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EVAL 14

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REPORT

From : the General Secretariat
To : the Collective Evaluation Working Party
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Subject Revised country report on Bulgaria

I. INTRODUCTION

In its analyses the Working Party has dealt with the progress made by each acceding country and has examined shortcomings which still have to be eliminated in order to catch up with the EU Acquis in the field of Justice and Home Affairs.

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The first series of country reports pointed out the precise areas where the most serious shortcomings existed and where substantial efforts by the candidate country were still needed, while at the same time acknowledging progress already made and refraining from a final judgement, thus helping Member States in selecting programmes to finance (e.g. bilateral programmes, PHARE), as well as the Commission in adjusting the priorities and objectives of the accession partnerships and feeding the discussions on enlargement.

The point of departure for the present second series of country reports, whose structure has been refined, is to identify exactly where in the process of alignment the candidate country finds itself and what remains to be done, focussing on operational conclusions. The key elements of this new structure, reflected in each chapter, are:

- adoption of the “acquis”, including shortcomings,
- administrative capacity, including an assessment of structure, staff, resources etc. and
- implementing performance, covering issues such as quality, efficiency and independence.

The conclusions drawn at the end of the report are the result of extensive discussions within the Collective Evaluation Working Group on the basis of the information presented.

In line with this approach, all other relevant background information can be found in the thematic analyses-documents constituting the basis of these reports.

As the process of alignment and the collection of relevant data is a continuously evolving and ongoing process, the findings and conclusions in the present report cannot be considered final or exhaustive. Updates will therefore continue to be presented on a regular basis.

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II. OVERVIEW OF DEVELOPMENT

A. Border security

1. *Formal acquis*

The legal bases for border security in Bulgaria are defined in several laws. The border guard's status and main tasks are stipulated in *the Ministry of Interior Act (1997)*. The new *draft Law on Border Security*, planned to come into force by the end of 2002, should lead to closer alignment with EU standards. There is no special law on border police but a *Draft Border Guard Act* was elaborated under the National Phare programme. There is no clear information on whether this draft, which should enter into force end 2002, is compatible with the overall reform strategy. Decrees and ordinances providing guidelines for implementation of laws are lacking in many cases.

Border authorities are said to have sufficient powers to carry out their job properly except for the fact that the Border Police's area of jurisdiction is territorially limited, covering a 10 – 20 km wide area from the border inland only, airports, railway stations, ports and international transport routes¹.

International co-operation with all neighbouring countries is based on agreements. These cover different models for exchanging information and some operative co-operation. There are no bases for hot pursuit, cross-border surveillance, joint patrols or common contact points. Practical co-operation is difficult and very formal with FRY and FYROM, partially due to fact that there is no specialised border authority responsible for border management in these countries. Bulgaria is eager to enhance bilateral relations with neighbouring and other third countries.

¹ This limitation is partially due to the division of responsibilities between the different National Services and stipulated in the Ministry of Interior Act.

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National co-operation is regulated in the Ministry of Interior Act. This law states that the Secretary-General is the most senior Police authority in the Ministry, fully responsible for the co-ordination of all operative activities of the six National Services (Police, Service Combating Organised Crime, Border Police, Gendarmerie, Security Service and Firemen and Emergency Service). There are plans to improve the legal basis for interagency co-operation through the draft Border Guard Act. There is much room for improvement in practical interagency co-operation. At the moment there are some general instructions for co-operation but no real co-operation agreements or MoU's between the different authorities dealing with border security and crime prevention.

2. *Administrative capacity*

The National Border Police Service (NBPS) under the auspices of the Ministry of Interior has the main responsibility for border security in Bulgaria. The NBPS is responsible for border surveillance (land and sea) and border checks at border crossing points. It is a separate, solid and specialised law enforcement organisation having relatively sufficient legal powers to carry out its tasks.

In February 2002 the total strength of the NBPS was 7543 persons of which 1425 officers, 3705 sergeants and 2413 military conscripts. The number of vacancies was 574. The NBPS will give up conscripts by the end of 2002. Transformation from the soviet type organisation to a professional and specialised organisation has been very rapid since 1999, when there were still over 5000 conscripts (over than 50% of total strength) in the NBPS. This means that most of the current border policemen are relatively new in office, implying a need for intensive and continuous training.

The first specialised Border Police Training Centre was opened in October 2000. The centre provides primary border police training courses, language training and some special courses. Basic training of border police lasts 6 months and includes theory and practice. Training time is rather short. The introduction of new equipment, a new approach towards border management and increasing professional staff stress the need for a different type of training. There is a need to train policemen to use sophisticated equipment in order to make better use thereof in different circumstances and situations.

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The need for specialised training in management, leadership and border police tactics is also evident. Border police also needs more training in the field of investigation and crime prevention – there are many cases in which detained persons have been acquitted for lack of evidence. Criminal intelligence capacity as part of overall actions is not yet very effective.

Bulgaria is preparing an integrated border management and control strategy. Some important elements necessary for a comprehensive national border security system exist already but it is not possible to consider that a full system is in place. The capacity to create reliable national and regional risk assessment is still rather weak and statistics are not reliable. When taking the Schengen four tier border model as an aim, Bulgaria needs to enhance all 4 tiers: actions abroad are still very modest, co-operation with neighbouring countries do not recognise modern co-operation instruments, border checks and border surveillance are not yet conducted according to Schengen principles and migration control inland is rather weak.

According to Bulgarians all crossing points have an on-line connection to national databases. The level of equipment at most important crossing points is also said to be rather good. Mobility at land borders has increased due to new vehicles but it is not yet satisfactory. Airborne surveillance and operative mobility does not exist since there are no aircraft available. Patrols' night vision capacity has increased but there is a lack of a modern integrated technical land border surveillance system. Sea border surveillance is effective only in theory. The current radar system does not cover the whole sea border and the capacity to detect and identify small objects is very limited. Situational awareness is not complete. The number of vessels is on an acceptable level but the quality is far from acceptable – there is no real capacity to overtake or detain suspicious vessels.

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3. *Implementing performance*

The very rapid exchange of staff leads to a situation where there are many new recruits, the main part of which is therefor new and inexperienced. This situation has some impact on implementation since the assignment of new tasks and the need to start using new border policing methods. The decrease in the number of staff following a professionalism programme may also explain the decreasing number of illegal immigrants detained at green borders. In some cases, there was not always somebody available in every shift, capable of using sophisticated equipment, meaning that valuable equipment is not in full use.

Border checks are not carried out according to Schengen principles since the border police in practice only checks passports and does not conduct any other required tasks (interviews, checking means of subsistence, luggage etc). New techniques like profiling are far too often just words without actually being implemented in everyday work.

Co-operation with other law enforcement authorities is very limited and extremely difficult in practice. There is no visible co-operation with customs and border police at crossing points and mutual trust does not always exist. There are no joint action plans for crossing points and interoperability in terms of communication does not exist.

Units responsible for green border surveillance and units carrying out border checks do not co-operate effectively. Inadequate co-operation and co-ordination leaves some gaps in border security and hampers the flexible usage of resources. A comprehensive tactical approach and new border police methods are not yet fully implemented in practice.

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Practical border surveillance is still very static and real use of risk assessment and the capacity to conduct migration control inland is weak. Intelligence-based border police operations are quite rare or ineffective. Usage and creation of statistical data as a basis for situation assessment is not yet at a very high level and is unreliable. The practical effectiveness of border surveillance is very low, due to poor equipment, especially at the sea borders, where staff is trying to perform its duty under very poor conditions and is often equipped with old and not seaworthy vessels.

Bulgaria continues to be an important storage and transit country for heroin along the Balkan Route. Not only has there been a large increase in the number of seizures reported by the Customs, but there has also been a significant increase in the quantities seized. Crossing point Kapitan Andreevo is 'the' major trafficking bottleneck for Europe. In view of the future EU external border, both the Turkish border and increasingly the Black Sea ports form a high risk for drug trafficking. The Customs are the leading agency in preventing and combating drug trafficking at the borders and they achieved some good results in the interception of drugs (mostly heroin). There are nevertheless some problems to be solved in terms of law and organisation of the customs services, interagency co-operation, the improvement of risk profiling techniques, introduction of mobile units and lack of equipment (especially at ports).¹

4. *Summary*

The legal bases in the field of border security in Bulgaria are in transformation. Some very important laws are still in the process of being drafted. These laws are considered to contain some key elements for Schengen compatibility and they should also create more solid legal bases for the work of the border police and for national co-operation. Bulgaria needs still to clarify its overall Police Model and this includes the role and structure of the Border Police within the internal security system. National co-operation suffers from the lack of formal basis and mutual trust

¹ See also chapter on police.

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between the authorities. There is a strong impression that some agencies still try to dominate others and there is a culture of mistrust between the agencies. There is a need to clarify the role and responsibilities of the different agencies involved in law enforcement and to define their co-operation modalities. Territorially limited jurisdiction hampers border authorities' possibility to effectively combat illegal immigration.

There is a specialised and separate border authority in Bulgaria in the sense of basic Schengen principles. The Border Police aims to be fully professional by the end of this year (2002). A very rapid transformation programme emphasises training of new recruits as well as of the older existing staff and there is a continuous need to train the entire staff in order to be able to use all new equipment and apply new border police methods and tactics. A new strategy and a comprehensive border security system is under preparation. This system does not yet cover all elements of the Schengen border security model but it is a step in the right direction. Risk assessment capacity and situational awareness is rather poor and therefore a reliable nation-wide situation picture is not available. The equipment situation has improved but there are still considerable weaknesses especially in sea border surveillance, which is de facto not capable of detecting, identifying and detaining all objects on sea using the sea area.

The main problems in Bulgaria are related to limited administrative capacity and poor implementation. Many very good plans and clear concepts have been drafted and presented but there is still a long way to go to put everything in practice in order to achieve an acceptable minimum level of implementation. This problem is partially related to the very rapid and ambitious reorganisation and professionalism programme – staff is rotating very rapidly and a big part of the organisation consists of new inexperienced recruits. The problem will disappear in the long run. Poor or non-existent day-to-day co-operation with other law enforcement authorities causes serious problems for implementation. There is also a need for closer co-operation between the different units of the border police. Border checks are not yet conducted according to Schengen principles. New methods and border police tactics are far too often only theory without any connection to real life.

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B. Migration

1. *Formal acquis*

Visa policy has been aligned, except regarding FRY, FYROM, for whom visas will be introduced upon accession only¹, and Tunisia. The list of countries whose nationals need airport transit visa must still be elaborated. In addition, Bulgaria still requires visas for many countries belonging to the EU positive list. Finally, despite the fact that there is no binding EU acquis, it is worth noting that Bulgaria, contrary to all Schengen States, does not require visas from holders of diplomatic and passports of e.g. China², North Korea, or Russia.

Regarding legislation, the Law on Foreigners of 1998, as amended in 2001, is not in line with the acquis on several important issues³. The minimum resources, the proof of which has to be provided by the resident foreigner when applying for family reunification, is much higher than own Bulgarian corresponding levels; workers are completely excluded from access to family unification and to permanent residence.⁴ All this is contrary to Article 8 of the ECHR, to the principle of "Fair treatment of third country nationals"⁵ and to the spirit, if not the letter, of the formal EU acquis.⁶

¹ Countries with ethnic Bulgarian minorities, and with whom Bulgaria also has close historical/economic ties.

² Bulgaria being aware of the abuse of such passports by their Chinese holders, as well as of attempts to establish a "Chinese bridgehead" in Bulgaria, the necessary consequences should be drawn.

³ And anyway needs clarification since most explanations came from oral replies in the screening process.

⁴ Family unification is open to holders of "permanent permits" only. Workers hold permits valid for one year, and they cannot enter with their family, nor submit an application for family unification before a minimum of five years. A work authorisation cannot be extended more than 3 years, and the category of stay cannot be changed. These conjugate conditions ban, in practice, the workers from family unification. The single way for a worker to hold a "permanent permit" is to marry to a Bulgarian citizen or to a permanent foreigner, which gives much room to marriages of convenience.

⁵ Cf. Tampere conclusions.

⁶ Resolution of 1993 on family unification, Resolution of 4 March 1996 on the status of third-country nationals residing on a long-term basis, and Resolution of 20 June 1994 on limitation on admission of third-country nationals for employment.

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In addition, the geographical level according to which existing manpower is checked before granting a work permit should be national, the lack of any status for self-employed workers should be remedied, and the provisions on the prolongation of stay and on visas delivered by the police should be clarified. Finally, Bulgaria should explain how it will conciliate the EU principle of *préférence communautaire* with its provisions on persons of Bulgarian ethnic origin.¹

Before expulsion, aliens may be detained without time limit and without judicial intervention: this is clearly contrary to Art. 5 ECHR.²

2. *Administrative capacity*

At consulates, the procedures for applying and issuing visas are close to Schengen ones. However, despite a very modern computerised system connected online with central databases,³ all decisions continue to be taken at the central level (Visa centre within the Ministry of Foreign Affairs (MFA)), contrary to the Schengen normal rule. It is therefore not surprising that the capacity of the visa centre, which deals with all requests on its own, is deemed insufficient. In addition, consulates had, at least in 2001, no equipment to detect forged or falsified documents. The Interior Ministry manages a large number of information systems⁴. According to the Ministry of the Interior Act each National Service can create and manage separate information systems. However, the Ministry through its Coordination, Information and Analysis Directorate tries to guarantee coordination and

¹ Persons of Bulgarian ethnic origin (in practice from Moldova, FRY and FYROM) receive preferential treatment for access to citizenship, which is not contrary to the formal *acquis*, and to permanent residence, which conflicts with the principle of *préférence communautaire*.

² Of course, the Bulgarian authorities state that "According to ...the Foreign Nationals Act, the competent authorities can, at their own discretion, forcibly intern a foreigner, subject to expulsion, in a special home... Insofar as the placement in these homes does not constitute police custody within the meaning of the Ministry of the Interior Act, nor is it a procedural measure under the Penal Procedure Code, it is not subject to judicial control". However, either these "homes" are completely open, and therefore are inefficient and should be closed, or, as all reports state, they are prison-like, and therefore should respect the provisions of ECHR on detention.

³ This system is available in 60% of the consulates, and includes scanned photographs of the holders of visas.

⁴ It is a network of computerized databases on population, on visas issued and rejected, on legal and illegal aliens, wanted persons, invalid documents etc...including sometimes photographs and signatures, online connecting central headquarters, all border check points, and 60 to 70% of the prefectures. However, break-downs and accident prone communications have been observed."

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avoid incompatibilities between systems. Therefore, integration and solidity of the overall information system is essential to enable an effective performance and full compatibility in view of future connection to the SIS. The legal framework regulating these Automated Information Systems seems disperse. There is no clear acquis related data protection system for the moment. The Strasbourg Convention has not yet been ratified¹ and the Bill on Personal Data Protection, which entered into force on 1 January 2002, contains a possible exception in its applicability to police and justice issues.²

Visa stickers, passports and identity cards are modern and secure. There are plans for setting up a "Migration Service" and for establishing regulations on the issuance of residence and work permits. The main problem is the bad or lack of co-operation between the services responsible for fighting human trafficking. (See next section.)

In addition, places of detention for aliens are insufficient in number, and living conditions thereof are very poor.

3. Implementing performance

There is not much information on the functioning of consulates and on the issuance and refusal of residence permits. The implementation of new passports and ID cards has been efficient.

¹ On 28 February 2002 the government proposed its ratification to the National Assembly.

² Data Protection Act Art 1, para.(4): "The processing and access to personal data for the purposes of defence, national security and public order as well as for the enforcing of criminal law by the executive power and the judiciary, may be provided for in special Acts." Currently, a Task Force has presented a draft proposal for amendments in the MoI Act affecting all articles related to exploitation of information systems and all personal data protection related activities, in accordance with the new legal framework. Its adoption is planned for September 2002.

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The main problems lie in implementation of the fight against illegal migration and trafficking. The number of persons that third countries readmit to Bulgaria is still much higher than the number of persons that Bulgaria readmits to third countries. The lack of readmission agreements with Georgia, Russia and Ukraine (despite Bulgarian wishes) and even with neighbouring countries such as FYROM¹ and Turkey, does not help. Entry refusals (6000 to 9000 a year) are not low but seem to concern mainly nationals of neighbouring FRY, who should be subjected to visas, and of Romania, who will be EU citizens in future. Illegal foreigners are fined rather than expelled. (This kind of sanction is very debatable, and easily leads to corruption.) The fight against illegal employment is non-existent.²

For whatever statistics and words are worth, the figures on traffickers arrested, even though they have recently increased³, are low and do not reflect the scale of the problem. Moreover, the ratio convicted/apprehended is also low. Finally, the figures are much lower than those of other applicant countries. While the transit role of Bulgarian roads ("freezer trucks" channel), railroads and even airports⁴ is well known, and though appropriate sanctions have been formally established against all migration-related offences, implementation is weak, notably when it comes to trials and sentencing.⁵

¹ An agreement with FYROM is expected in 2002.

² At least it was the case in 1998, where the Inspectorate of the Ministry of Labour and Social Policy initiated 13 cases only. No later data are available.

³ In 2001, 37 organised criminal groups of over 120 members involved in trafficking in human beings and particularly women were dismantled. There were 183 arrests of people involved in smuggling and trafficking of human beings.

⁴ Where air entries are concerned, Bulgarian police noted the use of falsified passports of visa-free countries, as well as corruption of officials.

⁵ The border police has registered a high number of acquittals in border related cases, allegedly because of a lack of evidence.

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One striking example is trafficking in women. Bulgaria is an important transit country for women trafficked towards the western Balkans and Greece, and is also a country of origin.¹ Reliable sources believe that a certain percentage of law enforcement authorities are involved. Investigations have taken place, but no suspected traffickers have been brought to trial.² Recent measures aiming at improving the administrative capacity in this field have been taken, the results of which will require monitoring.³

Finally, Bulgaria has taken preliminary steps to address Bulgarian illegal immigration into the EU, through effective implementation of readmission agreements and through legal measures. However, the number of Bulgarian citizens asking for asylum in Europe being rather stable,⁴ deterrence efforts must continue.

4. Summary

Visa policy has been aligned, except for FRY, FYROM and Tunisia. Bulgaria does not require visas from holders of diplomatic and service passports of e.g. China, North Korea, or Russia.

¹ La Strada reports that Bulgarian women constitute one of the largest groups of victims of forced prostitution in Western and Central Europe.

² Possibly because victims are afraid to confront their former criminal controllers in the absence of government-sponsored programs to assist or protect victims of trafficking. Some judges and prosecutors also report that they feared reprisals from organized crime figures.

³ Two police units specifically address the problem of trafficking in persons: one is part of the National Service Border Police and the other (Co-ordination Centre) is located within the structures of the National Service Combating Organized Crime. (NSCOC). A task force is expected to draft an MOU aiming at improving co-operation between these services and co-operation with Customs. According to Bulgarian authorities, the NSCOC "will collate data on human smuggling,...perform situation analysis, identify all crime-generating factors, suggest measures, improve the organisation and mechanism of co-ordination and work for an overall increase in the effectiveness of law enforcement and delivery of justice. Since the establishment of the Co-ordination Centre (May 2001), there have been 14 police operations against persons controlling over 40 facilities of sexual exploitation and cross-border trafficking in human beings. 26 people have been arrested as organisers and leaders of criminal activity and 125 women victims of sexual coercion have been saved".

⁴ 3200 (1997), 1430 (1998), 1710 (1999) 2730 (2000) 2906 (2001) and 676 in the first quarter of 2002, according to UNHCR.

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The Law on Foreigners of 1998, as amended in 2001, is not in line with the acquis concerning notably family reunification, the checking of existing manpower, and self-employed workers. Issues as prolongation of stay and of visas and the regime of persons of Bulgarian ethnic origin need clarification. Detention before expulsion is not regulated.

Visa procedures are close to Schengen ones, but all decisions are still taken at central level, and equipment to detect forged documents at consulates and border posts, at least in 2001, was lacking.¹ The existing comprehensive national information systems require further efforts aiming at integration and consolidation. There is a need to update and refine the regulation ruling the exploitation of automated information systems. Documents are secure. Detention places are insufficient.

Readmission agreements are lacking with essential neighbouring countries. Illegal foreigners are fined rather than expelled. While the transit role of Bulgaria is well known, figures on traffickers arrested are low, and the existing sanctions are weakly implemented, notably when it comes to trials and sentences. One example is trafficking in women. Recent measures, which have been taken (co-operation between the services responsible), will require monitoring.

Finally, although Bulgaria has taken preliminary steps to address the issue of Bulgarian illegal immigration into the EU, deterrence efforts must continue.

¹ Bulgaria states it has started to remedy this.

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C. Asylum

1. *Formal acquis*

The Law on Refugees of 1999 is in line with the acquis, with the following exceptions:

- The failure to meet the short time limit for submitting an application has excessive consequences, insofar as it does not lead to an accelerated procedure (which would have been in compliance with the acquis) but immediately constitutes a legal ground for refusing refugee status. This goes much further than allowed by the acquis.¹
- In the accelerated procedure, the local police are the decision taking body and may refuse refugee status, whereas it clearly cannot be considered as the "qualified" authority at "the appropriate level" required by the acquis in such cases.

The Act adopted by the National Assembly on 16/5/2002² is likely to redress these provisions, and also to improve the wording of the (currently very extensive) exclusion and cessation clauses, and to extend the (currently very short) time limits to lodge an appeal³.

Finally, the official list of "safe" countries (105) includes countries such as FRY, Indonesia and India, where asylum procedures are dubious.

¹ Resolutions on manifestly unfounded applications and on minimal guaranties. In Bulgaria, the foreigner has to manifest his application within 72 hours of his arrival, and "forthwith" if he entered illegally.

² Still unavailable

³ Seven days in the normal procedure (judicial appeal) and 24 hours in the accelerated procedure (administrative appeal only.)

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2. *Administrative capacity*

Whereas qualifications at the Migration Office and at courts do not raise concern, things are different when it comes to police and border guards, who need more training, despite the efforts already undertaken by UNHCR, the Bulgarian Helsinki Committee and Greece.

As regards accommodation, despite ambitious intentions laid down in legislation itself, there are only two reception centres¹, and there is a need to build new ones, notably at the Bulgarian-Turkish border and near Sofia Airport.

Co-operation with UNHCR and with Member States is active. However, all or most part of legal assistance, translation, leaflets and even daily allowances of the applicants... is paid by UNHCR or by UNHCR-funded NGOs. The financial commitment of Bulgaria is not high. Integration measures formally provided for by legislation, lack consistent procedures.²

Efforts are required in these fields, since the slowly increasing number of applications, 1500 - 2000 a year, is still relatively low, because Bulgaria is not yet confronted with the outbreak of asylum requests which, in all transit applicant countries, inevitably accompanies the prospect of accession.

Legal aspects of participating in the Dublin convention exist or have been drafted, and the material equipment for collection, storage and processing of data and of fingerprints, although not existing yet, does not raise concern, since Bulgaria has provided evidence of good technical (if not legal) experience in managing country-wide information systems (See above, Migration.)

¹ In addition, a Temporary Transit Center was established in 1999 at the border zone of Kapitan Andreevo, on the Bulgarian -Turkish border.

² This may be one of the reasons why even recognised refugees leave the country towards the EU, as applicants do.

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3. *Implementing performance*

The recognition ratio does not give rise to any comments (12%), the backlog is reasonable and the judicial appeal body (Supreme Administrative Court) is considered efficient.

The most serious problems are related to practical access to legal aid,¹ and to the situation at the borders. The current accelerated procedure at the border has led to difficult access and protection in Bulgaria. NGOs which complain that they do not have much access to the border areas, often also denounce summary refoulements of potential applicants (meaning that the accelerated procedure is not even implemented). The fact is that Bulgaria, while emphasising the role of its border guards in guarding the EU future external border, has also entrusted them to deal with the delicate concepts it has chosen to introduce (manifestly unfounded application, safe third country and accelerated procedure), and to deal with them through sophisticated procedures involving three different authorities in 72 hours². The result was probably unavoidable. It will be necessary to assess anew the situation, once the newly drafted provisions on accelerated and admissibility procedures are in place.

4. *Summary*

The Law on Refugees of 1999 requires amendments (which should have been adopted by the National Assembly in May 2002) on the effects of the failure to meet the short time limit for submitting an application, on the accelerated procedure (which gives too much power to police), on exclusion and cessation clauses, and on time limits for appeals. The list of "safe" countries is far too extensive.

¹ According to ECRE, 51 to 75% of asylum seekers are rejected without having had any kind of legal assistance (be it by lawyers or by NGOs) throughout the whole procedure.

² The police, the Agency for Refugees and the Ministry of Interior

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The administrative capacity is appropriate given the current low number of applications, except for training of police and border guards, and for accommodation. Bulgaria's own financial involvement is not high.

The most serious implementing problems are related to legal aid and to the situation at the borders, where refoulements and mismanagement of the accelerated procedures are reported.

D. Police and customs

a) Police

1. Formal acquis

Allocation of tasks, co-operation and interaction between authorities involved, are presently regulated in the Ministry of Interior Act and in the Narcotic Drugs and Precursors Control Act.

New legislation on the operation of public order services is under preparation and is expected to be adopted end 2002, bringing legislation on police co-operation in line with the *acquis*. This new legislation would regulate the division of responsibilities between police services, types of co-operation (terms, conditions, and procedures for cross-border police co-operation), the multi-agency approach, police-training and data protection in law enforcement databases.

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More information is needed on implementation of the legislative amendments to the Penal Code (approved by the Government on 11/4/02 and presently under consideration by the National Assembly, introducing a series of new crimes and specifying in greater detail provisions on terrorism, corruption, organised crime, trafficking of human beings etc.) the Ministry of Interior Act (i.e. the draft Security and Public Order Act, restructuring the police services, including the National Service for Combating Organised Crime (NSCOC) and establishing a National Contact Point¹) and on the progress in adopting the amendments to the Measures against Money Laundering Act of 2001, notably those regarding the actual functioning of the Financial Intelligence Bureau (BFI).

Bulgaria should comply as soon as possible with the *acquis* and other international standards on the fight against the abuse of the financial system, in particular money laundering, including Directive 2001/97/EC on the prevention of the use of the financial system for the purpose of money laundering.

Although Parliament adopted the Personal Data Protection Act on 22/12/01, neither secondary implementing legislation has been adopted nor has the Council of Europe Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data (1981) been ratified (see Chapter E. Justice).

The Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances has been approved and is being implemented.

Progress has been made in the adoption of legislation on drugs. Bulgaria has ratified all UN Drug Conventions, and the basic national legal acts in this field are the Narcotic Drugs and Precursors Control Act, the Penal Code, the Ministry of Interior Act, the Customs Act, the Penal Procedure Code and the Regulation on Precursors Control. Further legal measures are needed on controlled deliveries, exchange of information, powers of investigation of the customs and cross-border co-operation.

¹ Scheduled to be operational by the end of 2002.

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2. *Administrative capacity*

Structure and organisation

The following four police services come within the remit of the Ministry of the Interior (MoI):

- The National Gendarmerie is a specialised security, operation and investigation police service for securing strategic and particularly essential establishments, combating terrorist and subversive groups, securing the peace and combating crime.
- The National Service for Combating Organised Crime (NSCOC) is a specialised police operation and investigation service for preventing and neutralising criminal activity of local and transnational criminal structures (detection, prevention together with customs; direct communication with foreign law enforcement agencies etc. The Investigative Office, in charge of preliminary proceedings, then carries out the relevant procedural investigations). NSCOC focuses i.a. on trafficking in drugs, weapons and human beings; terrorism and financial crimes.
- The National Police Service is a specialised operational and investigative as well as protective service which maintains public order, prevents, detects crimes and takes part in their investigations. It also embodies Drugs Units, the Criminal and the Economic Police.
- The National Border Police Service (see Chapter on Border Security).

The National Security Service, also within the MoI, is a specialised counterintelligence and information service, whose main tasks are protection of national security and -interests. It is however strictly speaking not a police service.

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The Specialised Investigation Service (SIS) , in charge of preliminary proceedings in criminal cases and responsible for investigating serious offences / crimes, is an independant service whose status is similar to that of judges and prosecutors. The Supreme Judicial Council appoints, dismisses and transfers its members (1025 staff, all of whom professional jurists/lawyers). The investigation system consists of 28 District Investigation Services and one Specialised Investigation Service. Main problems facing the SIS include its inability to quickly access information, difficulties in exchanging information within the legal time limits set for pre-trial proceedings, lack of an updated database for the collection of information and the keeping of records, lack of proper documentation (-system) and archaic management.

The police services are handicapped by a complicated organisational structure, resulting in significant overlaps of responsibilities (e.g. between the National (criminal) Police and NSCOC), services with unclear roles (e.g. the Gendarmerie) and a serious lack of communication between them (especially at local and regional level). Although the Government Programme 2001-2005 includes measures for institutional and structural reform of the MoI, these seem to have come to a standstill. At present, the focus is rather on amending the legal framework in respect of personal data protection, police co-operation, computer crime and reform of the MoI's selection and training system. At the same time, the MoI would draw up a National Strategy on reform, enhancing the MoI's institutional capacity and drawing a clear distinction between policy-making and administration on the one hand, and the professional police on the other, and merging the existing national services into one or two General Directorates.

A National Council on Narcotic Drugs was established which conducts national drug-policy (i.e. approval of national programmes on drug abuse and trafficking; proposing of legislation) and is chaired by the Minister of Health and co-chaired by the Chief Secretary of the Ministry of the Interior and the Deputy Minister of Justice. More detailed information on its functioning and co-ordinating capacity is necessary.

RESTREINT UE

Staff, training and equipment

The replacement of military conscripts with officers/sergeants is scheduled to be completed by the end of 2004.

Approximately 65% of officers have majored in Public Order Protection and Combating Crime at the Police Academy. The rest are appointed when they have finished their education at civil universities and after an obligatory 6-month basic police training. An additional expert training programme is implemented by the Police Academy. Courses on Human Rights and Police Co-operation are included both in the full-time training programme and the part-time initial and additional expert training. A range of training activities to enhance managerial skills have been /are being developed as well as training on illegal migration, combating corruption, undercover work and organised crime analysis. A new Centre on Police Studies (R&D) is being set up to support the MoI's management in developing public security policy and policing activities. The current training system and selection procedure do not fulfil the minimum criteria in terms of objectivity, equality and selection on the basis of quality / capacities. Existing training structures are university centres rather than professional training centres.

An ongoing twinning project on management of criminal information systems should result in the establishment of an overall (MoI) Information System and a sub-system on Stolen Vehicles by March 2003 as well as an integrated Criminal Analysis System to serve as a co-ordinating tool for operational law enforcement activities.

More information on the results / implementation of these programmes is needed, as well as on Bulgaria's national intelligence and investigation-coordination models .

RESTREINT UE

Despite the fact that police officers are comparatively well paid, the police force still has a poor reputation, linked to perceived corruption which is in turn linked to the lack of transparency and accountability. The introduction of a modern human resources policy, including career development, selection and training is indispensable to improve efficiency within police services; a Phare twinning project aims to address these issues in 2002.

3. *Implementing performance*

Organised Crime

Organised crime continues to be a significant problem; little progress can be reported. Besides trafficking in drugs and human beings, criminal activity includes smuggling, tax and financial fraud, gambling, money laundering and illegal export of capital. According to the authorities, organised crime structures are re-directing towards more traditional types of crime due to diminishing possibilities in the shadow economy: results are being reported in the fight against economic/financial crime.

General crime trends¹/ statistics

There seems to be great disparity between the official statistics and the actual situation. The official crime rate is low (1.9%) as a result i.a. of the fact that many offences are not reported to the -widely mistrusted- police. Little is known about the results of the National Strategy to combat Organised Crime (1998-2001); a new strategy to combat organised crime is being developed, more information on which would be welcomed.

¹ Answers from MS Embassies and Commission Representation in Sofia to the EVAL questionnaire.

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Criminal activity over the past years seems relatively stable. In 2001 the police registered 147,961 crimes, compared to 137,001 in 2000 and 132,897 in 1999. An increase in some types of crime, e.g. tax and financial fraud, can be observed whereas crimes against persons are declining (compared to 1999 and 2000, the registered decline is around 23%; murder attempts have fallen by 36%, rapes by 14%). The clear-up rate of registered crimes in 2001 was 46%.

Regarding drugs: in 2001, preliminary proceedings were initiated against 784 people. Around 663 specialised police operations to fight drug trafficking / distribution were carried out, 1,476 sites checked, 4 laboratories for illegal production discovered, and 9 channels for trafficking were disclosed and shut down. The considerable increase in seizures may be the result of the increased capacities notably of the Customs.

Trafficking in human beings (Bulgaria being a source and transit country¹) is a serious concern but no effective measures have been enforced up to date although proposals to make it an offence were recently adopted (11/4/02) and a draft Law on Combating the Illegal Trafficking in Human Beings is under preparation. In May 2001, the Ministry of Interior established a Human Trafficking Task Force comprising representatives from different ministries and the judiciary. It is preparing a Memorandum of Co-operation, which should lead to a common action framework against trafficking.

Money Laundering

Bulgaria is vulnerable to money laundering at the placement, layering and integration stages. The most serious money laundering problems currently involve the proceeds of drug trafficking and proceeds obtained from financial/economic crime.

¹ Women from Romania, Moldova, Russia, Ukraine, Armenia, Azerbaijan, and Georgia are trafficked for sexual exploitation to FYROM, Greece, Turkey, Kosovo, Bosnia, Italy, Poland, and other countries in Western Europe.

RESTREINT UE

The Bureau of Financial Intelligence (BFI) was established as a separate agency by virtue of a law adopted in 2001¹. The bureau collects, inspects, analyses and reveals information related to money laundering activities. It may use inter-service, banking or commercial confidential information, as well as protected personal data. The new provisions widen the range of legal entities obliged to identify their clients in case of operations exceeding € 15 320.

Information is needed on the progress in adopting the amendments to the Measures against Money Laundering Act of 2001, notably those regarding the actual functioning of the BFI (staffing, lack of capacity to deal efficiently with the documents submitted by the numerous entities and thus lack of resources, poor co-operation with other law enforcement agencies - the judiciary in particular).

Bulgaria should comply as soon as possible with the *acquis* and other international standards on the fight against the abuse of the financial system, in particular money laundering, including Directive 2001/97/EC on the prevention of the use of the financial system for the purpose of money laundering.

Drugs

Despite government efforts, the main problem is still drug trafficking: most of the heroine supply to European markets comes through Bulgaria (Balkan Route-see also Chapter on Border Management) which is hardly surprising, since offenders are usually released on bail.²

¹ On 8/3/02, the head and 7 members of the BFI were dismissed, officially for reasons related to poor performance. This does not however correspond to earlier information provided by the authorities in the framework of the negotiations on Chapter 24 (JHA) on the functioning of the BFI, even if the subsequently published critical annual report confirmed its malfunctioning. Developments will need to be monitored closely.

² There is considerable concern about the high number of suspects, often accused of serious offences, released on bail for an indefinite period of time, often up to 5 years. It adds to the pressure already on the judiciary, creates difficulties re preserving evidence, supporting victims/witnesses and the suspect's right to a speedy trial.

RESTREINT UE

Strengthening of regional co-operation is being pursued in order to provide an appropriate response to this threat; it needs to be deepened and must at the same time remain compatible with what is being done in EU framework and in particular Europol.

The MoI has the central role in co-ordinating the development of a national drug policy. NSCOC is the central drug law enforcement agency, embodying a National Centre for co-ordination and analysis of intelligence in this field. Presently however there is no functioning drug information system with a systematic and organised network. Neither customs, who are the leading agency in preventing and combating drug-trafficking, nor judicial authorities have direct access to the MoI information system.

Regarding participation in the Reitox network of the EMCDDA and a National Strategy in line with the EU Drug Strategy 2000-2004, a Twinning Project with the UK started August 2001, with the aim of elaborating a National Anti-Drug Strategy, establishing a National Focal Point in compliance with the requirements of EMCDDA and strengthening the National Drugs Intelligence Unit. The National Strategy is expected to be adopted in June 2003¹ and the legal framework for the activities of the National Drug Intelligence Unit should be adopted end of December 2002.

A National Council on Narcotic Drugs was established which conducts national drug-policy (see also above, 'Administrative Capacity - Structure and Organisation') and has a secretariat, which should become the National Focal point for co-operation with EMCDDA; it is however not yet operational.

Terrorism

Bulgaria has associated itself fully with the conclusions on terrorism of the extraordinary European Council on 21 September 2001 and is party to the 1977 European Convention on the Suppression of Terrorism and the 1999 UN Convention for the Suppression of the Financing of Terrorism.

¹ According to the Schengen Action Plan.

RESTREINT UE

Combating terrorism is part of the Unified Strategy for Combating Crime, adopted in 1998, which aims at preventing its territory being used by foreign and international terrorist organisations, as well as to prevent attempts to set up channels for communication between domestic organised crime structures and international terrorist groups and networks. There is a Specialised Counter-terrorist Squad. The recently approved amendments to the Penal Code (11/4/02) introduce special regulations on terrorism and on the financing of terrorist activities. Perpetrators of terrorist acts can be individuals, groups and organisations. The law covers all kinds of terrorist acts and regulates extradition of individuals having committed such acts. It is a crime to set up or organise a group on Bulgarian territory for the purpose of committing a crime abroad involving the use of explosives, taking of hostages, a threat to air-safety, or hazardous pollution. Finally, a law on measures against the financing of terrorism is under preparation and the report "Counter-Terrorism Activities of the Republic of Bulgaria in Implementation of Resolution 1373 (2001) of the UN Security Council on Measures to be Adopted by UN Member-States for the Suppression of Terrorism" was adopted end 2001.

Police co-operation / liaison officers

There is no effective co-ordination between the police and other law enforcement authorities, e.g. the judiciary¹, notably in the pre-trial phase, and there is no clear definition and division of competencies enabling the authorities involved to unite their efforts in combating crime. The lack of agreed methods for gathering and presenting evidence frequently leads to misunderstandings and overlaps of tasks between police, investigators and prosecutors (notably between prosecution and investigators in the pre-trial phase; moreover, as evidence gathered by the police cannot be used in court, police investigations are done all over again by investigators), which in turn delays the judicial process.

¹ In at least one case, police authorities, including the Ministry of the Interior are persistently disregarding the ruling of an administrative tribunal.

RESTREINT UE

Although the overall perception is improving, public trust in the police is still not high.

Apart from the signing of intergovernmental agreements on combating international organised crime with Austria, Belgium, Greece, Italy and Spain, as well as with the Czech Republic, Hungary, Poland, Romania, the Ukraine and Slovakia, no progress can be reported in the area of police co-operation.

A National Contact Point for international police co-operation is being set up and should be operational by the end of 2002.

Negotiations on a co-operation agreement with Europol are still in a very preliminary stage; such an agreement cannot be expected in the short term.

b) Customs

1. *Formal acquis*

Bulgarian customs legislation is to a large extent in conformity with the EC Customs Code, thus achieving a high degree of alignment. Some further adaptation is needed, e.g. in customs debts appeals procedures. As far as the customs *acquis* outside the Customs Code is concerned, further alignment is required.

The legal framework has improved with the adoption of the Law on the Civil Service, applying to customs officers and stipulating recruitment of civil servants through general selection tests only. However in practice transitional rules are being applied, and recruitment is often done by local offices on the basis of diverging criteria.

Rules of procedure for the National Customs Agency (BCA) were adopted and an ordinance on the procedures related to the customs declaration was amended.

RESTREINT UE

A regulation determining the organisation of the central administration of the customs administration has been adopted, but the rules for the organisation of the 5 regional directorates have not yet been published.

Bulgaria is party to the major international agreements in the area of customs co-operation.

In July 2001 Bulgaria adopted a Strategy for rationalising border operations performed by the customs. Bulgaria included the provisions of the Istanbul Convention on temporary admission in the Customs Act and its implementing regulation, so that it can join the Convention in 2002.

2. *Administrative capacity*

Organisation and structure

The objectives and tasks of the BCA are defined i.a. in the

- Declaration of Endorsement of the Pre-accession Preparation Strategy for the Customs and Tax Administration
- National Strategy for Preparation of the Bulgarian Customs Administration for Membership in EU and its implementation Programme
- Business Strategy of the Bulgarian Customs Administration
- Detailed Financial Plan of the Budgetary and Human Resources Needed to Fully Implement the Business Strategy of the Bulgarian Customs Administration.

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As far as the administrative and operational capacity to implement the *acquis* is concerned, little progress can be reported.

Compared to the previous structure, it can be noted that a post-clearance control directorate in charge of preventing and collecting customs debts has been added.

Intelligence and investigation services within the Bulgarian customs are being established but do not yet meet EU standards. They are in need of both administrative strengthening and specialised training, including in covert surveillance techniques. Their effectiveness will depend on the further development of risk analysis and modern methods to fight fraud and corruption.

The Bulgarian government is to begin a rapid and sustainable reform of its customs activities. It has appointed an international consultancy specialising in customs reform, to implement a comprehensive reform programme. This reform is part of a wide-ranging 3-year programme recently initiated by the Prime Minister, designed to increase revenue, develop a functioning market economy and fight corruption. International specialists will work alongside local customs officials to increase the effectiveness of the administration through a series of measures to improve revenue collection, intelligence handling, investigation, detection, and enforcement.

The results of these activities must be monitored.

Customs being the leading agency in preventing and combating drug trafficking at the borders¹, successes have been achieved in the interception of drugs. Problems remain in terms of law and organisation of the customs services, the provision of necessary powers in the field of intelligence, the improvement of risk profiling techniques and introduction of mobile units.

¹ The agency embodies i.a. the Drug Enforcement Division (specialist investigation service) and the Customs Intelligence and Investigation of Drugs Trafficking Directorate and its specialised Units.

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Staff, training and equipment

In order to improve current standards, the Customs Administration aims to develop efficient planning, management and communications. A comprehensive systematic training program was established through a PHARE twinning project in 2001. The structure, organisation and management of the Customs Audit function are to be developed and implemented. A database for audit purposes will also be developed and interfaced with the Bulgarian Integrated Customs Information System (BICIS).

Training is necessary to ensure that customs offices apply rules in a uniform way and to improve the professional qualifications of customs officers. Specialised training courses in the field of border control and covert surveillance techniques are also necessary and Operation Manuals should be published. The BCA's effectiveness will depend on the further development of risk analysis and modern methods to fight fraud and corruption.

The BCA has adopted a strategy on organisation and management of human resources.

The rules on recruitment are incoherent and intransparent, and criteria for dismissal are vague; only about 750 customs officers, out of a total of about 3,750, are likely to be employed as civil servants, as opposed to employment under a fixed-term contract. Salaries remain low, staff turnover high and there is little career management. Officials furthermore lack sufficient investigative powers.

A basic declaration processing system has been set up, but the issue of interconnecting and compatibility with systems used in the EU will need to be addressed. Many border crossing points still lack modern equipment, in particular laboratory and detection equipment, e.g. for container screening.

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3. *Implementing performance*

Co-ordination, co-operation and exchange of information

There is a need for better co-ordination with other border-related services, especially the border police and the other police forces. This is to be developed through a clearer distribution and division of competencies between the authorities. Actions designed to improve the exchange of information and communications between the separate border check points and the separate customs administration units are being undertaken; their results should be monitored.

Considerable efforts are still needed to combat corruption among customs officials. Although the new Law on the Civil Service lead to improvements notably of the recruiting system, and a PHARE 1998 twinning "Fight against Corruption" developed a specific strategy, significant efforts and strong determination on the part of authorities are still required (see also Chapter G. Corruption).

Bulgaria has concluded bilateral agreements with Armenia, Austria, Azerbaijan, Greece, FYROM, Mongolia, Romania, Russia, Turkey, the United Kingdom, Ukraine, the USA and Yugoslavia and entered into arrangements with Slovenia, Slovakia and the Czech Republic, through CEFTA. Regarding international co-operation, 21 agreements with European countries have been concluded on combating crime and a number of liaison officers have been seconded.

There is however still a need for :

- improving co-operation with the customs administrations of neighbouring countries;

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- optimising activities on implementation and functioning of risk analysis and customs control selectivity techniques, ensuring systematic, comprehensive, flexible and consistently applied customs control;
- improvement of intelligence and investigation activities and establishment of teams for intelligence and investigations of smuggling and customs fraud;
- improvement of intelligence and investigation of drug-trafficking and further development of the administrative structures for the fight against drug-trafficking;
- granting of the necessary customs powers in the field of intelligence.

Memoranda of Understanding have been signed and implemented with DHL-Bulgaria (January 2000), and with HM Customs and Excise, British Airways and Balkan Airlines (February 2000).

The Customs Administration is engaged in international operational customs co-operation by its active participation in international intelligence systems such as BALKANINFO, CARGOINFO and MARINFO.

In its Schengen Action Plan, Bulgaria foresees the drafting (by the MoI in 2002) of bilateral agreements on co-operation in the field of border control with Greece and Romania (the latter incl. joint mobile units). It also intends to draft (November 2002) a framework agreement providing possibilities for full-scale co-operation, i.e. cross-border surveillance and hot pursuit.

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4. Summary (Police and Customs)

On *policing*, Bulgaria expects to adopt new legislation on the operation of public order services no later than end 2002, bringing legislation on police co-operation in line with the *acquis*.

More information is needed on a series of pending legislative amendments essential for implementation of the *acquis*.

The different police services are handicapped by a complicated organisational structure, resulting in significant overlaps of responsibilities, an at times unclear division of roles and a serious lack of communication between them.

A range of training activities are being/have been developed but there is still a lack of modern human resources policy and specialised training for effectively investigating and countering new types of crime.

Organised crime continues to be a significant problem and little progress can be reported. There is great disparity between the official statistics and the actual situation. Little is known about the results of the National Strategy to Combat Organised Crime (1998-2001), and a new strategy to combat organised crime needs to be developed.

No effective measures have been enforced (yet) to counter trafficking in human beings, although a series of actions are being undertaken. Money laundering continues to be a problem as well as the functioning of the Bureau of Financial Intelligence. Drug trafficking too continues to be a problem requiring further strengthening of regional co-operation. On terrorism, Bulgaria has associated itself fully with the conclusions of the European Council of 21 September 2001; the Unified Strategy for Combating Crime (1998), the Specialised Counter-terrorist Squad and the relevant provisions of the *Penal Code*, illustrate its commitments in this area.

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Finally, there is still little effective co-ordination / co-operation between the police and other authorities involved in combating crime.

On *customs*, legislation is to a large extent conform the EC Customs Code. Some further adaptation is needed concerning the *acquis* outside the Customs Code.

Despite adoption of the Law on the Civil Service (on i.a. recruitment) transitional rules are still being applied in practice leading to the use of dicerging criteria. The Customs Agency is severely plagued by corruption (see Chapter G. Corruption). As far as administrative and operational capacity to implement the *acquis* is concerned, little progress can be reported. Intelligence and investigation services are being established but do not yet meet EU standards. A rapid and sustainable reform of Bulgarian customs activities is being started up, the results of which must be monitored.

Training is necessary in a number of areas (intelligence/investigating and control techniques/risk analysis etc.). The rules on recruitment are incoherent and intransparent, and criteria for dismissal are vague. Salaries remain low, staff turnover high and there is little career management. Officials furthermore lack sufficient investigative powers. Modern equipment is being introduced but their use and compatibility must be addressed.

There is a need for better co-ordination and co-operation both nationally and internationally, with other border related services.

E. Justice

1. *Formal acquis*

According to the Constitution and the Judicial System Act, independence of the judiciary is fully guaranteed. In 1994 the new Judicial System Act was introduced, establishing the Supreme Judicial Council (SJC) as the highest body representing and governing the judicial system. After the re-establishment in 1997 of the Supreme Court of Cassation and the Supreme Administrative Court, the three-instance court procedure was introduced. In October 2001, the new Government adopted the Judicial Reform Strategy to prepare for EU Membership by tackling all major problems of the judicial system. Essentially, the 5-year Strategy focuses on achieving independence of the judiciary, supremacy of law, the protection of citizens' and social rights and equal access to justice and EU standards in justice and international judicial co-operation. The Action Plan for its implementation was approved in March 2002.

Bulgaria has made several amendments to the Criminal Code and Code of Procedure to align with the *acquis*¹. In general Bulgarian legislation has achieved the average standard of EU Member States. In April 2002, the Government approved a draft law amending and supplementing the Criminal Code in the field of combating terrorism, corruption, organised crime and trade in human beings, as well as punishing participation in criminal groups formed for the purpose of illegal drugs trafficking. The draft is currently being considered by the National Assembly. A new legal definition is given of organised crime/criminal organisation, in compliance with the Joint Action of 1998 and with Article 2 of the UN Convention on transnational organised crime.

¹ I.e. protection of victims of crime, racism and xenophobia, trafficking in human beings, sexual exploitation of children

RESTREINT UE

The punishments for raping children up to 18, and of rape for the purpose of coercing to debauchery and prostitution will become more severe. Child pornography and possession of it are also criminalised, in compliance with the Joint Action of 1997. Further, the draft includes new provisions on the commitment of crimes on the Internet on the bases of the Convention on Crime in Cyberspace¹. A new section of the Criminal Code will deal with the traffic of people for sexual exploitation, forced labour, the taking of organs and slavery both in Bulgaria and abroad. More information is needed on the content and state of adoption of amendments in the field of witness protection . The main Conventions related to extradition and mutual assistance in criminal matters have been ratified. Still, a number of Conventions and/or Protocols remain to be signed² and ratified³.

As for alignment with Schengen legislation, Bulgaria has ratified the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters and the *ne bis in idem* principle is fully incorporated in the Criminal Code. Regarding the transfer of enforcement of criminal judgements, Bulgaria intends to accede -by the end of 2003- to the Additional Protocol to the Convention on Transfer of Convicted Persons. 2003 has also been set as a deadline for changing the law allowing for future sending of documents by post and introducing the speedy extradition procedure.

¹ A new chapter of the Criminal Code will deal with computer crimes.

² Additional Protocol to the Convention on the Transfer of Sentenced Persons, The European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, the European Convention on the International Validity of Criminal Judgements or the European Convention on the Transfer of Proceedings in Criminal Matters. For the two latter, Bulgaria had scheduled amendments to the Criminal Code and Code of Procedure for the end of 2001. Once adopted, these would enable Bulgaria to accede to the two Conventions as well as to the European Convention on the Enforcement of Foreign Criminal Sentences and the Convention on Simplified Extradition Procedures. However, information on the adoption of these amendments is necessary. On 28/05/02, the two Conventions had not yet been signed by Bulgaria.

³ Second Additional Protocol the European Convention on Mutual Assistance in Criminal Matters

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Some progress was made in the area of drugs as regards the adoption of several legal instruments to make the 1999 narcotic drugs and precursors control act operational. More severe punishment of participation in criminal groups set up for the purpose of illegal drug trafficking is stipulated in the amendments introduced to the Criminal Code in 2000. However, legislation is not yet fully harmonised. Bulgaria has not yet signed the 1995 Agreement on Illicit Traffic by Sea¹ but intends to do so before the end of 2002.

Bulgaria has ratified the 1977 European Convention for Suppression of Terrorism. It withdrew its reservation to Article 13 §1. Information on the co-operation between the bodies involved in the fight against terrorism, especially on the role of the Security Council, is awaited. The draft amendments to the Criminal Code will update the regulations regarding punishment of terrorism. It provides for the introduction of special *corpus delicti* on terrorism and on financing of terrorism. Further, the amendments envisage the punishment of setting up, leading and participating in terrorist groups, the obvious incitement of perpetrating acts of terrorism and the intimidation of perpetrating acts of terrorism².

In the civil law area, several Conventions remain to be signed³. Bulgaria has signed the 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and its ratification was foreseen by the end of March 2002, following the entry into force of the Personal Data Protection Act. However, this date was not met⁴. In order to implement the Act, the Ministry of Interior Act and the Criminal Code need to be amended and subsidiary legislation⁵ still needs to be drafted. Bulgaria foresees that the adoption of all the necessary legislation will be finalised by 31 December 2002. More information on the state of play is needed.

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- ¹ Implementing Art. 17 of the UN Convention against illicit traffic in narcotic drugs and psychotropic substances
- ² These legal amendments have been developed *inter alia* in accordance with the texts of the International Convention for the Suppression of Financing Terrorism
- ³ The European Convention on the Adoption of Children, the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, the European Convention on the Exercise of Children's Rights, the 1980 Hague Convention on the Civil Aspects of International Child Abduction and the 1954 Convention on Civil Procedure
- ⁴ Status on 28/05/02
- ⁵ Such as an Action Plan concerning the implementation of the personal data protection legislation and the terms of the citizen's rights of access to police information

RESTREINT UE

Judicial co-operation with judicial authorities of other states is implemented on the basis of bilateral agreements for legal assistance in criminal matters, extradition and transfer of convicted persons. 27 such agreements have been concluded, including with Member States.

2. *Administrative capacity*

The number of judges is definitely considered insufficient, especially having in mind their heavy workload¹. The main problems are insufficient administrative capacity of the judicial system, poor administrative support in courts², insufficiency of modern equipment and of financial resources. The level of selection and training of personnel in the judiciary is also unsatisfactory.

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¹ 511 cases per judge in 2001

² Lack of court assistants and qualified administrative personnel, overburdened courts/judges

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The SJC suffers from a serious deficit of capabilities for the performance of its functions (inter alia managing the judiciary budget), as it does not have the necessary (secretarial) personnel. It also meets too infrequently to be an effective administrator. Apart from this, the administrative capacity of the entire judicial structure -courts, prosecution, investigators- is very poor. Huge delays are built up between the moment a case leaves the prosecutor's office and its administrative processing¹. The poor administrative support forces magistrates to spend huge amounts of time² on purely administrative and clerical matters, reducing the time available for handling cases. Moreover, the lack of administrative capacity hampers the implementation of legislation in general, and in the field of economic crime in particular. The Reform Strategy foresees an improvement of the judiciary's administrative capacity.

Judges and administrative court staff do not receive *remuneration* which corresponds to their responsibilities nor are they protected against illegal pressure from other powers/organised crime. Moreover, the motivation to serve as part of a system entrusted with resolving claims sometimes lacks. Also, judges' pensions are quite low and rules on retirement are discretionary. These two facts combined threaten judges' decisional independence.

As for court *backlogs*, a final verdict in a civil case is usually reached only after 5-8 or even 10 years. There are complaints that especially on civil cases, court hearings are scheduled only twice a year, due to judges' overload and inadequate court conditions. 3-4 year-delays in labour disputes (dismissals) have become commonplace.

At present, no kind of permanent or systematic system for *training* judges has been established or works, a serious consequence of which is that a large group of the judiciary does not receive any training. Training of the courts' administrative staff, prosecutors and investigators is extremely insufficient and incidental. Judges are trained mainly on the basis of programs financed by donors.

¹ Even on the level of a prosecutors' office attached to an appeal court, it may take the administration up to 4 months just to type a hand-written report. In regional courts, these delays may even be longer.

² Varying from 20-50% of their time

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The only public institution is the Centre for Magistrate Training -a NGO financed by foreign donors- where newly appointed judges attend initial training. The Centre also gives some general courses in human rights, EU Law and institutions. A pilot programme for training public prosecutors was started in 2001. Some specialised courses have been organised for magistrates on international co-operation in criminal matters, extradition and insolvency proceedings. Courses on international law, market economy and EU enlargement are planned for 2002. The need for training in all three branches of the judiciary is enormous. The establishment of a national public institute for judiciary¹ training (by transforming the Centre) is envisaged under a Phare 2002 project and included in the Reform Strategy.

The conditions in the majority of courts, prosecution and investigation services remain very poor. About 80% of the *budget* for the judiciary goes to salaries for judges and staff, and much of what remains must cover the day-to-day running costs. Courts suffer from chronic under-investment and working conditions are unsatisfactory, especially as concerns office space and equipment. Procedures for funding the management of court, prosecution and investigation service-premises are complicated and untransparent. Court presidents are in a particularly vulnerable position in relation to the SJC and the Ministry of Justice, which control the required resources. The unclear system of elaboration, adoption and distribution of the judiciary's budget constitutes a problem. The judiciary budget was not sufficient for its functioning over the last years.

In most courts, the administration works with old *methods*, mainly through manual document processing. Case registers are entirely maintained manually, entailing long delays and difficulties for both staff and people interested in obtaining information from registers. In some courts, computer registration of cases has been introduced but these are local initiatives. Consequently, the various court systems differ and their software (as a whole) is not compatible. The Reform Strategy envisages Registration Offices and the introduction of modern information technologies.

¹ Including courts' administrative staff

RESTREINT UE

Regional *judicial co-operation* networks are being set up for the purpose of gradual integration into the European Judicial Network. At present, Bulgaria already benefits from some of the EJN's functions¹. The Ministry of Justice is in principle the central authority regarding judicial co-operation in extradition and criminal matters. In some cases the General Prosecutor' Office is appointed as the central authority². The capacity of the Directorate of the Ministry of Justice which deals with international legal cases, in particular extradition, needs to be strengthened and reinforced in order to deal rapidly with incoming requests. An International Legal Co-operation and Human Rights Department has been set up within the Ministry to train experts in international co-operation. It prepares documents for the conclusion of international bilateral agreements and accession to multilateral international conventions. Training of its staff is provided by (inter)national training programmes. However, more information is needed on training, the sufficiency of its staff and its equipment.

More information is also needed on the establishment of a Data Protection Commission³. The necessary subsidiary regulations on the designation of the Commission's single communication point and additional guarantees for the security of information systems were foreseen to be adopted by 31 March 2002⁴.

Bulgaria has established the relevant national contact point within the prosecution office in anticipation of future Schengen membership. Direct contacts between judicial authorities have not yet been developed, mostly because of the magistrates' limited knowledge of foreign languages and because of the unsatisfactory level of IT equipment. Bulgaria states that it is working on it, but specialised training (especially in foreign languages), the necessary equipment and the lists of contact points in the Member States are needed.

¹ Active intermediation to help establish the most convenient form of direct contacts between the local judicial authorities and other competent authorities in the relevant state; provision of up-to-date basic information.

² The two never act as central authorities at the same time.

³ Foreseen for end September 2002

⁴ (Status on 28/05/02): there is no information available as to whether these have been adopted.

RESTREINT UE

3. *Implementing performance*

Progress has been made over the years especially in the development of formal arrangements separating the judiciary from the other branches and giving it considerable administrative autonomy. However, the situation today still needs improvement. The formal consolidation of *judicial independence* aimed for during recent years has been seriously curtailed. The main problems are the lack of a qualified and professionally functioning judicial system capable of guaranteeing full respect for the rule of law, the unclear division of roles and responsibilities between the SJC and the Ministry of Justice as well as between the prosecutor's office, the criminal investigators and the investigative police, the apparent submissiveness of the judiciary to the administrative power and the far-reaching constitutional safeguard of criminal immunity for magistrates. The general opinion is that the Courts are not yet free from an important influence by the Government and the Ministry. Although the old practice of telephone instructions from the executive to the judiciary may no longer exist, some indirect but very important channels for the executive to interfere into the work of the judicial system remain. Although in theory the SJC should act as the administrator of the judiciary, the Ministry of Justice continues to exercise extensive administrative powers. In addition, the Ministry has extensive supervisory powers, allowing its Inspectorate to make intrusive investigations into the work of courts and individual judges, of the prosecution offices and investigation services.

Functioning of the judicial system

Other criticism concerns the fact that legislative changes are often characterised by a lack of a clear approach and goals, as well as by unfounded, often conjectural decisions. There is inadequate action of the judiciary with respect to the sharply increasing organised crime and in relation to the developing civil turnover of goods under the established market economy rules.

RESTREINT UE

Also, the gap between registered, discovered and punished crime is constantly increasing, investigations are blocked by the great number of pending pre-trial proceedings, the total number of initiated/pending cases is constantly rising and the organisation of work (case initiation and movement) is poor. Scheduling of cases is untimely and there are delays in the preparation of court acts. Moreover, inter-agency co-operation is weak and complicated. An unusually large proportion of cases e.g. is returned to the public prosecutor, because the courts consider the investigation to be incomplete¹. The conditions for return are not transparent and there is no system for appeal against such a decision. Finally, there is insufficient attention as to how laws will be implemented, resulting in delays between adoption and actual implementation.

The protection of witnesses in cases against organised crime groups is a serious concern, especially given the backlogs and delays in the judicial process. For example, senior police officials consider that it would be almost impossible to relocate witnesses within Bulgaria and guarantee their safety. The consequences of this are: it is not unknown for witnesses to change their evidence, forget the essential details over the passage of time, or simply fail to make themselves available when asked to give their evidence. Lack of public confidence in the judicial process as a whole is sometimes reflected in a reluctance to get involved.

As concerns *distribution of work/case* assignment, the law stipulates that the Court President distributes cases among judges in the respective court. So far, no other transparent neutral criteria have been introduced for case assignment. In the Supreme Administrative Court, a system exists allowing for electronic distribution of cases. However, due to the lack of equipment and systems, this is not the case in all courts².

¹ Although return of cases to the public prosecution also occurs in EU Member States, the high level of this in Bulgaria suggests a structural weakness.

² However, common software is reportedly in the process of developing and should serve the entire courts system, allowing electronic distribution of cases.

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The criteria for recruitment, appointment, and promotion lack transparency. Even though the SJC announced in 2001 its intention to introduce selection panels for appointments of judges and prosecutors at regional courts, this has not yet been put into practice. However, local initiatives in several major courts to recruit junior judges by competition, continue. The Reform Strategy does foresee the introduction of selection criteria for the appointment of staff as well as an increase of transparency in the SJC's work.

With regard to *internal control mechanisms*, the SJC is given as an example of the lack of it. The Constitution and the Judicial System Act grant magistrates immunity from prosecution for all but serious crimes entailing a minimum sentence of 5 years of imprisonment. Both requests to the SJC to lift immunity and its lifting in practice are rare. Also, few clear or objective procedures exist to guide the SJC in making decisions on staff. The SJC has neither developed a system for reporting and investigating disciplinary matters, nor are there any kind of clear instructions or guidelines for the behaviour of staff (including investigators). In addition, the SJC has no experts to carry out disciplinary actions within the judiciary. Finally, certain members of the SJC were divested of the ability to make proposals for opening disciplinary procedures. As a result, inappropriate behaviour often remains unpunished. Consequently, the effectiveness of the judicial system suffers as a whole. In 2000, a *Code of Ethics* for Civil Servants¹ was approved without, however, adequate sanctions in case of non-compliance. The Minister recently recognised the need to amend this Code. The professional Association of Judges has adopted a Code of Ethics for Judges. As for prosecutors and investigators, in accordance with the Reform Strategy, the Government adopted in April 2002 the draft amendments to the Judicial System Act which are now in the parliamentary procedure. These include the adoption by the SJC of a common Code of Ethics for magistrates as well as a Code of Ethics for the judiciary's administrative staff. The Reform Strategy also points out the need to improve the -currently poor- public image of the judiciary.

¹ Offering guidance on ethical conduct in relations with the public on duty and in public and private life

RESTREINT UE

Criminal Law does not pose specific problems, but *procedures* do. In 2000, major amendments to the Criminal Procedure Code entered into force introducing to a large extent the requirements of the ECHR as regards measures on *pre-trial detention*. It has somewhat improved in that there has been a trend towards shorter preliminary proceedings, i.e. fewer defendants are detained for more than 6 months. However, Bulgarian law still needs further improvement, and the main shortcomings are mostly caused by the incorrect enforcement of existing laws. More information is needed on the implementation of the amendments on pre-trial detention and on judicial control by the prosecuting authorities.

In 2001, amendments to the Criminal Procedure Code were adopted in order to speed up procedures. However, the changes have not reached the primary goal and the procedures, which still extremely complicated and inefficient, urgently need amendments¹. The resolution of a criminal case usually takes from 3 up to 5-8 years. Reports exist about criminally prosecuted people who have been in prison for more than 10 years without a sentence.

Although the basic rule of law and human rights principles are theoretically respected by law, the *slowness* of court proceedings in many cases still hampers their implementation. The situation regarding the adjourning of some cases (especially labour disputes) is particularly poor. *Access to justice* and *free legal aid* are ensured in principle, but concerns have been raised that over a third of criminal case defendants do not have access to a lawyer during trial before a court of first instance. The Code of Criminal Procedure does not make a professional lawyer to defend the accused compulsory. In addition, courts have budgetary difficulties in paying fees to officially appointed defenders. Moreover, there is a public perception that too many decisions affecting citizens' rights are made by the administration in an arbitrary manner, that the public does not understand the *rationale* behind many decisions and that the citizen does not know where to turn to for recourse within the bureaucracy. In the end, citizens view the delayed access to a proper remedy for their violated rights as an absence of access to justice. The problem is compounded by citizens' perception that judges have to be paid-off in order to obtain justice.

¹ Making them more efficient is part of an on-going Phare project.

RESTREINT UE

Concerning *civil law*, the system of notaries was excluded from the judiciary in 1996 and the position of bailiff was introduced. Although generally there are no serious complaints about these amendments, some believe that the new notaries system is far from perfect. In 2000, far-reaching amendments were introduced to the Commercial Law concerning company law and bankruptcy proceedings. They introduced some of the relevant EU requirements, the three-instance procedure and were meant to improve the procedures in bankruptcy cases. However, many professionals claim that the changes were not very efficient. The Ministry of Justice has elaborated a Draft Law amending the Civil Procedure Code which envisages *inter alia* the rationalisation of the summoning procedures, the functioning of appeal courts as "cassation" instances in labour disputes and the speeding up and increased efficiency of proceedings for issuing executive orders and collateral proceedings.

More information is needed on the *quality* of decisions. As for *execution* of judgements, there is a serious problem, especially in civil and commercial cases. Proceedings on vigorous execution of court decisions are ineffective and court bailiffs have a poor reputation.

Today, *alternative dispute resolution* mechanisms are absent, except for the arbitration court within the Bulgarian Chamber of Commerce. The Reform Strategy envisages the introduction of alternative settlement techniques.

The *Reform Strategy* deals with several of the mentioned shortcomings. It foresees strengthening the capacity of the SJC to implement its functions (in particular in budgeting and managing disciplinary proceedings), improving the co-ordination and co-operation between the SJC and the Ministry of Justice in management of the judiciary, improving enforcement and ensuring equal opportunities for access to justice (legal aid provision), improving judicial budgeting (adapting the budget in accordance with the judiciary's needs) and finally legislative amendments.

RESTREINT UE

The draft amendments to the Judicial System Act, currently under discussion in Parliament, will create the legal framework for the first part of the Strategy. They contain a number of important changes, i.e. a clarification of the rules on the election of the SJC¹, the possibility to lift a magistrate's immunity if requested by at least 1/5 of the SJC's members², the introduction of an evaluation of magistrates and a mechanism for its efficient implementation before the magistrates become indissmissible as well as a procedure to demote magistrates who lack the required abilities to fulfil their professional duties. It establishes a system of accountability of the courts, prosecution offices and investigation services before the SJC and foresees several anti-corruption measures for the judiciary³. The draft Act provides that junior judges and prosecutors, regional judges and prosecutors⁴ and investigators shall be appointed after a contest. It further covers the training of magistrates⁵ (under the Ministry of Justice⁶) and the status of officials at the administration of the SJC. The adoption of the Civil Servants Act made it necessary to regulate the special status of (registration) judges, prosecutors, investigators, bailiffs and court officials in line with the State Administration Act. In that respect, amendments are proposed to the Code of Compulsory Social Security and the Health Insurance Act. The draft Law does not change the structure and composition of the judiciary as concerns the investigators (they stay within the judiciary) but changes the internal structure of the investigation: a National Investigation Service is re-established to ensure the administrative and financial management of the investigation services. Finally, the amendments improve the management of budget and physical infrastructure for the judiciary. The introduction of the position of court administrator- dealing with administrative matters- is foreseen in order to allow judges, prosecutors and investigators to perform their specific duties.

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- ¹ By providing more comprehensive rules for the appeal of a particular nomination or appointment of its member
² At present, only the General Prosecutor can request the lifting of a magistrate's immunity
³ Following the model for high-ranking state officials, all magistrates will declare their property and income before the National Audit Office
⁴ Prosecutors at regional prosecution offices
⁵ A legal framework is set for such training and its implications for the career of magistrates in the official hierarchy. Legal rules are introduced to set up a National Institute of Justice as a public institution in charge of training all members and administration of the judiciary.
⁶ It should be noted that the SJC has opposed the establishment of the Institute under the Minister of Justice, as they believe it should be independent from the executive.

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The action plan to implement the Strategy was adopted in April 2002. Both the Minister of Justice and his staff are highly committed to the reform process. . The SJC has approved the draft amendments to the Judicial System Act with several reservations and some members have expressed their concern about the increased competence of the Minister of Justice.

So far, no budgetary commitments have been made with regard to the Strategy . Moreover, it does not mention a number of important issues, such as the division of tasks and responsibilities between the Ministry of Justice and the SJC or issues such as upgrading the status of magistrates, increasing their remuneration¹, the reduction of the duration of court proceedings, improvement of (adequate) enforcement of judgements and strengthening judicial control over decisions of the executive branch. It also does not tackle the criminal immunity of magistrates.

Judicial co-operation in criminal and civil matters

In 2001, Bulgaria withdrew its reservation to Art. 12 of the Extradition Convention which allowed it to retain its right to request evidence of crime from the country claiming extradition. This hampered speedy examination of requests. Yet today, judges and practitioners still face major difficulties in extradition cases. Practical problems include slow communication transmission and the provision of improper documentation causing additional delay in the processing of requests. Bulgaria's existing reservation on Art. 23, requiring a request to be submitted to the court with a translation into one of the official Council of Europe languages, also causes delays and loss of procedural time. This reservation is foreseen to be withdrawn by end 2002, which should considerably speed up the implementation of requests.

The Ministry of Justice is the central authority for civil matters. Yet, there is no direct contact between Bulgarian judges and their EU colleagues as regards mutual legal assistance in civil matters². The appropriate level of co-operation as regards mutual recognition and enforcement of judicial decisions, and direct court-to-court dealings in cross-border situations needs to be ensured.

¹ Including pensions

² E.g. for collection of evidence

RESTREINT UE

4. *Summary*

Although independence of the judiciary is guaranteed in theory, many obstacles remain. The Reform Strategy should improve the situation, but does not address all issues nor are there any budgetary commitments. Several criminal and civil law Conventions and Protocols, including on Data Protection remain to be signed and/or ratified. The Criminal Code and Code of Procedure need to be amended on a number of issues and the current reservation to the Extradition Convention hampers a speedy dealing with requests.

The administrative capacity of the judiciary is insufficient, both in terms of staff, equipment, working conditions, remuneration and of financial resources in general. Training at present is insufficient for all involved (magistrates, administrative and Ministry of Justice staff) and lacks any systematic approach.

The judiciary's implementing performance is poor, both in terms of procedures and independence from the executive. Both criminal and civil procedures are very lengthy and inefficient, execution of judgements lacks efficiency and access to justice (including free legal aid), although theoretically guaranteed, is far from ensured in practice. The criteria for recruitment, appointment, and promotion of magistrates lack transparency and impartiality and the system of internal control is ineffective. Judicial co-operation in civil and criminal matters works, but also needs improvement (training of magistrates and sufficient equipment and staff). The Reform Strategy foresees the tackling of several of the shortcomings. The draft amendments to the Judicial System Act, now in Parliament, introduce a number of important issues which should improve the situation significantly.

F. Human rights

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1. *Formal acquis*

Bulgaria has ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols 4,6 and 7. Bulgaria has not yet signed Protocol 12 to the ECHR¹.

Bulgaria has ratified the Framework Convention for the Protection of National Minorities and is party to the UN Convention on the elimination of all forms of racial discrimination (1966) and to the UN Convention on the rights of the child (1989). The EC anti-discrimination *acquis* has not yet been transposed. Bulgarian law currently discriminates against homosexuals² and there has been no progress regarding the adoption of legislation on equal opportunities for men and women. Information on the state of play regarding preparations to start implementation of Article 13 of the Anti-Racism Directive would be desirable³.

During the last few years, progress has been made with regard to the legal frameworks of the Ministries of Interior and Justice. Several amendments have been made to criminal legislation as regards pre-trial detention. Amendments to the Criminal Procedure Code which included the possibility of judicial review of refusals by prosecutors to initiate investigations, and an open court process for termination of criminal investigations by prosecutors, entered into force in 2000.

¹ Bulgaria has in fact ratified Protocols 1-8 and 11, and not yet signed 9, 10 and 12. Only Protocol 4, 6, 7 and 12 are part of the formal acquis under Title IV of the TEC and Title VI of the TEU (consolidated version, 2001).

² Articles 152 and 157 of the Criminal Code. So far, different draft amendments to the Criminal Code were submitted to Parliament in order to eliminate the discriminatory provisions against homosexuals. Amendments to the Criminal Code are expected to be adopted in the summer 2002.

³ Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('bodies for the promotion of equal treatment').

RESTREINT UE

Measures to curb violence and abuses during police routine operations have been enforced with some success. An ordinance on terms and conditions of providing police protection to children has been adopted. After a judgement from the European Human Rights Court in 2000 on a violation of Art. 5 of the ECHR¹, deficiencies in Bulgarian legislation were identified. The Government has announced its intention to make changes to the Public Health Law or through a new law on Mental Health, but has not yet done so.

In 2001, women's human rights activists continued to press for state action to protect women from domestic violence, advocating for changes in the criminal code to criminalise domestic violence.

The Non-profit Legal Entities Act entered into force in 2001. It provides a new legal framework for NGO's in Bulgaria, and established clear rules for the registration of associations of citizens and foundations. The new Act also increases transparency through a public register of organisations and the obligation to provide annual reports on activities and finances. However, the tax environment for NGO's and donations remains rather restrictive.

The Government has made continuous efforts in order to foster respect for human rights, even if the results have not always been as expected. However, the implementation of the new human rights-related legislation has proved to be difficult and sometimes inefficient. Despite all efforts, Bulgarian standards on human rights remain far from EU standards.

2. *Administrative capacity*

The institution of an Ombudsman does not yet exist, but there is strong political will to create it in the near future. Today, there are Ombudsman-type activities in a number of municipalities and in Sofia. In 2001, the National Assembly established a parliamentary committee on civil society issues.

¹ In October 2000, the European Court of Human Rights delivered a judgement in the case of Varbanov v. Bulgaria. It established a violation of Art. 5 of the ECHR, the right to liberty and security, by ruling that his detention in a psychiatric hospital was arbitrary.

RESTREINT UE

Even though the Child Protection Act aims to reduce the number of children in institutions through placement in foster families, there was no significant change at the end of 2000 in the number of children in institutions. Conditions in social institutions for children are mixed and indicate that some orphanages offer relatively high standards of care, but in many the living conditions are very poor.

The situation is extremely serious in some of the homes for severely handicapped children. Children are reported to live in extreme neglect, deprived of food and basic care, medical and educational needs. The state budget for these institutions is seriously inadequate. Conditions in some institutions for mentally handicapped children are even described as 'cruel, inhuman or degrading treatment' and are said to have contributed to especially high mortality rates. Around 65% of children in residential accommodation come from minority groups. Staff caring for children rate amongst the country's lowest paid.

The institutional framework for child protection was reinforced in 2001 with the adoption of a regulation for the establishment of the Child Protection Agency and the appointment of its Chairman. The Agency should improve co-ordination and implementation of policies at national and regional level, and provide guidance to and control of municipal services on child protection activities. Efforts are oriented towards preventing social exclusion and towards de-institutionalisation. Yet, several steps are necessary if the Agency is to become fully operational. Secondary legislation (clarification of its precise role) and adequate human and financial resources are still needed.

The second central body foreseen by the Child Protection Act, the National Council for Child Protection¹ has also been set up, with members coming from 8 Government departments, 7 NGOs and representatives of 2 international organisations participating as associate members.

¹ A consultative body

RESTREINT UE

In January 2001, there were around 9.000 prisoners in the country's 13 prisons and 23 labour correction hostels and around 1.000 persons in pre-trial detention centres. Following a recommendation of the CPT¹, 14 out of the 29 pre-trial detention centres housed underground were closed. Some cases brought against Bulgaria to the Court in Strasbourg relate to damage sustained as a result of inhuman conditions in pre-trial detention facilities. The old housing and the relatively large share of persons confined to facilities of a closed type contributes to the problems of overcrowdedness and personal hygiene and impedes individual and group re-socialisation.

There are frequent complaints about the quality and quantity of food. Only 25% of the prisoners have access to work which leads to a reduced sentence. Not all places have educational facilities and in those where these do exist, they are in bad condition and poorly equipped. The organisation and standard of medical services is insufficient. Toxicomania and dependence on medicines and drugs among inmates is growing and preventive measures are urgently needed. The Ministry of Justice received 72 complaints of violence from prisoners, 4 of which were judged as being justified. Disciplinary measures against 36 officials were taken in the Central Penitentiary Administration system as a whole. One positive development is that a number of applications for alternative service have been granted over 2001 in accordance with the law of 1999. Also, with the amendments to the Criminal Code (adopted by the Government in April 2002), probation is introduced².

As regards regulations to improve prison conditions, the Ministry of Justice set up a working group which elaborated a draft Amending Act to the Execution of Punishments Act. The draft was to be finalised by the end of 2001 and submitted to the Council of Ministers for approval. More updated information is needed. Re-constructions and repairs inside prisons and arrest premises are carried out, but are limited to Burgas Prison and the Sofia Investigative Service.

¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

² Instead of imprisonment, monitoring takes place, assisting measures are taken and the person in question must work for the society

RESTREINT UE

A Commission on Human Rights was created within the National Police Service. Its role is to align police practice with international law and organise training. Regional co-ordinators, who will organise activities at local level, have been appointed and receive periodical training on human rights issues. In 2001, the Ministry of Interior organised several seminars on human rights for 180 police agents.

3. *Implementing performance*

Pre-trial detention has somewhat improved. There has been a trend towards shorter preliminary proceedings, which means few defendants are detained for more than 6 months. However, concerns have been raised that over a third of criminal case defendants do not have access to a lawyer during trial before a court of first instance. Problems with the enforcement of pre-trial detention legislation seem to be caused either by the lack of economic resources to ensure the conditions established by law or by the authoritarian ways still prevailing among some police agents.

There continue to be critical reports on police violence. Most incidents occurred during police investigations into complaints, when criminal suspects were apprehended or within the first few hours of custody.

Ethnic minorities in Bulgaria (Turks¹, Roma²) have suffered disproportionately from police brutality and abuse. The situation of the large Turkish minority is not as acute as that of the Roma and has somewhat improved since the Movement for Rights and Freedom party (representing mostly the Turkish minority) has become a coalition partner in the Government. As in previous years, Roma continued to constitute a disproportionate number of the victims of this violence.

¹ 9.4% of the population

² 4.6% of the population

RESTREINT UE

Amnesty International¹ lists Bulgaria among the countries where religious and social minorities such as homosexuals and prostitutes are subjected to police ill treatment.

This involves discriminatory treatment by police of these social groups, use of force against their members and police actions creating unequal conditions in the criminal process. No changes were introduced in the legislation and policy to make punishment and prevention more effective.

A complaint procedure on possible abuse by the police exists, but is slow and not very efficient. Allegations of criminal offences by a police agent are investigated, prosecuted and tried by military investigators, prosecutors and judges. However, investigations into police abuse remain rare and very few cases come to court. Civil damage cases against the police are not very common. Issuing a medical certificate is still denied to citizens if the perpetrator of ill-treatment against them is a police officer.

Although several officers were sentenced for illegal use of force and firearms, the sentences were inadequate to the severity of the offences. Investigations into police shootings were usually terminated as a result of police actions being deemed lawful.

Concerning the right to privacy, concerns have been expressed by human rights organisations about the high number of permits granted for wiretapping and the need to ensure proper judicial controls on the issuing of these.

Romas' living standards are poor when compared to the rest of the Bulgarian people. Many live in very poor conditions in illegally built housing, which means very limited access and no right to public services. Very few municipalities have acted on the call in the Framework Programme to legalise such homes.

¹ Amnesty International Annual Report 2000

RESTREINT UE

The Government, municipal authorities and various NGO's make continuous efforts as regards education of Roma children and young university students. The Ministry of the Interior already started to engage Romas. However, it is considered that Bulgaria must focus more attention to the integration of Roma into Bulgarian society. An Agency on minorities is planned to be established during 2002 and a law against racial discrimination is expected to be voted. These two initiatives, when concluded and applied, should mark a significant progress as far as Roma integration is concerned.

Nevertheless, little has been done for the implementation of the Framework Programme for Roma integration¹ at central level and for strengthening the capacity of the National Council on Ethnic and Demographic Issues (NCEDI). The funds allocated for the programme's implementation are limited. Roma are socially and economically excluded; have difficulties in acceding to social and health services, education and capital and are often subject to hidden discrimination. Over 90% is unemployed. However, the programme to appoint Roma as experts continued; they were appointed in the State and Municipal administration and in police stations. Roma tutors and teachers have been appointed in bilingual schools, but further steps should be made in order to ensure access of Roma children to the educational system.

In the general elections in June 2001, an increased political participation by Roma was observed and there are Roma National Assembly members. The Turkish minority is better integrated into political life through elected representation at national and local levels. Further efforts are needed for the socio-economic integration of those ethnic Turks who live in economically underdeveloped regions.

¹ adopted in 1999.

RESTREINT UE

Since the recent reform of the Radio and Television Act, independence of the media in Bulgaria is sufficiently guaranteed. However, the heavy fines established by the Criminal Code to prevent libel -currently varying from 1.000 to 20.000 leva- are still the main threat to media's freedom. Journalists and private individuals have been sentenced for insult and libel by politicians.

4. Summary

Bulgaria has ratified the main human rights related instruments, but has not yet transposed the *acquis* on discrimination (including against homosexuals) or on equal opportunities for men and women. The legal frameworks for the Ministries of Justice and Interior as well as for NGO's have improved. Yet, despite numerous efforts, the standards of human rights in Bulgaria remain low and implementation in practice continues to be difficult or inefficient.

With regard to administrative capacity, a National Ombudsman does not yet exist, prisons are overcrowded, health, sanitary and food conditions are poor not to mention the conditions in institutions for (mentally) handicapped children which are totally unsatisfactory. This is compounded by the fact that the state budget is inadequate and salaries for the staff are extremely low. Training of the police on human rights has not yet been sufficiently developed.

Implementation of human rights related legislation is poor in practice. This concerns *inter alia* the right to a lawyer, the right to medical care and to privacy, the prevention of torture and inhuman or degrading treatment (both children and prisoners) and discrimination of ethnic, religious and social minorities. Discrimination against the Roma remains high.

RESTREINT UE

G. Corruption

1. *Legislation and relevant international instruments*

Bulgaria has ratified the Council of Europe Criminal Law Convention on Corruption as well as the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. It has however not (yet) ratified the Council of Europe Civil Law Convention on Corruption, and more information is awaited on alignment of Bulgarian legislation regarding future co-operation with OLAF . Bulgaria continues to participate in the monitoring of anti-corruption measures through e.g. GRECO. According to Bulgaria, a number of amendments were introduced to the Criminal Code and Code of Procedure between 1997-2001 to bring national legislation in line with the *acquis* in this field. In April 2002, the Government approved a draft law amending and supplementing the Criminal Code. The proposed amendments comply with the standards of the anti-corruption instruments of the Council of Europe (Criminal Law Convention), the OECD and the EU.

They provide for the extension of the term 'foreign public official', criminalisation of bribery in the private sector, a definition of non-material advantages/services as bribe, the introduction of fines as punishment in cases of bribery, the criminalisation of passive bribery of foreign public officials and of trade in influence, of bribing arbiters and in specific cases defence counsellors and attorneys. Finally, it provides for defence limitation when punishing active bribe and introduces more severe punishments for bribing judges, jury, prosecutors and investigators.

Bulgaria has further stated that the Measures against Money Laundering Act was amended at the beginning of 2001 to fully align legislation to Council Directive 91/308/EEC on Prevention of the Use of the Financial System for the Purpose of Money Laundering. Again, it is not clear whether the amendments have been adopted and implemented. More (detailed) information is awaited.

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2. *National programmes and strategies*

The recently adopted National Strategy against Corruption (1 October 2001) gives special attention to the customs, the MoI and the judiciary. There is however no corresponding action plan, i.e. time-schedule and budget are still missing. The draft implementation program contains provisions on criminalising various types of active and passive bribery, (exertion of / trade with) influence etc. Actual implementation and effects thereof will have to be monitored.

The Inspectorate Service has set up a Division dealing specifically with corruption within the Ministry of the Interior. A separate section of the NSCOC investigates possible corruption-based connections between members of public and local administrations and organised crime groups. The National Police Service has developed a Counter Economic Crime Programme 2000-2006, which envisages measures against corruption-related crime. The Ministry of Justice keeps special records...(statistics).

The establishment of an Inter-institutional commission for combating corruption is foreseen.

3. *Current trends*

Despite Government's efforts to curb corruption within the Bulgarian administration, the problem is still a threat for the social and economic development of Bulgaria, in particular where it affects those branches responsible for fighting corruption (police and the judiciary). Recent surveys on this issue show that more than 80% of the people consider corruption a widespread practice within the Administration. Notably border- and customs officials are suspected of engaging in large-scale corruption and taking bribes¹.

¹ Trucks and buses, entering or transiting Bulgaria, report requests, by toll post officials, to pay a 500 US dollar "fee" per passage. Such reports frequently reach some MS Transport Ministries and their Embassies.

RESTREINT UE

According to a TI survey¹, in 1999 the police solved 114 cases of bribery. In the first half of 2000 33 cases of bribery were detected. In 1999 the police found "undeniable proof of the steady corruption-based connections between state administration officers and 11 organised criminal groups" involving 30 civil servants (14 customs officers, 7 officers working for the authorities exercising quality control on imported goods for customs tariff purposes, 5 tax service officers, 3 local administration officers and 1 policeman). Another 93 investigations of smuggling and other grey economy crimes yielded intelligence on chance utilisation of the services of corrupted officers by organised criminals. Their criminal perpetration is subject to further substantiation.

a) Border management

According to several sources, corruption in Bulgaria is worst among customs but also not unknown within the border police. Co-operation between these two services is very difficult partially due to lack of mutual trust related also to corruption - customs do not want border police to enter their "area of interest". One source indicates that there is some kind of corruption in Sofia airport, without however being specific. The Border police has launched several measures to combat corruption: there is an anonymous hot line telephone number, a mailbox for passengers wishing to make a complaint about the border police and there is a specialised unit responsible for the prevention and detection of corrupt practices.

b) Migration

There is no direct information on cases of corruption in the field of issuance of visas or residence permits. As far as repressive measures are concerned, the weak implementation of sanctions and the absence of trials in case of discovered smuggling may suggest, inter alia, corruption among police and justice. The official practice to fine illegals rather than to expulse them, gives a wrong example. Reliable sources believe that a certain percentage of law enforcement authorities are complicit in trafficking in human.

¹ Karadjov, Ventsislav 2001. National Integrity Systems Country Study Report: Bulgaria 2001. The Hague: The Netherlands Ministry of Justice.

RESTREINT UE

c) Police and customs

According to statistics and despite significant Government efforts, corruption is still a very serious problem within the different police and customs services. Customs rank first in all polls. Police officers arrive in second position, ahead of doctors (contrary to several other candidate countries) in one poll¹ and in fourth position after customs, courts, and health in another poll.²

Concrete measures : foreseen development of an Anti-Corruption Strategy; elaboration of a Code of Ethics and Customs Officer's Status (draft code, part of Phare project on combating corruption in the Customs Administration). End July 2000, the General Customs Directorate started developing a strategy against customs officers' unlawful actions.

Considerable efforts are still needed to combat corruption among customs officials. The new Law on the Civil Service introduced a new recruiting system. Measures to prevent corruption are based on training, rotation and sanctions. A strategy for the fight against corruption within the Customs was developed through a PHARE twinning "Fight against Corruption" in 1998. The results of the twinning showed that significant efforts are required. Although the first texts on how to engage in an efficient fight against corruption have been elaborated, these must be followed through with strong determination by the authorities, including the customs authority, and go beyond mere formal adoption of legislation. Customs authorities seem to be in fact more interested in equipment/financial projects than in organisational measures. The aforementioned TI survey advises Bulgaria "to train police officers in implementing the legislation and the respective forms and methods of disclosure and investigation of corrupt activities and to promote teamwork among police officers, investigators and prosecutors."

¹ According to a poll conducted in 560 state and private enterprises in October 2000. The same poll indicated that 55% of Bulgarian businessmen believe corruption is Bulgaria's major problem.

² corruption climate Results of an International Research project on Corruption in 11 Central and Eastern European Countries GfK Prague, June, July, August 2001.

RESTREINT UE

d) Justice

There are no comprehensive and objective reports on corruption within the judiciary, but there are many rumours and public perception indexes. Some examples of their outcomes are the ranking of the judiciary as the 4th most corrupted system in the state¹, and 44%² 'totally agreeing' with the statement that the state is corrupt.

In spring 2001, the General Prosecutor requested removal of immunity of an investigator caught in the process of receiving bribery. However, despite some cases where investigation has started, no results of such investigations have led to trials. One of the reasons is the fact that the Constitution and the Judicial System Act give magistrates criminal immunity from prosecution from all but serious crimes that carry over 5 years of imprisonment. Both requests to the SJC, which should act as an internal control mechanism, to lift immunity and its lifting in practice are rare. These provisions not only make it difficult to know the potential scale of corruption or criminal activity within the judiciary but also hamper, to a very large extent, efforts to combat corruption.

Furthermore, as there are no objective criteria for the recruitment of staff in the judiciary or any neutral standards for case assignment, the risk of corruption exists. There are very few clear or objective procedures to guide the SJC in making personnel decisions. The SJC has neither developed a system for reporting and investigating disciplinary matters, nor are there any kind of clear instructions and guidelines for the behaviour of the servants³. In addition, the SJC does not have experts to deal with disciplinary actions in the judicial system. Finally, certain SJC members were divested of the ability to make proposals for opening disciplinary procedures. As a result, inappropriate behaviour of those working in the judicial system often remains unpunished. Regarding case assignment, the law stipulates that the Court President distributes cases among judges in the respective court. So far, no other transparent neutral criteria have been introduced.

¹ Another source mentions justice as the 2nd most corrupted system.

² of those questioned

³ including investigators

RESTREINT UE

The Association of Judges has adopted a Code of Ethics for Judges. The Reform Strategy envisages the elaboration of a common Code of Ethics for all magistrates. It has also pointed out a set of problems to be solved in order to improve the public image of the judiciary, which today is unsatisfactory.

The National Strategy for Combating Corruption -adopted in 2001- covers 4 areas, one of which is the anti-corruption reform in the judiciary. One Twinning project¹ aims to improve the legal and organisational framework of administrative justice in order to prevent corruption efficiently. Another² aims to increase the capacity of the PPO for combating organised and economic crime and corruption. Moreover, the draft amendments to the Judicial Service Act aim to tackle corruption within the judiciary through several measures (viz. Justice). The draft amendments to the Criminal Code aim to introduce more severe punishments for bribing judges, jury, prosecutors and investigators.

4. *International organisations*

Bulgaria ranks 47 on *Transparency International's* Corruption Perception Index (CPI) 2001, ahead of countries such as Slovakia (51), Latvia (59) and Romania (69).

In the Worldbank's "Comparison for Control of Corruption", Bulgaria ranks in the middle of the list of the "Eastern Europe region" (2000/01), and lowest of the candidate countries after Romania (and Turkey.)

¹ "Improvement of administrative justice"

² "Strengthening the Public Prosecutor's Office"

III. CONCLUSIONS

A. Border security

The legal bases in the field of border security are improving but have not yet been finalised. Some core laws will only just come into force at the end of this year (2002) and decrees and implementation orders are in many cases missing. Many plans exist, some only under preparation, one of the most important being the integrated border security strategy. Main problems today lie in administrative capacity and implementing performance. The National Border Police Service (NBPS) is a separate and specialised law enforcement authority responsible for border security in Bulgaria. Its organisation and system is very much in line with Schengen principles. The border police is going through a very rapid, ambitious and difficult professionalisation process. This process naturally reflects on administrative capacity and implementation performance where huge number of staff are new and inexperienced. The Schengen type of comprehensive border security system is not yet in place but some encouraging signs exist. Lack of intelligence-based risk assessment and poor capacity to conduct co-operation with other law enforcement authorities are serious problems. Implementation capacity is still weak due to the lack of training and in some cases due to poor equipment. Especially sea border surveillance is weak in terms of detection, identification and detention. Border checks are not yet carried out according to Schengen principles.

Bulgarian border security is in rapid transformation and many plans and laws are just coming into force and being implemented. New tasks, new policing methods and staff changes together create very big challenges for border authorities. The lack of a tradition of interagency co-operation and the unclear division of labour between law enforcement authorities causes unhealthy competition and mistrust between different authorities. The high level of corruption within the customs does not help this situation.

RESTREINT UE

The Bulgarian border security system is moving in the right direction. It is necessary to continue work with determination towards attaining the objectives set out in the different plans. It is necessary to finalise draft legislation (Border Security Act and Border Guard Act) and draft the necessary decrees and other implementing orders. Legal bases and agreements for interagency co-operation are necessary steps towards a better and more effective co-operation between law enforcement authorities. The administrative capacity of the NBPS needs to be enhanced in order to be able to create and implement a Schengen-based border security system. Especially intelligence-based national risk assessment, the capacity to create real time situational awareness and management of data flows should be taken into account. Training of staff needs particular attention: there is a need to train new recruits, chiefs, consular staff and carriers. Theoretical knowledge should be transformed into everyday practice. The sea border surveillance system is in urgent need of improvement in order to be able to consider it a reliable part of the Bulgarian border security system. The existing plans related to enhancement of sea surveillance should be put in practice.

B. Migration

Visa policy has been aligned, except in respect of FRY, FYROM and Tunisia. The Law on Foreigners of 1998, as amended in 2001, is not in line with the acquis concerning family reunification and detention before expulsion, and requires adjustments on several work-related issues and clarification of the regime for persons of Bulgarian ethnic origin. All visa decisions are still taken at central level, the impressive already existing "national information system" is in need of regulation and of data protection. While the transit role of Bulgaria is well known, e.g. for trafficking of women, the figures on arrests of traffickers are low, and the existing sanctions are very weakly implemented, notably when it comes to trials and sentences.

The postponement of alignment of visa policy in respect of FRY and FYROM, as well as the regime of persons of Bulgarian ethnic origin, are the result of historic/economic ties. Deficiencies in legislation and data protection may be due to the relative novelty of these issues.

RESTREINT UE

The lack of results in the fight against illegal migration and trafficking may be due to the lack of means (detention places, fining rather than expulsing), the lack of readmission agreements with essential neighbouring countries, the lack of organised and co-ordinated police bodies, lack of awareness and maybe willingness, as well as corruption.

Bulgaria should understand that accession to Schengen is not incompatible with the maintenance of close relationships with neighbours, and it should align its visa policy in good time before accession so that all involved bodies are prepared. It should modify its legal provisions on admission to bring them in line with the *acquis*, and regulate the detention of aliens properly. It should increase its means for expulsion beyond simple refusal of entries, bring its neighbours to sign readmission agreements, create proper detention places, increase general awareness of the conditions of travel and of the fate of smuggled persons, co-ordinate and command its police units - as it seems to have started to do - in order to prosecute actively and condemn those responsible for or accomplice in trafficking.

Finally, Bulgaria has taken preliminary steps to address the issue of Bulgarian illegal immigration into the EU, but deterrence efforts must continue.

C. Asylum

The Law on Refugees of 1999 requires amendments on several items, the main one being the current accelerated procedure, which gives too much power to the police. The list of "safe" countries is far too extensive. Administrative capacity is well accorded to the current low number of applications, except for training of police and border guards, and for accommodation. Bulgaria's own financial involvement is not high. Legal aid is nearly non-existent, integration is not practised, and refoulements and mismanagement of the accelerated procedures are reported at the borders.

RESTREINT UE

Deficiencies in legislation are due to the novelty of asylum issues in Bulgaria, and to a tradition (dating back to 1992) of entrusting these issues to the police. The low financial involvement maybe indicates the level of Bulgaria's real interest in asylum and in granting its protection to persons who often leave the country later. Besides, Bulgaria has not yet been confronted with the outbreak of asylum which, in all transit candidate countries, accompanies the prospect of accession. Wrong implementation at the borders is the result of deficient legislation, of feeble means of accommodation, of lack of training and maybe of command and control of local police.

The Act adopted by the National Assembly in May 2002 is likely to settle the legislative problems. The list of "safe" countries has to be reduced to the really safe ones. Above all, Bulgaria should understand that it will be an important "responsible state" in the meaning of the Dublin Convention, and that UNHCR cannot finance forever the implementation of the Geneva Convention, and it must therefore train, command and control its police, increase and prepare its means of accommodation and of material conditions of access to the procedure, in order to be ready for the very likely and quickly approaching outbreak of applications it will have to cope with.

D. Police and customs

Bulgaria has been making significant progress in drafting legislation to align to the acquis. Institutions are being established and numerous acts are presently pending or awaiting implementation (secondary legislation). Although reorganisations are foreseen, many structural overlaps, unclear division of responsibilities, lack of communication and lack of co-ordination/co-operation between the different policing services continue to exist. Training is also being developed but requires more attention for modern types of organised crime and the use of new technologies and equipment. The results of the National Strategy on Organised Crime are unknown and it is not clear whether there will be any follow-up to the program.

RESTREINT UE

Last year's elections explain in part the delays in adoption of legislation. The lack of implementing legislation is partly being solved by the use of transitional rules which however allow for (too much) discretionary powers. In some instances there is a clear lack of determination / will to push through measures or necessary changes. Another significant problem hindering development, notably within customs, is corruption. As for (re-)organisations and structures, rules on recruitment are incoherent and intransparent and criteria for dismissal vague. Salaries remain low and staff turnover high; finally, there is little career management.

Efforts must concentrate on actual effective implementation of existing and future legislation. The adoption of measures and drawing up of plans is not enough; there must be a clear determination to push these matters through in all layers of existing police and customs structures, including serious efforts/changes of attitude needed to curb corruption. The Republic of Bulgaria should continue to enhance the capacities (in terms of staffing, training and equipment) of its police services incl. the BFI, and of the BCA in order to further develop their practical operations. Further structural changes and redistribution of tasks in the fight against organised crime and other forms of serious crimes, corruption and money laundering are foreseen and should be encouraged. The Bulgarian authorities should consider ways of ensuring that respective roles do not remain or become even more confusing: A clear definition and division of competencies is necessary to enable the authorities involved to unite their efforts in combating crime.

Specialised training programmes are still needed to continue to build up the adequate skills to effectively investigate and counter new types of crime, especially economic crimes and money laundering as well as organised crime and corruption. Efforts should be made in order to ensure sufficient and qualified customs staff, technical facilities and equipment for supporting the customs control. The introduction of a modern human resources policy is indispensable to improve the efficiency within the Police services. The problem of corruption finally, must be tackled head-on and independently of any potential financial, material or other type of assistance which presently too often seems to blur good efforts.

RESTREINT UE

E. Justice

Over the years, progress has been made with regard to formal arrangements to achieve independence of the judiciary, though the situation still needs serious improvements on some important points. The continued involvement of the Ministry of Justice in administrative and supervisory matters, the executive's co-optation of the judicial budget and the continued mixing of core judicial and non-judicial functions in the SJC limit judges' real independence. As regards the formal *acquis*, although progress has been made in a number of fields, Bulgaria has still not fully aligned its legislation.

Quite a number of Civil and Criminal Law Conventions still need to be signed and ratified and several amendments to its Criminal Code and Code of Procedure, *inter alia* allowing accession to some Conventions, have been or are in the process of being drafted. Information on the state of play of adoption is necessary, as is information on implementation.

The administrative capacity of the judiciary is poor, both in terms of administrative staff, remuneration, equipment and working conditions in general. Training is lacking, for both the magistracy and their staff (including the staff of the Ministry of Justice) and lacks a systematic approach. This poor administrative capacity, the lack of equipment and resources hamper the judiciary's implementing performance. Both the Codes of Criminal and Civil Procedure have been adapted over the years in order to speed procedures up and make them more efficient, but the aimed goals were not entirely achieved.

The former Government considered that the reform of the judiciary had been achieved through the various legislative amendments, and that the system only needed some modernisation. The new Government on the other hand understood that further reform is necessary in order to tackle all remaining problems of the judicial system and to contribute to the preparation for EU Membership. Although the aims of the Strategy are effectively going in the right direction, some major issues have still not been addressed and no budgetary commitments have yet been made. It may be that lack of financial resources make the realisation of the Strategy difficult.

RESTREINT UE

The poor administrative capacity and lack of equipment certainly hamper procedures to be efficient or fast, and the lack of resources, including financial, impede effective access of citizens to justice. Witness protection remains a weak area in Bulgaria, leading to particular difficulties in the prosecution of organised crime cases. The current lack of transparent criteria for recruitment and promotion, of clear rules on pensions, of effective sanctions for improper conduct and of effective internal control mechanisms hinder the ensurance of the necessary impartial and independent judicial system.

Bulgaria should continue to align its legislation with the *acquis*, including the new one, and try to keep up with its deadlines. It should provide information on the necessary budget . Yet, it should also provide information on how it intends to address important issues such as the division of tasks and responsibilities between the Ministry of Justice and the SJC, the criminal immunity of magistrates, the reduction of the duration of court proceedings, the adequate enforcement of judgements and strengthening judicial control over decisions of the executive branch. Major efforts must be made to improve the independence of the judiciary (a clearer role of the SJC, also as regards the task concerning deontological infringements) and the remuneration of both magistrates and administrative staff. The recruitment procedure must become more transparent and training must be ensured¹. The fight against corruption must also be stepped up as, despite the lack of comprehensive and objective reports, the public perception of the phenomenon reveals a worrying situation. The administrative structure and its (adequate) functioning must be increased, also in order to tackle the consistent delays in civil and criminal cases and in particular labour disputes. 'Ex officio' defence should be guaranteed effectively in practice and there is a need to improve the presently unsound system of precautionary measures to which a person is subject in the time preceding the judgement².

¹ at present being financially dependent purely on NGO's

² viz. Justice implementing performance (criminally prosecuted people who have been in prison for over ten years without a sentence)

RESTREINT UE

F. Human rights

Bulgarian legislation has not yet been fully aligned to the *acquis*, especially in the field of discrimination. Despite all efforts, Bulgarian standards on human rights remain low. Prisons still have problems of overcrowdedness and poor food and sanitary conditions. Despite the creation of the child protection agency and a national advisory council for child protection, there is not yet a significant change in the number of children in institutions. Moreover, the extremely poor conditions in some homes for (mentally) handicapped children are cause for serious concern. Ethnic, religious and social minorities continue to suffer from police violence.

Especially Roma continue to suffer from widespread social discrimination. Very little progress has been made regarding the implementation of the Roma Framework Programme and the strengthening of the National Council on Ethnic and Demographic Issues.

Despite numerous and continuous efforts by the Government to foster respect for human rights, the results have not always been as expected. Implementation of the new human rights-related legislation has proved to be difficult and sometimes inefficient. Besides, the setting up of different institutions and the implementation of several programmes need to be accompanied by the necessary budgetary and human resources. Training of police on human rights related legislation has started only recently.

Bulgaria must transpose the EU *acquis* on discrimination and remove its discriminatory provisions in the Criminal Code. Bulgaria must further take steps to ensure that fundamental human rights are fully respected, especially that in practice all detained individuals who cannot afford a lawyer have access to legal aid and medical care. Respect of the right to privacy should also be ensured, as well as effective prevention of torture and inhuman or degrading treatment (both children and prisoners) and of discrimination of ethnic, religious and social minorities. Prison conditions need to be improved and training of the entire police on human rights is necessary.

RESTREINT UE

Serious improvement is needed in the field of child protection, especially with regard to the current situation in some homes. The Child Protection Agency must become fully operational and the full implementation of the UN Convention on the Rights of the Child must be ensured, together with sufficient administrative capacity which functions efficiently. With regard to Roma, further concrete actions and adequate financial resources are still required.

G. Corruption

Corruption is widespread in Bulgaria. Furthermore, according to the polls, and contrary to the situation in several other applicant countries, the main sector concerned is not the health sector, but sectors directly related to the JHA *acquis* (customs, police, justice.) The formal *acquis* concerning corruption and money laundering has recently been put in place (clarification is still needed on whether items have been adopted or still only drafted). National programs have been adopted. They have not modified public perception of the phenomenon. Bulgaria still ranks among the most corrupted candidate countries.

Bulgaria is clearly making efforts to align its legislation. However, implementation is a serious problem. With regard to the judiciary, as at present no objective criteria exist yet for the recruitment of staff or any neutral standards for case assignment, the risk of corruption exists. Both requests to the Supreme Judicial Council to lift magistrates' immunity and its lifting in practice are rare. A Code of Ethics currently exists only for judges, and not for prosecutors and investigators. Customs, the most corrupted service, is still in the process of being reorganised. Police is poorly trained to investigate cases of corruption, even though recent figures are now available.

Bulgaria must continue its efforts to align to the relevant legislation and present clear timetables regarding the necessary amendments to the Criminal Code and adjustment of the criteria for their election, appointment and dismissal.

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It should actively implement its national plans against corruption, train police officers in implementing the legislation and disclose and investigate on these issues, promote teamwork among police officers, investigators and prosecutors, and focus on setting up the organisational reforms proposed in the framework of twinning in customs and not only on the equipment/financial aspects of EU assistance.

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