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THE EUROPEAN UNION**

Brussels, 27 June 2002

**8607/1/02
REV 1 EXT 1**

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**EVAL 14
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EXTRACT FROM REPORT

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

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.

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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.

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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.

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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.

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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.

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.

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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)

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.

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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