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REPORT
ON THE STATE OF PREPAREDNESS OF BULGARIA FOR FULL EU MEMBERSHIP FROM 1 JANUARY 2007

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EXECUTIVE SUMMARY

1. Introduction

In 2006 Bulgaria entered the home stretch of its preparation for full membership of the EU, for which the target effective date is 1 January 2007.

The October 2005 and May 2006 Monitoring Reports of the European Commission identified a number of areas as giving rise to 'serious concern' over the slowed down pace of reform.

In its May 2006 Comprehensive Monitoring Report on the state of preparedness for EU membership of Bulgaria, the European Commission lists six areas of serious concern, which require urgent action:

- setting up a proper integrated administration and control system (IACS) in agriculture, (*acquis* chapter 7);
- building-up of rendering collection and treatment facilities in line with the *acquis* on TSE and animal by-products (*acquis* chapter 7);
- clearer evidence of results in investigating and prosecuting organised crime networks (*acquis* chapter 24);
- more effective and efficient implementation of laws for the fight against fraud and corruption (*acquis* chapter 24);
- intensified enforcement of anti-money laundering provisions (*acquis* chapter 24);
- strengthened financial control for the future use of structural and cohesion funds (*acquis* chapter 28).

The question of **nuclear safety** was included in a warning letter sent to the Bulgarian Government after the publication of the Monitoring Report and signed by EU Enlargement Commissioner Olli Rehn and by the Energy Commissioner Andris Piebalgs.

In this connection, the Open Society Institute – Sofia formed six expert groups tasked with monitoring the Bulgarian Government's progress in honouring the commitments assumed and with informing the authorities in Sofia and Brussels and civil society, **simultaneously with and independently of the Government, of the state of preparedness of Bulgaria for full membership from 1 January 2007.**

On the basis of written information collected and interviews with officials of the ministries concerned held until **31 August 2004**, the expert groups have **prepared this Report on the State of Preparedness of Bulgaria for Full EU Membership from 1 January 2007.**

The report is structured into: **executive summary, introduction, evaluation of the adequacy and implementation of the measures planned by the Bulgarian Government, and conclusions on the state of preparedness of Bulgaria for full membership from 1 January 2007, the risk of application of safeguard clauses, and proposals for follow-up measures to guarantee the sustained implementation of reforms even after 1 January 2007 in the spheres where the problems have not been completely overcome.**

2. Review and Evaluation of Implementation of the Measures

The team analysed a total of seventy-three measures planned by the Bulgarian Government to overcome the problems in the areas of serious concern identified by the

EC. Of these, sixty-seven qualified as adequate and six as inadequate to address the problems in question. Between May and August 2006, forty measures were implemented and eleven were not implemented, while implementation of twenty-two is in progress.

An analysis of the adequacy and implementation of the measures planned by the Government in each of the six areas found:

In the **anti-corruption area**, all fourteen planned measures adequately address the conclusions and criticisms in the May 2006 Report of the EC.
Nine of these measures have been implemented, one has not been implemented, and efforts and progress in the implementation of the remaining four have been made or their deadline has not yet expired. **Of greatest concern is the delay and gaps in building the capacity of the Commission on Prevention and Counteracting Corruption to effectively implement the anti-corruption policy.**

However, progress in implementing the rest of the anti-corruption measures shows that there is a political will to address the issue and raises hopes that if anti-corruption efforts continue and are stepped up, the problems of corruption will not be an obstacle to Bulgaria's full membership in the European Union from 1 January 2007.
Considering the progress made in implementing anti-corruption measures, there are grounds to assume that the risk that corruption may prompt the application of a safeguard clause has receded over the past few months. Still, it must be noted that there is a need of far more resolute measures for sustained counteraction and prevention of corruption.

In the area of **reform of the judicial system**, the Government has identified fourteen measures as needed to continue the judicial reform process in Bulgaria. A quantitative analysis found that ten measures qualify as implemented and four as not implemented. The majority of the measures (twelve) qualify as fully adequate, one as adequate provided that certain other conditions are met as well, and one as inadequate (holding a national meeting of the police investigators investigating crimes committed by organised criminal groups, to assess the practice in enforcing the new Penal Procedure Code).

On the whole, progress has been made in implementing the planned measures in the area of judicial reform. The small number of measures that have not been implemented, as well as their nature, cannot be treated as grounds for serious criticism, nor can they pose an obstacle to Bulgaria's EU accession.

The adequacy of the measures taken by the Government in response to European Commission criticisms does not pose a risk of application of a safeguard clause. The need to press ahead with the judicial reform with a view to full-fledged and effective implementation of the measures undertaken is more likely to justify the introduction of a period of post-accession monitoring.

In their predominant part (seventeen), the twenty-one measures planned for **countering organised crime and money laundering** are adequately defined and, if properly implemented, could lead to an optimisation of the investigation and criminal prosecution of organised crime in Bulgaria in the medium term. Of the analysed measures, nine have been implemented and five have not been implemented, while implementation of seven is in progress.

Since the period of time remaining until September 2006 is hardly likely to see tangible results in the fight against organised crime (e.g. several convictions of key figures or large-scale confiscation of assets), there is still a risk of application of some of the safeguard clauses under Article 37 or 38 of the Accession Treaty. Recourse to a postponement of accession by one year (Article 39 of the Treaty) is unlikely. With a fair amount of certainty, the European Commission can be expected to impose some form of continued monitoring of the performance of the Bulgarian authorities in the field of the fight against organised crime.

The measures identified in the **field of agriculture** are sufficient to overcome problems in the areas of serious concern. Of the planned seven measures, three have been implemented and the implementation of the remaining four is in progress as the deadlines set for their implementation are unrealistically tight. Still, **it is not very likely that the achieved level of implementation of the measures will be a significant obstacle to Bulgaria's accession or will even prompt the application of safeguard clauses.**

There is a risk that a safeguard may be applied as of the end of 2007 if the IACS (and, respectively, LPIS) is not operational by the time of Bulgaria's accession. Since the actual use of the IACS will commence from 1 December 2007, with the start of the CAP direct payments scheme for the first year of Bulgaria's possible membership, a safeguard clause – if applied – will be effective from that date. Further efforts are needed to ensure that the LPIS and, respectively, IACS will be in place and in operation before the end of 2006, thus averting the application of a safeguard clause.

There is a risk of application of an internal market safeguard in the veterinary sector, consisting in restrictions on trade in pigs and pigmeat, as well as on trade in live animals between Bulgaria and Member States. Such measures may be applied if there are unauthorised vaccinations against classical swine fever and if the animal identification database is not operational. Avoiding the application of such measures requires the establishment of an emergency animal health fund and provision of the financial resources necessary for the launch of the animal identification information system.

Almost half of the twelve measures planned **to strengthen financial control for the future use of the Structural and Cohesion Funds** were implemented by early August. The remaining seven are either-long term or their implementation is in progress.
The measures planned adequately address the problems, but part of them are oriented in the long term, e.g. regarding the strengthening of administrative capacity, and the results will make themselves felt after a long period of time.

The pace of implementation of the measures to strengthen financial control for the future use of the Structural and Cohesion Funds does not pose a significant risk of a postponement of Bulgaria's membership in the European Union. Until completion of the EDIS accreditation, however, absorption of resources from the EU funds will be impossible. **This spells a risk of a delay or even loss of financial resources from the EU funds. There is no risk of application of a safeguard clause.**

The measures in **the sphere of nuclear energy and nuclear safety**, set out in the Government Action Plan, are adequate and timely. Of the five measures planned, four have been implemented and one has not been implemented.

Implementation of the measures in the field of nuclear energy and nuclear safety, therefore, compensates for the actual lag and largely contributes to building confidence in the

Government's political will to honour the commitments to the EU. It could be argued that **the risk of a negative opinion (i.e. a determination that Bulgaria does not honour its commitment) is insignificant and should not block the country's full membership from 1 January 2007.**

Full-scale honouring of the commitment to close down units 1–4 of the Kozloduy NPP, however, will take an exceedingly long period of time after the accession date; in practice, before accession the EC can only assess the initial efforts made by the Bulgarian Government, which must demonstrate a will to make the process irreversible. The bulk of the actions planned in the decommissioning strategy are to be implemented after 2007.

3. Conclusion

The analysis of the adequacy and implementation of the **seventy-three measures** planned by the Government of the Republic of Bulgaria during the May–August 2006 period in the six areas of serious concern, which require urgent action, as identified in the Report of the European Commission, shows that:

1. **Most measures have been adequately planned and implemented (sixty-seven qualified as adequate and forty of them have been implemented, while implementation of twenty-two is in progress), which proves the presence of a political will and actions to overcome the problems and invites the conclusion that the identified areas do not spell a significant risk of a postponement of Bulgaria's membership in the European Union from 1 January 2007.**

2. **Owing to the systemic nature of some of the identified problems, whose addressing requires sustained and systematic actions, the areas of anti-corruption, fight against organised crime and money laundering, and agriculture still pose a risk of application of safeguard clauses, even though the level of this risk has substantially receded.**

3. **The need to press ahead with the judicial reform with a view to full-fledged and effective implementation of the measures undertaken is more likely to justify the introduction of a period of post-accession monitoring.**

4. **In the sphere of financial control for the future use of the Structural and Cohesion Funds, the overdue EDIS accreditation spells a risk of a delay or even loss of financial resources from the EU funds after accession.**

5. **As sustained and systematic efforts are required to overcome the problems in the six areas of serious concern, work will have to continue and a number of measures and actions will have to be taken even after Bulgaria's accession to the EU on 1 January 2007.**

INTRODUCTION

In 2006 Bulgaria entered the home stretch of its preparation for full membership of the EU, for which the target effective date is 1 January 2007.

The October 2005 and May 2006 Monitoring Reports of the European Commission identified a number of areas as giving rise to 'serious concern' over the slowed down pace of reform.

Considering the broad public support for Bulgaria's EU membership as from 1 January 2007 and the short time left, it is necessary to make redoubled efforts to enhance partnership between civil society and government institutions, as well as to monitor constantly and exercise active citizen 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.

The Agreement established this country's first ever mechanism for civil 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.

In **March 2006**, the Open Society Institute published a report on the progress in honouring the commitments assumed in the five areas identified as giving cause for serious concern in the **October 2005 Monitoring Report of the European Commission**. Progress was monitored and reported simultaneously and independently of the Government.

The **May 2006 Monitoring Report of the European Commission** lists six areas of serious concern, which require urgent action:

- setting up a proper integrated administration and control system (IACS) in agriculture, (*acquis* chapter 7);
- building-up of rendering collection and treatment facilities in line with the *acquis* on TSE and animal by-products (*acquis* chapter 7);
- clearer evidence of results in investigating and prosecuting organised crime networks (*acquis* chapter 24);
- more effective and efficient implementation of laws for the fight against fraud and corruption (*acquis* chapter 24);
- intensified enforcement of anti-money laundering provisions (*acquis* chapter 24);
- strengthened financial control for the future use of structural and cohesion funds (*acquis* chapter 28).

The question of **nuclear safety** was included in a warning letter sent to the Bulgarian Government after the publication of the Monitoring Report and signed by EU Enlargement Commissioner Olli Rehn and by the Energy Commissioner. The letter emphasises the concern

caused by the failure to honour commitments for irreversible dismantling of the first two reactors of the Kozloduy NPP and the insufficient measures for the closure of units 3 and 4.

In this connection, the Open Society Institute – Sofia formed six expert groups tasked with monitoring the Bulgarian Government's progress in honouring the commitments assumed and with informing the authorities in Sofia and Brussels and civil society, **simultaneously with and independently of the Government**, of the state of preparedness of Bulgaria for full membership from 1 January 2007.

The civil monitoring of the implementation of the measures under the relevant **areas** is conducted by the following experts:

Civil Monitoring Project Director: Assya Kavrakova, Program Director, European Integration and Regional Stability, Open Society Institute – Sofia;
Civil Monitoring Project Co-ordinator: Zvezda Vankova, Program Co-ordinator, Open Society Institute – Sofia;
Anti-corruption Area (Chapter 24 *Co-operation in the fields of justice and home affairs*, Political criteria): Martin Gramatikov, Assistant Professor, St Kliment Ohridski University of Sofia, Public Administration Department, and Diana Kovacheva, Executive Director, Transparency International Bulgaria;
Organised Crime and Money Laundering Area (Chapter 24 *Co-operation in the fields of justice and home affairs*): Ivanka Ivanova, Program Director, Legal Program, Open Society Institute – Sofia;
Judicial System Reform Area (Chapter 24 *Co-operation in the fields of justice and home affairs*): Rada Smedovska-Toneva, Program Co-ordinator, Legal Program, Open Society Institute – Sofia;
Agriculture Area (Chapter 7 *Agriculture*): Prof. Plamen Mishev D.Sc. (Econ.), Optional Courses Centre, University of National and World Economy;
Financial Control Area (Chapter 28 *Financial Control*): Boyan Zahariev, Program Director, Governance and Public Policies Program, Open Society Institute – Sofia, and Georgi Angelov, Senior Economist, Open Society Institute – Sofia;
Energy Area (Chapter 14 *Energy*): Luchezar Bogdanov, Industry Watch Group.

The experts attended the meetings held by the Council for Co-ordination and Monitoring with the Council of Ministers. On the basis of collected written information and interviews with officials of the ministries concerned held until 31 August 2004, the expert groups have **prepared this Report on the State of Preparedness of Bulgaria for Full EU Membership from 1 January 2007.**

The report is structured into: executive summary, introduction, evaluation of the adequacy and implementation of the measures planned by the Bulgarian Government and conclusions on the state of preparedness of Bulgaria for full membership from 1 January 2007, the risk of application of safeguard clauses, and proposals for follow-up measures to guarantee the sustained implementation of reforms even after 1 January 2007 in the spheres where the problems are not completely overcome.

Monitoring Methods

Outlining the scope of the monitoring, 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.).

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.

The **evaluation** of the Government-planned actions (measures) includes:
- evaluation of the **adequacy** of the measures (whether they adequately address the problem as identified in the EC Monitoring Report), and
- evaluation of the **implementation** of the measure. A scale of two 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;
⇒ **Implemented:** the measure has been implemented by the deadline.

The **conclusions** of the evaluation of the implementation of the planned measures cover the following issues:

- **Sufficiency/insufficiency of the formulated measures and of the extent of their implementation to overcome the problems in connection with Bulgaria's full membership in the EU from 1 January 2007.**
- **Assumptions of a risk of application of safeguard clauses.**
- **Proposals for follow-up measures to guarantee the sustained implementation of the reforms in the relevant area even after 1 January 2007 (in case the problem has not be completely overcome).**

CHAPTER I: ANTI-CORRUPTION MEASURES

Part I. Review and Evaluation of Implementation of the Measures

1. European Commission criticisms and requirements in areas of serious concern

Traditionally, anti-corruption measures are covered in the sections on political criteria and Chapter 24: *Co-operation in the Field of Justice and Home Affairs* of the European Commission's regular and monitoring reports. In its May 2006 Monitoring Report, the Commission identifies certain outstanding issues in the fight against corruption that remain to be addressed. It notes that the capacity of the Commission on Prevention and Counteracting Corruption to effectively implement and co-ordinate anti-corruption policy needs to be further enhanced. The European Commission also points out that Bulgaria needs to present clear evidence of results in its fight against corruption, in particular high-level corruption. It expressly notes that indictments, prosecutions, trials, convictions and dissuasive sentences remain rare in the fight against high-level corruption.

The May 2006 report of the European Commission also identifies the need of addressing political corruption through legislative regulation of the public disclosure of the financial interests of senior public officials. Another area of concern is the gap in the Political Parties Act regarding declaration of in-kind donations. Such donations are unaccountable and could lead to corrupt practices.

One of the conclusions in this, as in previous reports, is that law enforcement agencies, including the Customs Agency, remain very vulnerable to corruption and improper behaviour. The report notes corrupt practices in border control and the need for taking organisational and technical measures to limit the possibility of corruption.

2. Measures addressing the European Commission recommendations, identified in the Government Action Plan

2.1. Compulsory or voluntary nature of declaration of interests and assets by magistrates, MPs, political parties and all civil servants.

Urgent issuance of an Order by the National Audit Office President to specify the procedure for public access to the public register – pursuant to Article 6 (2) of the Public Disclosure of Senior Public Officials' Financial Interests Act.
Responsible authority: National Audit Office
Deadline: Not specified

The Public Disclosure of Senior Public Officials' Financial Interests Act was amended on 9 May 2006 (*State Gazette* No. 38 of 9 May 2006) to ensure greater publicity and accountability of the financial interests of senior public officials in Bulgaria by establishing a mechanism providing broader access to the information in their asset declarations. Public access to such declarations is regulated by Article 6 of the Act. The amendments stipulate that any person shall have access to data from the public register according to a procedure specified by an

Order of the President of the National Audit Office. In this connection, the President of the National Audit Office shall issue an Order specifying that access to the public register is provided on the basis of a declaration/request filed by the interested person. On 31 May 2006 the President of the National Audit Office issued Order No. 145, pursuant to Article 6 (2) and Article 7 of the Public Disclosure of Senior Public Officials' Financial Interests Act, specifying:

- A procedure for public access to data from the public register under Article 5 (1) of the Public Disclosure of Senior Public Officials' Financial Interests Act, contained in declarations filed after 1 January 2005;
- Approving a sample application form for access according to Annex 1, an integral part of the Order;
- Standards for payment of expenses for provision of access.

Adequacy of measure:
The measure is adequate as the Act does not specify a procedure for access to data from the public register, therefore there was an urgent need for the National Audit Office President to issue the relevant Order.

Status: Measure implemented.

Urgent adoption of standards for payment of expenses for disclosure of data from the public register – pursuant to Article 7 (1) of the Public Disclosure of Senior Public Officials' Financial Interests Act.
Responsible authority: National Audit Office
Deadline: Not specified

The amendments to the Public Disclosure of Senior Public Officials' Financial Interests Act (promulgated in the *State Gazette* No. 38 of 9 May 2006) have introduced new arrangements for access to data from the public register. Article 7 of the Act provides that the expenses for disclosure of data shall be paid according to standards determined by the President of the National Audit Office. On 31 May 3006 the President of the National Audit Office issued Order No. 145, pursuant to Article 6 (2) and Article 7 of the Public Disclosure of Senior Public Officials' Financial Interests Act, determining standards for payment of expenses for provision of access.

Adequacy of measure:
The measure is adequate as the Act does not specify a procedure for payment of expenses for provision of access to data from the public register. The fees for access to information from the public register are very low and do not curtail the right of access to data from the public register under the Public Disclosure of Senior Public Officials' Financial Interests Act.

Status: Measure implemented.

Elaboration and submission to the National Assembly of a Bill to Amend and Supplement the Public Disclosure of Senior Public Officials' Financial Interests Act introducing, *inter alia*, an obligation for the National Revenue Agency to verify the authenticity of declarations filed with the National Audit Office; entry of declarations into a freely accessible Internet-based register.

Responsible authority: Commission on Prevention and Counteracting Corruption, Ministry of Finance, National Audit Office, in co-operation with National Assembly
Deadline: 15 June 2006

The Public Disclosure of Senior Public Officials' Financial Interests Act obligates all persons in senior public office (according to Article 2 of the Act) to file asset declarations upon entering/leaving office, as well as by 31 May every year. Practice in enforcing the Act shows that many of the persons covered by Article 2 of the Act fail to file annual declarations, which seriously obstructs the possibility of monitoring changes in their financial/property status while they are in office. Secondly, it must be noted that the National Audit Office does not have the capacity to verify the authenticity of information provided in asset declarations.

On 9 May 2006 (*State Gazette* No. 38 of 9 May 2006), the Public Disclosure of Senior Public Officials' Financial Interests Act was amended to provide greater access to the National Audit Office public register where the filed declarations are kept. Following the amendment to Article 6 of the Act, any person has the right to access data from the public register by filing a declaration with the President of the National Audit Office.

Despite the above-mentioned amendments, the Public Disclosure of Senior Public Officials' Financial Interests Act remains one of the most heavily criticised laws because of the narrow range of persons who are obligated to declare their financial interests (the persons covered by Article 2, their spouses and underage children), ineffective control over the filed declarations, the limited range of assets subject to declaration (the latter do not include bank accounts, bank safety deposit boxes and safes, jewellery, works of art), etc.

To address these and other criticisms, in July 2006 a group of MPs submitted to the National Assembly a Bill to Amend and Supplement the Public Disclosure of Senior Public Officials' Financial Interests Act.[1] The bill was passed on second reading on 23 August 2006 and became law on 5 September 2006 (promulgated in the *State Gazette* No. 73 of 5 September 2006). The amendments to the Act regulate the possibility for the National Revenue Agency to conduct checks to verify the authenticity of income and asset declarations. The range of persons obligated to declare their financial interests has been extended. Access to data is provided through the National Audit Office website, including to data from declarations filed by the end of 2004.

Adequacy of measure:
The measure is adequate. The need of exercising control to counter corruption has been repeatedly noted by the European Commission and international observers. Lack of control over the asset declarations of senior public officials renders meaningless the very declaration of financial interests. The National Audit Office does not have adequate powers and capacity to verify the authenticity of declarations. In this sense, assigning the obligation to verify the authenticity of declarations to the National Revenue Agency is an adequate solution to the problem of the lack of effective control.

Secondly, the amendments to the Act have increased public access to declared data by providing that the declarations must be entered into a freely accessible Internet-based register. This form of modern access to information will increase opportunities for public control over the filed declarations.

[1] Bill No. 654-01-95 dated 7 July 2006, to Amend and Supplement the Public Disclosure of Senior Public Officials' Financial Interests Act, submitted by Yordan Tsonev, Tatyana Doncheva and Kamelia Kassabova.

Status: Measure implemented.

Speedy elaboration and submission to the National Assembly of a Lobbying Bill as provided for by the 2006 Programme for Implementing the Strategy for Transparent Governance and Prevention and Counteracting Corruption, with the aim of introducing at a primary legislation level a requirement for disclosure of interests by all senior public officials.
Responsible authority: Not specified
Deadline: Not specified

Lobbying activities in Bulgaria are not regulated by law and this creates a non-transparent environment and possibilities for unauthorised economic pressure on members of the executive and the judiciary. To address the numerous criticisms in this area, a lobbying bill was drafted during the term in office of the previous, 39th National Assembly, but the bill was rejected.

In June 2006 a working group co-ordinated by the national Ombudsman and including representatives of national institutions and NGOs (the Council of Ministers' Commission on Prevention and Counteracting Corruption; the Combating Corruption Committee at the National Assembly; the Minister of European Affairs; the Public Consultative Committee at the National Assembly's Combating Corruption Committee; NGO experts, representatives of the academic community, practicing lawyers, and others) was set up to elaborate a lobbying bill. The bill contains provisions designed to publicly legitimise lobbying activities by obligating senior public officials to disclose interests. The bill has been drafted and submitted for co-ordination to European Commission experts. After it is approved it will be submitted to the National Assembly by the Commission on Prevention and Counteracting Corruption. The deadline for its submission to Parliament is 30 September 2006.

Parallel with the above-mentioned bill, another two lobbying bills were drafted by July 2006. The first Disclosure of Lobbying Activities Bill was drafted by the Parliamentary Group of the Movement for Rights and Freedoms, and the second (of the same name) was drafted and submitted to the National Assembly on 10 August 2006 by the MPs Lyuben Dilov and Asya Mihailova (both from the Parliamentary Group of the United Democratic Forces).

The three bills differ in their approach to the regulation of lobbying, and provide different arrangements for registration of persons involved in lobbying activities as well as different institutions conducting lobbying activities.

Adequacy of measure:

The elaboration of a lobbying bill is of key importance in countering corruption and ensuring, at the primary legislation level, public disclosure of interests of all senior public officials. The fact that there are three separate bills presupposes that the relevant parliamentary committees will conduct a serious debate on the approach to regulating lobbying activities.

This measure is listed in the 2006 Programme for Implementing the Strategy for Transparent Governance and Prevention and Counteracting Corruption, the implementation of which is within the remit of the Council of Ministers. As of now, the bill supported by the Commission on Prevention and Counteracting Corruption has not yet been submitted to Parliament. Hence, one may conclude that the implementation of the measure is in progress but the measure has not been implemented yet.

Status: Measure not implemented as the bill which is most likely to be adopted has not yet been submitted to the National Assembly.

Elaboration, in co-operation with the National Assembly, of a request to the National Audit Office for the provision of:
1. Political parties' financial statements on the preceding year, submitted by 31 May 2006;
2. A list of political parties which failed to submit financial statements on the preceding year within the time limit established under the Political Parties Act;
3. The National Audit Office's reports for the last three years on the results of the audits of the financial activity and management of the property allocated to political parties.
Responsible authority: Not specified
Deadline: Not specified

On 8 June 2006 the Combating Corruption Committee at the National Assembly officially resolved to request from the National Audit Office the certified financial statements of political parties on the preceding fiscal year and the National Audit Office's reports for the last three years on the results of the audits of the financial activity and management of the property allocated to political parties. The request was submitted on the motion of the Public Consultative Council at the National Assembly's Combating Corruption Committee.

The relevant letter of request on behalf of the Combating Corruption Committee was sent to the President of the National Audit Office on 15 June 2006.

The requested information is necessary with a view to taking concrete measures to amend the Political Parties Act and to provide stricter sanctions for political parties that fail to submit financial statements.

In its letter to the National Audit Office, the Combating Corruption Committee has not requested a list of political parties that failed to submit financial statements on the preceding year within the time limit established under the Political Parties Act. This information, however, is readily available on the National Audit Office website. In accordance with Article 34 (5) of the Political Parties Act, the National Audit Office publishes in its official bulletin and on its website, not later than 15 April of each current year, the designations of the parties which have failed to submit statements within the time limit established under Article 34 (4) of the Act.

Adequacy of measure:

The measure is adequate, considering Bulgaria's problems in the area of political corruption identified in the European Commission monitoring reports, Transparency International's Corruption Perception Index, and the reports of a number of international organisations and experts. Non-transparent financing of political parties is one of the most serious and common forms of political corruption. Scandals involving non-transparent financing undermine public confidence in political parties and can trigger political crisis. Requesting information about the results of audits of political parties' financial statements is of key importance in elaborating concrete proposals for amending and supplementing the Political Parties Act[2] (the section on financing of political parties and campaigns) and regarding the sources of

[2] Political Parties Act, promulgated in the *State Gazette* No. 28 of 1 April 2005; amended and supplemented, *State Gazette* No. 102 of 2005; amended, *State Gazette* No. 17 of 24 February 2006 – effective 1 May 2006.

financing of political parties in Bulgaria, as well as in evaluating the level of transparency of political life and, not least, the effectiveness of the control exercised by the National Audit Office.

As of end August 2006, the National Assembly's Legal Affairs Committee is reading for the second time a Bill to Amend and Supplement the Political Parties Act moved by a group of MPs. According to the proposed amendments, a list of donors and information about donations must be attached to the annual financial statements of political parties. The bill also makes an attempt to introduce transparency in donations from not-for-profit legal entities that are under the control or influence of persons from the leadership of political parties. Another positive step provided for by the bill is the granting of powers to the National Revenue Agency to exercise tax and insurance control over the annual financial statements of political parties.

In this sense, the measure is timely and adequate.

Status: Measure implemented.

Submission of the specified statements and reports to the Combating Corruption Committee at the National Assembly. Acting in co-operation, the Combating Corruption Committee at the National Assembly shall conduct an analysis of the submitted documents and shall assess their compliance with the Political Parties Act, particularly as to whether the political parties' statements include:
1. Donations in kind;
2. Donations from political foundations and whether the National Revenue Agency has checked if those donations are lawful;
3. Whether the names and other personal data of all donors to political parties have been made public.
Responsible authority: Not specified
Deadline: Not specified

The measure is designed to improve the legal framework regulating the financing of political parties in Bulgaria. Its implementation is based on a letter sent to the National Audit Office by the National Assembly's Combating Corruption Committee requesting specific information about the annual financial statements submitted by political parties. The request was submitted to the National Audit Office in June 2006, but the information about the latter's findings will be available only after the expiry of the six-month term provided for by the law. In this sense the measure, as worded, cannot be implemented before October 2006, when the National Audit Office presents its report.

Nevertheless, it must be noted that the problematic areas identified in this measure were taken into consideration while elaborating the Bill to Amend and Supplement the Political Parties Act passed by the National Assembly on first reading.

Adequacy of measure:
The measure adequately identifies problematic areas in the financing of political parties but its implementation depends on the National Audit Office report, which is expected in October 2006.
It must be noted that the implementation of the measure is in progress but cannot be completed before October 2006. As of now, the Bill to Amend and Supplement the Political Parties Act is expected to have been passed on second reading, therefore the measure can

serve only as a form of exercising control over the National Audit Office and as a point of reference in possible future amendments to the law.

Status: Measure not implemented, but implementation in progress.

Accelerated elaboration and submission to the National Assembly of a Bill to Amend and Supplement the Political Parties Act with a view to improving transparency and accountability of political party financing.
Responsible authority: In co-operation with National Assembly
Deadline: Not specified

The Bill to Amend and Supplement the Political Parties Act was submitted to the National Assembly on 21 July 2006 and passed on first reading on 16 August 2006. It provides for specific measures to improve transparency and accountability of political party financing. More specifically, the Bill provides for the following:

- Greater transparency of donations: Political parties must supplement their certified annual financial statements with a declaration listing all their donors, as well as the type, amount, value and purpose of the donations. Political parties are obligated to submit to the National Audit Office a list of the not-for-profit legal entities whose founding members or members of governing bodies include members of the governing and supervisory bodies of the relevant political party, their spouses and children.
- Greater supervisory powers of the National Audit Office: The governing and supervisory bodies of parliamentary parties are obligated to file with the National Audit Office declarations on their assets, income and expenses in Bulgaria and abroad.
- Stricter sanctions: Sanctions are introduced for any member or members of a governing body of a political party or a person or persons responsible for the revenue, expenditures and keeping of accounts of the party, who fail to submit a financial statement and a declaration listing donors, or who obstruct the conduct of an audit by the National Audit Office.

Adequacy of measure:
The measures providing for the submission of a Bill to Amend and Supplement the Political Parties Act are adequate, given the need to improve transparency and accountability of political party financing. The bill provides for specific measures addressing the problems identified in the area of non-transparent financing of political parties.

Status: Measure implemented.

2.2. Information about action taken in cases of alleged corruption (suspension, dismissal), applicable and applied sanctions.

Collection and updating, by the Commission on Prevention and Counteracting Corruption, of information from government ministries and other institutions on cases of removal from office due to allegations of corruption, as well as keeping of statistics on the sanctions imposed.

Responsible authority: Commission on Prevention and Counteracting Corruption
Deadline: Once a month

The Commission on Prevention and Counteracting Corruption collects and updates information on cases of removal from office due to allegations of corruption. The Commission collects and generalises such information from government ministries and other institutions for statistical purposes. In its latest report the Commission notes that, following checks of the activities of senior public officials, the Chief of the State Agency for Contingency Reserves and Wartime Stockage and the Director of the National Fire Safety and Civil Protection Service at the Ministry of Interior have been dismissed from office. The relevant materials have been submitted to the prosecution service.

The Commission reports the following statistics on action taken in cases of alleged corruption:

Between 1 January and 30 June 2006, a total fifty-three officials were dismissed, twenty-two were removed from office by an administrative procedure (at the Ministry of Interior), forty-four were suspended, twenty-five were relocated to remove them from a corruption-prone environment, ninety-eight received a disciplinary sanction of written warning, and 137 disciplinary proceedings were instituted.

Adequacy of measure:
The measure is adequate, given the need of timely generalised information about the actions taken in cases of alleged corruption and of identifying the specific areas requiring government or legislative action.

Status: Measure implemented.

Provision by the Commission on Prevention and Counteracting Corruption of information about cases of removal from office or other administrative or penal sanctions. The information provided must be sufficient to indicate the general trend.
- Level of sanctions
- Chronology of sanctions
- Suspension, removal from office, and punishment
- Regular reporting of the short-term improvements in statistics.
Responsible authority: Commission on Prevention and Counteracting Corruption
Deadline: Not specified

The measure concerning provision of generalised information and keeping of specific statistics must be reviewed in the context of the previous measure. Its implementation depends on the implementation of the measure requiring that the Commission on Prevention and Counteracting Corruption collect and update information from government ministries and other institutions on cases of removal from office due to allegations of corruption, as well as keep statistics on the sanctions imposed. Given that the previous measure is implemented, it will serve as a basis for providing information and identifying the trends in keeping statistics. The reports of the Chairperson of the Commission on Prevention and Counteracting Corruption covering the periods between 1 January and 30 June 2006, and 1 July and 30 August 2006 show that the Commission has enough data to keep statistics.

A unified set of indicators depending on the specific forms of corruption has been elaborated. The following main spheres of corrupt practices have been identified: corruption in public administration, political corruption, corruption in the judicial system and law enforcement

agencies, and corruption in public services. The main forms of corrupt action in the relevant spheres of corrupt practices have also been identified:

- Corruption in public administration is most common in the award of public procurement contracts; application of permit and licensing requirements; privatisation; collection of taxes, customs duties and fees; sanctioning; appointment of civil servants; absorption of EU funds.
- The main forms of corrupt action in political corruption include illegal financing of political parties; illegitimate lobbying (defence of private economic interests in exchange for a reward); clientelism and political patronage (cronyism and nepotism); unlawful influence on other authorities.
- The main forms of economic corruption involve privatisation; restitution of property under restitution laws; post-privatisation transactions.
- Corruption in the judicial system and law enforcement agencies is most common in ascertaining and reporting crimes or violations; drawing up written statements, imposing fines and other sanctions; setting or modifying restraints on liberty; undertaking criminal prosecution; dismissing criminal proceedings.

Depending on the perpetrators, scale and mechanisms, two types of corruption are identified: grand corruption (involving senior public officials, politicians and businesspersons who have the power to take or influence decisions on disposition of significant resources) and petty corruption (involving lower-level officials and smaller bribes, presents and favours).

Two general cases of corruption are also identified:

1. Cases in which officials obtain undue advantage by facilitating faster, better and more certain resolution of the bribe-giver's problem while acting within the law;
2. Cases in which officials obtain undue advantage from actions that violate the law.

Adequacy of measure:
The measure is adequate, given the need to generalise and provide information about the actions taken in cases of alleged corruption. The detailed information provided by the Commission for Prevention and Counteracting Corruption indicates that the Commission is keeping specific statistics that can provide information within specific parameters.

Status: Measure implemented.

Taking additional measures to reduce corruption at the borders, more specifically:

- **Discouraging cash payments at the border;**
- **applying the 'one-stop' principle at all Bulgarian border checkpoints;**
- **strengthening measures to prevent corruption in customs administration by investigating more proactively customs officials' unaccountable affluence, and by providing deterrent administrative and penal sanctions.**

Responsible authority: Interministerial Council on Border Control Issues
Deadline: Continuous – report in early September 2006

The adequacy of the measures must be reviewed separately with regard to the National Customs Agency and the Border Police.

The National Customs Agency has taken comprehensive measures to curb corruption. The relevant regulatory framework has been improved by Order No. 113 dated 13 June 2006 of the National Customs Agency Director, regulating the ascertainment of breaches of discipline

and conduct of disciplinary procedures. At the management level, the job descriptions for management staff positions have been updated to include an obligation for exercising control as to the observance of operational procedures by officials and a register has been created for officials' declarations on conflict of interest, which will facilitate future checks in this area. At the same time, the Customs Agency is pursuing a proactive policy to improve access of citizens and the business community to customs information. The Agency website is updated regularly and contains useful information. The procedures and methods of work are comparatively well presented, including those concerning border checkpoints, and phone numbers for reporting corruption are given. However, it is likely that providing a separate phone number for reporting corruption at each border checkpoint does not help citizens in reporting cases of corruption and makes it harder to generalise the reported information. It is advisable that the Customs Agency establish a single hotline for reporting corruption and promote it in an appropriate way.

The measures undertaken to ease and simplify customs procedures are a particularly positive development. As of 30 July, a pilot local information system for 'single-fiche' e-payment (e-payment to all border control services) has been introduced at the Lesovo border checkpoint, and is planned to be introduced at all other border checkpoints in the medium term. An Ordinance on the Terms and Procedure for Customs Declaration by Electronic Means (promulgated in the *State Gazette* No. 55 of 2006) has been adopted as well.

Between 1 January and 30 June 2006 the Customs Agency Inspectorate conducted more than 200 checks and internal investigations following alerts and complaints. A total 105 disciplinary proceedings against customs officials were instituted and seventy disciplinary sanctions were imposed, including the dismissal of nine officials. Five cases were referred to the prosecution service, but no information is available as to whether criminal proceedings have been instituted.

In a similar period of time (from 1 January to 30 May 2006), the General Border Police Directorate (GBPD) received only sixty-two alerts against officials, of which it investigated sixty. Thirty-nine were found to be unfounded. Five disciplinary sanctions were imposed. The comparatively high percentage of alerts which the General Border Police Directorate found to be unfounded and the low number of imposed disciplinary sanctions is noteworthy. These figures are symptomatic of the deficiencies in investigating alerts against Ministry of Interior officials in general. No information is available about the actual investigations themselves, therefore it is impossible to determine whether or not they were thorough. The criteria for distinguishing 'founded' from 'unfounded' alerts have not been made public, and this gives the authorities conducting investigations excessive discretion to determine whether an alert is founded or unfounded.

No information is available whether the General Border Police Directorate is taking any other measures, except for the above-mentioned investigations, to reduce corruption within its rank and file.

A step in the right direction has been taken to improve interaction between the customs administration and the Ministry of Interior. A joint Instruction on Co-operation between Border Control Authorities and Customs Authorities in the Border Zone was adopted on 31 May 2006.

Investigating the 'unaccountable affluence of particular customs officials' is within the competence of the Criminal Assets Identification Commission. There is no official information about the Commission's priorities. According to reports in the media, the

Commission has instituted eighty-five proceedings in connection with illegally acquired assets, involving impounded properties worth more than BGN 6 million. It is not known whether any of the instituted proceedings are against customs officials or GBPD officials.

As regards the introduction of the 'one-stop' principle at all border checkpoints in Bulgaria, it must be noted that it is unrealistic to expect this to happen prior to Bulgaria's accession to the EU. Negotiations on this issue have begun with Greece and Romania, but there is no programme with clear commitments of each country and deadlines. An agreement on one-stop service, signed with Romania on 28 August 2006, is expected to reduce the processing time of cars at the border by up to 70% after 1 January 2007.

Adequacy of measures:
The measures planned by the Government are adequate and can significantly reduce corruption at the borders. However, the radically different approach taken by the Ministry of Interior and by the customs administration to the problem is noteworthy. The approach taken by the Ministry of Interior relies solely on receiving alerts about corruption from citizens, without providing any guarantees that such alerts will be investigated properly. Hence, the low number of alerts is hardly surprising. Given the high percentage of alerts found to be 'unfounded' and the lack of clear criteria for determining whether an alert is founded or unfounded, one can assume that this measure does not have a distinctly positive impact on the reduction of corruption at the Ministry of Interior.

The approach taken by the Customs Agency is far more comprehensive. In addition to internal investigations, it relies on simplified procedures and eased access of citizens and business to the relevant information. In the long term, this approach will be much more effective than that of the Ministry of Interior. The first signs of that can already be seen. A World Bank report on anti-corruption reforms in the countries in transition in 2002 – 2005 (*Anticorruption in Transition 3 – Who is Succeeding ... And Why?* issued on 26 July 2006) notes Bulgaria's progress in customs reforms. This is the first survey in which public procurement has replaced customs as the sphere most prone to corruption.

Status: Measures not implemented at the time of writing (31 August 2006), but adequately identified; progress in their implementation should be assessed as positive.

Developing a comprehensive risk management programme that addresses the business sector. Risk management has to be underpinned by a reliable and regular reporting system.
Responsible authority: Council on Prevention and Counteracting Corruption to co-ordinate the implementation of the anti-corruption programme together with the business community
Deadline: September 2006

Developing a comprehensive risk management programme that addresses the business sector is needed to establish partnership between the Government and the business community. The programme should provide for feedback and provision of information about the achieved results. There is no doubt that the business community can play a significant role in countering corruption because although it is often identified as a victim of corruption business is a serious corrupting factor. In this sense, a risk management programme will increase predictability and enable diagnosing the corrupt environment, thus making it easier and faster to overcome existing and newly emerging corrupt practices.

At present, the results of risk management are reported regularly. Work is continuing on the identification, analysis and assessment of risks related to combating smuggling and customs fraud in 2006.

According to the Commission on Prevention and Counteracting Corruption, efforts are also being made to develop public-private partnership with the business sector, including to establish a practical mechanism of interaction with representative associations of importers and traders with a view to obtaining information about the parameters and development of the market and, possibly, alerts about suspected violations of the customs legislation, as well as studying the possibilities for and, respectively, initiating a procedure to conclude memoranda of understanding.

Adequacy of measure:
The measure is adequate and should be implemented by the Commission for Prevention and Counteracting Corruption in partnership with representatives of the business community. An analysis of the information provided by the Commission invites the conclusion that the implementation of the measure is in progress.

Status: Measure not implemented.

2.3 Administrative capacity of the National Audit Office and the Commission on Prevention and Counteracting Corruption

Urgent provision by the Prosecutor General of information and statistics on high-level corruption – based on the already established format and statistics concerning magistrates – including information about ongoing investigations, in order to demonstrate a track record.
Responsible institution: In co-operation with the Prosecution Service
Deadline: Not specified

According to information provided by the Prosecution Service, in the first six months of 2006 eight convictions were secured and thirty-one indictments for corruption were brought against high-level officials, including magistrates. In addition, the specialised units at prosecution offices and the Supreme Cassation Prosecution Office were verifying sixteen case files on crimes committed by high-level officials, including magistrates. The information provided by the Prosecution Service also includes descriptions of particular cases of corruption (for example, cases involving officials from the judicial system, the tax administration, etc.).

Adequacy of measure:
European experts find that Bulgaria's track record in combating high-level corruption remains poor and implementation of anti-corruption measures needs to be closely monitored. That is why Bulgarian institutions need to make further efforts to provide information about specific cases of corruption. Given the planned measures for collection and updating, by the Commission for Prevention and Counteracting Corruption, of information about accusations of corruption, the measure is adequate. Statistical information about cases of corruption crimes must be widely and publicly disseminated, as this will encourage institutions and the public to report such cases and conduct relevant investigations. Provision of such information will undoubtedly contribute to greater transparency in government and more effective combating of corruption. Comprehensive and in-depth analysis of the track record to date

will, in its turn, help the authorities to take adequate measures to improve relevant legislation, as well as to elaborate new anti-corruption norms.

Status: Measure implemented.

Urgent staffing of the Inspectorate General under the Council of Ministers, with a view to its capacity to fulfil the functions of a secretariat of the Commission on Prevention and Counteracting Corruption. Providing data (figures) on current staffing level and on planned level by September; providing a plan for staff training. In this connection, clarifying the role of the Commission on Prevention and Counteracting Corruption vis-à-vis the Co-ordinating Council under the Commission, the Ombudsman and the newly established Inspectorate at the Council of Ministers in handling alerts of corruption in the administration.

Responsible authority: Council of Ministers
Deadline: 15 June 2006

As of mid-August 2006, the staff of the Council of Ministers administration numbers 385 persons, of which 160 working under a civil-service relationship and 225 under an employment relationship. Article 88 (1) of the Rules of Organisation of the Council of Ministers and the Administration Thereof provides for a total 385 tenured positions in the administration. According to data from the Register of Administrative Structures and in accordance with Annex 3 to Article 88 (1) of the Rules of Organisation of the Council of Ministers and the Administration Thereof, as of end August 2006 the Inspectorate General Directorate has six tenured positions, of which four under an employment relationship and two under a civil-service relationship. At the time of writing this Report, the Register shows that four of the six tenured positions are vacant. For comparison, the Government Protocol Directorate has eight tenured positions, the Government Information Service has twenty-eight, and the Political Office of the Prime Minister has twenty-three tenured positions. By virtue of Article 10a of the Civil Servants Act, when a competitive examination for the appointment of a civil servant is announced, a notice of the competitive examination must be published in the Register of Administrative Structures. By end August 2006, no notices of competitive examinations for the appointment of staff at the Inspectorate General Directorate were published in the Register. Building a viable and effective Inspectorate General requires above all political will, expressed in statutory and political acts, and building an adequate administrative capacity. Understaffing raises concerns over the capacity of the Inspectorate General to fulfil its tasks. Given the high level and negative impact of corruption in Bulgaria, the number of tenured positions in the Inspectorate General (six) seems most insufficient.

The second component of the measure concerns the distribution of powers in combating corruption between the Council of Ministers General Inspectorate Directorate and the other institutions with similar functions. The powers of the Inspectorate General are regulated by an amendment to the Rules of Organisation of the Council of Ministers and the Administration Thereof (promulgated in the *State Gazette* No. 55 of 7 July 2006) and, more specifically, by Article 92b. The Rules of Organisation of the Council of Ministers and the Administration Thereof grants the Inspectorate General supervisory and methodological-guidance powers with respect to the inspectorates at government ministries, the purpose being to systematise its powers and co-ordinate them with the rights and obligations of the Commission on Prevention and Counteracting Corruption and the Ombudsman. Regulating the activity of the Inspectorate General is the subject of a separate measure in the Government's to-do list of

measures for implementation of the European Commission recommendations, identified in its Comprehensive Monitoring Report of 16 May 2006.

Adequacy of measure:
The 2006–2008 Strategy for Transparent Governance and Prevention and Counteracting Corruption, adopted at the beginning of 2006, assigns an important role to the Inspectorate General under the Council of Ministers. On the one hand, the Inspectorate General must play the role of a 'secretariat' of the Commission on Prevention and Counteracting Corruption. On the other, the establishment of an Inspectorate General must facilitate the unification of the practices of inspectorates at government ministries in detecting and preventing cases of corruption, abuse of office and conflicts of interest in public administration. Supplying the Commission with an appropriate administration is a key prerequisite for its viability and efficiency. Because of the two objectives noted above, the establishment and full-fledged operation of the Inspectorate General has an important role in the comprehensive set of measures to implement the policy on prevention and reduction of corruption. The measure adequately addresses the problems of corruption in Bulgaria identified by the European Commission in its Monitoring Report of 16 May 2006.

Status: Measure not implemented.

Adoption of amendments and supplements to the Rules of Organisation of the Council of Ministers and the Administration Thereof to improve the legal regulation of the Inspectorate General's functions in the field of transparent governance, prevention and counteracting corruption so as to support the activities of the Commission on Prevention and Counteracting Corruption.

Responsible authority: Council of Ministers
Deadline: 15 June 2006

The changes in the Rules of Organisation of the Council of Ministers and the Administration Thereof were promulgated in the *State Gazette* No. 55 of 7 July 2006. A new section (IIa 'Inspectorate General') regulating the powers of the Inspectorate General has been included in the Rules of Organisation. As the inspectorates at government ministries, the Inspectorate General likewise directly reports to the head of the relevant body of power – in this particular case, the Prime Minister. Item 6 of Article 92b (2) regulates the obligation of the Inspectorate General to support the implementation of the decisions of the Commission on Prevention and Counteracting Corruption. The question again arises as to the capacity of a directorate with six tenured positions to implement public anti-corruption policies. Hence, it is more likely that the activities of the Inspectorate General will concentrate on co-ordinating the interaction between the Commission and the other institutions involved in combating corruption.

Adequacy of measure:
The role of the Inspectorate General under the Council of Ministers in the activity of the inspectorates at government ministries and of the Commission on Prevention and Counteracting Corruption has been reviewed above. Clear and specific statutory regulation of the Inspectorate General is a significant prerequisite for the fulfilment of its tasks. The measure is also adequate in view of the existence of numerous agencies with powers and functions in anti-corruption policy implementation and the relevant need of a consistent regulatory framework.

Status: Measure implemented.

Part II. Conclusions

The analysis of the anti-corruption measures and their implementation shows that all fourteen planned measures adequately address the conclusions and criticisms in the May 2006 Monitoring Report of the European Commission. There are problems in the implementation of five measures which qualify as not implemented. However, it must be noted that efforts and progress in the implementation of four of those measures have been made or their deadline has not yet expired. **Of greatest concern is the delay and gaps in building the capacity of the Commission on Prevention and Counteracting Corruption to effectively implement anti-corruption policy. However, progress in implementing the rest of the anti-corruption measures shows that there is a political will to address the issue and raises hopes that institutional weakness will be overcome.** The measures undertaken signal progress and invite the conclusion that **if anti-corruption efforts continue and are stepped up, the problems of corruption will not be an obstacle to Bulgaria's full membership in the European Union from 1 January 2007.**

In its May 2006 Monitoring Report, the European Commission identifies the need for more effective and efficient implementation of laws for the fight against fraud and corruption as one of six areas of serious concern, which require urgent action by the Bulgarian Government. The EC report focuses mainly on political corruption. **That is probably why the measures proposed by the Bulgarian Government are aimed precisely at limiting the abuse of political power for private gain. From a technical point of view, one may conclude that efforts have been made to this end and that those efforts are in the right direction.** By extending the scope and transparency of norms concerning public disclosure of senior public officials' financial interests and by strengthening verification of the authenticity of the relevant declarations, prerequisites have been created for achieving the objectives of the measures. The proposed amendments to the Political Parties Act, designed to restrict the use of unauthorised and non-public means of financing political parties and election campaigns, are likewise aimed at ensuring transparency of the connection between the behaviour of political actors and the interests driving their behaviour.

The present measures to curb political corruption need to be followed up by adequate enforcement. The extent to which the changes in the legislation will help curb political corruption depends on the political actors themselves, on the National Audit Office, the National Revenue Agency, judicial authorities, law enforcement agencies, the media and civil society. Of key importance is the existence of political will. It is hard to formulate measures designed to initiate and direct political will. **In the past few months, however, there has been a particularly positive example of resolute action against corruption in Bulgaria. The efforts of the Prosecutor General to change procedures, policies and attitudes in the prosecution service are an example of leadership in this area.** Only resolute and consistent action, such as that now taken by the leadership of the prosecution service, can have a tangible impact on political corruption. **Regrettably, it must be noted that at the top political level there are no unambiguous examples of total condemnation of corruption. Such examples can have a crucial role in countering corruption by sending a strong message that corrupt behaviour is inadmissible.**

Building capacity to counter corruption can be identified as another priority in the measures proposed by the Government to fight against corruption and fraud. The planned measures to this end are adequate in themselves but, overall, they can be qualified as rather piecemeal. The 2006–2008 Strategy for Transparent Governance and Prevention and Counteracting Corruption, and the 2006 Programme for Implementing the Strategy are unquestionably a step

forward compared with previous anti-corruption policies. The main weakness in anti-corruption policy, however, is the lack of an institutional basis for policy implementation. The Commission on Prevention and Counteracting Corruption is not a standing body and has so far demonstrated mainly a reactive approach. The huge negative effect of corruption on social, economic and political development justifies the commitment of significantly larger resources than those allocated at present.

The Government measures pay relatively little attention to corruption in the administration of the executive and the judiciary. This may be due to a desire to stick to the text of the May 2006 Monitoring Report of the European Commission. **The ambiguities regarding the constitutional regulation of the balance of powers between the executive, legislative and judicial branches of government, as well as within the judiciary itself, obstruct the formulation and implementation of an effective anti-corruption policy.** The mechanisms that are relied on at present are reactive and do not provide sufficient guarantees for reducing corruption in the judicial system. To determine whether the proposed measures are sufficient, one must bear in mind the complex character of corruption. From this perspective, the identified measures are insufficient, but they are adequate. If they are combined with other practical actions and consistent efforts, corruption may be reduced to levels that indicate that institutions and policies are capable of effectively countering corruption. In the past few months, there has been a will to demonstrate results in the fight against corruption, and especially against high-level corruption. To qualify as a long-term and shared commitment, these efforts need to continue in full observance of the public interest.

After 1 January 2007, it will be more than necessary to step up anti-corruption measures. Political will to combat corruption must be demonstrated through consistent measures in areas such as award of public procurement contracts and concessions, investigation of crimes, administration of justice, education and healthcare. With respect to political corruption, there is a need for monitoring the activities of the National Revenue Agency regarding verification of the asset declarations of senior public officials, as well as co-ordination between the Agency and the National Audit Office in implementing the law. It is advisable to analyse all relevant laws to see if they are consistent and adequately cover all existing problems. The institutional framework for good governance should also be reviewed extensively in the context of corruption prevention.

It is noteworthy that the majority of anti-corruption measures are undertaken on the basis of criticisms rather than of an informed knowledge of problems. Effective and efficient implementation of the laws against corruption and fraud presupposes informed political and administrative decisions. **It is advisable to conduct more in-depth surveys of the state and trends of corruption and to adapt policies accordingly.**

In itself, corruption is a negative phenomenon that has an impact on numerous areas in politics, government, the economy, the legal system and social relations. Corruption destroys justice and makes Bulgaria less competitive. From this perspective, the level of corruption poses a serious risk of application of an internal market safeguard or a safeguard clause in the area of Justice and Home Affairs. **Considering the progress made in implementing anti-corruption measures, there are grounds to assume that the risk that corruption may prompt the application of a safeguard clause has receded over the past few months. Still, it must be noted that there is a need of far more resolute measures for sustained counteraction and prevention of corruption.** Further consistent measures to this end can generate additional momentum which, in its turn, will strengthen political will to combat corruption.

CHAPTER II: ORGANISED CRIME AND MONEY LAUNDERING

Part I. Review and Evaluation of Implementation of the Measures

1. European Commission criticisms and requirements in areas of serious concern

The fight against organised crime is central to the six areas of serious concern in respect of which the European Commission requires urgent action. A special emphasis is laid on the need to present clearer evidence of results in investigating and prosecuting organised crime networks. The ineffective investigation of contract killings is described as representing a 'challenge to the rule of law in the country'.

In a separate indent, the Commission also insists on intensified enforcement of anti-money laundering provisions.

Yet again, particular attention is called to the following issues:

- **Fight against trafficking in human beings:** absence of reliable registration mechanisms for trafficked persons and the number of missing people; limited implementation of the witness protection programme;

- **Fight against money laundering:** ineffective application and implementation of legislation; gaps in the Measures against Money Laundering Act; absence of tangible results in terms of enforcement and prosecution of cases of money laundering, lack of awareness of suspicious transaction reporting obligations amongst obligated entities;

- Measures to contain the **illegal possession of firearms**;

- **Fight against drugs:** limited administrative capacity, particularly as concerns highly qualified staff and inter-institutional co-operation; a fully consistent and well-co-ordinated national drug policy, addressing particularly demand reduction and enhancing funding for treatment programmes, has not been developed yet;

- **Regional co-operation:** a recommendation to intensify regional co-operation, in particular at operational level;

- **Capacity to investigate:** absence of a multi-disciplinary strategy for fight against organised crime; lack of a harmonised approach towards crime statistics; lack of high quality staff; need to improve the co-operation between the various law enforcement agencies;

- **Protection of personal data:** significant further alignment with the *acquis* still required; weak administrative capacity of the Personal Data Protection Commission.

2. Measures addressing the European Commission recommendations, identified in the Government Action Plan

2.1. Co-ordination mechanisms between police and banks, financial agencies, exchange offices, casinos, real estate sellers in order to track and cut off the circulation of the proceeds of crime

Introduction of additional amendments in the Banking Act, respectively, in the draft of a Credit Institutions Act (approved by the Council of Ministers by Decision No. 314 dated 28 April 2006), with the aim of further regulation of bank secrecy upon investigation of cases of money laundering.
Responsible authority: Ministry of Finance, Financial Intelligence Agency and Ministry of Interior
Deadline: Not specified

The Credit Institutions Act was promulgated in the *State Gazette* No. 59 of 21 July 2006. The Act will enter into force as from the day of entry into force of the Treaty concerning the Accession of the Republic of Bulgaria to the European Union. The Credit Institutions Act is a step forward in the aspiration to harmonise the Bulgarian system of statutory instruments with the *acquis communautaire*. The Act introduces the notion of professional secrecy within the meaning given by Council Directive 2000/12/EC, which makes it possible for the Bulgarian National Bank to pursue effective supervision co-operation and exchange information with the supervisory authorities of the Member States.

The institution of bank secrecy is regulated in Chapter Eight of the Credit Institutions Act. According to Item 1 of Article 62 (6), the court may order the lifting of bank secrecy from information on a motion by a public prosecutor. When criminal offences are investigated, the directors of the National Police Service and of the National Security Service are competent to demand from a credit institution to lift bank secrecy from information. A novelty in the statutory framework is the power vested in the Prosecutor General or a Deputy Prosecutor General empowered by him to obtain information covered by bank secrecy without advance warrant issued by the court. This power may be exercised if there is reason to believe that organised criminal activity or money laundering has been carried out. The law does not specify the scope and type of information from which credit institutions may be ordered to lift bank secrecy, nor does it define 'reason to believe that organised criminal activity or money laundering has been carried out'. This creates prerequisites for excessive invocation of the power under Article 62 (10) but, on the other hand, possibilities are provided to strengthen the suppression of money laundering. The mandatory keeping of a register of the demands for lifting of bank secrecy addressed to banks and of the replies received is a guarantee against abuse of the Prosecutor General's power under Article 62 (10).

The Credit Institutions Act also empowers the Financial Intelligence Agency and the judicial authorities to require the disclosure of information subject to the conditions of professional secrecy in the cases of institution of criminal proceedings. Recourse to this form of suppression of money laundering is made contingent on the signing of a joint instruction or agreement between the stakeholders. At this point, the Financial Intelligence Agency and the Bulgarian National Bank have not yet drafted such a document.

The effective Banking Act has not been revised in respect of bank secrecy and the measures against money laundering. The Banking Act makes it possible for the court, acting on motion by a public prosecutor, to order the disclosure of information covered by bank secrecy if there is reason to believe that a criminal offence has been committed. Insofar as money laundering is criminalised in the Penal Code, the prosecutor has grounds to approach the court for the lifting of bank secrecy in the cases of money laundering as well.

In addition to these measures, the Bulgarian National Bank and the Prosecution Service of the Republic of Bulgaria signed an agreement on co-operation and interaction on 16 August 2006. The agreement is expected to facilitate the access of the prosecution service to bank information, and the Bulgarian National Bank will intermediate in the contacts with commercial banks.

Adequacy of measures:
The measures against money laundering are one of the principal instruments for the suppression of organised criminal groups. This is particularly true of cross border organised crime. In accordance with Council Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and Council Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions, Bulgaria must take the regulatory and organisational measures required to ensure that the institution of bank secrecy will not obstruct or impede the prevention and combating of money laundering. According to Directive 2006/48/EC, each Member State must enable the competent authorities investigating money laundering or the competent judicial authorities to access or seize banking, financial or commercial information. To this end, the regulatory framework on credit institutions must provide for the cases in which bank secrecy does not apply. The Credit Institutions Act will enter into force as from the day of entry into force of the Treaty concerning the Accession of the Republic of Bulgaria to the European Union. Until then, according to § 36 of the Credit Institutions Act, the Banking Act will remain in effect. Therefore, it is essential to amend the Banking Act so as to regulate the proportion between the bank secrecy institutions and the measures against money laundering.
Considering the elaboration of an entirely new Credit Institutions Act, the measure is adequate and timely. It should be emphasised, however, that the revision of legal standards must be enforced in practice, too, so that the measure could be effective as well as adequate.

Status: Measure implemented.

Urgent increase of the staff of the Financial Intelligence Agency by ten positions for performance of checks of the persons obliged to report according to the Measures against Money Laundering Act.
Responsible authority: Ministry of Finance
Deadline: Not specified

The Regulations for Application of the Measures against Money Laundering Act were amended by Council of Ministers Decree No. 201 dated 1 August 2006. The revision provided for an increase of the staff of the Inspectorate Directorate of the Financial Intelligence Agency by ten positions. The powers of the Inspectorate Directorate include on-site inspections of the obligated entities under the Measures against Money Laundering Act, exercise of current and ad-hoc supervision etc. Interestingly, no provisions were made for an increase of the staff of the other specialised directorate, Reports on Money Laundering and Terrorism Financing. At the same time, according to the Rules of Procedure of the Financial Intelligence Agency, this structure basically analyses the collected information.
New officials of the Financial Intelligence Agency will be recruited through change in the staff size of other structures under the jurisdiction of the Ministry of Finance, such as the National Customs Agency, the National Revenue Agency etc. If the purpose of the measure were to strengthen the human resource capacity of the Financial Intelligence Agency, it would be more appropriate to hold competitive examinations for the relevant positions and seek the most suitable candidates for the rather specific work of the Agency.

Adequacy of measure:
The Measures against Money Laundering Act and the Measures against the Financing of Terrorism Act define the Financial Intelligence Agency as a leading actor in the suppression of money laundering through the collection and analysis of information. The Financial Intelligence Agency was established in 2001 and is gradually gaining administrative capacity. At the time of publication of the May 2006 EC Report, the Agency had thirty-four tenured positions. The proposed increase of the staff is intended to strengthen the capability of the Agency to enforce anti-money laundering measures. Considering the specifics of the Agency's operation and the predominant activities involving the collection, processing and analysis of information, the measure qualifies as adequate. Combined with suitable training and use of technology, the expertise of the Financial Intelligence Agency should be the principal instrument to achieve the goals set to the administration.

Status: Measure implemented.

Enhancement of co-operation between the Financial Intelligence Agency, the police and the prosecution service and provision of information on this close co-operation.
Responsible authority: Ministry of Interior, Prosecution Service and Financial Intelligence Agency
Deadline: September 2006

The latest revision of the Measures against Money Laundering Act regulates co-operation of the Financial Intelligence Agency with other state bodies through instructions (Article 10 (14). Complying with this requirement of the law, the Minister of Finance, the Minister of Interior and the Prosecutor General signed an Instruction on Interaction in Combating Money Laundering on 3 July 2006.

The provision of information on the co-operation among the three institutions is still based on handling alerts and pre-trial proceedings. Considering the factual and legal complexity of criminal cases on charges of money laundering, the number of convictions and confiscations of criminal assets cannot be expected to be substantial in the next couple of years. For the time being, the effectiveness of co-operation between the Financial Intelligence Agency, the Ministry of Interior and the prosecution service can be gauged by the indictments for money laundering brought in court. The frequency of reported pre-trial proceedings in connection with money laundering has increased since May 2006. The charges brought against the former director of a quasi-public energy company has received particularly prominent media coverage. Apart from the media interest in sensational cases, however, a more systematic information on the results of the interaction among the competent institutions does not reach the public. The progress of interaction in the suppression of money laundering is, therefore, difficult to monitor from independent sources.

Adequacy of measure:
Co-operation among the Financial Intelligence Agency, the police and the prosecution service ensues from the legal powers of each of the three institutions in the sphere of the fight against organised criminal activities and money laundering. In essence, the measure is adequate, but the question arises as to why legally regulated co-operation should be listed as a measure in its own right. The public provision of information on co-operation between various bodies of state power competent to handle the fight against money laundering is praiseworthy, but it is far more necessary to demonstrate results of this co-operation in the form of detected and

proven cases of money laundering, confiscated and impounded properties and cut-off proceeds to organised criminal groups.

Status: Measure implemented.

Establishment of specialised mirror structures in the Ministry of Interior and in the prosecution service, staffing them appropriately and providing for specialised training in financial crime issues, including money laundering, making the same provisions for judges.
Responsible authority: Ministry of Interior, Prosecution Service
Deadline: September 2006

A specialised Money Laundering Sector functions at the Department for Counteracting Organised Crime of the Supreme Cassation Prosecution Office. Such a structure has been established earlier at the Chief Directorate for Combating Organised Crime. According to official information, as a result of the implementation of this measure, the number of officials working in the specialised sector of the Chief Directorate has doubled and it now has a staff of 15. The Financial Intelligence Agency employs a liaison officer tasked with handling co-ordination with the Ministry of Interior. The recently signed joint Instruction of the Minister of Finance, the Minister of Interior and the Prosecutor General on Interaction in Combating Money Laundering was mentioned above. The effective co-operation among the institutions competent to combat money laundering largely depends on the quality and professional training of the personnel staffing the relevant units. Therefore, establishment and initial training should be followed by an intensive programme for capacity building of the Financial Intelligence Agency, the Chief Directorate for Combating Organised Crime and the prosecution service in suppression of money laundering through the pooled resources of the three institutions. In this respect, the effectiveness of the measures for combating money laundering at the local level is questionable, as only the Chief Directorate has personnel handling the problem there, whereas the prosecution service and the Financial Intelligence Agency do not have such structures. According to information of the prosecution service, the appellate and district prosecution offices have departments staffed by one to three prosecutors who focus on organised crime. It is not clear how far these units are capable of implementing measures against money laundering.

Adequacy of measure:
The purpose of the measure is to enhance specialisation in the prosecution service and the Ministry of Interior structures in the suppression of money laundering by establishing specialised units that will develop an expertise for investigating this type of offences. Insofar as both the prosecution service and the Ministry of Interior have an expansive remit, this is an adequate and necessary measure for investigation of money laundering cases. Money laundering is an activity that could be suppressed only through collection of information and an accurate and timely analysis of the data: these activities presuppose a high level of specialised competence. Last but not least, the adequacy of the measure is confirmed by the need to improve the exchange of information and the co-ordination of the efforts of the Financial Intelligence Agency, the Ministry of Interior and the prosecution service to achieve the end result: curtailment of the economic resources of organised crime.

Status: Measure implemented, but the tangible effect has yet to be checked against concrete results in the fight against money laundering.

Elaboration and adoption of a plan for training of officials of the Ministry of Interior, the prosecution service and the Financial Intelligence Agency analysts, *inter alia* with the assistance of training programmes with the EU Member States, including the UK.
Responsible authority: Ministry of Finance, Financial Intelligence Agency and National Institute of Justice
Deadline: 15 July 2006

The planned training is delivered through three channels. The Ministry of Interior Academy provides training on counteracting money laundering within its full-time Bachelor degree course, as well as extramural courses. According to information of the Academy, four such courses have been conducted. For lack of information on the content of the courses, the methods of instruction and the instructors' qualifications, no conclusion can be drawn on the effect of the training provided. In most general terms, the content of the courses covers preparing risk profiles, criminal analysis, collecting and verifying evidence. It is important that the trainings should evolve in future in terms of content and coverage of trainees.

The National Institute of Justice has conducted two courses in money laundering issues for 60 prosecutors. Such a training by UK and US experts is in preparation for officials of the Financial Intelligence Agency, the National Revenue Agency and the Criminal Assets Identification Commission. In May and July 2006, the Center for the Study of Democracy organised three training seminars on counter-corruption and organised crime control. The participants in the seminars (prosecutors, judges, investigators, lawyers and journalists) were familiarised with the key aspects of money laundering prevention and detection.

Of all stakeholder agencies whose officials are required to go through such training, only the Financial Intelligence Agency is known to have elaborated a training plan. Its implementation is expected to be ensured through a project under the MATRA-FLEX Programme of the Netherlands Government.

Adequacy of measure:
Personnel training of the organisations and units competent to suppress money laundering is essential for the capability of the law enforcement authorities to detect and prove this kind of criminal activity. The human factor is fundamental to an effective counteraction to organised crime and money laundering. Therefore, the elaboration of a training plan and the delivery of such training are an adequate measure considering the attainment of the more significant objective: suppression of organised crime. The training plan, however, must be elaborated on the basis of an assessment of the specific qualification level of the officials of the Financial Intelligence Agency, the Ministry of Interior and the prosecution service and giving consideration to the structure and behaviour of organised crime and money laundering in Bulgaria. The adequacy of the measure would benefit if the elaboration of a training programme were preceded by a more thorough analysis.

Status: Measure implemented, but it is of a continuous nature and should be pursued in future.

Involvement of a long-term expert from a EU Member State, who should cover the problems of money laundering in the financial sphere (applying the Measures against Money Laundering Act), as well as in the sphere of co-operation between the law enforcement authorities (investigation and prosecution of money laundering, application of the Penal Code).
Responsible Authority: Ministry of Finance and Financial Intelligence Agency

Deadline: Not specified

According to information of the Financial Intelligence Agency, a project for strengthening the Agency's capacity for money laundering prevention and detection has been elaborated, and it was approved for financing by the end of August 2006. The project will be financed under a Netherlands Government programme and will also include training of officials in financial intelligence analysis and police investigation techniques.
Within the project, an expert of the Netherlands financial intelligence unit has been designated to assist the Financial Intelligence Agency in training its personnel and in improving the co-ordination and interaction with the rest of the competent authorities.

Adequacy of measure:
The involvement of a long-term term expert on matters concerning money laundering from a Member State presupposes provision of technical assistance for application of the Measures against Money Laundering Act and/or improvement of international co-operation. In itself, the measure may have a favourable effect, but it is difficult to separate it from the context of other measures, which emphasise training.

Status: Measure implementation forthcoming.

Provision of a convincing track record of the police and prosecutorial activities as regards the fight against money laundering, updates on indictments, ongoing trials and convictions.
Responsible authority: Prosecution Service and Ministry of Interior
Deadline: 1 September 2006 and beyond

The following figures were cited as examples of the results of the anti-money laundering effort by July 2006: one criminal case instituted at the Sofia City Court, nine indictments charging money laundering issued, and forty-four pre-trial proceedings in progress. At the time of preparation of the Civil Monitoring Report, there is no information of a conviction or a confiscation of criminal assets. The lack of sufficient public information does not allow an in-depth analysis of how the results of police and prosecutor work cited above affect the state of organised crime. The publicly known instances of pre-trial proceedings on charges of official malfeasance and money laundering concern separate individuals. The effect of these proceedings on the capability of the organised criminal groups themselves to pursue their activities is not clear.

What gives rise to particular concern is the inclination of each stakeholder institution to report anti-money laundering activity up to the limit of its own competence. Thus, the Financial Intelligence Agency, the Ministry of Interior and the prosecution service all report results, but the ultimate effect remains unclear.

Adequacy of measure:
The nature of the measure is demonstrative and has no bearing on the fight against money laundering. The measure should be extended, stating that the information is addressed to the citizens of Bulgaria as well and not just to the official institutions. By virtue of the Measures against Money Laundering Act, the Director of the Financial Intelligence Agency presents an annual report on the activities of the Agency to the Minister of Finance. This report, however, does not provide an idea of what has been achieved in combating money laundering because it does not include an integral evaluation of the results of actions lying within the competence of the Ministry of Interior, the prosecution service and the court.

Status: Measure is of a continuous nature and can be assessed as implemented only provided the track record shows a tendency towards tangible improvement in the long term.

Establishment of specialised structures in the Ministry of Interior and the Prosecution Service to fight various forms of organised crime. Making provisions for sufficient staffing and training.
Responsible authority: Ministry of Interior and Prosecution Service
Deadline: 1 September 2006

The Chief Directorate for Combating Organised Crime under the General Police Directorate is the principal authority competent to prevent and investigate organised crime. The information on the structure and personnel of the Chief Directorate constitutes a state secret[3] and is not accessible to the public. Since such information is not available, the development of the Directorate's administrative capacity cannot be monitored and its adequacy cannot be evaluated.

The setting up of a Fight against Organised Crime and Corruption Department at the Supreme Cassation Prosecution Office in March 2006 is a positive development. Self-contained regional structures with the same specialisation have also been established at the appellate and district prosecution office level. There is no information of the existence of self-contained units specialised in dealing with the different forms of organised crime.

The interaction between the investigating and prosecuting authorities is regulated through an Instruction on Organisation of the Activity of Joint Teams of the Prosecution Service and the Ministry of Interior for Counteracting Organised Crime (signed by the Prosecutor General and the Minister of Interior on 22 June 2006).

Training courses in various problems of organised crime are sporadically organised for the personnel of the Chief Directorate, mainly with the support of government programmes of EU Member States. There is no information on initial professional training of staff at the competent prosecution service units. Since after the entry into force of the new Penal Procedure Code on 29 April 2006 prosecutors are expected to be able to control the quality of investigations, the prosecution service has yet to find ways to familiarise its personnel with the basic crime investigation techniques. They are covered cursorily in the course of general legal education.

Adequacy of measure:
The measure is adequate. In the course of time, however, both the prosecution service and the Ministry of Interior must develop a sustainable policy regarding the recruitment, motivation and management of the human resources investigating organised criminal groups. Only the foundations of the relevant administrative structures are being laid at this point, and if this is done with people who are merely relocated from other services and positions, the results might be seriously compromised.

[3] Under the Classified Information Protection Act, Schedule 1 to Article 25, Section II, Item 4: 'Detailed organisational and staffing structure of the security services and the public order services, as well as aggregate data concerning the personnel thereof' is a category of information classified as a state secret.

Status: Measure implemented.

Contract killings: Focussing on unsolved contract killings, establishing typology which should help detecting links and possibly assist in preventing contract killings, and reporting on progress in criminal investigations in recent and older contract killings.
Responsible authority: Ministry of Interior and Prosecution Service
Deadline: Continuous — report in June, July, August, and early September 2006

An analysis has been made and a typology has been prepared on the motives for the premeditated murders committed in the 2001-2006 period.

On 8 May 2006, the Prosecutor General endorsed Methodological Guidelines for investigation of contract killings, which are the first attempt to systematise the experience gained and to standardise investigating procedures.

Adequacy of measure:
The measure is adequate. Such type of information should be gathered systematically rather than sporadically. Only thus can the quality of the analysis be guaranteed and it can serve as a basis for successful investigations.

Status: Measure implemented at this point (deadline is continuous).

Firmly investigating possible involvement of senior public officials in organised crime activities and making provisions for deterrent administrative and criminal sanctions if linkages are proven.
Responsible Authority: Ministry of Interior and Prosecution Service
Deadline: Continuous

Several investigations, noisily covered by the media, have been instituted into cases of corruption and money laundering, which were discussed above in this report. Such investigations should not be launched by fits and starts but should rest on an integral strategy for organised crime control and a substantial administrative capacity of the investigating and prosecuting authorities.

Adequacy of measure:
The measure is adequate.

Status: Cannot be assessed at this point. There is no information on completed proceedings.

Taking administrative and other measures, with an accent on training, to foster a more pro-active approach in the attitude of the police departments dealing with various forms of organised crime.
Responsible authority: Ministry of Interior
Deadline: June 2006

No information is available on the motivation provided to Ministry of Interior and prosecution service personnel to actively investigate and charge organised criminal groups. Still, it is naive to assume that the motivation of officials to demonstrate a better track record is related

to their training. Even if well trained, they may lack interest in discharging their official duties if there is no objective system to assess their performance ensuring them clear opportunities for career development. Career prospects are a traditional tool of fostering personnel activity, along with various reward packages and incentive schemes. The National Customs Agency practises such a measure involving additional incentives for officials, and the possibility to introduce such incentives for various police structures as well has been reportedly discussed at various times. Before recommending a replication of such type of staff incentives, however, the results of their application in other administrations must be appropriately assessed.

Adequacy of measure:
The measure is not adequate. Both the Ministry of Interior and the prosecution service (respectively, the Supreme Judicial Council) must develop and apply in practice clear criteria for assessment of the performance of their staff, differentiating the officials according to the specific expectations of the relevant position. At this point, quantitative criteria are applied in reporting the performance of both institutions, and they do not take account of the final outcome of the criminal proceedings, i.e. the total number of convictions or some objective indicator measuring actual (rather than recorded) crime is ignored. Therefore, this affects the criteria for assessment of the performance of each individual official and, hence, his or her motivation.

Status: Cannot be determined at this point.

Taking additional measures to better secure treatment of confidential information, especially relevant as regards international police co-operation.
Responsible authority: Ministry of Interior
Deadline: June 2006

Measures have been taken at the organisational and technical level.

The Ministry of Interior Academy is conducting a course for updating professional qualification of personnel to handle classified information and for basic training of information security officers. The courses include presentation of the EU harmonised criteria in the field of information security.

State budget resources to the amount of BGN 3 million have been allocated for modernisation of the equipment of the information security system.

Adequacy of measure:
The measure is adequate.

Status: Measure implemented.

Transparent co-operation with the Commission for Personal Data Protection in case of inspections. Legal harmonisation.
Responsible authority: Ministry of Interior and Commission for Protection of Personal Data
Deadline: Continuous
Deadline: (legal harmonisation): to be submitted to National Assembly in early September

A working group has drafted a Bill to Amend and Supplement the Personal Data Protection Act, targeting full transposition of Directive 95/46. Consultations on the draft have been held with experts of the European Commission, and the Bill can be presented to the National Assembly for passage in early September 2006.

Along with the legal regulation of the operation of the Commission for Personal Data Protection, its administrative capacity and its capability to apply in practice the personal data protection policy remains an open question. Competitive procedures are in progress for selection of officials for seventeen positions in the Commission, and if personnel recruitment is successful, the capacity for practical application of the legal standards can be expected to strengthen.

Adequacy of measure:
The measure is adequate. Full transposition of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data requires additional revisions of the Personal Data Protection Act.

Status: The deadline of the measure expires after the preparation of the Civil Monitoring Report, but by the end of August 2006 there are reasons to believe that the measure will be implemented.

2.2. Need to give update on the progress of every investigation into gangland murders which remain unsolved for the last five-year period: what are the leads, if any, which the police are following, what are the links with administration/government, if any.

Regular provision of focussed information to the European Commission on the progress of the investigation of crimes of organised criminal groups.
Responsible authority: Ministry of Interior
Deadline: Not specified

The Bulgarian side presents updates to the European Commission in connection with the progress of the investigation of specific cases. This information is not accessible, and whether its content is sufficient *vis-à-vis* the Commission's expectations cannot be determined.

Adequacy of measure:
The measure is not adequate. It has no direct bearing on an improvement of the authorities' capacity for the suppression of organised crime.

Status: Cannot be determined.

Strengthening the capacity of the murder-investigating units in the Ministry of Interior – General Police Directorate, and exchange of experience with offices of EU Member States, including UK and Spain, for the fight against the organised crime.
Responsible authority: Ministry of Interior
Deadline: Not specified

A project for enhancement of the Ministry of Interior murder investigating capacity is in progress, and it is implemented in partnership with relevant service from UK. Under the project, Ministry of Interior officials have paid a working visit for familiarisation with the

British experience. In London, they had meetings at the Metropolitan Police, the London Police Academy, the Forensic Science Service and the Crown Prosecution Service. No information is available on the positions of the participants in the projects and on any other activities included in its work programme.

Adequacy of measure:
The measure is adequate. Building partnerships with the police forces of the EU Member States and exchange of information between professionals can affect favourably the capacity of the Bulgarian services for investigating serious crime. The administrative capacity, however, should not be viewed as a mere function of its personnel's professional qualification. Strengthening of administrative capacity actually depends on the taking of integrated measures involving improvement of the existing logistics, eased access to information, established channels of communication and interaction with the prosecution service.

Status: Cannot be determined.

Provision of analytical information on the functioning of the specialised unit on fight against organised crime with elements of gap analysis.

There is no information of a full assessment of the performance of the Chief Directorate for Combating Organised Crime having ever been made. Such an assessment would be very useful in planning reforms in the entire system of investigation and criminal prosecution of organised crime. To be objective and comprehensive, however, such an assessment must be conducted professionally, by an outside organisation, a body independent of the Ministry of Interior system and the prosecution service. Furthermore, the results of such an assessment must be publicly discussed and specific recommendations elaborated to address the gaps detected. A conduct of such an assessment is impeded by the restricted access to information (due to its classification as a state secret) regarding the structure, composition and budget of the separate Ministry of Interior services, and must be preceded by revisions of the Classified Information Protection Act.

Adequacy of measure:
The measure is adequate, and should be assigned top priority because only an objective analysis of the performance of the Chief Directorate for Combating Organised Crime so far can provide a basis for identification of essential gaps in the investigation of organised crime and, respectively, for planning remedial action.

Status: Measure not implemented.

2.3. Better control over 'security' firms and gun licences

Planned and ad hoc checks of manufacturers and distributors of explosives, firearms and ammunition.
Responsible authority: Ministry of Interior
Deadline: Not specified

The police have conducted checks, violations have been ascertained, and written statements have been drawn up under the Explosives, Firearms and Ammunition Control Act.

Adequacy of measure:
The measure is adequate.

Status: Measure implemented.

Provision of statistical information and elements of gap analysis on the improvement of security firms and gun licensing control.

There is no information on whether such an analysis has been made. Within its powers under the Private Security Business Act, the General Police Directorate conducts planned and thematic checks of private security firms, but no information has been made public on ascertained violations and ensuing sanctions. Insofar as the matter is of great public relevance, it would be appropriate for the results of both the checks and of the analysis to be subjected to public discussion.

Adequacy of measure:
The measure is adequate.

Status: Measure not implemented.

Taking measures to deal with the problem of unlicensed weapons.
Responsible authority: Ministry of Interior
Deadline: September 2006

Specialised police operations have been carried out to curb the illegal possession of firearms; weapon seizures have been reported. According to earlier studies[4], such one-time crackdowns for seizure of unlicensed weapons have dubious effect.

Adequacy of measure:
The measure is adequate but is formulated in too general terms. A specific plan must be elaborated for containment of the proliferation of small arms, and its fulfilment must be systematically monitored.

Status: Measure not implemented.

2.4. Amending legislation on money laundering

Urgent introduction of additional amendments in the Draft of an Act to Amend and Supplement the Measures against Money Laundering Act for achievement of full compliance with the *acquis* in this area.
Responsible authority: Ministry of Finance and Financial Intelligence Agency
Deadline: Not specified

[4] See a survey of the Center for the Study of Democracy *Taming the Arsenal – Small Arms and Light Weapons in Bulgaria*, SEESAC, 2005, p. 2.

The revision of the Measures against Money Laundering Act was promulgated in the *State Gazette* on 21 July 2006. The revision redefines the purpose of the statutory instrument and the concept of money laundering, stressing the use of the financial system in line with the spirit and letter of Directive 2001/97/EC. The bill imposes an obligation for interaction with the banking supervisory authority where there is suspicion that money laundering operations or transactions are executed.
The amendments to the Measures against Money Laundering Act regulate the measures against money laundering and the prevention of money laundering and extend the range of persons in respect of whom the measures are mandatory. The Measures against Money Laundering Act also establishes an obligation to apply extended measures in respect of the holders of senior public office in the Republic of Bulgaria or in a foreign state.

Adequacy of measure:
The Measures against Money Laundering Act has to be revised due to the need to transpose the provisions of Directive 2001/97/EC on prevention of the use of the financial system for the purpose of money laundering. The measure is adequate, considering Bulgaria's obligation to align its national legal system to the *acquis communautaire*.

Status: Measure implemented.

2.5. More information on money laundering cases and actions taken

Regular provision of information to the European Commission on the cases of money laundering and actions taken.
Responsible authority: Ministry of Finance, Financial Intelligence Agency and Ministry of Interior in co-operation with Prosecution Service
Deadline: Every month

The measure concerns the interaction between the Government and the European Commission and does not have a direct bearing on an improvement of the fight against money laundering in Bulgaria. The exchange of information between the two sides is not accessible to the public, which is why it is difficult to comment on the extent of implementation of the measure.

Adequacy of measure:
Not adequate.

Status: Cannot be determined.

Part II. Conclusions

In their predominant part, the planned measures are adequately defined and, if properly implemented, could lead to an optimisation of the investigation and criminal prosecution of organised crime in Bulgaria in the medium term. Part of the measures, however, are formulated in too general terms, they are not appropriately prioritised and do not demonstrate an integral approach to addressing the problem of organised crime.

The period of time remaining until September 2006 is hardly likely to see tangible results in the fight against organised crime (e.g. several convictions of key figures or large-scale confiscation of assets). Therefore, there is still a risk of application of some of the safeguard clauses under Article 37 or 38 of the Accession Treaty. Recourse to a postponement of accession by one year (Article 39 of the Treaty) is unlikely. With a fair amount of certainty, the European Commission can be expected to impose some form of continued monitoring of the performance of the Bulgarian authorities in the field of the fight against organised crime.

Proposals for follow-up measures to be undertaken after 1 January 2007:

(1) **Elaboration of a comprehensive, independent and professional assessment of the investigation and criminal prosecution of organised crime in Bulgaria and, in particularly, of the performance of the Chief Directorate for Combating Organised Crime.** The Government Action Plan unjustly treats organised crime as a problem concerning only the executive (Ministry of Interior) and the judicial system. The gaps in legislation and the lack of any control whatsoever over the operation of the Ministry of Interior in this, as well as in other spheres, is one of the key prerequisites for the existence of such a serious problem with organised crime in Bulgaria, which is why the National Assembly should assume a leading role in its addressing.

(2) **Elaboration and application of a multi-disciplinary strategy for countering organised crime** (on the basis of the above assessment).

(3) Part of the strategy should be a **comprehensive programme for professional training and career development of personnel.** One of the major deficiencies of the measures proposed in the Government Action Plan is that it treats the problems of administrative capacity as mere problems of professional underqualification and tries to address them by sporadic training courses. In general, there is a serious problem with the recruitment and training of specialists in the various spheres of countering organised crime: the professional qualification of the available personnel and the capacity of the institutions offering such training need a comprehensive evaluation. The overall impression is that the problem is not approached integrally but through isolated, time-limited projects of the various stakeholder organisations, which show very little indications of achieving sustainability. Financing is used mainly from outside donor programmes of foreign governments (the Netherlands, the UK, the US), while the Bulgarian Government is evidently neither prepared nor willing to allocate substantial resources. The training of staff by NGOs can only be of an auxiliary nature, but it cannot be a primary method of upgrading the qualifications of officials.

(4) It is particularly important to achieve **professionalisation of research and instruction** in the various spheres of organised crime prevention and control. At this point, using the antiquated master-apprentice method, the more experienced practitioners coach their colleagues. This is useful but cannot be a principal form of training. Professionalisation of instruction can be achieved through development of the research capability in the sphere of criminology and in particular on organised crime. This requires an additional investment in universities, the National Institute of Justice, the Ministry of Interior Academy or harnessing the capacity of established think tanks that work on similar subjects.

(5) **Completion of the introduction of the Unified Information System for Combating Crime:** this is the only way to collect reliable statistical information on crime and to assess the effect of intervention of the various public authorities.

(6) **Public presentation of the work of the law enforcement authorities through periodic reports.** At present, only the Financial Intelligence Agency presents an annual report, which is accessible to the public; the Prosecution Service presents a report to the National Assembly, but it is not made public, and the monthly reports presented by the separate prosecution offices do not provide a clear picture of the priorities of the country's penal policy; the report of the Ministry of Interior is incomplete and seldom contains elements of analysis.

CHAPTER III: REFORM OF THE JUDICIAL SYSTEM

Part I. Review and Evaluation of Implementation of the Measures

1. European Commission criticisms and requirements in areas of serious concern

In its May 2006 Monitoring Report, the European Commission identifies the judicial system as one of the areas requiring further measures to continue the reform. Although progress has been made in some areas, certain outstanding issues remain to be addressed.

The latest, March 2006 amendments to the Constitution leave some ambiguities regarding the guarantees of the independence of the judiciary and the balance of powers. To remove all ambiguity, it is necessary to revise these texts and to adopt new constitutional amendments and supplements.

Other areas that need to be further addressed are: enforcement of the new Penal Procedure Code, accountability and transparency in the internal management of the prosecution service, the delay in the passage of a new Civil Procedure Code, problems in the pre-trial phase in criminal proceedings caused by the shortage of police investigators, random assignment of cases and installation of the relevant IT system, absence of decisions on the establishment of specialised courts or on the reduction of the number of courts, and implementation of the new provisions for competitive recruitment procedures for magistrates, as well as of a uniform mechanism with well defined criteria for assessing the quality of the work of magistrates.

The European Commission finds that overall, limited progress has been made both in terms of quality and accountability of justice as well as regarding the institutional relations between the executive and the judicial system. The reform of the judicial system needs to be completed, which requires additional steps to guarantee its effective implementation.

2. Measures addressing the European Commission recommendations, identified in the Government Action Plan

2.1. First report on the effects of the changes brought about by the amendments to the Penal Procedure Code – staff changes, any unforeseen complications

Holding a professional debate on the issues of the enforcement of the new Penal Procedure Code (PPC) and the new Ministry of Interior Act to assess enforcement practice and identify problematic areas.
Responsible authority: Ministry of Interior
Deadline: 15 June 2006

A debate on 'Criminal Justice in the Context of Bulgaria's EU Accession. Problems Related to Enforcement of the new Penal Procedure Code and Ministry of Interior Act' was held on 6 June 2006. The debate was co-organised by the Ministry of Interior and the Centre for the

Study of Democracy. It brought together representatives of the executive, legislature and judiciary, who identified the problems emerging in pre-trial and trial proceedings one month after the entry into force of the new legislation. The Minister of Interior outlined what he sees as the key problems in the enforcement of the new Penal Procedure Code: the shortage of police investigators, the exceedingly short time limits for investigating crimes and for scheduling hearings and examining cases, etc. Other problems identified during the debate include the excessive workload both of police investigators and of supervising prosecutors, the need to revise the criteria for appointment of police investigators – including to revoke the requirement for a degree in higher education and a degree in law – to strengthen the preventive role of pre-trial proceedings, to increase the investigative powers of the investigating authorities with respect to juvenile crimes and high-level corruption, etc. Representatives of the three branches of government proposed a number of measures: amending the legislation so as to empower the Minister of Interior to assign by an order police officers (other than police investigators) to conduct initial investigative procedures, establishing a central structure on 'Police Investigation' at the National Police Service, abolishing or replacing the preclusive periods for criminal investigation introduced by the new legislation. The participants in the debate agreed that these problems could be resolved only by taking comprehensive measures to remove flaws in the legislation, as well as to implement co-ordinated organisational and structural changes in the criminal prosecution system.

Adequacy of measure:
The measure is adequate. Conducting debates during the drafting and after the passage of laws is a significant step towards improving legislation and maximising the effect of its enforcement. Criminal justice is an area that has attracted much criticism from Bulgarian and foreign experts, therefore there is an urgent need of expert and public debates that will help identify and resolve problems, be they in the legislation itself or in the capacity of the structures responsible for its enforcement. A single debate on a particular problem is not always capable of fully addressing the relevant problem, especially when it concerns entirely new legislation – as is the case of the new Penal Procedure Code and the new Ministry of Interior Act. However, such debates are an effective tool and ought to be planned as part of a comprehensive system of monitoring legislation. They are a source of valuable ideas and all stakeholders should be duly informed about them in order to maximise their effect. In addition, discussing and co-ordinating legislation with the relevant institutions proves that there is a will for greater transparency and access for the institutional and civil communities.

Status: Measure implemented.

Extension of the composition and tasks of the PPC Monitoring Working Group with a view to analysing the enforcement of the Penal Procedure Code.
Responsible authority: Ministry of Interior
Deadline: 10 June 2006

By an order of the Minister of Justice, a working group was set up at the end of 2005 to develop and adopt comprehensive criteria for monitoring the enforcement of the new Penal Procedure Code. A month after the new Code entered into force, the composition and tasks of the working group were extended (by Minister of Justice Order No. JIC-04-448 dated 6 June 2006). Its main task is to analyse and generalise, on a monthly basis, the information submitted by the executive and judicial authorities regarding problems identified in enforcing the Code, and to propose measures for their resolution to the competent authorities. The

working group is made up of representatives of the Ministry of Justice, the Ministry of Interior and magistrates.

Adequacy of measure:
The measure is adequate. In its May 2006 Monitoring Report, the European Commission notes that the impact of the new Penal Procedure Code needs to be carefully monitored. In the Government's 2005 Action Plan the tasks of the working group were limited to elaborating comprehensive criteria for monitoring the enforcement of the Penal Procedure Code. The working group has produced a set of detailed indicators (criteria) for comprehensive and large-scale monitoring of criminal procedure. These criteria cannot be applied adequately unless there is a body responsible for their application. Extending the composition and tasks of the working group is a rational step towards optimising criminal justice policies.

Status: Measure implemented.

In co-operation with the Supreme Cassation Prosecution Office, holding a national meeting of the police investigators (*doznateli*) investigating crimes committed by organised criminal groups, to assess the practice in enforcing the new Penal Procedure Code.
Responsible authority: Ministry of Interior in co-operation with Supreme Cassation Prosecution Office
Deadline: 15 July 2006

No information is available whether such a meeting has been co-organised by the Ministry of Interior and the Supreme Cassation Prosecution Office. An assessment of the enforcement of the new Penal Procedure Code was presented during a debate on 'Criminal Justice in the Context of Bulgaria's EU Accession. Problems Related to Enforcement of the New Penal Procedure Code and Ministry of Interior Act', held in Sofia on 6 June 2006. A number of management problems whose solution is within the competence of the Ministry of Interior were identified clearly during the debate. Police investigators do not belong to a single identifiable service or even administration, and this makes it difficult to generalise information about their activities, to outline career development opportunities, and to hold them accountable for omissions and violations.

Adequacy of measure:
The measure is inadequate. Assessing the enforcement of the new Penal Procedure Code requires a professional approach. Even though the separate categories of professionals involved in enforcing the Code are a very valuable source of information, the analysis of this information must be assigned to experts. In addition, assessment cannot be viewed as a one-off act but as systemic research that can identify particular trends. The purpose of this measure – assessing PPC enforcement – largely overlaps with the tasks of the working group at the Ministry of Justice.

Status: Measure implemented, considering that a relevant working group has been set up at the Ministry of Justice.

Holding monthly meetings of the PPC Monitoring Working Group to analyse the enforcement of the new Penal Procedure Code – first conclusions and a proposal to overcome the problem of the decreasing number of police investigators.
Responsible authority: Ministry of Justice and Ministry of Interior

Deadline: By June 2006

By a Minister of Justice Order dated 6 June 2006, a working group has been set up to monitor the impact of the new Penal Procedure Code as to efficiency and speed of criminal proceedings. The working group produces monthly reports generalising the information, submitted by the executive and judicial authorities, about problems in enforcing the new Code. The working group receives information from: the heads of the regional, district and appellate courts; the regional, district and appellate prosecution offices; the National Police Service. In addition to statistical data, it receives information about the criteria for monitoring the enforcement of the new Penal Procedure Code as well as specific information from the executive and judicial authorities about practical problems in enforcing the new Code.

The working group has produced its first conclusions concerning unification of practices and overcoming problems in enforcing the new Penal Procedure Code. They have been submitted to the Prosecutor General, the presidents of appellate courts and prosecutors. As of end August 2006, the first conclusion from the work of the group is that the duration of pre-trial proceedings needs to be monitored until the end of 2006 in order to draw conclusions as to the adequacy of the time limits set by the new Penal Procedure Code.

Adequacy of measure:
The measure is adequate. With the entry into force of the new Penal Procedure Code, ninety percent of investigative proceedings have been taken over by police investigators, as a result of which a large number of investigating magistrates have been reappointed to prosecutor positions. In addition, experts and representatives of the executive branch of government often identify as a key problem the shortage of police investigators and the exceedingly short time limit for conducting investigations. That is why monitoring the enforcement of newly set standards is a fundamental element of the law-making process. Such an element, however, is absent in the Bulgarian system, therefore laws are commonly passed without ensuring subsequent monitoring of their enforcement. Monitoring is conducted mainly by civic organisations which, however, are not always capable of exercising sufficient influence on competent institutions to eliminate identified problems. That is why the establishment of an interagency working group whose main task is to monitor the impact of the new Penal Procedure Code is a step forward in Bulgaria's law-making policies. The information collected and the analysis made on the basis of this information will undoubtedly help improve the quality of procedural legislation. For the purpose, professional and civic organisations and the media need to be regularly informed about the problems identified in the course of monitoring. At the time of writing this report, however, stakeholders and the public have not been informed about the findings of the monitoring. In addition, considering that information is collected from different bodies, there is a need to standardise terms and approaches in data integration in order to avoid all inconsistencies and ambiguities.

Status: Measure implemented.

2.2. Analysis by the working group on constitutional changes of the comments made by experts – elaboration of proposals by this group upon agreement on the need for further amendments, as well as review of the Judicial System Act

Removing all ambiguities as regards the full respect of the independence of the Judiciary.
Responsible authority: Ministry of Justice (co-ordinator) and National Assembly

Deadline: Procedure initiated by September 2006

A working group including the chairpersons of parliamentary groups and other representatives of the ruling majority was set up in June 2006 to consider amendments to the Constitution aimed at removing all ambiguities regarding the independence of the judiciary. The group is working in close co-operation with representatives of the European Commission. It has produced a bill to amend and supplement the Constitution, which has been submitted to European experts for co-ordination.

Adequacy of measure:
The measure is adequate. The latest amendments to the Constitution, passed in March 2006, come first in the European Commission's criticisms regarding the guarantees of the independence of the judiciary (the section on *Political Criteria* in the May 2006 Monitoring Report). Considering the strong criticism both from European experts and the Bulgarian legal community, there is an obvious need to revise the newly adopted texts and to elaborate a new bill to amend and supplement the Constitution. Amending the Constitution for the fourth time ought to be a top priority in the work of the executive and the judiciary, and to be listed in the first place in the section on judicial reform in their action plan.

At the time of writing this report, the constitutional debate in Bulgaria is being conducted within a very narrow circle of politicians and European experts. The elaboration of constitutional amendments, however, requires transparency and involvement of the widest possible range of representatives of the stakeholders, civic organisations and the media. The lack of clarity around the texts that are being discussed at present, as well as the way in which the consultations are conducted, can once again trigger criticism and disapproval of the ideas advanced by the judiciary.

Since the bill has been submitted only to the European Commission and has not been made officially available, the content of the envisaged amendments cannot be reviewed at this point. The publications in the media and partial comments by politicians do not allow an adequate assessment of the pending amendments. In addition, at the time of writing this report the judiciary is waiting for the decisions of the Constitutional Court, to which part of the latest constitutional amendments were referred by the Supreme Court of Cassation, in order to harmonise the new texts with the opinion of the Constitutional Court.

Status: Given the wording of the measure, limited to initiation of the relevant procedure, the measure qualifies as implemented.

Drafting a new Judicial System Act in close co-operation with the National Assembly and the experts from the Twinning Project with Spain, including regular consultations with the EC concerning the draft of a Judicial System Act. The draft Act should include criteria for evaluation of the quality of work of magistrates, and possibly envisage establishment of new commissions within the Supreme Judicial Council (SJC) in this respect. The draft Act should revise the generalised principle of competitive recruitment of magistrates, limiting it to initial appointment. For promotions etc. a real merit based career path should be developed – hence the importance of objective and harmonised assessment (attestation) criteria and a unit within the SJC to oversee implementation. Provide in the new Judicial System Act for the creation of a new Evaluation and Supervision Department (at the SJC). In parallel, include legal provisions in the Act to limit the role of chief administrators: powers to evaluate, select, appoint, promote or demote should be given exclusively to the SJC. The role of chief administrators should

be limited only to the designation of the number of vacancies in their respective courts or offices with no outstanding role in career development.
Responsible authority: Ministry of Justice, Minister of European Affairs, in co-operation with Supreme Judicial Council and National Assembly
Deadline: September 2006

A working group has been set up to draft a new Judicial System Act as provided for by the Programme for Implementing the Strategy of Reform in the Bulgarian Judicial System for 2006–2007. The Act was drafted and submitted at the end of July to the relevant government ministries and the Supreme Judicial Council for co-ordination. It will be passed after the passage of the Bill to Amend and Supplement the Constitution.

Adequacy of measure:
The numerous amendments and supplements (more than thirty) to the Judicial System Act in recent years indicate that it is flawed, therefore drafting an entirely new Judicial System Act is an adequate measure both with a view to transposing the *acquis* and addressing the needs of national legislation. The passage of a new law is a logical continuation of the already advanced processes of constitutional and legislative revision. Since the draft Act has not been presented officially, its content cannot be reviewed at this point. According to preliminary information, the recommendations made by European experts in the last regular reports and peer reviews have been taken into consideration in drafting the Act. The purpose is accurate formulation of provisions regulating the principle of competitive recruitment of magistrates (limited to initial appointment) and elaboration of mechanisms and criteria for evaluating the quality of work of magistrates.

Status: Measure implemented.

2.3. Completing the introduction of the random case assignment system using the software available at present – must be applied one hundred percent throughout the country

Complete introduction of the random case assignment system. In parallel, analysing and providing information on the number of courts in the country, for the purpose of elaborating relevant proposals to increase the efficiency of the judicial system.
Responsible authority: Ministry of Justice in co-operation with Supreme Judicial Council
Deadline: 30 June 2006; for analysis and reporting – 7 September 2006

According to the Supreme Judicial Council, the random case assignment system is being applied in all courts except one (due to change of premises). Guaranteeing impartial and transparent assignment of cases is a matter of political will and decisions, whereas it is currently regarded mainly as a technological problem. Transparent and impartial assignment of cases in courts (as well as in the prosecution, investigation and police investigation service) is impossible without an effectively operating case management information system and exchange of information between the institutions concerned. Random case assignment should take account factors such as workload of judges, complexity of cases and availability of premises. This is possible only when every action of the court and the court administration on a given case is entered into an integrated system and taken into account in case assignment. The software module designed by the Supreme Judicial Court does not have the capacity to take those factors into account in assigning cases, and is based only on the principle of

randomisation. That is why it is normal that the method will yield controversial results and will be viewed with mistrust by the courts.

With regard to guaranteeing transparent and impartial assignment of cases, a deficiency of the available software is the non-obligatory character of assignment. This means that the software does not obligate the court president (or the person assigning cases) to comply with the assignment, i.e. the principle of random case assignment can be easily violated. Thus, the software module for random case assignment is an auxiliary tool which, however, does not guarantee prevention of corruption through manipulative assignment of cases. Next, it must be noted that such a system ought to include subsequent analysis of case assignment to identify suspicious assignments and caseloads of judges and panels. Such analysis should be made by the Inspectorate at the Ministry of Justice, but at this point there is no information that this is being done. The lack of an automated system in the courts is again causing serious problems in exercising such ex post control to guarantee transparent and impartial assignment of cases in courts.

Adequacy of measure:
Random case assignment can be an adequate measure only if it is part of an automated integrated case and court management system.

Status: Measure can be treated as implemented but, as worded, is inadequate in scope. Its full implementation depends on the process of court automation, which is very slow.

2.4. Adopting a new Civil Procedure Code and providing relevant training

Providing full assistance to the National Assembly for the adoption of a draft of a new Civil Procedure Code.
Responsible authority: Ministry of Justice in co-operation with National Assembly
Deadline: September 2006

The draft of a new Civil Procedure Code was approved by Council of Ministers Decision No. 342 dated 11 May 2006 and was laid before the National Assembly on the same date. At the end of August 2006, the bill reached the first-reading debate stage. According to members of the parliamentary Committee on Legal Affairs, conclusive passage of the Code can realistically be expected before the end of 2006. The major social significance of the Code and the need to guarantee legal security require that a sufficient *vacatio legis* be allowed before its entry into force.

Adequacy of measure:
It is hard to say for sure whether it is better to adopt an entirely new Civil Procedure Code or revise the effective one (dating from 1952). There is no doubt that civil procedure in Bulgaria needs changes to comply with the requirements of civil and commercial circulation by ensuring an expeditious and fair procedure for dispute settlement. Statistics show that more than 450,000 cases go before the civil courts annually. A survey conducted by the Centre for Liberal Strategy has found that a civil proceeding takes an average 350 days. On the average, *in rem* proceedings last 636 days, actions for revocation of a wrongful dismissal 490 days, and tort or delictual actions 412 days. If we add the time for enforcement of judgements, we will see that civil procedure in Bulgaria does not ensure the required legal security and predictability guaranteeing expeditious, accessible, fair and predictable protection of the

rights of individuals and legal entities. Revising the effective Civil Procedure Code or adopting a new one is an adequate and long overdue measure.

The new Civil Procedure Code was drafted by a working group under a Phare project, and it was discussed at a conference. Drafting a new Civil Procedure Code and laying it before the Council of Ministers was a measure in the Government's previous programme to address the criticisms made by the European Commission in its October 2005 Comprehensive Monitoring Report. The previous monitoring report of the Open Society Institute noted that the measures to draft a new Civil Procedure Code were progressing on schedule, with an insignificant delay. However, the tightened schedule for passage of the instrument that is of paramount importance for civil and commercial circulation in Bulgaria cannot but cause concern. Especially worrying is the lack of debate on the proposed changes, some of which will have a material impact on legal practice and on economic and social relations. To guarantee legal security, many of the proposed new provisions, such as those concerning special action proceedings, the revised regulation of appellate and cassation proceedings, the shortened preclusive periods, etc., have to be subjected to a broad debate because they differ from the established practices.

The drafting, debate and passage of a new Civil Procedure Code is being rushed above all because the problems in civil procedure have been neglected for years or piecemeal solutions have been attempted. As a result, one of the key statutory instruments that is applied practically every day and affects the competitiveness of the Bulgarian economy and the life of people in Bulgaria will be adopted without an in-depth debate and without a clear idea of the impact of the changes.

The idea of the proposed draft Civil Procedure Code is to expedite civil proceedings. To this end, facts will be litigated in a single instance before the court of first instance, as the venue of the principal phase of civil proceedings. The proportion between the *ex officio*, discretionary and adversary principle in civil proceedings is shifted significantly. The draft Code casts the court in a far more active role in the progress of proceedings.

A series of standards in the proposed draft Code are intended to expedite proceedings by setting shorter preclusive periods for exercise of the rights of the parties. To guarantee that the parties' rights and interests will not be prejudiced as a result of preclusion, the draft provides that the papers submitted by the parties must be countersigned by a lawyer if the case is examined by a district or appellate court or by the Supreme Court of Cassation. Considering that the changed rules for generic cognisance will make district courts the principal instance for litigation of civil disputes, access to justice will be limited for individuals who cannot afford a lawyer. The draft Civil Procedure Code contains inconsistencies with the effective Legal Aid Act, which might cause significant problems.

To accelerate the progress of litigation, writ proceedings are introduced and regional courts will practically have to examine cases only in the form of summary or writ proceedings – the draft Code does not regulate a common procedure for examination of cases in this instance. In another bid to expedite proceedings, enforcement proceedings are revised, denying debtors many of their remedies against enforcement. The reasoning behind this change is that debtors have the legal option to seek redress from the insurance of the private enforcement agent or from the liability of the State for the actions of the public enforcement agent.

Next, the draft Code tries to speed up civil proceedings by revising the rules for appeal of cases in the first and second (cassation) instance. To this end, new motions and objections may not be made and new evidence may not be collected in the first appeals instance, unless

such evidence has emerged or has been learned after delivery of the appealed judgement. There are radical changes in cassation appeal, and precisely these changes have drawn the fiercest fire from practising lawyers and researchers. Cassation appealability is limited dramatically, and the Supreme Court of Cassation is vested with broad discretionary powers to determine the admissibility of a cassation appeal.

Along with the changes in procedural rules, application of laws such as the Commercial Register Act and the Private Enforcement Agents Act is also important for expediting and streamlining the administration of civil justice. Organisational and technological problems call into question the 1 October 2006 entry into force of the Commercial Register Act. The examinations for private enforcement agents, held in mid-August 2006, mark a positive development in optimising enforcement proceedings. It is realistic to expect that enforcement of judgements will be competitive by the end of the year, speeding up the enforcement of judgements and out-of-court enforcement titles.

The initial debate on the draft Civil Procedure Code shows that many of the new institutes and provisions attract strong criticism.

Status: Measure implemented, to the extent that the draft Civil Procedure Code has been passed on first reading. The strong and intensive criticism of the spirit and letter of the draft Code raises doubts as to whether the ultimate goal will be achieved: expeditious and fair adjudication.

Elaboration and adoption of a plan for training on the new Civil Procedure Code.
Responsible authority: Ministry of Justice and National Institute for Justice
Deadline: By the end of September 2006

The Ministry of Justice reports that an interagency working group has been set up to elaborate a plan for training on the new Civil Procedure Code. The uncertainty, noted above, as to the passage of the draft Civil Procedure Code renders meaningless the elaboration and adoption of a plan for training on the new Code.

Adequacy of measure:
The measure is adequate but requires a definite level of certainty as to the passage of the draft Civil Procedure Code. As of now, the criticisms of the proposed texts make the measure inadequate.

Status: Measure not implemented – the measure depends on the passage of a new Civil Procedure Code.

Commencement of training.
Responsible authority: Ministry of Justice and National Institute for Justice
Deadline: 15 September 2006

Training cannot commence prior to the passage of the new Civil Procedure Code and the elaboration of a training plan.

Adequacy of measure:
The measure is adequate but depends, firstly, on the passage of a new Civil Procedure Code, and secondly, on the elaboration of a training plan and adequate resourcing.

Status: Measure not implemented – the measure depends on the passage of a new Civil Procedure Code.

Elaboration and adoption of criteria for evaluation and enforcement (monitoring) of the new Civil Procedure Code.
Responsible authority: Ministry of Justice
Deadline: By the end of September 2006

According to the Ministry of Justice, a working group has been set up to elaborate criteria for evaluation and enforcement of the new Civil Procedure Code. The activity of the working group depends on the passage of the new Code.

Adequacy of measure:
The measure is adequate but depends primarily on the passage of a new Civil Procedure Code. The scanty and unreliable statistical data on the enforcement of the effective Civil Procedure Code will make it very difficult to accurately evaluate the impact of the new Civil Procedure Code.

Status: Measure not implemented – the measure depends on the passage of a new Civil Procedure Code.

2.5. Need for establishment of structures and training in view of enforcing the new Administrative Procedure Code (APC)

Elaboration and adoption of a plan for training on the new Administrative Procedure Code.
Responsible authority: Ministry of Justice and National Institute for Justice
Deadline: By the end of June 2006

At the beginning of June 2006, a working group was set up by an Order of the Minister of Justice and tasked with elaborating, together with the National Institute for Justice, a plan for training on the new Administrative Procedure Code. The plan has been elaborated and agreed with the Ministry of Justice, and provides for training in July, September, October, November and December 2006. Training will be provided to 300 – 400 magistrates and court officials from different parts of the country.

Adequacy of measure:
The Administrative Procedure Code entered into force on 12 July 2006. It regulates the issuance, contestation and enforcement of administrative acts. In addition to playing a systematising role, the Code introduces some new principles and institutes in Bulgarian administrative law. For example, the principles of proportionality, authenticity, equality, autonomy and impartiality are new and will raise questions in enforcing the Administrative Procedure Code. That is why the measure is entirely adequate and addresses the need for improving the efficiency and quality of administrative justice, as well as for high professional qualification and specialisation of judges. With a view to the new legislation, administrative justice should be a priority of the National Institute for Justice.

Status: Measure implemented.

Commencement of training.
Responsible authority: Ministry of Justice and National Institute for Justice
Deadline: September 2006

By a decision dated 15 June 2006, the Supreme Judicial Council approved a staffing schedule for regional administrative courts. A total 268 judges will be appointed at the twenty-eight regional administrative courts, which will start operating in March 2007. By a notice in the *State Gazette* of 8 August 2006, the Supreme Judicial Council announced a competitive examination for the appointment of judges at administrative courts. The written examination will take place on 29 September 2006. According to Supreme Judicial Council Ordinance No. 2 dated 28 June 2006, applicants who have passed the written examination with a score of more than 4.50 (by a six-point grading system) are eligible for the oral examination.
Commencement of training of judges and court officials on the enforcement of the new Administrative Procedure Code largely depends on the time of appointment of the applicants who have passed the examinations.

Adequacy of measure:
Given the need of training on the enforcement of the new Administrative Procedure Code, the measure is adequate.

Status: Measure not implemented – its implementation depends on the appointment of judges and court officials at regional administrative courts.

Elaboration and adoption of criteria for evaluation of the enforcement of the new Administrative Procedure Code.
Responsible authority: Ministry of Justice
Deadline: By the end of June 2006

A working group to elaborate criteria for evaluation of the enforcement of the new Administrative Procedure Code was set up by an order of the Minister of Justice in June. The criteria were approved by the Council of Ministers and the Supreme Judicial Council at the end of July.

Adequacy of measure:
Elaborating criteria to evaluate the enforcement of the Administrative Procedure Code is a necessary step towards systematising the legal problems connected with administrative proceedings. Evaluating the enforcement of newly set standards is a compulsory element of the law-making process. Such a set of indicators (criteria) will help develop a comprehensive and rational administrative policy, which will also enable monitoring the implementation of the reform in administrative justice and the achievement of the purposes of the new Administrative Procedure Code. Analysis of enforcement will also provide information about the need to take measures to solve particular problems in administrative justice that may emerge in the course of enforcement.

The criteria for monitoring the enforcement of the new Administrative Procedure Code are different for each stage of proceedings. They enable monitoring the speed of administrative proceedings, the efficiency and quality of protection of the legal interests of individuals, strict observance and enforcement of administrative acts and court judgements, and effective counteraction to corruption in administrative proceedings.

Similarly to the criteria for monitoring the enforcement of the new Penal Procedure Code, the set of criteria concerning the Administrative Procedure Code contains an ambitious list of indicators but does not specify the sources of relevant empirical information. When elaborating sets of indicators for monitoring the enforcement of legislation it is advisable to take into account the state of the available information collection systems.
It is positive that the monitoring has been extended to cover contestation of administrative acts according to an administrative procedure, which will help achieve the ultimate goals of the monitoring.

However, the lack of publicity of the elaborated criteria and of clarity as to how the monitoring will be conducted in practice gives cause for concern. The experience in applying the criteria for monitoring the enforcement of the new Penal Procedure Code shows that information about the findings of the monitoring does not reach stakeholders and the public at large.

Status: measure implemented.

Part II. Conclusions

The review of the measures concerning the reform of the judicial system shows that European Commission criticisms in this area have been taken into consideration. On the whole, the Government's to-do list does not include a great variety of measures but is generally in compliance with European requirements in this area. It identifies fourteen measures as needed to continue the judicial reform process in Bulgaria. A quantitative analysis found that ten qualify as implemented and four as not implemented. It is noteworthy that the majority of the measures are reported as implemented as early as June and July, which undoubtedly attests to the efforts of the authorities and the administration to make up for delay. In this sense, one may say that there is a clear political will for successful and effective implementation of the measures.

The majority of measures (twelve) qualify as fully adequate. Only two are more or less inadequate: one qualifies as adequate provided that certain other conditions are met as well (the random case assignment system), and one as inadequate (holding a national meeting of the police investigators investigating crimes committed by organised criminal groups, to assess the practice in enforcing the new Penal Procedure Code).

The nature of the measures concerning judicial reform shows that similarly to the Government's 2005 Action Plan, the present Action Plan gives priority to radical revision of relevant legislation, monitoring and training on the newly adopted legislation. The wording of the measures is consistent and rational. Radical reform of the judicial system can be achieved only by adopting entirely new legislation, and not by repeated revision. This undoubtedly justifies the presence among the identified measures of the elaboration and passage of a new Civil Procedure Code and a new Judicial System Act. It is worrying that one of the measures that is being implemented behind schedule is the passage of a new Civil Procedure Code. The delay may be qualified as a cause for concern, considering that it is identified in the European Commission's May 2006 Monitoring Report as a problem that needs to be solved. Also worrying is the tightened schedule for deliberation of the draft Civil Procedure Code, which might lead to failure to address or to superficial solution of some of the problems in civil procedure. In addition, the initial discussions of the draft Code show that many of the newly introduced provisions and institutes are criticised by the expert and legal communities. The

controversial opinions about the spirit of the draft Civil Procedure Code raise doubts as to its ability to achieve its ultimate objective – expeditious and effective civil proceedings, which is a requirement identified also in the European Commission reports.
In addition to adoption of key pieces of legislation, priority is given to training, discussion and monitoring of the enforcement and impact of newly adopted legislation. The regular and efficient operation of the working group monitoring the enforcement of the Penal Procedure Code is a positive tendency. Although there is some delay with regard to the other laws for which monitoring and training is provided (the Civil Procedure Code and the Administrative Procedure Code), this should not cause concern about Bulgaria's membership in the EU. The delay is due to technicalities (final passage of the Civil Procedure Code, establishment of regional administrative courts and appointment of the relevant number of judges) rather than to a lack of political will. This type of activities are important and signal progress with respect to the philosophy of the Bulgarian law-making process. Evaluation of the impact of legislation is a tool for rationalising and optimising the decision-making process in law-making and enforcement. These measures are adequate but ought to be part of a series of initiatives monitoring key legislation and, above all, they must be applied on a long-term and regular basis.

In implementing measures concerning the judicial reform, the executive and judicial branches of government should give priority to passage of the planned constitutional amendments and supplements. Besides being given top place among European Commission requirements, the pending constitutional amendments are also the top-priority issue in talks between European experts and Bulgarian politicians. At the same time, however, they are the area with the greatest lack of clarity regarding both the substance of the texts and the schedule for their adoption. Moreover, according to preliminary information part of the envisaged amendments will not be met with unconditional approval by the professional communities and institutions concerned. Since the relevant texts are not available, they cannot be assessed at this point. It must be noted that although a bill to amend and supplement the Constitution has already been drafted, it still remains unclear and inaccessible to magistrates. The planned establishment of a supervisory body of the judicial system, on which the European Commission insists, remains an incomprehensible idea for magistrates. According to the latter, it would be much more rational to look for a way to make the existing bodies – the Supreme Judicial Council and the Inspectorate at the Ministry of Justice – more effective rather than to create a new institution whose constitution, organisation and functioning are largely unclear. The more appropriate approach would be to formulate accurate and clear criteria and parameters for independence, and then regulate the procedures, functioning and organisation of the judicial system within those parameters. The approach taken at present, however, is the very opposite – starting from organisation and procedures. As a result, it remains questionable whether the envisaged amendments will remove all ambiguities regarding the guarantees of the independence of the judiciary and will ensure the necessary balance of powers.

The majority of the measures require intensive interaction and co-operation between the authorities responsible for their implementation. This is undoubtedly a means for improving the work of the administration and encouraging inter-institutional co-ordination. Although the process is complicated and inter-institutional communication is formal, the fact that the majority of measures are implemented proves that the administration has made efforts and wants effective results in implementing the identified measures.

On the whole, progress has been made in implementing the planned measures in the area of judicial reform. The small number of measures that have not been implemented, as well as their nature, cannot be treated as grounds for serious criticism, nor can they pose an obstacle to Bulgaria's EU accession.

The adequacy of the measures taken by the Government in response to European Commission criticisms does not pose a risk of application of a safeguard clause. The need to press ahead with the judicial reform with a view to full-fledged and effective implementation of the measures undertaken is more likely to justify the introduction of a period of post-accession monitoring.

CHAPTER IV: AGRICULTURE

Part I. Review and Evaluation of Implementation of the Measures

The European Commission's May 2006 Monitoring Report identifies the areas where further efforts are needed to complete Bulgaria's preparations for EU membership. It is noteworthy that in addition to monitoring progress towards formal compliance with EU requirements, the report also evaluates Bulgaria's capacity to effectively implement EU common policies after accession.

1. European Commission criticisms and requirements in areas of serious concern

In the section on Chapter 7: *Agriculture*, the May 2006 Monitoring Report reviews and evaluates Bulgaria's progress in this sphere. The report identifies a number of problems, which may be classified into two main groups: problems which, if not resolved, will make it very difficult for Bulgaria to implement the Common Agricultural Policy (CAP) and which are defined as areas of serious concern; and problems related to the effective implementation of formally fulfilled requirements (areas requiring increased efforts).

The areas of serious concern, which require urgent action, are: setting up a proper integrated administration and control system (IACS) in agriculture, especially with regard to the Land Parcel Identification System (LPIS); and building-up of rendering collection and treatment facilities in line with the *acquis* on TSE and animal by-products (upgrading of the rendering plants).

There are numerous criticisms in the report with regard to effective implementation of formally implemented measures (areas requiring increased efforts). These may be classified as follows:

- **Need of further training and building (improvement) of information systems:** With respect to the Paying Agency for administration of national and EU support, and with respect to identification and registration of animals. Training of the classifiers in abattoirs needs to be accelerated. Efforts are still needed as operational and detailed knowledge on trade mechanisms is still generally missing.
- **Secondary legislation yet to be adopted:** In the case of wine, additional implementing legislation for controls and certification has not been adopted, and the setting up of Bulgaria's vineyard register has not been completed. In the case of milk, detailed rules for management of milk quotas and of the national reserve have yet to be adopted. Some parts of secondary legislation to ensure full compliance with the *acquis* in the veterinary sector have not been adopted yet, and the EU norms and standards on animal welfare are not yet fully enforced.
- **Structures and facilities yet to be built:** Independent laboratories for the analysis of fat content of milk are yet to be created. All long-term veterinary border inspection posts have not been established yet. An animal health emergency fund is yet to be set up. Alignment with the new EU hygiene package and upgrading of establishments has not been completed.

2. Measures addressing the European Commission recommendations, identified in the Government Action Plan

The adopted 'Measures for Implementation of the European Commission Recommendations, Identified in Its Comprehensive Monitoring Report of 16 May 2006', (Annex 1 of the Action Plan of the Government of the Republic of Bulgaria) are classified into three main groups: completion of aerial photography (IACS); start of work on the construction of a new rendering plant; and completion of border inspection posts. While the first two address the areas of serious concern identified in the European Commission's May 2006 Monitoring Report, the third has probably been included because it is expected to be implemented and it is easily verifiable. More specifically, the measures in the Government's to-do list are the following:

2.1 Dates for completion of aerial photography (IACS)

Completing a digital aerial ortho-photo map of Bulgaria under LOT 1 of the contract (for 46,822 sq km, or 42.7% of Bulgaria's territory) by 31 July 2006, and under LOT 2 (for the remaining territory of the country – 63,910 sq km) by 31 August 2006.
Responsible authority: Ministry of Agriculture and Forestry
Deadline: August 2006

Adequacy of measures:
The measures planned by the Bulgarian side for producing a digital aerial ortho-photo map of the country are adequate and feasible. This conclusion is based on the contracts concluded with the company Eurosense Ltd. for elaboration of a digital aerial ortho-photo map of the whole territory of Bulgaria and a concluded contract for elaboration of a digital ortho-photo map based on archived satellite images.

Status:
According to the Ministry of Agriculture and Forestry (MAF), as of 25 August 2006 a total 100,500 sq km (90.5% of Bulgaria's territory) are covered by ortho-photo images. As of the same date, the Ministry has a digital ortho-photo map of 55,104 sq km (49.65% of the country's territory).
The measure can be treated as implemented to a certain extent.

Completing the digitalisation of physical blocks under LOT 1 by 30 September 2006 and under LOT 2 by 31 October 2006 (for the satellite images – by 31 August 2006).
Responsible authority: Ministry of Agriculture and Forestry
Deadline: October 2006

Adequacy of measures:
The measures planned by the Bulgarian side are adequate and the deadline is likely to be met if their implementation continues at the present pace. Training on the deciphering of the digital ortho-photo map is being conducted by the Portuguese company Estereophotoengineria Ltd. Four regional centres have been established at MAF regional directorates to accelerate the digitalisation of physical blocks.

Status:
According to the Ministry of Agriculture and Forestry, the digitalised physical blocks total 35,676 sq km and have been verified, including through field checks.
Measure implementation in progress.

Completing data entry and setting up a fully operational Land Parcel Identification System (LPIS) by 30 November 2006.
Responsible authority: Ministry of Agriculture and Forestry
Deadline: November 2006

Adequacy of measures:
The time schedule adopted by the Bulgarian authorities for setting up a fully operational LPIS is very tight. Even if the deadline is met, there is a definite risk regarding the quality of the entered data and the competence and training of the administration in this area.

Status:
Two additional centres for running control over the quality of work on deciphering physical blocks have been established and are operating at the Ministry of Agriculture and Forestry. A unit for field checks of physical blocks whose way of permanent use cannot be determined by the ortho-photos, is also in place.
Measure implementation in progress.

Coverage of the whole territory of Bulgaria by ortho-photo images, and complementary use of satellite images to accelerate the process of preliminary registration.
Responsible authority: Ministry of Agriculture and Forestry
Deadline: Not specified

Adequacy of measures:
Using satellite images as a complement is the only possible way to set up the LPIS on schedule as a key element of the IACS. The functioning of the Paying Agency and use of European funds on agriculture are impossible without an IACS.

Status:
Based on archived satellite images, a digital ortho-photo map of 32,985 sq km has been elaborated. As a result, more than 90% of Bulgaria's territory has been covered.
Measure implemented.

2.2 Start of work on the construction of a new rendering plant

The ongoing procedure for contracting of the feasibility study for the construction of the rendering plant is in compliance with the Phare rules and the deadline for concluding a contract is 1 September 2006.
Responsible authority: Ministry of Agriculture and Forestry
Deadline: September 2006

Adequacy of measure:

The implementation of this measure involves a series of specific elements, the main one being the significant role played here by the Phare Programme, whose projects are longer-term. This invites the conclusion that a new rendering plant will not be constructed within a year and that using the back-up variant, the rendering plant in Varna, is the only way Bulgaria can have the necessary capacity for disposal of animal by-products.

Status:
A notice was published on 15 July 2006 for a tender to select a consulting company to conduct a feasibility study on the construction and equipment of the rendering plant under the Phare Programme. The deadline for submitting bidding documents is 11 September 2006, and the project itself is expected to be completed by mid-2007. The tender for the construction and equipment of the plant is planned to be held by the end of 2007, with the rendering plant being completed by the end of 2008.
Measure implementation in progress, but the deadline obviously cannot be met.

2.3 Completion of Border Inspection Posts, including at Sofia Airport, and continued need for training, particularly in the use of the border inspections posts and their equipment

Completion of all Border Inspection Posts (BIPs), including BIP Sofia Airport, by 1 September 2006.
Responsible authority: Ministry of Agriculture and Forestry
Deadline: September 2006

Adequacy of measures:
Establishing border inspection posts is an important step towards the introduction of reliable veterinary control systems in the EU internal market.

Status:
Construction work on the border inspection posts is proceeding on schedule. As of 25 August 2006, between 50% and 60% of the rough construction work of the different facilities is in a state of completion. Rough construction work of the inspection posts is expected to be completed by the end of September. The completion of construction work is followed by a lengthy process of acceptance, initially under Bulgarian legislation and then by DG SANCO. That is why the border inspection posts will go into operation later than planned.
This also applies to the border inspection post at Sofia Airport, for which a construction contract was concluded with the company Safco in mid-August, with construction expected to be completed within a term of eighty days.
Measure implementation in progress, but the deadline will not be met.

Organising training of BIP staff before the completion of BIPs in view of their accreditation by the European Commission, as well as after their completion in view of their effective functioning as an external border of the EU from the date of accession. Including study visits in EU Member States, consultancy assistance by veterinary inspection staff from Member States, as well as programmes for training of the whole staff.
Responsible authority: Ministry of Agriculture and Forestry
Deadline: Not specified

Adequacy of measures:
The further action planned by the Bulgarian side is entirely adequate and will facilitate the training of BIP staff.

Status:
The planned measures are being implemented. It must be borne in mind that proper training of BIP staff can be conducted only in a real-life situation and with onsite assistance by EU experts. This will unquestionably be done after the final completion of BIPs.
Measure can be treated as implemented.

2.4 Measures not included in the Government Action Plan

- **Measures related to further training and building of information systems**

- According to the Ministry of Agriculture and Forestry, as of end August 2006 the necessary staff of the Paying Agency has been appointed and trained.

- As regards trade mechanisms, according to the Ministry of Agriculture and Forestry the necessary rules, instructions and manuals for implementation of all their elements have already been elaborated. With the assistance of the TAIEX Unit, a simulation training on trade mechanisms was conducted from 24 to 28 July 2006.

- With regard to the criticism about the insufficient training of classifiers in abattoirs, the Ministry of Agriculture and Forestry claims that they have already been trained.

- Measures have been taken to comply with European Commission requirements concerning the animal identification system. According to the Ministry of Agriculture and Forestry, the training of the persons who will work with the WorldVet information system was completed on 25 August 2006; connection of municipal computers to the Internet and entry of data on identified animals into the system is continuing. However, there is still a significant delay in the identification of animals and entry of data on them into the system owing to organisational reasons and need of additional funding.

- **Measures related to adoption of legislation**

According to the Ministry of Agriculture and Forestry, the national legislation on the wine, milk and veterinary sectors has been fully harmonised with the *acquis communautaire*. Ordinances are continuing to be adopted to revise the harmonised legislation in compliance with recommendations made by EC directorates general such as DG SANCO.
Intensive registration of vineyards is continuing, with vineyards totalling 15,077 ha having been registered between 14 July and 25 August 2006 alone. Bulgaria's vineyard register is expected to be completed by the end of September.

- **Measures for building the necessary facilities**

Complying with EC recommendations in this respect will take a comparatively longer period of time as it requires provision of the necessary financial resources and technological time for construction. That is why 'back-up' variants have largely been provided by assigning these functions to other institutions (mainly laboratories), while initiating the procedure for construction of the necessary buildings and facilities.

Part II. Conclusions

The identified measures are sufficient to overcome problems in the areas of serious concern. The problem is that the deadlines for implementation are unrealistic and cannot be met. Still, it is not very likely that the achieved level of implementation of the measures will be a significant obstacle to Bulgaria's accession or will even prompt the application of safeguard clauses. Progress made in the implementation of the individual measures provided in the Government Action Plan invites the following specific conclusions:

1. There is a risk that a safeguard may be applied as of the end of 2007 if the IACS (and, respectively, LPIS) is not operational by the time of Bulgaria's accession. Since the actual use of the IACS will commence from 1 December 2007, with the start of the CAP direct payments scheme for the first year of Bulgaria's possible membership, a safeguard clause – if applied – will be effective from that date. Further efforts are needed to ensure that the LPIS and, respectively, IACS will be in place and in operation before the end of 2006, thus averting the application of a safeguard clause.
2. Construction of the second rendering plant under the Phare Programme will be extended at least until 2008, but the European Commission will most probably assume that the currently operating rendering plants in Shoumen and Varna are sufficient until the construction of the new plant.
3. Irrespective of the likely delay in establishing the border inspection posts, progress to date justifies the assumption that they will be completed and accepted by DG SANCO by the end of 2006.

There is greater likelihood of application of safeguard clauses in the veterinary sector, in areas in which no measures are provided in the Government Action Plan. There is a risk of application of an internal market safeguard in the veterinary sector, consisting in restrictions on trade in pigs and pigmeat, as well as on trade in live animals between Bulgaria and Member States. Such measures may be applied if there are unauthorised vaccinations against classical swine fever and if the animal identification database is not operational. Avoiding the application of such measures requires the following:

- Establishment of an emergency animal health fund;
- Provision of the financial resources necessary for the launch of the animal identification information system.

CHAPTER V: FINANCIAL CONTROL

Part I. Review and Evaluation of Implementation of the Measures

1. European Commission criticisms and requirements in areas of serious concern

General requirements

Acquis Chapter 28 *Financial control* consists of a small number of statutory instruments and rather refers to the generally accepted principles of sound financial management and control. The internal control system that must be applied to the EU funds consists of five levels[5:]

The first level of financial control over public funds, part of which is the assistance received from the EU funds, are the internal control systems established by the spenders of resources provided by the European Union. These systems are part of the internal written procedures for the operation of these authorities.

The second level of financial control is the performance of internal audit. According to the Public Sector Internal Audit Act, each organisation spending budget resources and resources under programmes and funds of the European Union must have internal auditors. Internal audit is performed in accordance with Bulgarian legislation and the internationally accepted Standards for the Professional Practice of Internal Auditing. Essentially, internal audit assesses legal conformity and compliance with the principles of effectiveness, efficiency and economy. Internal audit is performed through audit of systems, audit of performance, financial audit, IT audit etc.

The third level of financial control are the sample tests of transactions and audit regarding EU funds carried out by the Audit of European Union Funds Directorate at the Ministry of Finance. The principal task of the Directorate is to guarantee the sound financial management and control of the European Union funds.

The fourth level of financial control over public funds is independent external audit which, according to Bulgarian legislation, is performed by the National Audit Office. The principal task of the National Audit Office is to contribute to the sound management of budgetary and other public funds, as well as to provide the National Assembly with reliable information on the use of funds in accordance with the principles of legality, effectiveness, efficiency and economy and to the truthful reporting of the implementation of the relevant budgets.

At the fifth level, the European Court of Auditors may perform audits independently or jointly with the Bulgarian National Audit Office regarding the management and absorption of the funds provided by the European Community.

The system under which the EU funds will be absorbed after Bulgaria's accession to the Union will be completely different from the system applied before membership. So far spending of the funds was subject to ex-ante control: the European Commission approves in

[5] Strategy for Participation of the Republic of Bulgaria in the Structural Funds and the Cohesion Fund of the European Union, updated version, Ministry of Finance, April 2006.

advance the spending of financial resources: selection of projects, competitive bidding, contracting. The new system that will be applied after Bulgaria joins the EU envisages decentralisation of the responsibility to the national government, with the European Commission exercising ex-post control over the spending of the funds. This new system is called Extended Decentralised Implementation System (EDIS).

Implementing the new system requires accreditation from the European Commission, attesting that the system is in place and conforms to requirements. Resources from the EU funds cannot be received without such accreditation.

Ensuring a capacity for protection of the financial interests of the EU is an important requirement *vis-à-vis* the financial resources provided by the EU. A Council Co-ordinating the Fight against the Infringements affecting the Financial Interests of the European Community (AFCOS) was established by Council of Ministers Decree No. 18 dated 4 February 2003. The Ministry of Interior (in the person of the directors of the National Police Service, the National Service for Combating Organised Crime and the National Border Police Service), the Ministry of Finance (the National Customs Agency, the Financial Intelligence Agency, the Public Internal Financial Control Agency, the General Tax Directorate, the Central Finance and Contracts Unit), and the Ministry of Agriculture and Forestry (the respective directorates in charge of the co-ordination and organisation of rural development programmes) are represented on the Council. AFCOS ensures interaction with the European Anti-Fraud Office (OLAF), with the Member States, and with counterpart structures in the Acceding Countries and in the Candidate Countries.

EC criticisms in the May 2006 Report

The EC Monitoring Report of May 2006[6]lists strengthened financial control for the future use of Structural and Cohesion Funds among the areas of 'serious concern'. More specifically, the criticism targets the control over structural action expenditure (incl. through EDIS accreditation) and protection of the EU's financial interests.

As regards negotiating Chapter 28 *Financial control*, the European Commission's May 2006 Monitoring Report notes that Bulgaria has accumulated substantial delays with Extended Decentralised Implementation System (EDIS) accreditation for both the Phare and the ISPA programmes.

'The timetables included in the relevant action plans for EDIS accreditation, which envisage final accreditation by the end of June 2006, have not been adhered to for the intermediate

[6] Communication from the Commission: Monitoring Report on the State of Preparedness for EU Membership of Bulgaria and Romania, COM (2006) 214
According to the European Commission:
'There remain six areas of serious concern, which require urgent action:

- setting up a proper integrated administration and control system (IACS) in agriculture, (*acquis* chapter 7);
- building-up of rendering collection and treatment facilities in line with the *acquis* on TSE and animal by-products (*acquis* chapter 7);
- clearer evidence of results in investigating and prosecuting organised crime networks (*acquis* chapter 24);
- more effective and efficient implementation of laws for the fight against fraud and corruption (*acquis* chapter 24);
- intensified enforcement of anti-money laundering provisions (*acquis* chapter 24);

strengthened financial control <u>for the future use</u> of structural and cohesion funds (*acquis* chapter 28).'

steps, and there are serious risks that the process will not be completed by the end of 2006, with substantial consequences involving the loss of large amounts of pre-accession funding. This also casts doubts over Bulgaria's capacity properly to control future Structural Funds expenditure. Urgent action is now needed in this area.'

'On **protection of the EU's financial interests**, an Action Plan and a Strategy on Combating Fraud affecting the financial interests of the European Communities have been adopted and training has been provided for relevant bodies. The output on communication of irregularities and suspected fraud has significantly improved recently.'

'The Anti-Fraud Strategy, which is the framework for protecting the EU's financial interests in Bulgaria, is too vague to become effective. An inter-institutional working group has been created on 12 April to propose a new draft strategy for fight against fraud affecting the European Communities' financial interests. The working procedures and the operational capacity of the Bulgarian AFCOS (Council Co-ordinating the Fight against the Infringements affecting the Financial Interests of the European Community) in inter-institutional co-operation and co-ordination between the authorities involved remains insufficient. Two Working Groups have been set up on 14 April by the decision of the Minister of Interior. They will have the tasks to improve the co-operation between the bodies having competencies in checks and investigations and the report of irregularities affecting.'
'Preparations need to be stepped up in this area.'

On Chapter 28, the European Commission concludes that progress has been made with regard to the **protection of the EU's financial interests**. 'However, increased efforts are still needed to sustain the progress made. Action is needed with regard to the strengthening of administrative capacity and the improvement of co-ordination by the new working groups. The situation with **control over structural action expenditure** has deteriorated. This area is now a cause of serious concern. Bulgaria should take immediate and decisive action now and significantly speed up EDIS accreditation in order to be ready by accession.'

2. Measures addressing the European Commission recommendations, identified in the Government Action Plan

2.1. Co-operation between the various government departments having an interest in the overall picture

Preparation and adoption of benchmarks for implementation of the Agreement between the Ministry of Finance and the National Audit Office for co-operation in the area of internal control in the public sector as well as in the area of auditing the EU funds.
Responsible authority: Ministry of Finance in co-operation with National Audit Office
Deadline: By the end of July 2006

The benchmarks are essentially a programme for joint measures with deadlines. They include exchange of experience between the Ministry of Finance and the National Audit Office, delivery of training, development of financial management and control methodology, and standardisation of the relevant terminology.

Status: Measure implemented.

Drawing up a medium-term programme for training of high- and middle-level managers at central, regional and local level for training in managerial responsibility and application of best practices in financial management and control over public funds, including EU funds.
Responsible authority: Ministry of Finance
Deadline: By the end of July 2006

On 21 July 2006 the Minister of Finance approved a programme for training in financial management and control and internal audit in the public sector. The programme covers the principal objectives and priorities, the needs of training, the organisation and conduct of training, including a training programme for the period from 1 August 2006 to 31 December 2007.

Status: Measure implemented.

Implementing a pilot project for training of 40 secretaries general and 50 mayors of municipalities in basic principles of financial management and control, organised by the Institute of Internal Auditors and with the participation of experts from DG Budget of the European Commission.
Responsible authority: Ministry of Finance
Deadline: 15 June 2006

Status: Measure implemented.

Beginning of certification of internal auditors in the state administration by the Minister of Finance from November 2006.
Responsible authority: Ministry of Finance
Deadline: By the end of June 2007

Experts of the Internal Control Directorate developed together with SIGMA consultants a draft Ordinance on the Terms and Procedure for Organisation and Holding of Exams for Getting a Certificate for Internal Auditor in the Public Sector. Ordinance No. 6 on the Terms and Procedure for Organisation and Holding of Exams for Getting a Certificate for Internal Auditor in the Public Sector was approved by the Minister of Finance on 29 June 2006 and was promulgated in the *State Gazette* No. 57 of 14 July 2006 (effective 17 July 2006).

Status: Measure implementation in progress.

2.2. Provision of information by central government to local authorities, including business operators, regarding the financing flows and the rules which will apply after accession

Training in financial management and control of mayors and business operators at regional level by September, for which target funding is needed from the European Commission.
Responsible authority: Ministry of Finance
Deadline: By the end of September 2006

A special working group has been established, and by mid-July it developed a Training Programme for the July-December 2006 period, according to which the following trainings will be delivered for municipal administrations and final beneficiaries:

- Financial management, financial control and audit. Detection, prevention and reporting of irregularities (intended for municipal administrations and organised by the Ministry of Environment and Water);

- Financial management, financial control and audit (intended for final beneficiaries and organised by the Ministry of Finance and the Ministry of State Administration and Administrative Reform);

- Financial management (intended for final beneficiaries and organised by the Ministry of State Administration and Administrative Reform);

- Detection and reporting of irregularities (intended for final beneficiaries and organised by the Ministry of State Administration and Administrative Reform);

- Financial management and disbursement mechanism (intended for final beneficiaries and organised by the Ministry of State Administration and Administrative Reform);

- On-site inspection and control (intended for final beneficiaries and organised by the Ministry of Finance and the Ministry of State Administration and Administrative Reform).

Status: Measure implementation in progress.

Development of a medium-term training programme (18 months) for planning and implementation of future projects on the Structural Funds at local level in the Public Finance School.
Responsible authority: Ministry of Finance in co-operation with Institute of Public Administration and European Integration
Deadline: By the end of July 2006

The first part of the Training Programme, for the July-December 2006 period, has been elaborated, and the second part, covering the January-December 2007, is under elaboration.

Status: Measure implementation in progress, but behind schedule.

Drawing up and concluding an agreement with governmental and non-governmental training institutions for co-operation and assistance in the area of training on issues of drawing up and applying for projects of the Structural Funds, their management and accountancy.
Responsible authority: Ministry of Finance in co-operation with Institute of Public Administration and European Integration
Deadline: By the end of September 2006

Status: Measure implementation in progress.

2.3. Progress towards EDIS

Implementation of the additional requirements by the target institutions on ISPA programme. The aim is to enable DG Regional Policy to do a verification audit according to the negotiated terms with the European Commission.
Responsible authority: Ministry of Finance
Deadline: By the end of June 2006

The EDIS accreditation package for the ISPA Programme was submitted to the EC on 20 April 2006. In order to enable DG Regional Policy to conduct the verification audit of target institutions for EDIS accreditation within Preparation for EDIS Stage 4, Deloitte Bulgaria EOOD carried out an audit in the areas of concern identified in Stage 3 'Compliance Assessment'. The report was sent to the EC on 23 June 2006.

The ISPA target institutions have completed all additional requirements to achieve successful EDIS accreditation. The final audit opinion on the part of Deloitte Bulgaria EOOD was submitted on 27 July 2006. In addition, a preliminary verification audit on the part of DG Regional Policy was carried out between 11 and 13 July 2006.

Status: Measure implemented.

Speeding up the preparation of the Phare programme target institutions by the end of July 2006. The aim is to enable DG Enlargement to do a verification audit by the end of July 2006.
Responsible authority: Ministry of Finance
Deadline: By the end of June 2006

A draft Compliance Assessment Report has been received from the auditor. The report identifies areas that require further actions to be carried out for some of the target institutions. The implementing agencies actively work on the implementation of urgent corrective actions. The Advisory Audit Mission on the part of DG Enlargement was carried out from 10 to 13 July 2006 and gave further clarifications on some of the emerging issues.

Status: Measure implementation in progress, but far behind schedule.

2.4. External audits of the high-spending ministries: Environment, Transport, Agriculture, Regional Development, Labour

Urgent target assistance by the European Commission for developing an intensive programme (6-12 months) for newly recruited officials in the target and financial institutions for financial management and control of Phare and ISPA funds (key areas of training: public procurement, internal control and project management).
Responsible authority: Ministry of Finance in co-operation with Institute of Public Administration and European Integration
Deadline: July 2006

A letter to the European Commission has been sent, requesting the secondment of experts to assist in the elaboration of training programmes.

Status: Measure implementation in progress. Everything necessary has been done by the Bulgarian side, a reply from the EC is expected.

Urgent target assistance from the European Commission for performing independent external audits (in co-operation with auditors from the National Audit Office) during the July-September 2006 period to establish the readiness for correct and good management of the EU funds in the institutions managing large-volume funds, such as the Ministry of Environment and Water, the Ministry of Transport, the Ministry of Agriculture and Forestry, the Ministry of Regional Development and Public Works, the Ministry of Labour and Social Policy.
Responsible authority: Ministry of Finance
Deadline: By the end of July

A letter to the European Commission has been sent. Between July and September, external audits will be performed at the institutions managing substantial amounts of EU funds so as to evaluate their readiness for sound financial management of the EU funds.

Status: Measure implementation in progress. Everything necessary has been done by the Bulgarian side, a reply from the EC is expected.

As regards AFCOS (Council Co-ordinating the Fight against the Infringements affecting the Financial Interests of the European Community): The two Working Groups that have been set up by an order of the Minister of Interior (mentioned in the EC Monitoring Report) have presented their reports/working papers on the key working documents, and these have been adopted by AFCOS for further implementation. In order to strengthen the protection of the EU financial interests, new permanent working groups have been set up in the areas of risk management and prevention of irregularities. A new training programme is under development. Meetings of AFCOS are organised on a monthly basis. By the end of June new legal provisions will be adopted with a view to improving co-ordination and interaction, to regulating clearly responsibilities, to improving accountability and publicity in the areas of the fight against the abuse of funds and fraud.
Responsible authority: Ministry of Finance and Ministry of Interior
Deadline: June-September 2006

Status: Measure implemented.

Adequacy of measures:
The measures are fully adequate to the objectives of protection of the financial interests of the European Union and effective absorption of EU funds. The forthcoming EDIS accreditation is essentially an introduction of a financial control and accounting system without precedent in Bulgaria.

Part II. Conclusions

Almost half of the measures planned were implemented by early August. The rest are either long-term or their implementation is in progress.

The measures planned address the problems, but part of them are oriented in the long term, e.g. regarding the strengthening of administrative capacity, and the results will make themselves felt after a long period of time.

The pace of implementation of the measures does not pose a significant risk of a postponement of Bulgaria's membership in the European Union. Until completion of the EDIS accreditation, however, absorption of resources from the EU funds will be impossible.

EDIS accreditation should be a key priority in the measures. Without successful completion of such accreditation, it would be impossible to absorb resources from the funds of the European Union. This spells a risk of a delay or even loss of financial resources from the EU funds. There will be a substantial delay in the EDIS accreditation. The delay accumulated so far is at least six months, and the task now is not to build up any additional delay, so that the new financing system could go into operation from January 2007. The accreditation process for the ISPA Programme began in April and will probably be completed before accreditation for the Phare Programme, which was not yet started by the end of July.

There is no risk of application of a safeguard clause.

Even after accession to the EU, Bulgaria should make a sustained effort to improve the administrative capacity and co-ordination in the Working Groups of the Council Co-ordinating the Fight against the Infringements affecting the Financial Interests of the European Community.

It should be borne in mind that accreditation is just the first step in the process of effective and transparent absorption of EU funds. The next steps include preparation of real projects, strengthening the administrative capacity of the management structures, implementation of an effective public procurement award system. They will be of decisive importance after the country's admission to the EU.

The work on protection of the financial interests of the European Union that is done by AFCOS will not be sufficient by itself, without an effective and working judicial system.

CHAPTER VI: ENERGY

Part I. Review and Evaluation of Implementation of the Measures

1. European Commission criticisms and requirements in areas of serious concern

In its May 2006 Comprehensive Monitoring Report on the state of preparedness for EU membership of Bulgaria, the European Commission concludes:
'Regarding Bulgaria's commitments to early closure of units 1 to 4 of the Kozloduy nuclear power plant, as enshrined in the Act of Accession, Bulgaria has not yet taken the necessary steps to ensure irreversible dismantling of units 1 and 2, which were shut down in 2002. It has also not yet taken tangible operational and administrative action to secure the definitive closure of units 3 and 4 in 2006 and to guarantee their subsequent decommissioning, thereby allowing appropriate use of the available EU funds. There is no full compliance yet with the Euratom Treaty requirements and procedures. Preparations in this area need to be significantly improved.'

'In the area of **nuclear energy and nuclear safety**, the situation has deteriorated with regard to the decommissioning process. Increased efforts and swift action are now needed to guarantee the irreversible closure of units 1 to 4 of the Kozloduy nuclear power plant.'

2. Measures addressing the European Commission recommendations, identified in the Government Action Plan

2.1. Progress on the definitive dismantling of units 1 and 2 of the Kozloduy NPP

Taking actions through EBRD for completion by the consultants BNG/EdF of the Decommissioning Strategy for units 1 and 2 of Kozloduy NPP and its adoption until 15 June 2006.
Responsible authority: Ministry of Economy and Energy and Kozloduy NPP
Deadline: 30 May 2006

The strategy has to be updated so as to avoid overdue and delayed implementation of the measures and actions envisaged by it, especially in connection with the accelerated measures since May on several actions included in the Government Action Plan. In practice, the formal adoption of the strategy is expected to convince the EC of the Bulgarian Government's determination to honour the commitments assumed. The involvement in the strategy and its approval by all institutions concerned: the Kozloduy NPP (as well as the consultant BNFL-EDF), the Government, the Nuclear Regulatory Agency, the European Bank for Reconstruction and Development (as financing part of the activities for closure of the units) can be regarded as a guarantee of this. At the same time, however, part of the measures adopted in the strategy must be implemented within a short term, so that follow-up action could be taken within the agreed timeframe for decommissioning and dismantling.

Adequacy of measure:
The measure qualifies as adequate, but at the same time it should be noted that it depends on the timely implementation of the rest of the measures on the Action Plan.

Status: Measure implemented.

Version C of the updated Decommissioning Strategy for units 1-4 of the Kozloduy NPP was reviewed on 14 June 2006. The strategy was adopted with a number of critical remarks for the addressing of which an additional time period was allowed until 21 June 2006. The texts of the strategy were repeatedly reviewed and remarks were resolved between 17 and 20 June 2006, arriving at a final version of the text acceptable to both sides. The working group on the Kozloduy NPP and the Kozloduy Project Management Unit drafted a joint opinion on the final version of the strategy. Under the strategy, dismantling of equipment, which is not related to ensuring the nuclear safety of units, 1 and 2 is to begin before the end of the year.
The updated Decommissioning Strategy for units 1-4 was adopted at a Council on Safety and Quality of the Kozloduy NPP on 21 June 2006.

Taking measures in order to develop a plan for compensation of the lagging behind of the project for construction of a dry storage for spent nuclear fuel and for submission of proposals for resolving the technical problems until 30 June 2006.
Responsible authority: Ministry of Economy and Industry and Kozloduy NPP
Deadline: 30 May 2006

The idea of this measure is directly related to previous action implementing the plan for final decommissioning and dismantling of units 1 and 2 of the Kozloduy NPP.

Units 1 and 2 were shut down at the end of 2002. In January 2003, the Kozloduy NPP contracted British-French consortium BNFL-EDF as a consultant for the Kozloduy Project Management Unit. Within the framework of the contractual agreements, the consortium will advice the Kozloduy NPP on the management of seven projects to facilitate the decommissioning of units 1 and 2. The most important of these projects is the construction of an interim dry storage facility for spent nuclear fuel. The competitive tendering procedure for selection of a contractor was held by the Kozloduy NPP and the European Bank for Reconstruction and Development. A contract for the design and construction of a Dry Storage Facility for Spent Nuclear Fuel from the Kozloduy NPP was signed in May 2004. A consortium formed by RWE NUKEM GmbH and GNB mbh – Germany was selected as contractor. The contract implementation period is 4.5 years.

At the end of 2005, in accordance with the conditions of the licences, the Kozloduy NPP submitted to the Nuclear Regulatory Agency a general plan for decommissioning of units 1 and 2. The plan is based on the approach defined in the 2001 Technical Project for decommissioning and envisages deferred dismantling with a 35-year period of safe storage. The first stage of the decommissioning is the so-called 'preparation for safe storage' of the radioactive components of the units during five years, and includes closure of the units during the first five years and preparation for safe storage of the radioactive components of the units during the next two years.

In January 2006, it transpired that the Kozloduy NPP had rejected the contractor's project for construction of the storage facility, arguing that it did not conform to the plant's terms of reference. According to the NPP management, the moot points concern safety. At this point, the lag is at least six months, which means that the storage facility will not be completed by 1

January 2006. As a result of the delay of the commissioning of the storage facility, the five-year preparatory period under the original Decommissioning Strategy for units 1 and 2 will have to be exceeded as well. Thus, the delay in the construction of the storage facility may be invoked as an 'objective' argument for a delay of a number of other planned actions, including the start of dismantling of a portion of the equipment of the two units.

Adequacy of measure:
The measure directly relates to the findings of lack of progress in the EC Report, and its implementation is a necessary (but insufficient) condition to guarantee the honouring of the commitments assumed to the EU.

Status: Measure implemented.

Two working-level meetings with contractor RWE NUKEM/GNB – Germany took place on 14 June 2006. The controversial issues related to the implementation of the project and the safety of the facility were discussed, and full agreement was reached on them. Specific measures were mapped out to compensate the lag of the project. For its part, the NPP committed itself to revise the Technical Project and the Interim Report on Safety Analysis on an accelerated basis by the end of July 2006 and to conduct consultations with the Nuclear Regulatory Agency on the acceleration of the procedure for issuance of a building permit for the dry storage facility for spent nuclear fuel by the end of 2006. On 27 June 2006, the project contractor RWE NUKEM/GNB – Germany presented an updated timetable for the construction and commissioning of the storage facility, which confirms the deadline envisaged by the contract: 9 January 2009.

Fulfilling the obligations under the Contract with the contractor RWE NUKEM/GNB and in accordance with the requirements of national legislation for conduct of an Environmental Impact Assessment of the Dry Storage Facility for Spent Nuclear Fuel, a copy of the EIA report was sent to the relevant authorities to initiate a public discussion. The discussion took place in the town of Kozloduy on 24 August. This opens the way to further action for obtaining a building permit for the storage facility from the Nuclear Regulatory Agency.

Submitting an application for the issuance of a permission by the Nuclear Regulatory Agency to carry out alterations leading to a change in constructions, systems and equipment of Units 1 and 2 of Kozloduy NPP (dismantling of equipment which is not related to the safe storage of spent nuclear fuel at reactor pools).
Responsible authority: Kozloduy NPP
Deadline: 1 August 2006

Units 1 and 2 were shut down at the end of 2002, implementing Council of Ministers Decision No. 848 dated 19 December 2002. In January and February 2004, the Nuclear Regulatory Agency issued five-year licences for the operation of units 2 and 1, respectively, in a condition limited to storage of the spent nuclear fuel at the reactor pools. At the end of 2005, in accordance with the conditions of the licences, the Kozloduy NPP submitted to the Nuclear Regulatory Agency a general plan for decommissioning of units 1 and 2. The plan is based on the approach defined in the 2001 Technical Project for decommissioning and envisages deferred dismantling with a 35-year period of safe storage. The first stage of the decommissioning is the so-called 'preparation for safe storage' of the radioactive components of the units during five years, and includes closure of the units during the first five years and preparation for safe storage of the radioactive components of the units during the next two years. Additionally, the Decommissioning Strategy for units 1-4 of the Kozloduy NPP

envisages that dismantling of equipment which is not related to ensuring the nuclear safety of units 1 and 2 start in June 2006.

Implementation of the plan depends on two conditions. In the first place, it is contingent on the timely construction of the dry storage facility for spent nuclear fuel. On the other hand, a process of dismantling of equipment in the units is supposed to start after the third year since the definitive shut-down. According to the regulatory framework, such actions require permission from the Nuclear Regulatory Agency. To this end, the Kozloduy NPP should submit an application accompanied by a number of documents related to the technical implementation of the dismantling, specifying the systems subject to dismantling and other such.

A delayed grant of permission for dismantling would lead to its deferral, regardless of a future acceleration of the construction of the storage facility. The effect would be a lagging behind in the adopted plan for definitive decommissioning of units 1 and 2. It should be borne in mind, however, that at this point the two units are merely shut down, without performing irreversible structural modifications guaranteeing their definitive decommissioning, as the EC notes in its conclusions. Hypothetically, the licence of the two units could be modified yet again (on an application by the Kozloduy NPP to the Nuclear Regulatory Agency), and they could restart electricity generation.

Adequacy of measure:
The measure is adequate and is intended to observe the pre-set schedule for decommissioning of units 1 and 2.

Status: Measure implemented.

Consultations with the Nuclear Regulatory Agency have been conducted on the measures which should be implemented with regard to modifying the licences for the operation of units 1 and 2 in a condition of zero power, leading to a modification of constructions, systems and equipment aimed at carrying out the dismantling. A detailed list of the systems which are not related to the safe storage of spent nuclear fuel at a spent fuel pool for units 1 and 2 has been elaborated on the basis of a Technical Project for the decommissioning of units 1 and 2. Preliminary radiological assessment of the equipment is underway.

On 21 July, the Kozloduy NPP submitted an application for permissions to the Nuclear Regulatory Agency. A procedure for modification of the licences, for co-ordination of the equipment that may be dismantled, is currently in progress. The list includes electrical machinery of the turbine generators, power transformers, electric motors. The required documents are being prepared, after which licensed appraisers are to appraise the equipment destined for dismantling and a sale procedure is to be announced, in accordance with the Regulations Establishing a Procedure for the Exercise of the State's Rights in State-Owned Commercial Corporations.

2.2. Presentation of a clear strategy for closing down Units 3 an 4 by the end of 2006

Submitting an application requesting modification of the operation licences for units 3 and 4 issued by the Nuclear Regulatory Agency due to new circumstances related to the units' closure by virtue of an international treaty. The amended licenses shall enable the

licensee to use the units' facilities for storage of the spent nuclear fuel in absence of fuel in the active zone of the reactor.
Responsible authority: Kozloduy NPP
Deadline: 30 June 2006

Within the framework of the negotiations with the EU on the country's accession to the Union, Bulgaria committed itself to close down units 1 and 2 of the Kozloduy NPP before the end of 2002 and units 3 and 4 before the end of 2006. In February 2003, the Nuclear Regulatory Agency issued a licence for operation of unit 4 of the Kozloduy NPP for ten years, i.e. until 2013. In May 2003, the Agency licensed unit 3 for eight-year operation – until 2011. Therefore, 'tangible operational and administrative action' (to use the terminology of the EC Report) to secure the definitive closure of units 3 and 4 in 2006 had yet to be taken at the time of release of the Monitoring Report.

In effect, the European Commission found a lagging behind in the action that should be taken if the units were to be decommissioned in accordance with the regulatory framework. Under the Safe Use of Nuclear Energy Act, closure of a nuclear facility requires modification of the licence. Since units 3 and 4 have been issued a licence for operation until 2011 and 2013, respectively, their definitive closure at the end of 2006 requires an alteration of the conditions of the licences. Under the requirements of the effective version of the Safe Use of Nuclear Energy Act, it is impossible to implement an option similar to the closure of units 1 and 2: only by government decision and subsequent issuance of new licences. For its part, the Nuclear Regulatory Agency rules on such cases within six months. Therefore, an application for modification of the licences should be submitted on 30 June at the latest. It should also be borne in mind that an application for modification must be accompanied by a number of documents related to the decommissioning activities. Preparation of these documents is time-consuming, as it involves planning a timeframe of actions, demonstration of safety upon decommissioning and approval of the series of technological modifications. The lack of progress in work on preparation of the package of such documents in May has given rise to serious doubts that the management of the Kozloduy NPP will submit on time an application for modification of the licence. This would imply – if the legal framework were complied with – a delay in the closure of units 3 and 4 beyond the end of 2006.

Insofar as the EC assumes with good reason that the Bulgarian Government, the Nuclear Regulatory Agency and the Kozloduy NPP itself, as a domestic legal person, should abide by the regulatory framework, the non-submission of an application for modification of the operation licences of units 3 and 4 within the statutory time limits can be regarded as a prerequisite for a failure to honour a commitment assumed in the Accession Treaty.

Adequacy of measure:
The measure should be treated as adequate in respect of the guarantees to honour the commitment to close down units 3 and 4 before the end of 2006.

Status: Measure implemented.

The first drafts of the supplements to the technological regulations were finalised on 16 June 2006. They include justification of safety regarding the actual state of the unit in operational regime E: storage of irradiated and spent nuclear fuel, a justification of the time period for modification of the licenses in accordance with the updated Decommissioning Strategy for units 1-4, as well as a supplement to the technological regulations concerning the operation of the units in regime E.

On 29 June 2006 the Kozloduy NPP submitted an application to the Nuclear Regulatory Agency for modification of the licences, which would allow operation in regime E: storage of irradiated and spent nuclear fuel in the reactor pools of units 3 and 4.

Submitting an application to the State Energy and Water Regulatory Commission for modification of the licence for generation of electricity and heat in connection with the closure of Units 3 and 4.
Responsible authority: Kozloduy NPP
Deadline: One month after issuance of the permissions under the previous measure

In December 2000, conforming to the requirements of the Energy Act the Kozloduy NPP was granted a 30-year licence for generation of electricity and heat. The provisions of this Act and of secondary legislation regulating the issuance of licences require that producers submit an application for modification of the licence upon decommissioning of generating capacities. Compliance with the regulatory framework requires that the State Energy and Water Regulatory Commission pronounce by a decision on modification of the licence of the Kozloduy NPP before 31 December 2006.

It should be borne in mind that the modification of the licence issued by the State Energy and Water Regulatory Commission does not have a direct bearing on the actual decommissioning of units 3 and 4. It can only limit the Kozloduy NPP, upon a hypothetical re-commissioning of the units, to selling electricity on the Bulgarian market conforming to the requirements of the Energy Act.

Adequacy of measure:
Implementation of the measure is a mandatory condition for compliance with domestic legislation, but would not provide any substantial guarantee of an irreversibility of the process of closure and dismantling of the units.

Status: Measure not implemented, depends on the previous measure.

Part II. Conclusions

The measures set out in the Government Action Plan are adequate and timely. They guarantee the implementation in the May-July period of the actions required to honour the commitments assumed and to keep the deadlines for closure of units 1-4 of the Kozloduy NPP.

It should be borne in mind, however, that the commitment assumed by the Bulgarian Government goes beyond the definitive closure of these units in 2002 and 2006, respectively. The ultimate goal, against which the EC will assess the country's progress, is the irreversible decommissioning and dismantling of units 1-4, moreover in line with previously assumed commitments under the decommissioning plan and timeframe. The prompt implementation of the measures set out in the Action Plan does compensate for the lagging behind in the expected progress, found in May. The European Commission, however, will also assess the reliability of the promises for future action made by Bulgarian institutions. Insofar as activity in this area in recent months was triggered by the sharp criticisms in the Report, doubts about the presence of sufficient guarantees of irreversible closure of the units may linger.

These doubts are prompted by the conflicting signals that the actions of Bulgarian institutions have been sending since 2002. On the one hand, the Government has honoured the commitment to close down units 1 and 2 in 2002 and, within the framework of negotiations on the energy chapter, agreed to close down units 3 and 4 in 2006. Thus, until it was time to act for the definitive closure of the units, the Government's policy was assessed in positive terms by the European Commission's regular reports.

On the other hand, however, a series of circumstances until April 2006, created purposefully, for lack of co-ordination or deliberate inaction, invite the assumption that Bulgaria is only paying lip service to honouring the commitments assumed. These circumstances include:
- a substantial delay in the construction of the dry storage facility for spent nuclear fuel, largely due to the refusal of the management of the Kozloduy NPP to agree with the contractor on the parameters of the Technical Project;
- the related delay of actions for the start of dismantling of equipment in units 1 and 2;
- the issuance of licences for operation of Units 3 and 4 until 2011 and 2013 in 2003, when the commitment to close down the units in 2006 was already clear;
- lack of readiness in the Kozloduy NPP to apply to the Nuclear Regulatory Agency for modification of the licence.

The overall conclusion of an unbiased outside observer would be that the Bulgarian side is trying to leave itself 'open-ended' options to postpone the closure of at least units 3 and 4 of the plant. Moreover, not a single technological action impeding a future re-start of units 1 and 2 has been taken so far, and at the same time the lack of progress on construction of the storage facility blocks a timely implementation of a number of measures envisaged in the Decommissioning Strategy for units 1-4.

Implementation of the measures, therefore, compensates for the actual lag and largely contributes to building confidence in the Government's political will to honour the commitments to the EU. Considering the sensitivity of the subject of nuclear safety for EU citizens and EC officials, the Commission could hardly be expected to blunt its criticism. And yet, despite this it could be argued that the risk of a negative opinion (i.e. a determination that Bulgaria does not honour its commitment) is insignificant and should not block the country's full membership from 1 January 2007. It could be predicted that this area will not prompt the application of a safeguard clause.

Full-scale honouring of the commitment to close down units 1-4 of the Kozloduy NPP will take an exceedingly long period of time after the accession date; in practice, before accession the EC can only assess the initial efforts made by the Bulgarian Government, which must demonstrate a will to make the process irreversible. The bulk of the actions planned in the decommissioning strategy are to be implemented after 2007.

CONCLUSION

The analysis of the adequacy and implementation of the **seventy-three measures** planned by the Government of the Republic of Bulgaria during the May-August 2006 period in the six areas of serious concern, which require urgent action, as identified in the Report of the European Commission, shows that:

1. **Most measures have been adequately planned and implemented (sixty-seven qualified as adequate and forty of them have been implemented, while implementation of twenty-two is in progress), which proves the presence of a political will and actions to overcome the problems and invites the conclusion that the identified areas do not spell a significant risk of a postponement of Bulgaria's membership in the European Union from 1 January 2007.**

2. **Owing to the systemic nature of some of the identified problems, whose addressing requires sustained and systematic actions, the areas of anti-corruption, fight against organised crime and money laundering, and agriculture still pose a risk of application of safeguard clauses, even though the level of this risk has substantially receded.**

3. **The need to press ahead with the judicial reform with a view to a full-fledged and effective implementation of the measures undertaken is more likely to justify the introduction of a period of post-accession monitoring.**

4. **In the sphere of financial control for the future use of the Structural and Cohesion Funds, the overdue EDIS accreditation spells a risk of a delay or even loss of financial resources from the EU funds after accession.**

5. **As sustained and systematic efforts are required to overcome the problems in the six areas of serious concern, work will have to continue and a number of measures and actions will have to be taken even after Bulgaria's accession to the EU on 1 January 2007.**

The analysis of the **anti-corruption measures** and their implementation shows that all fourteen planned measures adequately address the conclusions and criticisms in the May 2006 Report of the EC. There are problems in the implementation of five measures which qualify as not implemented. However, it must be noted that efforts and progress in the implementation of four of those measures have been made or their deadline has not yet expired. **Of greatest concern is the delay and gaps in building the capacity of the Commission on Prevention and Counteracting Corruption to effectively implement anti-corruption policy.**

However, progress in implementing the rest of the anti-corruption measures shows that there is a political will to address the issue and raises hopes that institutional weakness will be overcome. The measures undertaken signal progress and invite the conclusion that **if anti-corruption efforts continue and are stepped up, the problems of corruption will not be an obstacle to Bulgaria's full membership in the European Union from 1 January 2007.**

In itself, corruption is a negative phenomenon that has an impact on numerous areas in politics, government, the economy, the legal system and social relations. Corruption destroys justice and makes Bulgaria less competitive. From this perspective, the level of corruption poses a serious risk of application of an internal market safeguard or a justice and home affairs safeguard. **Considering the progress made in implementing anti-corruption measures, there are grounds to assume that the risk that corruption may prompt the application of a safeguard clause has receded over the past few months. Still, it must be noted that there is a need of far more resolute measures for sustained counteraction and prevention of corruption.**

After 1 January 2007, it will be more than necessary to step up anti-corruption measures. Political will to combat corruption must be demonstrated through consistent measures in areas such as award of public procurement contracts and concessions, criminal investigation and administration of justice, education and health care. With respect to political corruption, there is a need for monitoring the activities of the National Revenue Agency regarding verification of the asset declarations of senior public officials, as well as co-ordination between the Agency and the National Audit Office in implementing the law. It is advisable to analyse all relevant laws to see if they are consistent and adequately cover all existing problems. The institutional framework for good governance should also be reviewed extensively in the context of corruption prevention.

It is advisable to conduct more in-depth surveys of the state and trends of corruption and to adapt policies accordingly.

The review of the measures concerning the **reform of the judicial system** shows that European Commission criticisms in this area have been taken into consideration when the measures were formulated. On the whole, the Government's to-do list does not include a great variety of measures but is generally in compliance with European requirements in this area. Fourteen measures are identified as needed to continue the judicial reform process in Bulgaria. A quantitative analysis made by the expert team found that ten of these measures qualify as implemented and four as not implemented. It is noteworthy that the majority of the measures were reported as implemented as early as in June and July, which undoubtedly attests to the efforts of the authorities and the administration to make up for the delay. In this sense, one may say that there is a clearly stated political will for successful and effective implementation of the measures.

The majority of measures (twelve) qualify as fully adequate. Only two are more or less inadequate: one qualifies as adequate provided that certain other conditions are met as well (the random case assignment system), and one as inadequate (holding a national meeting of the police investigators investigating crimes committed by organised criminal groups, to assess the practice in enforcing the new Penal Procedure Code).

On the whole, progress has been made in implementing the planned measures in the area of judicial reform. The small number of measures that have not been implemented, as well as their nature, cannot be treated as grounds for serious criticism, nor can they pose an obstacle to Bulgaria's EU accession.

The adequacy of the measures taken by the Government in response to European Commission criticisms does not pose a risk of application of a safeguard clause. The need to press ahead with the judicial reform with a view to a full-fledged and effective implementation of the measures undertaken is more likely to justify the introduction of a period of post-accession monitoring.

In their predominant part (seventeen), the twenty-one measures planned for **countering organised crime and money laundering** are adequately defined and, if properly implemented, could lead to an optimisation of the investigation and criminal prosecution of organised crime in Bulgaria in the medium term. Part of the measures, however, are formulated in too general terms, they are not appropriately prioritised and do not demonstrate an integral approach to addressing the problem of organised crime.

The period of time remaining until September 2006 is hardly likely to see tangible results in the fight against organised crime (e.g. several convictions of key figures or large-scale confiscation of assets). **Therefore, there is still a risk of application of some of the safeguard clauses under Article 37 or 38 of the Accession Treaty. Recourse to a postponement of accession by one year (Article 39 of the Treaty) is unlikely. With a fair amount of certainty, the European Commission can be expected to impose some form of continued monitoring of the performance of the Bulgarian authorities in the field of the fight against organised crime.**

Proposals for follow-up measures to be undertaken after 1 January 2007 in respect of **organised crime control and anti-money laundering:**

- **Elaboration of a comprehensive, independent and professional assessment of the investigation and criminal prosecution of organised crime in Bulgaria and, in particularly, of the performance of the Chief Directorate for Combating Organised Crime.**
- **Elaboration and application of a multi-disciplinary strategy for countering organised crime** (on the basis of the above assessment).
- Part of the strategy should be a **comprehensive programme for professional training and career development of personnel.**
- It is particularly important to achieve **professionalisation of research and instruction** in the various spheres of organised crime prevention and control.
- **Completion of the introduction of the Unified Information System for Combating Crime.**
- **Public presentation of the work of the law enforcement authorities through periodic reports.**

The measures identified in the **field of agriculture** are sufficient to overcome problems in the areas of serious concern. The problem is that the deadlines set for implementation are unrealistically tight and cannot be met. Still, **it is not very likely that the achieved level of implementation of the measures will be a significant obstacle to Bulgaria's accession or will even prompt the application of safeguard clauses.**
Progress made in the implementation of the individual measures provided in the Government Action Plan invites the following specific conclusions:

- **Application of a safeguard may be expected** if the IACS (and, respectively, LPIS) is not operational by the time of Bulgaria's accession. Since the actual use of the IACS will commence from 1 December 2007, with the start of the CAP direct payments scheme for the first year of Bulgaria's possible membership, a safeguard clause - if applied - will be effective from that date. Further efforts are needed to ensure that the LPIS and, respectively, IACS will be in place and in operation before the end of 2006, thus averting the application of a safeguard clause.
- Construction of the second rendering plant under the Phare Programme will be extended at least until 2008, but the European Commission will most probably

assume that the currently operating rendering plants in Shoumen and Varna are sufficient until the construction of the new plant.

- Irrespective of the likely delay in establishing the border inspection posts, progress to date justifies the assumption that they will be completed and accepted by DG SANCO by the end of 2006.

There is greater likelihood of application of **safeguard clauses in the veterinary sector**, in areas in which no measures are provided in the Government Action Plan. There is a risk of application of **an internal market safeguard in the veterinary sector, consisting in restrictions on trade in pigs and pigmeat, as well as on trade in live animals between Bulgaria and Member States.** Such measures may be applied if there are unauthorised vaccinations against classical swine fever and if the animal identification database is not operational. Avoiding the application of such measures requires the following:

- establishment of an emergency animal health fund;
- provision of the financial resources necessary for the launch of the animal identification information system.

Almost half of the measures planned **to strengthen financial control for the future use of the Structural and Cohesion Funds** were implemented by early August. The rest are either-long term or their implementation is in progress.

The measures planned adequately address the problems, but part of them are oriented in the long term, e.g. regarding the strengthening of administrative capacity, and the results will make themselves felt after a long period of time.

The pace of implementation of the measures to strengthen financial control for the future use of the Structural and Cohesion Funds does not pose a significant risk of a postponement of Bulgaria's membership in the European Union. Until completion of the EDIS accreditation, however, absorption of resources from the EU funds will be impossible. This spells a risk of a delay or even loss of financial resources from the EU funds. There will be a substantial delay in the EDIS accreditation. The delay accumulated so far is at least six months, and the task now is not to build up any additional delay, so that the new financing system could go into operation from January 2007. The accreditation process for the ISPA Programme began in April and will probably be completed before accreditation for the Phare Programme, which was not yet started by the end of July.

There is no risk of application of a safeguard clause.

Even after accession to the EU, Bulgaria should make a sustained effort to improve the administrative capacity and co-ordination in the Working Groups of the Council Co-ordinating the Fight against the Infringements affecting the Financial Interests of the European Community.

It should be borne in mind that accreditation is just the first step in the process of effective and transparent absorption of EU funds. The next steps include preparation of real projects, strengthening the administrative capacity of the management structures, implementation of an effective public procurement award system. They will be of decisive importance after the country's admission to the EU.

The work on protection of the financial interests of the European Union that is done by AFCOS will not be sufficient by itself, without an effective and working judicial system.

The measures in **the sphere of nuclear energy and nuclear safety**, set out in the Government Action Plan, are adequate and timely. They guarantee the implementation in the May-July period of the actions required to honour the commitments assumed and to keep the deadlines for closure of units 1-4 of the Kozloduy NPP.

It should be borne in mind, however, that the commitment assumed by the Bulgarian Government goes beyond the definitive closure of these units in 2002 and 2006, respectively. The ultimate goal, against which the EC will assess the country's progress, is the irreversible decommissioning and dismantling of units 1-4, moreover in line with previously assumed commitments under the decommissioning plan and timeframe.

Not a single technological action impeding a future re-start of units 1 and 2 has been taken so far, and at the same time the lack of progress on construction of the storage facility blocks a timely implementation of a number of measures envisaged in the Decommissioning Strategy for units 1-4.

Implementation of the measures in the sphere of nuclear energy and nuclear safety, therefore, compensates for the actual lag and largely contributes to building confidence in the Government's political will to honour the commitments to the EU. Considering the sensitivity of the subject of nuclear safety for EU citizens and EC officials, the Commission could hardly be expected to blunt its criticism. And yet, despite this it could be argued that **the risk of a negative opinion (i.e. a determination that Bulgaria does not honour its commitment) is insignificant and should not block the country's full membership from 1 January 2007.**

Full-scale honouring of the commitment to close down units 1-4 of the Kozloduy NPP will take an exceedingly long period of time after the accession date; in practice, before accession the EC can only assess the initial efforts made by the Bulgarian Government, which must demonstrate a will to make the process irreversible. The bulk of the actions planned in the decommissioning strategy are to be implemented after 2007.