency (BSMEPA):***

A procedure for amending the Rules of Organisation of the BSMEPA, initiated in January 2006, provides for the following:

- Establishing an Intermediate Body Department within the BSMEPA; the new department will be created by merging the Pre-accession Projects and Programmes Implementation Department, the Technological Development and Innovations Department, and twenty regional offices of the Agency. It will combine the Agency’s experience as Phare Project Implementation Unit and as Managing Authority of the National Innovation Fund;
- Clear definition of the functions of the Intermediate Body in the Rules of Organisation;
- Increase of the Intermediate Body Department staff to sixty-two (including twenty-eight experts at the regional level).

The amendment became effective on 1 March 2006. The Agency will assign the functions of Final Beneficiary of some of the operations under OP “Competitiveness” to two of its already existing departments.

***Intermediate Body for the Human Resources Development Operational Programme: Employment Agency, Programmes and Pre-accession Funds Department:***

Number of staff by the end of 2006, in conformity with the commitments made under Chapter 21: *Regional Development and Coordination of Structural Instruments:*

- Six experts at central level, and
- Twenty-eight experts at regional (NUTS III) level.

New Rules of Organisation of the Employment Agency have been drafted but have not yet entered into force. They provide for the transformation of the Programmes and Pre-accession Activities Department into a European Funds and International Projects Directorate, which will have three departments: Programmes and Projects, Monitoring and Coordination, and Control and Reporting. The number of expert staff will increase to forty-three, of which fourteen experts at central level and twenty-eight regional coordinators. The new Rules of Organisation are expected to enter into force in April 2006 depending on the relevant procedures. The competitive and selection procedures for experts take approximately one and a half to two months.

***Intermediate Body for the Transport Operational Programme: National Railway Infrastructure Company:***

The establishment of an Intermediate Body is in progress. Following internal restructuring, a Programming of New Projects, Contracts and Monitoring Department, acting as Intermediate Body, will be created within the Strategic Development and Investment Policy Directorate. The Department will have a staff of fifteen. Eight positions have already been filled. The seven vacant positions will be filled by December 2006.

***Intermediate Body for the Transport Operational Programme: Maritime Administration Executive Agency:***

Following internal restructuring, a new department acting as Intermediate Body will be created within the European Integration and International Relations Directorate. The department will have a staff of six. Five positions have been designated. Only one position – for the official in charge of tenders and contracts – is vacant.

***Intermediate Body for the Transport Operational Programme: Road Executive Agency:***

The Road Executive Agency is to be transformed into an independent executive agency that will be registered as a state-owned enterprise according to national legislation and will have a responsible Board of Directors. The Minister of Regional Development and Public Works and the Minister of Transport will be jointly responsible for the appointment of the Executive Director of the state-owned enterprise. The independent agency will be one of the final beneficiaries in the roads sector under the Transport Operational Programme. The transfer of human resources and expertise will be completed within two months.

***Intermediate Body for the Environment Operational Programme:***

In the environment sector, agreement has been reached to establish one Intermediate Body for the Environment Operational Programme at the Ministry of Environment and Water. The agreement was signed by the Minister of Environment and Water and the Minister of Regional Development and Public Works on 23 January 2006. The transfer of the relevant human resources and expertise from the Ministry of Regional Development and Public Works to the Ministry of Environment and Waters will be completed by the end of March 2006.

**Status: The measure qualifies as rather implemented.**

As the available information shows, the establishment of Intermediate Bodies for the Operational Programmes is in progress. The degree of readiness for operation of each Intermediate Body is different. More needs to be done before the measure can qualify as fully implemented.

**Expected outcome:** Ensuring the implementation of EC regulations for successful management of Operational Programmes, preparation and implementation of sound investment projects for absorption of EU funds.

**Recommendations to guarantee effectiveness of the measure:** Take measures to speed up staffing, to guarantee transparency in recruitment of staff, and to conduct targeted and effective personnel training.

**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 European Integration**

**Deadline: 30 October 2005**

In 2005 the Institute of Public Administration and European Integration elaborated four professional development programmes in European Integration: “Preparation for Membership in the EU”; “Absorption of EU Resources”; “European Experience”; “Management Skills.”

**Status: The measure qualifies as implemented.**

**Expected outcome:** Better preparation of the administration at all levels to cope with challenges in the project-management cycle.

**Recommendations to guarantee effectiveness of the measure:** Develop mechanisms to improve training quality and control over participation and effectiveness of acquired knowledge.

**14. Regular reporting to the EU Commission on the training of experts in the OP Managing Authorities and Intermediate Bodies.**

**Responsible institution: line Ministers**

**Deadline: continuous**

**Status: The measure qualifies as implemented.**

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.

**Expected outcome:** Achieving, through information exchange, high-quality and targeted training of stakeholders in the overall process of strengthening administrative capacity of OP Managing Authorities and Intermediate Bodies. This is a precondition for better planning and absorption of EU funds through sound and effective projects.

**Recommendations to guarantee effectiveness of the measure:** Include exchange of information as an element of the integrated information system for monitoring assistance from EU Structural Funds.

**15. Organising discussion of the priorities in draft Operational Programmes with interested public authorities, regional stakeholders, social partners, NGOs and academics.**

**Responsible institution: line Ministers**

**Deadline: 30 October 2005**

In 2004 and 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 14 December 2005 all working groups met for a joint final 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: The measure qualifies as implemented.**

**Expected outcome:** Organising public discussions teaching participants how to conduct a reasoned debate aimed at achieving consensus. This is an important precondition for taking into account the interests of all stakeholders for better formulation of priorities and measures under Operational Programmes. Discussions improve inter-institutional coordination and information exchange.

**Recommendations to guarantee effectiveness of the measure:** Use the structured form of the “Forum” to discuss priorities and activities in implementing Operational Programmes.

#### **16. Organising discussion of the draft National Development Plan 2006 –2013 with stakeholders.**

**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 business, and NGOs – to discuss the National Development Plan of the Republic of Bulgaria, 2007–2013. After three consecutive sessions, on 14 December 2005 the 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).

**Status: The measure qualifies as implemented.**

**Expected outcome:** Organising public forums helps improve the quality of public debate, contributing to the development of civil society and strengthening democratic attitudes and activities. Such forums also help formulate the strategic goals and priorities of the Plan, and ensure public and expert support for the planned activities. The strength of this approach is that it fosters new partnerships and inter-institutional coordination and information exchange. These are preconditions for a higher quality of the Plan and for its successful implementation.

**Recommendations to guarantee effectiveness of the measure:** Use the structured form of the “Forum” to discuss key planning documents in future too.

#### **17. Readiness to submit draft Operational Programmes and the draft National Development Plan 2007–2013 to the European Commission for comments.**

**Responsible institution: line Ministers**

**Deadline: 18 November 2005**

**Status: The measure qualifies as rather implemented.**

It is difficult to assess with certainty the degree of readiness under the different Operational Programmes. Changes are still being made in the institutional structures (Intermediate Bodies), priorities and indicative allocation of funds. There are differences in level of staffing and personnel training. The ex-ante evaluations of the National Plan and the Operational

Programmes have not yet been completed. Coordination of the National Strategic Reference Framework is still in progress.

**Expected outcome:** The National Strategic Reference Framework and the Operational Programmes are expected to be submitted to the European Commission for comments in April, immediately after the Commission publishes its successive Comprehensive Monitoring report.

**Recommendations to guarantee effectiveness of the measure:** Mobilise all resources to overcome the delay and submit well-coordinated planning documents to the Commission.

## **Part II. 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 by the amendments and supplements to the Organic Budget Law: *State Gazette* No. 87 of 1 November 2005; *State Gazette* No. 89 of 8 November 2005; *State Gazette* No. 105 of 29 December 2005.

The Government should ensure an adequate level of co-financing for municipalities in the first three years after accession, until the financial decentralisation system is fully introduced. The Minister of Finance should guarantee that there will be sufficient national budget allocations for co-financing of all projects under Operational Programmes.

The new Concessions Bill and the Bill to Amend and Supplement the Public Procurement Act were approved by the Council of Ministers on 8 December 2005 and have been submitted to Parliament for review. The two acts are expected to be adopted by the end of April 2006 and to enter into force on 1 July 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.

The strategy for restructuring public sector financial control agencies needs to be actively pursued. The Bills addressing these issues – Public Sector Financial Management and Control Bill, Public Sector Internal Audit Bill, and Public Financial Inspection Bill – have been submitted to Parliament by the Council of Ministers and are due to be adopted and submitted to the European Commission.

Efforts are being made to assign the internal audit of line ministries and other units to the best auditors. By Decision No. 988 dated 27 December 2005, the Council of Ministers has designated the National Fund Directorate at the Ministry of Finance as Paying Authority – future Certifying Authority responsible for receiving payments from the Commission.

The Council of Ministers has adopted a decision (Decision No. 965 dated 16 December 2005) designating the Central Coordination Unit, the Operational Programmes Managing Authorities and Intermediate 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. The Managing Authorities are authorised to designate, by 30 September 2006, other Intermediate Bodies according to the priorities of each Operational Programme.

By June 2006, municipal units are to be reorganised for participation in EU programmes and projects, and associations of municipalities are to be set up. By the end of 2006, training seminars and discussion forums will be organised to strengthen municipal capacity for management and implementation of projects financed under EU Structural Instruments, including on public procurement issues. A timetable is being drawn up for planned recruitment of staff for the Central Coordination Unit, Operational Programmes Managing Authorities and Intermediate Bodies, internal control units, the Certifying Authority and the Auditing Authority.

By June 2005, an attractive remuneration system will be introduced for experts in these units. By a decision dated 2 February 2006, the Council of Ministers adopted an Ordinance on Management, Monitoring, Evaluation and Control to Guarantee Effective Implementation and Information Support of the National Operational Programme for Regional Development. The Ordinance was adopted in pursuance of Article 32 of the Regional Development Act.

### **Planning and Programming Documents**

By Decisions Nos. 1014, 1015, 1016, 1017, 1018 and 1019 dated 30 December 2005, the Government approved the development plans of the six planning regions, which cover the period from Bulgaria's accession to 2013. They define the medium-term vision and priorities of regional policy in the next few years. The six regional plans take into account the provisions of the National Development Plan, National Strategy for Regional Development 2005–2015, the regional strategies, the municipal development plans and the financial framework of the National Operational Programme for Regional Development.

The Minister of Regional Development and Public Works is to elaborate a unified system of indicators for monitoring and evaluation of progress in implementing the Regional Development Plans, as well as special monitoring and evaluation indicators for each planning region.

By Minutes of Proceedings No. 55, Council of Ministers Meeting on 27 December 2005, the Government adopted preliminary versions of the National Development Plan and Operational Programmes covering the period 2007–2013 as a basis for negotiations with the European Commission.

Work on approving the ex-ante evaluations of Operational Programmes began in February 2006.

The ex-ante evaluation of the National Development Plan 2007–2013 commenced at the beginning of February 2005; the completion deadline has been extended to the end of April 2006. More work needs to be done on the National Plan and the Operational Programmes to ensure that they will 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 Managing Authorities have been developed and e-mailed to the Regional Policy Directorate-General and the Enlargement Directorate-General

of the EC. Commission comments and recommendations are currently being expected and the final versions of the strategies will be modified accordingly.

Amendments have been introduced into the Rules of Organisation of line ministries in which Managing Authorities of Operational Programmes have been structured. Regular information needs to be provided to the European Commission on the progress of competitive procedures for recruitment of additional staff for structures designated as Managing Authorities or Intermediate Bodies for Operational Programmes. The functions of units designated to act as Intermediate Bodies for Operational Programmes are being defined and finalised.

The European Commission is regularly informed of the training of experts working in structures designated to act as Managing Authorities or Intermediate Bodies for Operational Programmes.

### **Partnership**

Discussions have been organised with stakeholders on the priorities in the draft Operational Programmes and the draft National Development Plan 2006–2013.

### **What Needs to Be Done in 2006**

A Roadmap for the final stage of Bulgaria's preparation for accession under Chapter 21: *Regional Development and Coordination of Structural Instruments* has been adopted. This document reflects recent progress in fulfilment of commitments made during the mission of Mr. Jean-Charles Leygues, Deputy Director General, European Commission DG Regional Policy, conducted in Sofia on 10 January 2006. The Roadmap reflects progress in the identified areas of serious concern, and sets out a to-do-list. The deadlines set in the timetable are in accordance with the commitments made during negotiations on Chapter 21.

The Roadmap includes the following activities:

- Strengthening administrative capacity
  - o Institutional framework
  - o Effective coordination
- Multi-annual budget programming
- Strengthening the financial management and control system
- Audit
  - o External audit
  - o Checking payment claims
  - o Internal audit
  - o Accreditation for the Extended Decentralised Implementation System;
- Public procurement
- Pipeline of projects
- Recruitment of staff
- Timetable for activities

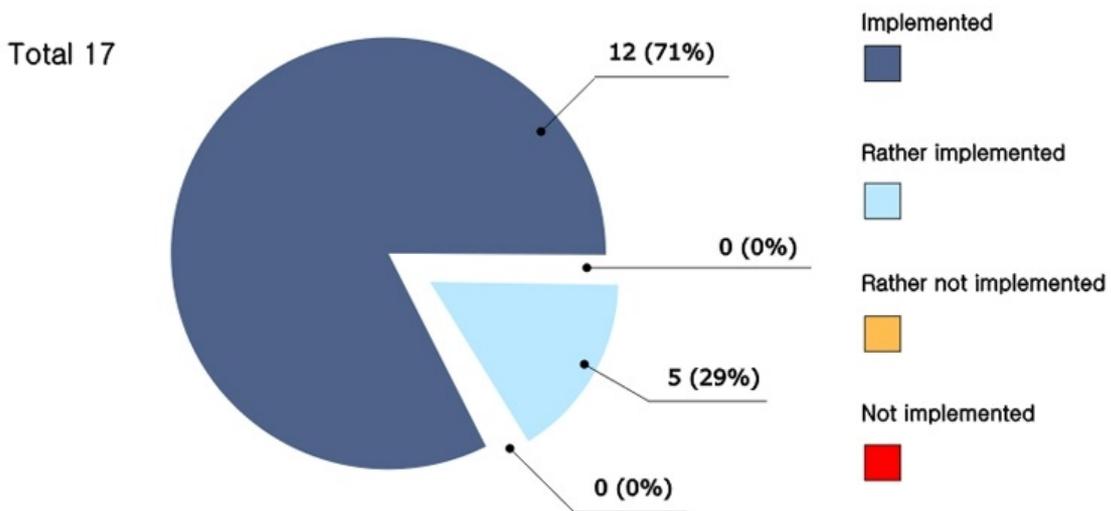
### **Conclusion**

As of today (15 March 2006) twelve of the measures planned by the Bulgarian Government can be treated as fully implemented and five as rather implemented (Figure 4). It must be noted, however, that there is already some delay in actions specified in the Roadmap timetable that should have been completed by the end of February 2006.

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

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Therefore, it could be concluded that **the critical minimum of progress has been reached in the area of Regional policy which guarantees that this area no longer gives cause for “serious concern” and should not pose an obstacle to Bulgaria's full membership of the EU as from 1 January 2007.**

## CHAPTER 24: JUSTICE AND HOME AFFAIRS

Justice and Home Affairs is one of the most criticised areas in the EC Comprehensive Monitoring Report, both in the section on “Political Criteria” and on Negotiating Chapter 24. The fact that this area is addressed in two critical sections of the Report once again confirms the key role of the law enforcement and judicial systems in guaranteeing the rule of law, legal order, the safety and security of citizens and economic development.

The to-do-list adopted by the Bulgarian Government to ensure fulfilment of commitments under Chapter 24: *Justice and Home Affairs* aims at overcoming delays identified in these two sections. Hence, the list includes measures that vary significantly in terms of scope, nature, degree of specification, and importance. The number of involved institutions alone (thirteen) validates the complexity and comprehensiveness of the proposed thirty-two measures.

### **Part I. Review and Evaluation of Progress in Implementing Planned Measures**

#### **1. Initiating 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 submitted to the Records Office of the National Assembly on 22 December, having been signed by 107 MPs. It has been passed on first and second readings. The third reading is pending; according to MPs working on the amendments, it will take place at the end of March. In purely formal terms, the measure can be treated as implemented since the Constitution will have been revised by the beginning of April.

**Status: Measure implemented.**

**Expected outcome:** The constitutional amendments regulate several areas of public relations, providing for the following:

- criminal liability of MPs for all criminal offences at public law;
- a new removal procedure for the Prosecutor General and the presidents of the Supreme Court of Cassation and the Supreme Administrative Court;
- submission of annual reports by the chief administrators of judicial authorities to Parliament;
- new powers of the Minister of Justice, including the power to propose the draft budget of the judiciary and to oversee the work of magistrates in instituting, conducting and closing proceedings;
- constitutional regulation of the Ombudsman institution; the Ombudsman is granted the power to refer complaints from physical and legal persons to the Constitutional Court.

The new powers provided by the Bill to the Minister of Justice restore the necessary balance between the executive branch of government and the Supreme Judicial Council. However some of them, such as the power to propose the budget of the judiciary and to take part in organising the training of magistrates, can upset the system and have aroused serious objections on the part of the institutions concerned. Other amendments, such as the power of the Ombudsman to refer complaints to the Constitutional Court, are a positive step as they will fill the gap in the Bulgarian Constitution with regard to protection of human rights and will help improve their defence. On the whole, the constitutional amendments are a move forward but they do not resolve the main problems of the judiciary, associated with accountability and oversight of the prosecuting authorities.

**Recommendations to guarantee effectiveness of the measure:** One of the main flaws of the present amendments is the equal treatment of the Prosecutor General and the presidents of the supreme courts. These institutions have different powers and should therefore be subject to a different procedure for removal from office. Furthermore, removal of the presidents of the supreme courts by Parliament prejudices the principle of independence of the judiciary. Having huge powers and sole authority to institute criminal proceedings, the Prosecutor General is the only institution that must be subject to political oversight, therefore only the Prosecutor General should be removable by Parliament.

**2. Drafting and submission to the National Assembly, through the Council of Ministers, of 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 allowing the National Institute for Justice to defend its budget before the Supreme Judicial Council.**  
**Responsible institution: Council of Ministers and Ministry of Justice in coordination with the Supreme Judicial Council**  
**Deadline: December 2005**

The Bill to Amend and Supplement the Judiciary Act was approved by the Council of Ministers and submitted to Parliament on 29 December 2005, but has not yet been assigned to the relevant Parliamentary Standing Committee. MPs from Coalition for Bulgaria and the Simeon II National Movement are drafting another bill to amend and supplement the Judiciary Act, which addresses the random assignment of cases and disciplinary violations of magistrates. This bill was moved to Parliament on 16 March 2006. Both bills are due to be reviewed by the Parliamentary Committee on Legal Affairs. Given the wording of the measure, which limits its scope only to drafting and submitting a bill, it can be presumed that the measure qualifies as rather implemented. This presumption, however, rests solely upon formal indicators because the submission of a bill in itself is not sufficient. The measure ought to qualify as fully implemented only when the relevant amending act is adopted and enters into force.

**Status: Measure rather implemented.**

**Expected outcome:** The Bill to Amend and Supplement the Judiciary Act codifies the recommendations of the European Commission and peer reviews under Chapter 24: *Justice and Home Affairs*. The main changes involve the introduction of a competitive procedure even for initial appointment in the judiciary. The provisions concerning initial and continuous

training, which is conducted by the National Institute for Justice, have been improved. The Bill also extends the term of compulsory judicial internship required for attainment of licensed competence to practice law.

On the whole, the measure is designed to transpose European standards on the professional qualification of magistrates.

The amendments to the Judiciary Act are in conformity with the priorities of the judicial reform in Bulgaria.

**Recommendations to guarantee effectiveness of the measure:** The successful implementation of the measure depends primarily on the effective enforcement of the envisaged amendments. The amendments to the Judiciary Act are an adequate tool to avoid nepotistic appointments in the judicial system, such as those that have recently caused serious media interest and discontent in the legal community.

Meanwhile, a working group has been created to draft an entirely new Judiciary Act, which is expected to be adopted at the beginning of 2007.

### **3. Developing and adopting comprehensive criteria to monitor the enforcement of the Code of Criminal Procedure 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 Interior in coordination with the Supreme Judicial Council**

**Deadline: January 2006**

Comprehensive criteria to monitor the enforcement of the Code of Criminal Procedure have been elaborated by an inter-institutional working group representing the Ministry of Justice, the Ministry of Interior, magistrates and foreign experts. The criteria were approved by the Supreme Judicial Council on 8 February 2006. The Council of Ministers took notice of the criteria by a Decision dated 23 February 2006.

**Status: Measure implemented.**

**Expected outcome:** The set of indicators (criteria) elaborated to monitor the enforcement of the Code of Criminal Procedure is very detailed and covers in depth most aspects of criminal procedure. Monitoring enforcement by collecting and analysing the relevant information would make it possible to base criminal justice management on objective facts. Practical application of the comprehensive criteria can be expected to have at least three significant outcomes:

- Firstly, it would **rationalise management** of institutions and resources involved in the administration of criminal justice.
- Secondly, having detailed and timely information would make it possible to **conduct a targeted criminal justice policy** in the areas of greatest public, economic and social interest. Analysis of the enforcement of the Code will provide the information necessary to improve lawmaking in the area of criminal justice.
- Thirdly, monitoring based on the criteria in question would make the entire criminal justice system **more transparent and accountable**, provided that there is a will to share findings with the professional community, the media, NGOs and all other stakeholders.

**Recommendations to guarantee effectiveness of the measure:** Monitoring the enforcement of the Code of Criminal Procedure based on the elaborated set of criteria is impossible without an adequate automated information system. Collecting and analysis information on the basis of these criteria requires integrating data from the police, the investigating and the prosecuting authorities, the courts and the Ministry of Justice. The problems existing in the information systems of each of those institutions **raise questions as to whether such monitoring is possible in practice.** The still partly operational Unified Information System for Combating Crime should be the main source of information in monitoring enforcement of the Code of Criminal Procedure based on the comprehensive criteria. This requires detailed analysis of the Information System with regard to its compliance with the criteria. Next, efforts should be made to standardise terms in the information systems of the data-collecting and data-providing institutions in order to avoid the conceptual inconsistencies that can be found at present.

To be effective, this measure requires also precise definition of powers with respect to monitoring. Considering that monitoring the enforcement of the Code of Criminal Procedure involves many institutions, it is necessary to **define the relevant rights and obligations, as well as time progress.**

The comprehensive criteria largely aim to increase transparency in criminal proceedings and in the functioning of the institutions involved. This requires that the aggregate information about the different criteria be made public and available in real time. To guarantee effectiveness of the measure, it is also necessary to provide arrangements for the participation of independent organisations in auditing the reliability and validity of the collected data. This is the only way to increase public confidence in the criminal justice system and to base its management on real and actual data.

Measuring the effectiveness and efficiency of the enforcement of the new Code of Criminal Procedure also requires comparison with the former Code (from 1974). Having historical data would be useful in objectively identifying the impact of the statutory changes and would allow more comprehensive analysis of their enforcement. To that end, one may recommend a study of the formulated criteria in the 1974 Code of Criminal Procedure and their comparison with data about the enforcement of the new Code.

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

**Responsible institution: Ministry of Justice in coordination with the Supreme Judicial Council and the Prosecutor General**

**Deadline: November 2005**

An inter-institutional working group has been established. The group has written to all appellate prosecution offices and their subordinate units, asking them to give their opinion on the issue. However, the fact that only one appellate prosecution office has responded to date shows a lack of commitment to the ongoing judicial reform. Meanwhile the prosecution offices of ten EU Member States have been contacted to study international practice and experience. More than half have sent replies which, however, are rather abstract in content.

The working group is proposing concrete changes in the Judiciary Act and the new Code of Administrative Procedure. Some of its recommendations have already been implemented:

Rules of Organisation and Procedure of the prosecution administration have already been adopted.

**Status: Measure implemented.**

**Expected outcome:** The proposals of the working group will be included in the new Judiciary Bill and Draft Code of Administrative Procedure. The Draft Code has enshrined the principle of compulsory involvement of a prosecutor only in proceedings on appeals and protests against adopted statutory acts. With regard to the Judiciary Bill, several changes are envisaged: revocation of the obligation of prosecutors to interfere in urgent cases involving contested that rights have been violated by arbitrary forcible assertion; introduction of higher-instance review in the prosecution office; establishment of the institution of prosecutor's assistant.

**Recommendations to guarantee effectiveness of the measure:** The measure is aimed at improving the performance of prosecutors in executing their main functions. The results of the work of the expert group show that its recommendations are in line with fundamental European standards and that their inclusion in Bulgarian legislation will only optimise the performance of the prosecution institution.

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

**Responsible institution: Ministry of Justice and National Institute for Justice**

**Deadline: November 2005**

The training of magistrates is carried out under a Phare project on improving criminal and civil procedures, which includes the component "Training of magistrates and court administration in accordance with the new Code of Criminal Procedure". Training is to be completed prior to the entry into force of the new Code and to be carried out using the training-of-trainers method. It is provided in close cooperation with the National Institute for Justice based on a concept, a concrete training programme, and a specially developed training kit. Approximately seven hundred judges, prosecutors and investigating magistrates 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 legislation in the area of criminal procedure. 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 being prepared in cooperation with the National Institute for Justice.

**Status: Measure implemented.**

**Expected outcome:** About eight training seminars for magistrates will be completed by the end of March. Approximately three hundred judges, investigating magistrates and prosecutors from all twenty-eight judicial districts in Bulgaria have been trained to date. Training seminars for trainers are also being conducted. By the end of April, some sixty magistrates are expected to have been trained as trainers for the new Code of Criminal Procedure.

**Recommendations to guarantee effectiveness of the measure:** The measure is adequate and addresses a genuine need of upgrading the professional qualification of magistrates. This type of training is commonly provided under projects financed by foreign donors and is limited to the period covered by the relevant project. However, there is a need also of continuous training in specific areas in which Bulgaria is lagging behind – such as combat of organised crime and corruption – as well as ad hoc training.

**6. Assessing the implementation of the Strategy for Reform in the Bulgarian Judicial System and updating the Programme for Implementing the Strategy for Reform in the Bulgarian Judicial System for 2006–2007 in accordance with recommendations made over the last three years.**

**Responsible institution: Council of Ministers and Ministry of Justice in coordination with the Supreme Judicial Council**

**Deadline: December 2005**

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. The Programme was coordinated and approved by the Supreme Judicial Council on 11 January 2006. It was approved by the Council of Ministers on 2 February 2006. The report on the implementation of the Strategy by the end of 2005 was likewise approved by the Council of Ministers.

**Status: Measure implemented.**

**Expected outcome:** The Programme for Implementing the Strategy for Reform in the Bulgarian Judicial System for 2006–2007 sets out priorities for the development of judicial reform in the period immediately prior to and after Bulgaria's accession to the EU, providing concrete measures and legislative changes. The short-term priorities identified in the Programme include the adoption by the end of 2006 of the new Code of Administrative Procedure, a new Code of Civil Procedure, a Commercial Register Act, and a new Judiciary Act. The priorities to be implemented by the end of 2007 include creating a Central Register of Legal Entities, and introducing e-Justice and a Unified Information System for Combating Crime.

**Recommendations to guarantee effectiveness of the measure:** A significant part of the key priorities in the Strategy for Reform in the Bulgarian Judicial System and the Programme for Implementing the Strategy by the end of 2005 have been achieved. Progress is monitored by the European Commission, which by the end of 2005 was sent four reports on Strategy implementation. The Programme for 2006–2007 has taken into account the recommendations of European experts and is a continuation of activities launched earlier. The measures set out in the Strategy and Programme comply with European standards and ensure Bulgaria's full-fledged and worthy participation in the EU.

**7. Adoption of a Ministry of Interior Act regulating the criminal police and introducing a new career development mechanism.**

**Deadline: December 2005**

The Ministry of Interior Act was adopted on 9 February 2006 and will enter into force on 1 May 2006.

**Status: Measure implemented.**

**Expected outcome:** The Act provides for a new organisational structure of the Ministry of Interior, establishing three national services: Security, Police, and Fire Safety and Civil Protection. The main reform consists in the incorporation into the National Police Service of the National Service for Combating Organised Crime, National Border Police Service, National Gendarmerie Service, Migration Directorate, Counterterrorism Commando Unit, and Bulgarian National Central Bureau of Interpol. The National Police Service comprises the General Police Directorate and Regional Police Directorates. Further details of the structure of the General Police Directorate are specified by the Implementing Regulations for the Act.

The Act provides for civilianisation of Interior Ministry staff and introduces merit-based career service. A particularly positive step is the introduction of competition-based recruitment and promotion of staff, equal opportunities for career development and non-discrimination. Civilianisation and introduction of competition-based recruitment and merit-based career advancement schemes can be expected to lead to higher motivation of staff, recruitment of qualified staff and higher readiness for decision-making at different levels of management.

An especially positive development since the publication of the Open Society Institute's Interim Report on implementation of commitments is the introduction into the Ministry of Interior Act of provisions regulating the legal status of police investigating officers within the Ministry system and guaranteeing their independence in conducting investigations and submitting opinions within criminal proceedings. Other provisions are designed to regulate the balance of subordination of police investigators to their superior officers and to the prosecutor in charge of the investigation. If these provisions are applied in practice, one could expect a positive development of police investigation units (it is assumed that the term "*criminal police*" from the measure title refers precisely to this staff category).

**Recommendations to guarantee effectiveness of the measure:** The new Ministry of Interior Act aims at radical reorganisation of the Ministry's large and complex system. Firstly, this requires extensive secondary legislation whose issuance is within the competence of the Minister of Interior. A broad public discussion and consultation on the required pieces of secondary legislation would demonstrate a will for openness and transparency, guaranteeing civilian control of the Ministry of Interior. Secondly, civilianisation is a large-scale organisational reform requiring a change in organisational culture, in initial and continuous training, in performance appraisal criteria at the Ministry. Hence replacing military titles and ranks by civilian civil-service categories is only the beginning of the reform. Effective exercise of civilian control over the Ministry of Interior is of key importance in this process, therefore it is all the more surprising that Article 2 (2) of the Ministry of Interior Act confuses civilian with institutional control. Positive mention must be made of the power granted to the Parliamentary Standing Committee to exercise control over the Ministry's automated databases. This also requires developing the capacity of the Committee for exercising effective control.

The introduction of merit-based career service requires developing an adequate procedural and material framework for conducting competitions for appointment. The Interior Ministry needs to develop an adequate capacity in this area, especially in appraising performance of

individual staff members and units, encouraging achievement and constant analysis of the degree of realisation of the Ministry's goals in crime prevention, detection and investigation. The philosophy of the new Act also presupposes conducting targeted policies promoting transparency and accountability of resources and their allocation within the system and in the processes of transforming resources into results. Special priority should be given to provision of unbiased and accurate information to the public about the results of Ministry activities.

**8. Issuing a proposal to the Supreme Judicial Council for reappointing investigating magistrates to prosecutor positions, submitted by the Minister of Justice on behalf of the Council of Ministers.**

**Responsible institution: Council of Ministers and Ministry of Justice**

**Deadline: November 2005**

In November the Council of Ministers assigned the Minister of Justice to submit to the Supreme Judicial Council a proposal for reappointing investigating magistrates to prosecutor positions. The proposal was submitted to the Supreme Judicial Council, which however refused to consider it with the argument that reappointment proposals have not been discussed by the Proposals and Attestation Commission. At its meeting on 14 December 2005, the Supreme Judicial Council decided to postpone the consideration of submitted proposals for opening new positions in the Prosecution Office of the Republic of Bulgaria and reappointing investigating magistrates to prosecutor positions. The proposal was deliberated on 11 January 2006. Out of sixty-eight investigating magistrates proposed for reappointments, sixty-three were appointed to prosecutor positions. Two were refused appointment on the grounds that they were currently under investigation. Another three had meanwhile resigned and declined reappointment. At its subsequent meetings, the Supreme Judicial Council continued reappointing investigating magistrates to prosecutor positions, downsizing the relevant investigative service and upsizing the prosecution office. To date, approximately 160 investigating magistrates have been reappointed to court positions and nearly 300 to prosecutor positions. This process is planned to end by May 2006.

**Status: Measure implemented.**

**Expected outcome:** Despite the initial reluctance of investigating magistrates to be reappointed to prosecutor positions, the parties concerned are now inclined to see this measure as adequate. The need for reappointments arose following the adoption of the new Code of Criminal Procedure and the takeover of almost 95 per cent of investigative proceedings by police investigators. The approach to the implementation of this measure can be qualified as satisfactory, considering that a special working group has been set up under the Supreme Judicial Council to analyse the situation and propose relevant concrete measures. As a result, pre-existing cases are being analysed to determine what percentage of the investigating magistrates could be reappointed and what effects and impacts this is likely to have on the system.

**Recommendations to guarantee effectiveness of the measure:** Reappointments should be carried out in accordance with the needs of the investigative services. In practice, almost 60 per cent of the investigating magistrates are to be relocated in 2005, which would result in an excessive workload for investigative services and delays in pre-trial proceedings. To avoid this, it has been decided that investigating magistrates reappointed to prosecutor positions will continue working on the cases they were in charge of prior to relocation.

## **9. Adoption of a Code of Administrative Procedure.**

**Deadline: December 2005**

The draft Code of Administrative Procedure has been passed on first reading. Second reading in the Parliament began in mid-December and is nearing completion. As of 15 March 2006, the conclusive plenary debate has reached Article 200, which means that approximately one third of the entire Code has been passed.

**Status: Measure rather implemented.**

**Expected outcome:** The draft Code of Administrative Procedure is one of the statutory acts whose adoption has been greatly delayed. It was expected to be adopted by the previous Parliament, but was moved too late and was therefore left to the present one. The draft Code of Administrative Procedure signals great progress for the Bulgarian system of administration of justice because it is the first bill to regulate comprehensively the relations between natural and legal persons, and the administration. The range of acts that are unappealable is narrowed. The Code provides for the establishment of regional administrative courts that will review cases at first instance.

**Recommendations to guarantee effectiveness of the measure:** The pending adoption of the Code of Administrative Procedure will undoubtedly place Bulgaria among the countries with an advanced system of administration of justice. It addresses the widely recognised need to improve access of citizens to the administration, raise quality of work in the area of administrative justice, and exercise effective control over the administration. This new statutory act is designed to provide to citizens better and simpler access to administrative structures, more reliable protection of their rights in dealing with the administration, and a more effective and speedy procedure for upholding their rights. The envisaged regional administrative courts will relieve the Supreme Administrative Court of first-instance cases, which ought to significantly facilitate the access of citizens to justice. Improving the effectiveness and quality of administrative justice requires also high professional qualification and specialisation of judges.

## **10. Drafting and submitting a new Code of Civil Procedure to the Council of Ministers for consideration.**

**Responsible institution: Ministry of Justice**

**Deadline: 31 March 2006**

As of 15 March 2006, the deadline is sixteen days away. The draft Code of Civil Procedure is being prepared by a working group under a twinning project carried out in cooperation 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 March 2006. A Legislative Concept of Civil Procedure identifying key priorities was elaborated in September 2005. A national conference held in Sofia on 27 February 2006, brought together a wide range of Bulgarian experts to discuss the key provisions of the future Code of Civil Procedure. The opinions and recommendations given at the conference are being considered by the working group and will be included in the draft.

**Status:** Considering the progress made to date, the **measure can be treated as implemented**. At the time of writing this Report, it appears that the deadline for submitting the Code to the Council of Ministers would not be strictly met, but the short delay would not significantly affect the adoption of the Code of Civil Procedure and its entry into force as of 1 January 2007.

**Expected outcome:** The draft Code of Civil Procedure must be submitted by the Council of Ministers to Parliament and duly considered, adopted, and enforced at the beginning of 2007. The Code is expected to improve legal certainty and business environment by expediting the delivery of civil justice. The draft Code provides for a series of institutions designed to expedite proceedings by increasing the role of first-instance court of civil cases, introducing writ proceedings for several categories of cases, limiting the range of cases that can be appealed to the Supreme Court of cassation, optimising the summoning and notification system, etc. However, the power and obligation of the court to act on its own motion in civil proceedings has raised serious concern in the legal community. In the recent past, the extensive power of the court to act on its own motion led to numerous appeals of rulings on grounds of claimed violation of rights.

**Recommendations to guarantee effectiveness of the measure:** To achieve the goal of the measure – increasing legal certainty and predictability by improving administration of civil justice – the texts of the Code need to be subjected to wide and in-depth debate. The existence of political will to prioritise civil procedure will be of significant importance at the stage of coordination of the draft Code and its consideration and vote in Parliament. Following adoption, the judicial and executive authorities will need to make purposive efforts to apply the provisions of the Code so as to expedite the administration of civil justice without impairing access to justice and the other legal rights of persons.

Ensuring adequate resourcing of the judicial system is crucial for the successful enforcement of the new Code of Criminal Procedure. Providing premises, employing a sufficient number of judges, clerks, summons servants, etc., as well as ensuring that they are adequately trained and motivated, will be of significant importance in expediting proceedings. As in administration of criminal justice, well-functioning information systems in all units – such as courts, registry services, cadastre, executive judge’s offices, notaries public – are key to optimising civil procedure. Similarly to the Code of Criminal Procedure, one can recommend developing comprehensive criteria to monitor enforcement of the Code of Civil Procedure to ensure timely identification and remedying of problems.

**11. Creating 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. Developing a concept for creating a unified data collection system to serve as a judicial system management tool.**

**Responsible institution: Ministry of Justice**

**Deadline: December 2005**

Software products for the above-mentioned four systems have been developed and are being introduced at a different pace. The Supreme Judicial Council has accepted<sup>7</sup> the Ministry of Justice proposal for approving the software and has endorsed a schedule for its installation in

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<sup>7</sup> See Minutes of Proceedings, Supreme Judicial Council Meeting on 4 November 2005.

courts. Pilot testing of the documentation and workload management system began on 15 February 2006. Five courts have been designated<sup>8</sup> to pilot-test the court case management system. At the time of writing this Report, the officials who will work with the two systems are being selected and are due to be trained.

The necessary hardware has been purchased and delivered.

A concept for creating a “unified data collection system to serve as a judicial system management tool” is under development.

**Status: Measure rather not implemented.** Although hardware has been supplied and some software products have been designed and installed, the systems are not operational yet.

**Expected outcome:** The measure is adequate. Introducing information technology is a key component of the reform of the Bulgarian judicial system. It will improve control and management of the judicial system, providing quick and reliable access to accurate information about progress on individual cases as well as statistics on the overall operation of the system. It will also expedite movement of cases through the system and improve access of citizens and parties concerned to relevant documents. Services to citizens will become quicker and better, increasing public confidence in the judicial system. Not least, introducing information technology will eliminate possibilities for corruption involving “loss” of complete case files or individual documents and irregularities in assigning cases for adjudication.

**Recommendations to guarantee effectiveness of the measure:** The relevant strategic plans (the Strategy for Reform in the Bulgarian Judicial System and the Information Strategy for Judicial Authorities in the Republic of Bulgaria) must become effective tools of judicial reform.

Implementation of the Strategy for Reform in the Bulgarian Judicial System should be assigned to a special administrative unit within the Ministry of Justice working in partnership with the Supreme Judicial Council.

Progress in implementing the strategies must be reported on a regular basis. The reports should contain not only a list of conducted activities but also analysis of results achieved and problems encountered in the implementation process, as well as alternative possibilities and concrete proposals for their solution. In the short term, this recommendation applies mainly to reporting progress on the Phare 2002 project and the implementation of the Information Strategy.

At the same time, the process of recruiting and training human resources should be completed: system administrators should be appointed at all courts, and the officials who will work with the relevant information systems should be designated and duly trained.

## **12. Creating a special body (a Council and a Bureau) under the Law on the Protection of Persons Endangered in Criminal Proceedings], as well as under the provisions of its Implementing Regulations.**

**Responsible institution: Ministry of Justice**

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<sup>8</sup> See Minutes of Proceedings, Supreme Judicial Council Meeting on 1 February 2006.

**Deadline: November 2005**

The Law on the Protection of Persons Endangered in Criminal Proceedings stipulates the establishment of a Council for Protection of Endangered Persons and a Bureau for Protection of Endangered Persons. The composition of the Council is provided for by law and the Council may be considered effectively established upon entry into force of the Law. According to Article 14 of the Law, a special Bureau for Protection of Endangered Persons must be established at the Ministry of Justice. On 1 January 2006 a new staffing schedule became effective at the Ministry of Justice. The schedule provides for the creation of a new unit within the Security Directorate General: the Magistrate and Witness Protection Section, with the necessary structure and human resources to act as a Bureau for Protection of Endangered Persons. The establishment of this unit as a special independent division, as stipulated in Article 9 (1) of the Implementing Regulations for the Law, required an amendment to Ordinance No. 1, dated 30 January 2003, on the Structure, Organisation, and Activity of Judicial Security Service. At its meeting on 11 January 2006, the Supreme Judicial Council approved the proposed amendments to the Ordinance, which the Ministry of Justice had submitted for coordination.

The Bureau for Protection of Endangered Persons has thirty tenured positions (twenty-one sergeants and nine officers) in the territorial security units located in the regions of appellate courts. At the beginning of January 2006, the Ministry of Justice reported that three persons were being given protection. A total BGN 260,000 have been allocated for the witness protection programme in 2006.

**Status: Measure implemented.**

**Expected outcome:** The creation of a Council and Bureau for Protection of Endangered Persons is a precondition for the effective application of the Law on the Protection of Persons Endangered in Criminal Proceedings and its Implementing Regulations. Establishing a special organisational structure, developing capacity for witness protection and ensuring adequate funding are crucial in this respect. The measure is expected to improve the effectiveness of criminal proceedings by guaranteeing the security of persons who can offer evidence, explanations or information about grave premeditated crimes or crimes committed on the orders of or by organised crime groups. In addition to applying the Forfeiture of Criminal Assets Act, offering witness protection must be part of a unified policy on countering heavy and organised crime.

**Recommendations to guarantee effectiveness of the measure:** The Council and the Bureau should co-operate with criminal justice authorities and the Ministry of Interior both with the aim of guaranteeing real protection of individuals covered by the Law on the Protection of Persons Endangered in Criminal Proceedings, and in the context of the general objective of countering heavy and organised crime. In addition, the possibility for inclusion in the witness protection programme must be popularised among persons covered by Article 15 (1, 2) of the Law.

**13. Preparation for introduction of a random case assignment system in courts.****Responsible institution: Ministry of Justice****Deadline: January 2006**

The Regulations on Court Administration in Regional, District, Military and Appellate Courts, issued by the Minister of Justice and promulgated in *State Gazette* No. 95 of 26 October 2004, stipulate that presiding judges must be designated by “random selection”. The administration of the Supreme Judicial Council has developed a software application for random selection of reporting judges and random case assignment. The application was approved by a Supreme Judicial Council Decision dated 21 September 2005, which advises courts to implement the software product. By the end of March 2006 the efficiency of already implemented products should be reviewed to proceed with standardisation. According to the Ministry of Justice, feedback on the efficiency of the software will be provided by courts in their first-quarter reports.

This measure is required because of the lack of a unified documentation management system. The random case assignment module should be an element of a comprehensive, integrated case management system. Although such a software application is reported to have been installed in 124 courts across Bulgaria (see Measure 11), the monitoring has found that the case management system is rarely used owing to lack of training in software operation.

Information from courts shows that some use a module of their own documentation management system to ensure random assignment, others have implemented the Supreme Judicial Council application, and still others do not practice random assignment at all. Opinions vary on the application designed by the Supreme Judicial Council.

**Status:** Defined as “*preparation for introduction*”, the **measure is implemented**.

**Expected outcome:** Random case assignment is designed to limit possibilities for unlawful influence on the progress and outcome of court proceedings through manipulative assignment of cases to individual judges and panels. To that end, the measure should have been formulated as “*introduction of a random case assignment*” rather than “*preparation for introduction of a random case assignment system*”. The software designed by the Supreme Judicial Council is a temporary solution that cannot serve as a substitute for the much-needed integrated case management application, of which random case assignment is an essential module. That is why the outcome of this measure depends on the implementation of Measure 11. The measure can be truly effective only when random case assignment becomes part of a comprehensive process of collection and analysis of information about the workload and specialisation of judges and panels.

**Recommendations to guarantee effectiveness of the measure:** To introduce random case assignment, it is necessary to have an installed and fully operational case management system. Upon introducing a random assignment application, one needs to analyse the differences in court workloads. In smaller courts, random assignment of different types of cases might prove impossible owing to a shortage of judges or panels specialised in the relevant area. Conversely, in larger courts there are more possibilities for randomisation.

**14. Production of a report on the implementation of specific measures stipulated in the Schengen Action Plan. Based on report findings, updating of the Schengen Action Plan for 2006–2007 and adoption of the updated version by the Council of Ministers. Submission of the report and the Schengen Action Plan to the European Commission.**

**Responsible institution: Ministry of Interior**

**Deadline: January 2006**

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. Bulgaria has committed to updating the Plan on an annual basis. At its meeting on 26 January 2006, the Council of Ministers approved a Report on the Implementation of the 2005 National Action Plan for the Adoption of the Schengen *Acquis*, and an updated version of the Plan. The report and updated Schengen Action Plan have been submitted to the European Commission.

**Status: Measure implemented.**

**Expected outcome:** The Schengen Action Plan specifies measures, deadlines and implementing institutions in the areas of border control, visa policy, migration, police cooperation, judicial cooperation, combating the proliferation of drugs, firearms and ammunitions, use of the Schengen Information System, and personal data protection. In itself, the implementation of this measure involves a series of subsequent commitments prescribed in the updated Schengen Action Plan.

A careful reading of several consecutive “updates” of the Plan reveals that the planned measures in some areas are identical in all versions but their deadlines have been extended. This only confirms the *importance of implementing the measures identified in the updated Schengen Action Plan and the instrumental character of the measure under consideration here.*

The Report on the Implementation of the 2005 National Action Plan for the Adoption of the Schengen *Acquis* sets out in detail the statutory, administrative and technical measures that were taken in 2005 to achieve the specified goals. The Report can be criticised for the disproportion between the sections on results and efforts. It concentrates on the adoption and promulgation of statutory acts and conduct of training, devoting considerably less space to concrete results. Furthermore, it does not identify the measures that have not been implemented and analyse the reasons for that. Consequently, as noted above, the deadlines for some measures have been extended without any explanation for the reasons for that.

**Recommendations to guarantee effectiveness of the measure:** Greater publicity and transparency in the actions of institutions involved in implementing the updated Schengen Action Plan. Publication of the updated Plan and of the Report on the implementation of the previous one would be useful to institutions and would help inform the public about critically important issues. Regular information about the implementation of the Plan would contribute to regular implementation of measures and improve communication concerning achievements and challenges.

## **15. Developing and adopting an Integrated Border Management Strategy.**

**Responsible institution: Ministry of the Interior**

**Deadline: 20 December 2005**

An Integrated Border Management Strategy was approved by the Security Council at the Council of Ministers on 14 December 2005 and adopted by Council of Ministers Decision No. 47 dated 27 January 2006. The document was adopted in execution of the 2005 Schengen Action Plan.

**Status: Measure implemented.**

**Expected outcome:** Even though the deadline was missed, the Strategy was elaborated and submitted to the European Commission. The Strategy is a continuation of the Concept for the Development of the National Border Police Service and the 2004–2006 Strategy for Reinforcing Bulgaria’s Future External Borders. The main goal of the document is to provide a national policy framework that will ensure unified and smooth cooperation among all institutions and resources relevant to border control. The timeframe of the Strategy is divided into two periods: in the run-up to accession, and after accession until complete alignment with the Schengen *acquis*.

The Strategy tends to be descriptive rather than prescriptive and raises more questions than answers. Although it identifies a number of areas requiring greater integration between authorised institutions, it does not clearly specify the institutional, statutory and financial arrangements through which the desired goals can be achieved. The document is too abstract, and this raises questions as to its utility as a roadmap towards integrated border management.

**Recommendations to guarantee effectiveness of the measure:** In order to achieve the required targets, the Strategy needs to be revised, providing less background information and tying goals to specified actions, resources and implementing institutions. The recommendations concerning transparency and publicity of the Schengen Action Plan apply to the Strategy too.

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

**Responsible institution: Ministry of the Interior**

**Deadline: 15 November 2005**

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 hard to understand why such an action was 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 qualifies as classified within the meaning of the Classified Information Protection Act. Exchange of information on this issue does exist between the Ministry of Interior and the European Commission, but in the context of the current monitoring it is impossible to judge 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 submission or non-submission to the European Commission but not the actual content of the information itself.

According to data from the Ministry of Interior, information on the border police staff and more specifically on the number of border patrols has been submitted to the European Commission. The submitted information reportedly includes analytical cross-tabulations and data on staff qualification, training and other relevant indicators.

**Status: Measure implemented.**

**Expected outcome:** Considering that the information in question is classified, the implementation of this measure cannot be evaluated.

**Recommendations to guarantee effectiveness of the measure:** Better communication with the European Commission would preclude the need to identify regular exchange of information as a special measure under Chapter 24.

**17. Full alignment with the EU positive visa list.**

**Responsible institution: Ministry of Foreign Affairs**

**Deadline: June 2006**

Full alignment with the EU positive visa list in compliance with Annex II of Regulation (EC) No. 539/2001 is expected to be achieved by June 2006. Bulgaria has declared that by 31 December 2006 it intends to unilaterally lift visa requirements for citizens of the countries in the positive list with which it does not have a bilateral agreement on abolition of visa requirements. According to information available at the time of writing this Report, a visa-free regime has been established with another seven countries listed in Annex II: Brazil (as of 10 October 2005), Venezuela (as of 2 March 2006), Macao SAR (as of 14 July 2005), Hong Kong SAR (as of 14 July 2005), Uruguay (as of 25 May 2005), Argentina (as of 14 March 2006) and Paraguay (as of 17 March 2006).

**Status:** Although efforts on this measure are still being made, considering that Bulgaria has expressed readiness to unilaterally abolish visa requirements the **measure qualifies as implemented**.

**Expected outcome:** By concluding bilateral agreements on abolition of visa requirements or unilaterally abolishing visa requirements for citizens of the countries listed in Annex II, Bulgaria will fulfil the commitments pursuant to Regulation (EC) No. 539/2001.

**18. Ensuring the necessary financial resources for setting up EURODAC by the date of accession. As of 1 January 2007 Bulgaria should be able to effectively implement the Dublin Convention, using the EURODAC System.**

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

**Deadline: November 2005**

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, coordination needs to be established among a number of institutions, mainly within the Ministry of Interior system. More specifically, these include the Interior Ministry's Coordination, 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. The Ministry of Interior has already taken the necessary steps to ensure that such coordination will be achieved, and implementation of the measure is being actively pursued.

According to data from the Ministry of Interior, a decision has been made on the financial resources required to establish the system. A project has been prepared – "Implementation of EU *Acquis* in the Field of Asylum – Dublin II and EURODAC Regulations" – whose main

purpose is improving the National Automated Fingerprint Identification System (AFIS), developing the relevant network structure, and institutional building of Dublin II and EURODAC offices. The project has been proposed for funding under Phare Programme 2005 of the EU, with some contribution from the Bulgarian Government. At present, work is in progress on the first stage, with funding from the Bulgarian Government.

The State Agency for Refugees has been taking fingerprints and other identification features of foreigners seeking asylum in the Republic of Bulgaria since April 2005. Given these developments and the fact that a decision on financing has been made, progress in the implementation of the measure can be assessed as good and the system is likely to be in place by the set deadline.

**Status: Measure rather implemented.**

**Expected outcome:** The measure is adequately formulated to ensure implementation of the Dublin II Regulation, which determines the Member State responsible for examining an asylum application lodged by a third country national in a EU Member State. By introducing EURODAC and Dublin II, Bulgaria will become part of the common European system concerning asylum.

**Recommendations to guarantee effectiveness of the measure:** It must be noted that EURODAC and Dublin II place most of the responsibility for examining asylum applications on the country through which the asylum-seeker has first entered EU territory. This responsibility includes resolving problems related to the integration or deportation of asylum-seekers.

Considering that Bulgaria will be an external border of the EU and will gradually become increasingly attractive for asylum-seekers, in the medium term it is necessary to review and increase the capacity of the relevant administration of the State Agency for Refugees.

In the long term, only Bulgaria's accession to the Schengen Agreement and subsequent access to the relevant funds can guarantee the resources required for pursuing an effective policy towards asylum-seekers in conformity with international human rights law.

## **19. Improving the capacity of the Migration Directorate at the Ministry of Interior.**

**Responsible institution: Ministry of Interior**

**Deadline: February 2006**

Meetings held revealed that the implementation of the measure is seen mainly as appointing and training representatives of the Directorate in all regional divisions of the Ministry. However, considering that the Migration Directorate was established two and a half years ago, the fact that it is still training staff does not speak well of its capacity.

A manual of procedures in conformity with European best practices in migration control is being prepared for the Directorate. The relevant funding and organisation is provided by a twinning project under the Phare Programme of the EU.

Divisions have already been created within the central administration of the Directorate, but no data are available on the efficiency of procedures or the budget of the Directorate. That the procedures are inefficient is indicated by the fact that acts issued by the Directorate are quite

easily revoked or amended in court. This is a direct effect of the Interior Ministry's approach: building the administration of the Directorate while expecting it to carry a full workload. However, the full range of negative effects remains a matter of conjecture since it is impossible to establish with certainty what percentage of the acts are appealed and what the outcome of such appeals is. This also applies to the adequacy of the human resources policy. No information is available on the number and qualification of Directorate staff.

**Status:** Slow and limited progress. The measures taken to date are piecemeal and belated.  
**Measure rather not implemented.**

**Expected outcome:** 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.

The Government's efforts to strengthen the capacity of the Migration Directorate at the Ministry of Interior are driven by the urgent need of developing an operational and efficient immigration police. However, the quantitative or qualitative parameters of this process have not been specified to date.

**Recommendations to guarantee effectiveness of the measure:** It is necessary to develop an implementation plan that will break down the different aspects of "administrative capacity" and allow monitoring progress on the measure. In addition to developing human resources, the plan should provide for:

- completing the structuring of the administration of the Directorate at the central level;
- adopting specific procedures for the numerous functions of the Directorate, especially with regard to communication with embassies and the Ministry of Foreign Affairs' Consular Relations Directorate on issuing identification documents of illegal aliens who have no such papers;
- providing adequate funding (especially for deportation) and establishing accommodation centres for illegal aliens.

Making estimates and projections of expected migration flows and adjusting the capacity-building plan for the Directorate accordingly is also of key importance.

## **20. Opening an accommodation centre in Sofia (Busmantsi).**

**Responsible institution: Ministry of Interior**

**Deadline: December 2005**

The centre is designed to provide temporary accommodation for illegal aliens and is being established under the management of the Migration Directorate at the Ministry of Interior. The date for opening the centre has been repeatedly postponed, and was last scheduled for 24 March 2006. Given that no property issues or legal disputes on the establishment of the centre exist, it is reasonable to expect that this deadline will be met.

**Status: Measure rather implemented.**

**Expected outcome:** The measure is adequate. Establishing centres for temporary accommodation of illegal aliens would reduce security risks and simplify deportation procedures.

**Recommendations to guarantee effectiveness of the measure:** No recommendations can be made because it is not clear why the opening of the centre has been repeatedly postponed.

**21. Final alignment of the Personal Data Protection Act with the *acquis*. Drafting and submission to Parliament of a relevant Bill to Amend and Supplement the Personal Data Protection Act.**

**Responsible institution: Ministry of Finance, Personal Data Protection Commission, Ministry of Interior**

**Deadline: December 2005**

The Act to Amend and Supplement the Personal Data Protection Act was promulgated in the *State Gazette* on 23 December 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. By way of 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 been transposed into national law.

**Status: Measure implemented.**

**Expected outcome:** The amendments to the Personal Data Protection Act have largely transposed the *acquis* in this area. The changes in the definition of personal data and sensitive data, and in the guarantees for protection in collecting and processing personal data provide more reliable statutory protection of the rights of natural persons as data subjects. Of particular importance for personal data administrators is the introduction of more precise regulations concerning registration of personal data administrators and indication of grounds for registration, as well as of the possibility for voluntary registration. As regards transfer of personal data to third countries, the Act has adopted the principle of equivalence of protection as laid down in Directive 95/46/EC.

**Recommendations to guarantee effectiveness of the measure:** The alignment of the Personal Data Protection Act to the *acquis* is an important step forward in the right direction. At the same time, the legal standards vested in the Act require a well-developed system of implementation, which depends on operational administration structures, adequate financing, knowledge of the rules of conduct and an effective system of administration of justice. The amendments to the Act ensure better coordination and less conflict in implementing personal data protection policy; at the same time, however, they grant greater discretionary powers to the implementing authorities, which requires developing an adequate capacity.

**22. Improving the efficiency of the Personal Data Protection Commission; filling vacant positions.**

**Responsible institution: Personal Data Protection Commission**

**Deadline: December 2005**

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 the Commission broad powers and its enforcement largely depends on the capacity of this administrative body. The members of the Commission were appointed by a National Assembly decision dated 23 May 2002, but serious difficulties remain in developing predictable and consistent administrative practices of enforcement. Underfunding of the Commission is seen as a main obstacle to comprehensive implementation of the Personal Data Protection Act. Even though the Act stipulates that the Commission is an independent public body, the Commission is a second-level spending unit under the Council of Ministers and depends on government funding.

By 16 January 2006, competitive procedures were announced for eight administrative positions or approximately eleven percent of the entire administration, as specified in the Rules of Operation of the Personal Data Protection Commission and its Administration. As of 15 March 2006, those positions have been filled, but approximately half of the tenured positions in the Commission remain vacant. This is explained by the lack of office space. Lack of adequate premises is also a serious obstacle to developing an information system without which the Commission cannot exercise its powers as prescribed by law.

**Status: Measure rather not implemented.**

**Expected outcome:** Given that the measure is rather not implemented, one may expect only that further efforts will be made to resolve the problem of the Commission's administrative capacity.

**Recommendations to guarantee effectiveness of the measure:** There are two ways of resolving the administrative capacity problem. One is to constitute the Commission as a first-level spending unit and to ensure that it is adequately resourced to implement public policy on personal data protection. The other is to keep its present status while designating personal data protection as a priority of the Bulgarian Government. The decision as to which of the two ways is more feasible and what action needs to be taken to resolve the problems in implementing the Personal Data Protection Act should be made following an in-depth study of omissions in enforcement, conducted with the participation of the Commission, representatives of personal data administrators, NGOs and other stakeholders.

### **23. Drafting a report on the implementation of the National Anti-corruption Strategy with a focus on measures taken to curb high-level corruption.**

**Responsible institution: Anti-corruption Coordination Commission**

**Deadline: December 2005**

This measure envisages preparing a report on the implementation of the National Anti-corruption Strategy with a focus on the measures taken to curb high-level corruption and their effectiveness.

The report on the implementation of the National Anti-corruption Strategy covers the period 2004–2005 and can be found on the Anti-corruption Coordination Commission website (at [www.acc.government.bg](http://www.acc.government.bg) – as of 15 March 2006, in Bulgarian only). It consists of two parts:

1. Report on the Implementation of the National Anti-corruption Strategy in the Period 2004–2005, and
2. Annex: Report on the Implementation of the Action Plan for the Implementation of the National Anti-corruption Strategy in the Period 2004–2005.

By December 2005 the Anti-corruption Coordination Commission did not have a final version of the report. By the end of January 2006 one could find on the Commission website at least two different versions that did not offer sufficient information about measures taken to implement the Strategy in 2004–2005.

With the production of a final version, Measure 23 has been implemented, albeit with a one-month delay (by 31 January 2006 instead of December 2005). The new report has an annex covering the tasks set in the Action Plan to implement the Strategy, and is quite informative.

The report contains general information about the main directions of Strategy implementation. The annex is more detailed, covering outcomes of all measures implemented to date.

However, it is noteworthy that neither the report nor the annex provides information about the non-implemented measures under the Strategy and Action Plan. Such information is crucial in evaluating the extent to which the tasks set have actually been achieved. The two documents give only the percentage ratio of implemented to non-implemented measures, but the percentages have been provided by the implementers themselves and it is not clear what indicators were used to evaluate implementation of measures.

Secondly, the report and the annex do not focus on the measures to curb high-level corruption. However, this is hardly surprising considering that such measures are not specified as a top priorities in the Strategy and Action Plan. The only measure to have been implemented in this area is the adoption of a Code of Ethics of Senior Government Officials.

The delay in implementing this measure may also be attributed to the restructuring conducted within the Anti-corruption Coordination Commission itself, which as of the beginning of January 2006 is a structure under the Council of Ministers and is chaired by the Minister of Interior.

**Status: Measure implemented.**

**Expected outcome:** In formal terms, the measure qualifies as implemented. It largely qualifies as implemented in substantive terms too, but several points need to be made here.

Firstly, the Annex to the Report on the Implementation of the National Anti-corruption Strategy in the Period 2004–2005 evaluates progress in the implementation of the measures identified in the Strategy and Action Plan. The figures given in the annex show the following:

- The average score of the implementation of measures included in the Action Plan is 7 (on a scale of 1 to 10, where 10 is the maximum).
- In percentage points, the ratio of implemented to non-implemented measures in the Action Plan is **68.47%** to **31.58%**.

These figures indicate that relatively good progress has been made in implementing measures. However, since there is no information about the indicators used to evaluate progress and little if any information about the measures that have not been implemented, it is impossible to judge whether the evaluation contained in the annex is correct.

Last but not least, the report provides no information about the plans for implementing the measures that failed to be taken by the end of 2005. This makes it difficult to judge actual progress made in implementing the Action Plan.

**Recommendations to guarantee effectiveness of the measure:**

1. Timely provision of access to the reports on the activity of the Anti-corruption Coordination Commission, including by posting them on the Commission website;
2. Regular updates on progress/failure in implementing measures envisaged in the Action Plan are aimed to ensure transparent governance, prevention and combating of corruption in 2006;
3. Focus on progress in implementing measures to counter political corruption, identified by the European Commission as a priority for Bulgaria.

**24. Elaboration of a new National Anti-corruption Strategy (2006–2008), adoption of the Strategy by the Council of Ministers, and development of an Action Plan for 2006.**

**Responsible institution: Anti-corruption Coordination Commission**

**Deadline: December 2005**

The new National Anti-corruption Strategy (2006–2008) was adopted by the Council of Ministers on 12 January 2006. The 2006 Anti-corruption Action Plan (Programme for Implementation of the Strategy for Transparent Governance, and Corruption Prevention and Combating) was adopted by the Council of Ministers on 26 January 2006.

**Status: Measure implemented.**

**Expected outcome:** The National Anti-corruption Strategy (2006–2008) and the Action Plan for its implementation were elaborated shortly after the deadline. Given the structural changes in the Anti-Corruption Coordination Commission (transformed as of January 2006 into a Corruption Prevention and Combating Commission under the Council of Ministers), one can conclude that both documents were elaborated on time.

Of major importance for the effective implementation of this measure is the participation of NGOs in elaborating the Strategy and Action Plan, as well as the envisaged measures to ensure public oversight. Evaluating progress in implementing the measures on a six-month basis is an effective mechanism for increasing transparency and assessing their contribution to curbing corruption in Bulgaria.

**Recommendations to guarantee effectiveness of the measure:** Ensure monitoring and evaluation of progress in implementing the Strategy and Action Plan. As of mid-March 2006, work has not begun on developing a set of indicators for monitoring. Considering the deadlines for developing indicators (30 April 2006) and for producing the first monitoring report (30 June 2006), it is necessary to take urgent measures and work in partnership with the leading NGOs in the anti-corruption area.

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

**Responsible institution: Ministry of Interior, Ministry of Justice, and Council of Ministers administration**

**Deadline: December 2005**

In formal terms, the measure has been implemented since it specifically provides for holding meetings with representatives of law-enforcement bodies. It does not specify the obligation to

develop a “systematic planning approach to investigating serious cases of corruption”, although this is what it ought to imply. However, given that developing such an approach is not expressly provided for, the measure ought to be treated as implemented.

**Status: Measure implemented.**

**Expected outcome:** The measure provides only for holding meetings that would serve as a basis for developing a systematic planning approach to investigating serious cases of corruption. This measure makes no sense unless it serves as a basis for elaborating a specific approach designed to improve the performance of law-enforcement bodies in investigating cases of corruption.

**Recommendations to guarantee effectiveness of the measure:** The measure can serve as a basis for developing a unified approach to investigating cases of corruption. Although this is what the substantive implementation of the measure consists in, it is not explicitly provided for.

Hence, it would be advisable to develop measures providing for the elaboration of a concrete plan for investigating serious corruption cases.

The bodies committed to implementing the measure in substantive terms should include the Supreme Judicial Council, whose performance is relevant to the development of adequate measures to support law-enforcement bodies in detecting and investigating serious cases of corruption, and to the initiation of a strict criminal justice policy in the area of organised crime and corruption.

## **26. Submission to Parliament of a Bill to Amend and Supplement the Public Disclosure of Senior Public Officials’ Financial Interests Act in order to eliminate provisions limiting transparency.**

**Responsible institution: Ministry of Finance**

**Deadline: October 2005**

In pursuance of the updated 2001 National Anti-corruption Strategy, on 31 October 2005 the Council of Ministers submitted to Parliament a Bill to Amend and Supplement the Public Disclosure of Senior Public Officials’ Financial Interests Act. The amendments envisaged in the Bill provide arrangements for increasing transparency and access to information.

**Status: Measure implemented.**

**Expected outcome:** With regard to the effectiveness of this measure, the following points need to be made:

- The initiative to revise regulations concerning public disclosure of financial interests has been taken on the recommendation of the European Commission, and not as part of purposive efforts by the relevant public institutions to implement the Strategy. It must be noted that this is yet another case in which a law is amended because of external recommendations and pressure rather than as a result of inter-institutional discussion involving NGO experts, and in-depth analysis of the omissions and flaws in the existing statutory framework in the anti-corruption area.
- In this sense, monitoring the anti-corruption legislation that is in force in Bulgaria is urgently needed not only to ensure that it is consistent but also to improve it. Such

monitoring would be highly appreciated by EU institutions. It can be initiated by leading NGOs in partnership with the Government's and Parliament's anti-corruption commissions. To expedite this process, it is advisable for the NGO community to prepare expert reports and set up a special working group to discuss and submit them to the Government and Parliament.

- In its reasoning, the Bill notes that at the present stage the National Audit Office does not have “objective technical and administrative capacity to build the information system needed to publish data on the Internet”. Being expressly noted in the reasoning, this fact could lead to indefinite postponement of the practical application of the new provisions of the amended Act. Hence, the failure to provide adequate financial and administrative resources for implementing the amended Act (funds for that have not been allocated even in the 2006 National Budget, although the Bill was drafted by the Council of Ministers and submitted to Parliament prior to 31 October 2005, i.e. before the debate on and adoption of the 2006 National Budget Act) suggests that this is a purely formal action on the part of the Government in its efforts to fulfil EC recommendations prior to the Commission decision on Bulgaria's readiness for accession, and that it will hardly produce the desired legal effects.
- The regulations limiting public disclosure remain in force with respect to all declarations submitted by 31 December 2004.

At the time of writing this Report, the Bill is still under “consideration” in Parliament, primarily by the Standing Committee on Home Affairs and Security.

**Recommendations to guarantee effectiveness of the measure:** The measure has been implemented to the extent that it provides for submission of the Bill to Parliament. The problem is that the delay in its consideration by Parliament renders meaningless the implementation of the measure within the deadline (31 October 2005). Five months later, the Bill is still being considered and it is not clear when it will be presented to the full house.

The effective implementation of this measure depends on the successful cooperation and coordination between the executive and the legislative branch of government. This applies to the majority of anti-corruption measures, which require concerted efforts of institutions and, in most cases, of all authorities engaged in countering corruption.

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

**Responsible institution: Ministry of Finance**

**Deadline: December 2005**

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

**Status: Measure implemented.**

**Recommendations to guarantee effectiveness of the measure:** Continue to apply the plan.

**28. Developing a concept for a unified digital communication system for police cooperation.**

**Responsible institution: Ministry of Interior**

**Deadline: 31 December 2005**

A concept for a unified digital communication system for police cooperation, developed by a working group, has been adopted by a Minister of Interior Order (28 December 2005). According to information provided by the Ministry of Interior, the concept focuses on the need to develop communications with the automated systems in various EU structures, such as the Schengen Information System II, Europol systems and EURODAC. According to the Ministry of Interior again, some of the elements of the system are already being prepared and there is readiness to start exchanging data.

**Status: Measure implemented.**

**Expected outcome:** The information provided is classified and does not allow evaluating the implementation of this measure.

**Recommendations to guarantee effectiveness of the measure:** The measure is envisaged in the 2005 and 2006 Schengen Action Plan, stipulating that the system must become operational upon full accession to Schengen (which is not equivalent to full accession to the EU). This means that following the adoption of the concept, a series of organisational and technical measures need to be taken to prepare to connect the relevant national automated information systems with the above-mentioned international systems.

**29. Organising 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.**

**Responsible institution: Ministry of Justice and Ministry of Interior**

**Deadline: December 2005**

On 11 January 2006, the Minister of Interior, two of his deputies, and senior officials from the Supreme Cassation Prosecution Office and the Ministry of Justice attended a meeting of the Supreme Judicial Council. As a result, the Council adopted a special decision on coordination of joint measures between the Supreme Judicial Council and the Ministry of Interior on countering corruption and organised crime in Bulgaria. A working format for future meetings of this kind has not been specified and neither has a planning tool to determine and coordinate the measures in question been elaborated.

**Status: Measure rather not implemented.**

**Expected outcome:** The measure is inadequately worded and is unlikely to contribute to curbing organised crime and corruption. It is unclear exactly 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.

**Recommendations to guarantee effectiveness of the measure:** If future meetings are conducted in the same format (two ministers and the whole Supreme Judicial Council) as that on 11 January 2006, they are unlikely to be regular and truly productive. It would be appropriate to determine a working format ensuring constant communication between stakeholder institutions, and to define the goals of cooperation and a concrete joint action plan. This could be done on the basis of a joint analysis of the implementation (or non-implementation) of the last governmental strategy for countering crime.

At the same time, it must be borne in mind that 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 detect and substantiate. Those convicted of involvement in criminal groups or of bribery comprise less than one per cent of all convicted persons and are never the masterminds of 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.

An effective policy against organised crime does not rest upon criminal prosecution of perpetrators. It targets 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 those are precisely the areas in which special measures need to be taken. Those are also the areas in which more immediate and more visible results are likely to be achieved.

**30. Production of a report on the implementation of specific measures stipulated in the National Anti-drug Strategy and Action Plan. Based on report findings, updating of the 2006–2008 Action Plan and adoption of updated version by the Council of Ministers. Submission of the report and the Action Plan to the European Commission.**

**Responsible institution: National Council on Narcotic Drugs, Ministry of Interior and Ministry of Health**

**Deadline: December 2005**

The logistics required to implement the measure are already in place. The Coordination, Information and Analysis Directorate at the Ministry of Interior has produced a report on the implementation of the Strategy, as well as a proposal for updating the Strategy, but no information is available about the content these documents. The relevant documents were reviewed by the National Council on Narcotic Drugs in February, but have not yet been approved by the Council of Ministers.

**Status: Measure rather not implemented.**

**Expected outcome:** Taken separately, this measure seems to be an end in itself. The regular reporting and updating of the National Anti-drug Strategy by the relevant competent administrations appears to be done for their purposes only. It is done without a public debate that would make it possible to assess the real results of the implementation of the Strategy and to propose alternative solutions.

**Recommendations to guarantee effectiveness of the measure:** Three years after it was adopted, the Strategy must at last be properly resourced. Unless adequate financial, institutional and organisational resources are provided, the Strategy is unlikely to have an effective impact and there is no point in monitoring progress in its implementation.

Progress must be evaluated on the basis of reliable and comprehensive data collected through studies conducted by consistent, internationally recognised methods. In the long term, such information should be collected and analysed by the National Focal Point within the framework of the European Monitoring Centre for Drugs and Drug Addiction, rather than by the Coordination, Information and Analysis Directorate at the Ministry of Interior (as it is at present). Strategy updates should be done only after public discussion.

### **31. Reviewing present Penal Code sanctions for possession of small amounts of drugs in order to align them to European Union best practices.**

**Responsible institution: Ministry of Interior and Ministry of Justice**

**Deadline: December 2005**

The organisational arrangements to implement this measure are in place. An interim working group has been created, and it has reviewed the relevant penal sanctions and proposed options for aligning them to European best practices. The proposals have been included in a draft Bill to Amend and Supplement the Penal Code, which was approved by the Council of Ministers on 9 March 2006 and is due to be submitted to Parliament. The Bill envisages significant mitigation of penal sanctions for possession of small amounts of drugs by providing for fines or probation as an alternative to imprisonment.

**Status: Measure rather implemented.**

**Expected outcome:** Penal policy is a key component of the fight against the spread of addictions and it needs to be regularly assessed and revised to keep up with the times. Practice shows that severe penal deterrence is not productive. It restricts access of addicts to treatment and rehabilitation programmes and does not serve as a deterrent or warning to vulnerable groups. Because of these risks, mitigating penal sanctions for possession of small amounts of drugs is in fact a good policy. However, the measure in the Government's to-do list should be worded more adequately, since reviewing penal sanctions in itself cannot lead to mitigation of penal deterrence. Penal sanctions can be mitigated only by revising the Penal Code.

**Recommendations to guarantee effectiveness of the measure:** Excessively severe punishments are definitely not the only flaw in the present penal framework concerning drugs. Criminal liability for production and distribution must be separated from criminal liability for possession to the extent that the degree of public danger posed by these acts is different. Lawmakers should also make a distinction between the different kinds of drugs as defined by medicine, keeping strict penal sanctions in place only for "hard" drugs.

The Bill needs to be coordinated with a wider range of organisations before it is submitted to Parliament; there is also a need for serious preparatory work with the relevant parliamentary committees. In 2003 when the so-called "one-time dose" was revoked, there was a strong majority in Parliament in favour of tougher penal deterrence. A proposal to reverse this might not rally enough support among legislators. That is why the grounds for this policy shift should be clearly formulated.

### **32. Enhancing 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 Health**

**Deadline: January 2006**

The National Focal Point relies on information and research department of another administration. Its staff consists of three persons who are concurrently working on National Council on Narcotic Drugs projects. The Focal Point's staff and office room at the National Centre on Narcotic Drugs are entirely insufficient to implement its large-scale research programme. Since no information is available on the funds budgeted for the Focal Point, it is impossible to judge if they are adequate or not. In fact, the Focal Point still does not have an independent budget, as a separate budget line from the Ministry of Health budget and an independent auditing mechanism are yet to be established.

The Rules of Operation of the National Focal Point were adopted by the National Council on Narcotic Drugs at the end of December 2005.

**Status: Measure rather not implemented.**

**Expected outcome:** Although the measure, as worded, is too general, it indicates an intention to resolve the important problem of collecting comprehensive and reliable information about the spread of drugs in Bulgaria.

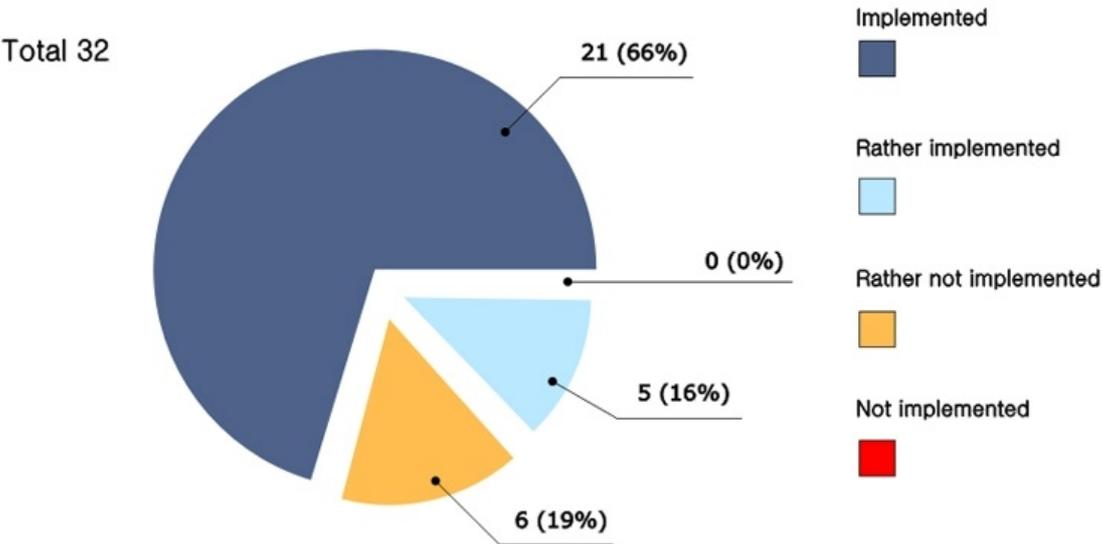
**Recommendations to guarantee effectiveness of the measure:** Enhancing the capacity of the National Focal Point requires adequate planning. Separating the Focal Point as an independent legal entity and reconsidering its status within the Ministry of Health system are an important precondition for that. There is also a need to increase the number of tenured positions and to recruit qualified staff, as well as to provide adequate funding for research.

## **Part II. Findings**

Quantitative analysis of the implementation of commitments shows that the majority of measures qualify as "implemented" (66 per cent) or "rather implemented" (16 per cent) (see Figure 5). Although there are no measures that qualify as "not implemented", the monitoring has found that six measures (19 per cent) can be treated as "rather not implemented". Significant progress has been made since the Interim Report from mid-January 2006, where 28 per cent of the measures were qualified as "implemented", 31 per cent as "rather implemented", and 41 per cent as "rather not implemented". However, given the different importance and potential impact of the measures in question, the pure quantitative analysis of progress under Chapter 24: *Justice and Home Affairs* is not conclusively reliable. Assessment of progress and identification of problematic areas should be done on the basis of the importance of the relevant measure for the overall system. In evaluating the effectiveness of efforts made since the European Commission published its Comprehensive Monitoring Report on 25 October 2005, one should also bear in mind that the list of measures proposed by the Bulgarian Government is far from exhaustive. There are numerous problems that have

not been addressed, whereas part of the proposed measures raises serious questions as to their adequacy.

**Extent of Implementation of Measures under Chapter 24:  
Cooperation in the fields of Justice and home affairs**



On the whole, the monitoring of implementation of measures under Chapter 24: *Justice and Home Affairs* shows that the criticisms in the Commission Report have made a significant impact among executive, judicial and legislative authorities. The Executive, in particular, and especially the Ministry of Justice and the Ministry of Interior, have accelerated their efforts to address omissions. The fact that there is no measure that has not been addressed at all indicates that the administration has the political will and is making efforts to catch up on commitments. The existence of political will is best demonstrated by the expressed desire for constitutional amendments, which may be criticised by some but nonetheless show that there is consensus on the need for structural reforms in the judiciary. It is to be regretted that the envisaged constitutional amendments are unlikely to provide the necessary checks and balances with respect to the separation of powers. In the long term, the takeover of preliminary investigation proceedings in criminal cases by police investigators, who are employed by the Ministry of Interior, can be of key importance to the judicial system. This makes it possible to hold an executive body, which is also subject to control by the judiciary, politically accountable for the development of the pre-trial phase in criminal proceedings. In addition, this constitutional change gives the Executive legal and organisational possibilities to influence public policy on combating crime. At present, there is lack of clarity about the responsibilities of institutions and of the separate and independent branches of government concerning issues such as organised crime, combating corruption, countering proliferation of drugs, trafficking in human beings and weapons, and a number of other anti-social acts. By the amendments to the Constitution and the provisions of the new Code of Criminal Procedure with respect to implementation of criminal justice policy, the Government and, generally, the executive branch of government will be empowered and at the same time bound to achieve the desired results. The creation of such a checks and balances of powers, combined with the election of a new Prosecutor General and the expressed desire for changes in the functions of public prosecution authorities, give grounds for optimism. Another positive

element at the constitutional level is the introduction of indirect individual complaints and the limitation of immunity of MPs. One of the criticisms against the proposed constitutional amendments is that they extend the powers of the Minister of Justice; some of the proposed texts have raised concerns about the independence of the judiciary.

The monitoring has identified significant progress with respect to statutory change in key areas of the legal framework in Bulgaria. Following the adoption of a new Code of Criminal Procedure in October 2005, the Interior Ministry Act was promulgated in February 2006 and will enter into force on 1 May 2006. Although with a delay, Parliament is reading the draft Code of Administrative Procedure for the second time, while the drafting of a new Code of Civil Procedure, which is expected to enter into force at the beginning of 2007, is nearing completion. In execution of a measure from its to-do list, in December 2005 the Council of Ministers submitted to Parliament a Bill to Amend and Supplement the Judiciary Act. On the whole, since the EC Monitoring Report was published, there have been intensive developments in the area of legislative revision.

The statutory changes raise the question of law enforcement. A review of the European Commission's 2005 Comprehensive Monitoring Report and, more specifically, of the sections on "Political Criteria" and Chapter 24: *Justice and Home Affairs*, shows that the main criticisms are in the area of law enforcement. The Interim Report of the Open Society Institute – Sofia discussed the adequacy of measures, and gaps between actual and desired results. The Final Report has again found a tendency to underestimate the importance of the results expected from Bulgaria. Training magistrates and police investigating officers how to apply the Code of Criminal Procedure, developing comprehensive criteria to monitor the enforcement of the Code, drafting and elaborating strategies and action plans are simply means to achieve ends, such as effective and efficient administration of justice, legal security, border control, implementation of migration policies, personal data protection and combating corruption. Hence, the high percentage of implemented measures must be evaluated also on the basis of their actual impact.

A significant part of the measures envisage interaction and cooperation between two or more institutions. The development of partnership between stakeholder institutions must be recognised as a positive step. Still, interaction on/between institutions must be directed to a greater extent at achieving effective results.

As regards measures concerning the judicial system and enhancing the effectiveness of the administration of justice (Measures 1 to 13), significant progress has been made. Of thirteen measures, only one qualifies as "rather not implemented" and two as "rather implemented", the remaining ten being fully implemented. An analysis of their content shows that the main efforts have been in the area of improving the statutory framework of the structure and operation of the judiciary, and developing human resources. Legally-conforming and predictable administration of justice requires also adequate financial resources and organisation. An issue of great concern is the introduction of automated information systems in the organisations and processes of administration of justice. The monitoring of implementation of Measures 3, 11 and 13 raises a number of questions as to the capacity for management of the judicial system in the context of absent, incomplete or unconnected information systems. The problem of the failure to introduce information and communication technology in the judicial system should not be viewed as a technological but rather as an organisational and political one. The inability or unwillingness to base judicial system management on real data largely discredits all other measures.

Secondly, the Executive and the Legislature must address in an adequate way the issue of financing the judicial system. The amendments to the Constitution and procedural laws aimed at ensuring fair, quick and accessible justice can be rendered meaningless by technicalities such as lack of court rooms, limited funding for expert examinations and legal aid, shortage of detention and incarceration facilities, and other logistical issues. To demonstrate that judicial reform is indeed a priority those issues must be addressed with priority too. Although it is not part of the judicial system, the case of the administrative capacity of the Personal Data Protection Commission is particularly worrying. Several consecutive reports of the European Commission underline the need to build capacity for implementing personal data protection policy. Even so, the Personal Data Protection Commission remains without adequate premises and financing which, in turn, leads to understaffing, impossibility to develop the required information system and other preconditions without which enforcing the data protection *acquis* is impossible.

In the area of Home Affairs, there is significant difference in the outcome and content of the implemented measures. As regards border control, progress has been made with the adoption of the updated Schengen Action Plan and an Integrated Border Management Strategy. However, those measures are not an end in themselves; they entail a series of subsequent commitments which Bulgaria needs to fulfil. The numerous criticisms in the European Commission's 2005 Comprehensive Monitoring Report concerning the implementation of the Schengen Action Plan show that adopting and implementing the Schengen *acquis* is a key priority. Even though an Integrated Border Management Strategy has been adopted, questions arise as to how effective it will be in meeting this priority.

Progress in implementing measures concerning migration and anti-drug policies is considerably slower than that in the other areas under Chapter 24: *Justice and Home Affairs*. An analysis of the measures and the reported progress shows that the problems come from incomplete actions to identify problematic areas or build administrative capacity. Given adequate political will and financing, the efforts made to date can become a stable basis for achieving real results and translating administrative capacity into implemented policies and achieved goals.

Of particular importance for Bulgaria are the measures to curb corruption and organised crime. The measures proposed by the Government address the issue of combating organised crime mainly at the statutory level, and the only special measure is aimed at improving inter-institutional interaction. Better communication and coordination are of course useful, but the combat of organised crime can be effective only if the conditions that allow development of organised criminal activity are eliminated or restricted. That is why the measures to curb high-level corruption, money laundering and fraud, as well as to ensure witness protection and increase the informational and analytical capacity of the institutions concerned, are much more relevant to achieving the desired goals.

In the fight against corruption there is a shift towards more pragmatic measures and demonstration of will to develop intolerance towards corruption. On the other hand, elaboration of strategic documents should not be an end in itself. The measures to produce a report on the previous national Anti-corruption Strategy and to create a new one have been implemented. What is important, however, is daily condemnation, persecution and punishment of cases of corruption irrespective of the scale or parties involved. That is why demonstrating results and implementation of anti-corruption policy can be done only by

demonstrating results that condemn the phenomenon and prove that signals of corruption will be inevitably acted upon.

To summarise, the monitoring of implementation of Government measures under Chapter 24: *Justice and Home Affairs* indicates significant progress in addressing the identified measures and the absence of measures that cannot be addressed. However, the efforts made so far are only part of a long process that must not only continue but must develop progressively. The goals set must continue to be pursued not because of a wish for a positive assessment in one monitoring report or another, but because the citizens of Bulgaria deserve access to quick, effective, efficient, reliable and predictable justice, and a high level of individual and public safety and security.

The measures qualified as “rather not implemented” in the area of Justice and home affairs cannot be defined as critical within the context of the overall effort to integrate Bulgaria into the European area of freedom, security and justice. Despite the assessment of these measures as “rather not implemented” at this stage, if the representatives of the three branches of government and the political entities earnestly realise the problem and are willing to address it, substantial progress can be demonstrated in the areas of delay by 1 January 2007 and, therefore, **the area of Justice and home affairs should not pose an obstacle to Bulgaria's EU membership as from 1 January 2007.**

The popular opinion that the measures indicated as “rather not implemented” are of a logistical nature poses a serious risk. Each of the “not implemented” measures affects the judicial or law-enforcement systems of the Republic of Bulgaria, and the delay of their implementation compromises the state of preparedness under Chapter 24: *Cooperation in the field of justice and home affairs* and **spells a high risk of application of a justice and home affairs safeguard.**

## CONCLUSIONS

The civil monitoring, conducted by the Open Society Institute - Sofia of the progress achieved in the period between December 2005 and March 2006 in honouring the commitments assumed in the five areas in which the delay of the reforms gives cause for serious concern, found that **with two months to go until the release of the European Commission's Monitoring Report, 88 per cent of the measures planned by the Bulgarian Government to overcome the delay are "implemented" and "rather implemented."**

**Of a total of 108 measures, 68 (63 per cent) were "implemented," 27 (25 per cent) were "rather implemented," and 13 (12 per cent) were "rather not implemented" by 15 March 2006.**

**Seven of the thirteen "rather not implemented" measures are within the sphere of competence of the Ministry of Interior. That Ministry is single-handedly responsible for one of these measures and shares responsibility with other institutions for six. This invites the conclusion that better coordination is needed among the responsible institutions so as to improve effectiveness in implementing the reforms.**

**The Ministry of Agriculture and Forestry is single-handedly responsible for three of the "rather not implemented" measures. Other institutions, which assume sole or shared responsibility for the measures found to be "rather not implemented," are: the Financial Supervision Commission (three "rather not implemented measures"), the Ministry of Health (two measures), the Ministry of Justice (two), the Ministry of Environment and Water (one), the Ministry of Finance (one), the Commission for Personal Data Protection (one), the National Council on Narcotic Substances (one), and the Guarantee Fund (one).**

The analysis of the measures **in the area of Regional policy** shows that substantial progress has been achieved (**no measures are "not implemented" or "rather not implemented"**), but specific actions planned, which should have been completed by the end of February 2006. A "Roadmap" has been adopted for the last stage of preparation of the Republic of Bulgaria under Chapter 21: *Regional policy and coordination of structural instruments*. This Roadmap covers the pace of progress in the areas where weaknesses have been identified and the immediate action that must be taken in those areas.

Therefore, even though the expert team that conducted the civil monitoring has certain recommendations regarding continued reforms, it could be concluded that **the critical minimum of progress has been reached in the area of Regional policy which guarantees that this area no longer gives cause for "serious concern" and should not pose an obstacle to Bulgaria's full membership of the EU as from 1 January 2007.**

The analysis of implementation of the measures in the area of **Protection of intellectual property rights** shows that the measures planned by the Government for protection of intellectual property rights are rather of a **procedural and administrative nature**, and their implementation (strategy, programme, campaign, information exchange) does not immediately and visibly produce a practical social outcome. Notwithstanding, implementation (**no measure is "not implemented" or "rather not implemented"**) is a clear indication of a will and making efforts to strengthen the system for protection of intellectual property rights.

The evaluation prompts the conclusion that the critical minimum of progress has been reached in the area of **Protection of intellectual property rights** which guarantees that this area no longer gives cause for “serious concern” and should not pose an obstacle to Bulgaria's full membership of the EU as from 1 January 2007.

In the **area of Freedom to provide services**, as many as 76 per cent of the measures planned are “implemented.” **Four of the measures (24 per cent)** are grouped in the “**rather not implemented**” category.

The following measures are “**rather not implemented:**”

- *Measure No. 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*
- *Measure No. 9. Revision of Decree/Ordinance 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*
- *Measure No. 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: permanent*
- *Measure No. 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*

Thirteen (or 76 per cent) of the 17 measures planned to heighten compliance with the compulsory motor insurance obligation are “implemented.” Four of the measures (24 per cent of the total) are evaluated as “rather not implemented.” The reason for two of these measures is that they require revisions of legislation, and the deadlines that the inter-institutional commission has set itself for implementation of these measures have been missed. No deadline has been set for one of the other not implemented measures, No. 12 (the deadline is permanent), and its implementation will really take a little longer. The idea is to build a common information base to be augmented and used by the authorities of the Traffic Police,

the Ministry of Transport, the Guarantee Fund and the Financial Supervision Commission. Active work is in progress to address this measure, but still, its implementation requires some technological time.

Measure No. 5 is also grouped in the “rather not implemented” category, even though it is *de facto* implemented. The negative assessment is prompted by the lack of any positive outcome from the implementation of this measure.

If the political will is there, three of the four “rather not implemented measures” can be implemented within two or three months.

**Therefore, there is good reason to expect compliance with civil liability insurance to be over 90 per cent by the end of May 2006, when the campaign for re-registration and de-registration of automobiles in Bulgaria is due for completion, which will meet the European Commission's requirement for EU membership as from 1 January 2007.**

Of the 23 measures in the **area of Agriculture**, 12 were fully “implemented,” 8 were “rather implemented” and 3 were “rather not implemented” by 15 March 2006.

The following measures are “**rather not implemented:**”

- *Measure No. 11. Implementing activities to establish a Paying Agency and IACS (including a Land Parcel Identification System) according to the schedule of the comprehensive Master Plan for the establishment of a PA and IACS and the contracts signed for acquisition of orthophoto images of the country.*  
*Responsible institution: Ministry of Agriculture and Forestry*  
*Deadline: March 2006*
- *Measure No. 18. Implementing activities to build the remaining seven long-term border veterinary inspection posts according to the schedule of the Phare projects and the procurement procedure for the post at Sofia Airport.*  
*Responsible institution: Ministry of Agriculture and Forestry*  
*Deadline: March 2006*
- *Measure No. 23. Updating the present plan for upgrading the agri-food industry to comply with the new requirements of the Hygiene Package.*  
*Responsible institution: Ministry of Agriculture and Forestry*  
*Deadline: December 2005*

Even though just three of the measures are grouped in the “rather not implemented” category, **the delay in their implementation raises serious concern because these measures require considerable financial and human resources and technological time to implement. There is a potential to implement all three measures until the end of 2006.**

**Therefore, the area of Agriculture should not pose an obstacle to Bulgaria's membership in the EU as from 1 January 2007, even though the risk that an internal market safeguard will be applied is not overcome yet on account of the delay of important reforms in the sector.**

The quantitative analysis of implementation of the measures in the **area of Justice and home affairs** shows that the bulk of the promised measures can be treated as “implemented” (66 per

cent) or “rather implemented” (16 per cent). Even though no measures qualify as “not implemented,” the monitoring conducted found reason to treat six measures (19 per cent) as “rather not implemented.”

The following measures are “**rather not implemented:**”

- *Measure No. 11. Creating a unified court case management system, documentation and workload management system, a unified register system, and a system for issuing Conviction Status Certificates under a 2002 Phare project. Developing a concept for creating a unified data collection system to serve as a judicial system management tool.*  
*Responsible institution: Ministry of Justice*  
*Deadline: December 2005*
- *Measure No. 19. Improving the capacity of the Migration Directorate at the Ministry of Interior.*  
*Responsible institution: Ministry of Interior*  
*Deadline: February 2006*
- *Measure No. 22. Improving the efficiency of the Personal Data Protection Commission; filling vacant positions.*  
*Responsible institution: Personal Data Protection Commission*  
*Deadline: December 2005*
- *Measure No. 29. Organising 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.*  
*Responsible institution: Ministry of Justice and Ministry of Interior*  
*Deadline: December 2005*
- *Measure No. 30. Production of a report on the implementation of specific measures stipulated in the National Anti-drug Strategy and Action Plan. Based on report findings, updating of the 2006-2008 Action Plan and adoption of updated version by the Council of Ministers. Submission of the report and the Action Plan to the European Commission.*  
*Responsible institution: National Council on Narcotic Drugs, Ministry of Interior and Ministry of Health*  
*Deadline: December 2005*
- *Measure No. 32. Enhancing 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 Health*  
*Deadline: January 2006*

The significance of the measures qualified as “rather not implemented” should be discussed both in reference to the overall list of measures under Chapter 24 and within the broader context of criticism in the Monitoring Report from the European Commission of 25 October 2005. Viewed in isolation from one another and from the comprehensive dialogue on the chapter on justice and home affairs, the “not implemented” measures seem technical and

trivial. Notably, five of the six measures are in the sub-area of home affairs, where the Ministry of Interior is the principal obligated institution.

An analysis of the measures in trouble should take into consideration that although, on the face of it, they deal with logistical arrangements, these measures in most cases either signal the priority assigned to a specific area or demonstrate the extent of attainment of a broader objective. Thus, the projects for automation of working processes in the judicial system that have been dragging on for years are indicative of the inability of the Supreme Judicial Council to implement the overdue reforms in the judicial system. The failed introduction of information and communication technologies in the Bulgarian judicial system inevitably affects governance of the judiciary as a whole. The constitutional debate on the role of the Minister of Justice in the control over the progress of cases is a direct consequence of the lack of a case management system and case management applications. If the automation projects had reached a more advanced phase, in all likelihood the issue of the powers on the progress of cases would not have been raised at all. The next conclusion that can be drawn from the “rather not implemented” Measure No. 11 on the Government's list of measures is the obvious resistance of certain quarters in the judiciary to the technologies which guarantee transparency and accountability. Considering the importance of the forthcoming report from the European Commission in respect of the progress found, it could be said that non-implementation of this measure in itself is not likely to have a negative effect. Account should be taken, however, of the fundamental significance of the measure for the governance of the judicial system and for pressing ahead with the judicial reform. Considering the long record of failure in this area, full implementation of the measure by 1 January 2007 is difficult to expect. Overcoming existing resistance and rallying strong political support on the part of the Supreme Judicial Council, the Ministry of Justice and the Ministry of Finance for implementation of the measure can potentially produce visible results in the right direction.

Three of the measures in the sub-area of home affairs concern the capacity of structural components which are entrusted with essential powers in three key Community policies: migration, protection of personal data, and fight against drugs. All three cases require setting a political priority and the ensuing financial, logistical and regulatory support. The persistent nature of non-implementation of the measures is particularly alarming. This is not the first time that experts have raised the question of weak administrative capacity in the areas of concern identified and that the EC reports have noted this weakness. Precisely for this reason, the grouping of Measures No. 19, 22 and 32 in the “rather not implemented” category is cause for special concern. To a certain extent, the administrative capacity problem is symptomatic of the entire Chapter 24: *Justice and home affairs*, where Bulgarian politicians and administrators assume that a Community policy is applied by the mere fact of adopting a statutory instrument. The numerous warnings that administrative capacity is an integral part of application of legislation, however, continue to be ignored. The delays can be overcome by 1 January 2007, provided the need to build an adequate administrative capacity is genuinely realised and a political priority is set on the relevant policies. The policies themselves are among the most crucial ones for development of guarantees of the European area of freedom, security and justice, which means that the areas of concern in question pose a high risk of application of a safeguard clause under Article 38 of the Protocol and Act of Accession of Bulgaria and Romania.

Measures No. 29 and No. 30 can be evaluated as “rather not implemented” owing to their inadequate nature. Organised crime and the lack of coherent policies on its control undoubtedly a major problem under Chapter 24: *Cooperation in the field of justice and home*

*affairs*. The position that tangible results, which are expected from Bulgaria, can be achieved through the proposed meetings of the Supreme Judicial System with key components of the judicial system, is therefore quite indefensible. For this reason, in the particular case of fight against organised crime the very nature of the measure largely predetermines the impossibility to evaluate the measure as “implemented.” Measure No. 30 is more or less a similar case: drug enforcement is treated there at the level of a strategic document and action plan. Implementing specific measures from the action plant would be far more convincing than the ritualistic updating of the action plan.

The measures qualified as “rather not implemented” in the area of Justice and home affairs cannot be defined as critical within the context of the overall effort to integrate Bulgaria into the European area of freedom, security and justice. Despite the assessment of these measures as “rather not implemented” at this stage, if the representatives of the three branches of government and the political entities earnestly realise the problem and are willing to address it, substantial progress can be demonstrated in the areas of delay by 1 January 2007 and, therefore, **the area of Justice and home affairs should not pose an obstacle to Bulgaria's EU membership as from 1 January 2007.**

The popular opinion that the measures indicated as “rather not implemented” are of a logistical nature poses a serious risk. Each of the “not implemented” measures affects the judicial or law-enforcement systems of the Republic of Bulgaria, and the delay of their implementation compromises the state of preparedness under Chapter 24: *Cooperation in the field of justice and home affairs* and **spells a high risk of application of a justice and home affairs safeguard.**

The civil monitoring conducted by Open Society Institute - Sofia of the progress in honouring the commitments assumed in the five areas in which the delay of the reforms gives cause for serious concern, achieved in the period between December 2005 and March 2006, arrived at the following key conclusions:

- 1. In all five areas: Company law, Freedom to provide services, Agriculture, Regional policy, and Justice and home affairs, progress in overcoming the delay has reached the critical minimum and, therefore, provided the brisk pace of reforms is kept up, these spheres should not pose an obstacle to Bulgaria's membership in the EU as from 1 January 2007.**
- 2. Owing to a delay and inadequate effectiveness in the implementation of key reforms in the areas of Agriculture and Justice and home affairs, the risk that an internal market safeguard will be applied is not overcome yet, whereas the risk of application of a justice and home affairs safeguard remains high.**

## **RECOMMENDATIONS BY THE EXPERT TEAMS WHICH CONDUCTED THE CIVIL MONITORING, SEEKING ACHIEVEMENT OF GREATER PUBLIC OPENNESS, TRANSPARENCY AND ACCOUNTABILITY**

Guided by an understanding that 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, the expert teams of the Open Society Institute - Sofia, which conducted the civil monitoring, recommend:

1. Design of an Internet site on Bulgaria and the European Union, to be hosted by the Office of the Minister of European Affairs, providing online access to the text of all documents concerning Bulgaria's European integration:
  - National Development Plan;
  - National Strategic Reference Framework;
  - Operational Programmes, Managing Authorities, Intermediate Bodies with contact information;
  - Results of peer reviews and recommendations of the European Commission and European experts;
  - Monitoring reports from the European Commission;
  - Council Regulations for the 2007-2013 period;
  - Relevant significant events and decisions of the Council of Ministers, the National Assembly, other bodies: Council on European Integration, Council on Coordination and Monitoring etc.;
  - Others, including relevant information from the EU Member States.
2. Public disclosure of the results of peer reviews.
3. Posting on the Internet site of the Ministry of Finance of the list of projects which have applied for EU financing and of the major national investment projects, which have or are being prepared for financing after Bulgaria's accession to the EU. Posting information on each project financed by European resources: objects, amount of financing, implementing entity etc.
4. Formation of a team for dialogue and partnership with civil society at each Managing Authority of an Operational Programme, to ensure transparency in the work of the relevant authority and to provide information, explanations and answers to questions by members of the public, media, organisations etc.
5. Introduction of mandatory criteria of public openness, transparency and partnership with civil society in evaluating the results of the implementation of the Operational Programmes, the National Development Plan and the National Strategic Reference Framework (which must be elaborated periodically and publicly).