

**EUROPEAN UNION COMMON POSITION  
(Replaces doc. 20151/02 CONF-BG 10/02)**

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Subject : Chapter 24: Cooperation in the Fields of Justice and Home Affairs

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This position of the European Union is based on its general position for the Accession Conference with Bulgaria (CONF-BG 2/00), and is subject to the negotiating principles endorsed by the Accession Conference (CONF-BG 14/00), in particular:

- “any view expressed by either party on a chapter of the negotiations will in no way prejudice the position which may be taken on other chapters;
- agreements – even partial – reached during the course of the negotiations on chapters to be examined successively may not be considered as final until an overall agreement has been established”.

The EU underlines the importance for Bulgaria of compliance with the Europe Agreement as well as the Accession Partnership, which constitute basic elements of the enhanced pre-accession strategy. The EU encourages Bulgaria to continue the alignment of its policies with the *acquis* and its effective implementation.

The EU notes that Bulgaria, in its positions (CONF-BG 9/01, 19/01, 46/02 and 19/03), accepts the *acquis* under chapter 24 as in force on 30 November 2002, including the Schengen *acquis* as integrated in the EU framework. The EU notes that Bulgaria declares that it will be able to implement this *acquis* by 1 January 2007. The EU also takes note of the additional information provided by Bulgaria (CONF-BG 55/02 + ADD 1-35, 3/03 + ADD 1-4, 16/03, 17/03 and 20/03).

The EU recalls that, in conformity with its objectives, as set out in Article 2 of the Treaty on European Union, it shall “maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime”. The EU also draws Bulgaria’s attention to the fact that, with the entry into force of the Amsterdam Treaty, Community policies have been introduced on internal and external borders, visas, asylum, immigration and judicial cooperation in civil matters.

The EU also recalls that the European Council in Tampere, in October 1999, stated that “the challenge of the Amsterdam Treaty is to ensure that freedom, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice accessible to all. It is a project which responds to the frequently expressed concerns of citizens and has a direct bearing on their lives”.

The EU recalls its general position for the Accession Conference with Bulgaria on 8 February 2000 (CONF-BG 2/00, paragraph 23), in which it states that: “With regard to Justice and Home Affairs, accession to the European Union will entail that you:

- a) accept in full on accession the Justice and Home Affairs provisions, and the working practices designed to give them effect, of the Treaty on European Union (in particular Title VI) and the EC Treaty (in particular Title IV), as amended in each case by the Treaty of Amsterdam;
  
- b) in respect of those conventions or instruments in the field of Justice and Home Affairs, which are inseparable from the attainment of the objectives of the Treaty on European Union and the EC Treaty, as amended in each case by the Treaty of Amsterdam, as well as those drawn up by the Council on the basis of Article 34 of the TEU following the coming into force of the Treaty of Amsterdam, including the creation of Europol:
  - i) undertake to accede to those which have been drawn up by the Council or those signed by, or which have been opened for signature to, the Member States by the date of your accession to the Union;
  
  - ii) accept, in relation to those still under negotiation, the points which have been agreed on by the Fifteen or by the Council at the date of your accession to the Union, participating in subsequent negotiations within the Union framework only on those points still to be resolved;
  
- c) accept on accession the joint actions, joint positions adopted by the Council and resolutions, decisions and statements adopted by the Fifteen or by the Council in the field of Justice and Home Affairs and accept, in relation to those still under examination, the points which have been agreed on by the Fifteen or by the Council at the date of your accession to the Union, participating in subsequent deliberations only on those points still to be resolved;

- d) introduce administrative and other arrangements, such as those already adopted by the Fifteen or by the Council, so as to ensure close practical cooperation between Member States' institutions and organisations working in the field of Justice and Home Affairs, as is necessary effectively to implement the *acquis*;
- e) bring your institutions, management systems and administrative arrangements up to Union standards with a view to implementing effectively the *acquis*, and in particular adopt and implement measures with respect to external border controls, asylum and immigration, and measures to prevent and combat organised crime, terrorism and illicit drug trafficking.

With the entry into force of the Amsterdam Treaty on 1 May 1999, the Schengen *acquis*, including the safeguard clause and the implementation mechanisms provided for in the Schengen Agreement, is integrated into the framework of the European Union. You will need to provide the conditions and procedures applied to the Schengen cooperation before controls at internal borders can be lifted.”

The EU stresses that implementation of practical measures as identified elsewhere in this common position is essential in the run up to accession. The EU will therefore continue to take the closest interest in the progress of Bulgaria in both the adoption and the practical implementation of the *acquis* in these areas, as well as in the performance of the relevant institutions, management systems and administrative arrangements. Moreover, given the importance and complexity of the *acquis* under this chapter, the EU will reinforce the existing monitoring process, within a uniform and consistent framework, paying particular attention to Bulgaria's administrative and judicial capacity and performance in implementing and effectively enforcing the *acquis*. Reinforced monitoring will include increased coordination of all available information sources, as well as peer reviews. In this context, Bulgaria is invited to provide information to the Conference on a regular basis, and at least every six months, on progress made in implementing the *acquis*.

The EU recalls that it is devoting significant resources to support Justice and Home Affairs preparations in the candidate countries, given the priority of this area. However, the EU underlines that, as a matter of principle, the implementation of the *acquis* for the purpose of accession cannot be made conditional upon the Community's financial assistance.

The EU reaffirms its intention to continue after enlargement close and cooperative relations with its neighbours, including in the field of Justice and Home Affairs.

### **The Schengen Action Plan**

The EU recalls that Article 8 of the Protocol integrating the Schengen *acquis* into the framework of the European Union states that: "For the purposes of the negotiations for the admission of new Member States into the EU, the Schengen *acquis* and further measures taken by the institutions within its scope shall be regarded as an *acquis* which must be accepted in full by States candidates for admission." Furthermore, the EU underlines that the decision confirming the capacity of each state acceding to the EU to implement the Schengen *acquis*, thus permitting the removal of controls at internal borders, will take into account all elements listed in the Decision of the Executive Committee of 14 December 1993 concerning the declarations by the Ministers and State Secretaries (SCH/Com-ex (93) 10). The EU underlines the sensitivity of this subject and points out that the lifting of internal border controls will require a separate decision, to be taken unanimously after Bulgaria's accession to the EU and in conformity with the relevant EU provisions.

The EU reiterates that Bulgaria will need to satisfy as soon as possible all the preconditions for bringing the full Schengen *acquis* in force, and encourages Bulgaria to prepare early for full implementation. The EU recognises that those Schengen provisions intrinsically linked to the lifting of internal border controls cannot be implemented upon accession, but only once the internal border controls are lifted.

The EU further underlines that the Schengen Action Plan should cover all policy areas included in the Schengen *acquis*. For each of these areas the Schengen Action Plan should set out the objectives, the actions needed, a timetable and the state of play. It also should make a clear distinction between the requirements that must be applied upon accession to the EU and those which are connected to the Council Decision for the lifting of internal border controls. Bulgaria's further efforts in this respect should be in conformity with the "List of provisions of the Schengen *acquis*" sent to Bulgaria on 28 September 2001. In this regard, the EU also draws Bulgaria's attention to the EU Schengen Catalogues for recommendations and best practices.

The EU notes the information provided by Bulgaria (CONF-BG 55/02 and 16/03), in complement to its Schengen Action Plan (CONF-BG 73/01). The EU also takes note of the updated Schengen Action Plan (CONF-BG 3/03 ADD 4), which reflects progress made and the changes in policy towards border management as well as providing a detailed overview of Bulgaria's intention to implement the updated Schengen Action Plan.

The EU takes note of the explanation given by Bulgaria that the deadline set for implementing Article 2 of the Convention Implementing the Schengen Convention of 14 June 1985 is only related to the preparation of the necessary national legislation in this regard.

The EU takes note of the information provided by Bulgaria (CONF-BG 55/02) that a separate Border Security Act is no longer envisaged and that all the principles, including tasks and powers of border guards, already set out in the draft of the Act will be used instead to amend the Ministry of the Interior Act, its implementing regulations and other secondary legislation. The EU notes that the amendments to the Ministry of the Interior Act were approved by the Bulgarian Council of Ministers on 30 July 2003 and that their adoption is foreseen for 30 December 2003. The EU also notes that the necessary secondary legislation will be adopted by 31 December 2004. The EU further notes that Bulgaria intends to introduce by June 2004 a three-stage border guard management system, to draft and adopt by 31 December 2004 the Strategy for Integrated Border Management, and to set up joint mobile units for in-depth checks in the border zone by 30 June 2005. In this context, the EU also notes the detailed information provided by Bulgaria on the current legislation on border crossing, which was to be fully aligned with the *acquis* at the end of June 2003. The EU invites Bulgaria to keep the Conference informed of progress made and underlines that it will closely monitor the adoption of the legislation foreseen as well as the Strategy for Integrated Border Management.

The EU notes the information provided by Bulgaria on the extension of the Automated Information System and the databases developed in this context, as well as the establishment of direct access for all border checkpoints and Regional Directorates of the Ministry of the Interior.

The EU notes the detailed information provided by Bulgaria (CONF-BG 55/02 and 3/03 ADD 4) on the allocation of technical equipment at all its borders and the measures planned to improve allocation according to the Public Investment Programme. The EU also notes that this Programme will be updated regularly on the basis of the available financial means and in view of specific border situations. In this context, the EU encourages Bulgaria to ensure that it will allocate sufficient financial means to provide for adequate technical equipment at its borders.

The EU notes that Bulgaria phased out the use of conscripts in border surveillance tasks in September 2002 and replaced them with professional border police staff. In this context, the EU takes note of the detailed information (CONF-BG 55/02 and 16/03) provided by Bulgaria on the distribution of staff along its various borders, the training provided for the newly recruited border police and the specialised training programmes for all staff. The EU further notes that Bulgaria filled the remaining vacancies (136) at the end of June 2003 and that training of the new recruits has started. In this context, the EU underlines the need for Bulgaria to reinforce its border staff at the future external borders, in particular its borders with Serbia and Montenegro and FYROM. As regards training, the EU stresses the importance of ensuring the training of border surveillance staff in the areas of management, techniques for border checks, investigative techniques and the prevention of border violations.

The EU notes the detailed information provided by Bulgaria (CONF-BG 55/02) on border surveillance carried out at Bulgaria's land and sea borders, including the available equipment. The EU notes that as regards equipment, priority is given to the land border with Turkey. In this context, the EU encourages Bulgaria to also upgrade the equipment at the land borders with FYROM and Serbia and Montenegro. The EU further notes Bulgaria's plans to upgrade the radio surveillance system at the Black Sea border and to set up Technical and Surveillance Posts equipped with modern surveillance equipment at the Danube River in the period 2003-2005. Given the importance of adequate surveillance of the land and sea border, the EU underlines that it will closely monitor progress made.

The EU takes note of the detailed information provided by Bulgaria (CONF-BG 55/02 ADD 1, 2, 3, 5 and 6 and 3/03 ADD 4) on the measures planned to improve border cooperation with Greece and Romania. In this context, the EU also notes the intention to increase bilateral and multilateral cooperation with the Black Sea region countries including the establishment of the Centre for coordination, control and exchange of information on Black Sea traffic. The EU encourages Bulgaria to intensify its efforts to start negotiations on border cooperation with Serbia and Montenegro, FYROM and Turkey.

The EU notes the information provided by Bulgaria (CONF-BG 3/03 ADD 4 and 16/03) on its preparatory measures for the adaptation of Sofia airport to the Schengen requirements on the separation of passenger flows by 31 January 2005. The EU further takes note of Bulgaria's statement that given the existing infrastructure at the two seaports (Varna and Burgas) and the two river ports (Russe and Lom) no adaptations are necessary and that separate lanes for EU/EEA and non-EU/EEA nationals are already established.

The EU notes the information provided by Bulgaria (CONF-BG 55/02) on its policy as regards the issue of visas for seamen in transit. The EU informs Bulgaria of the entry into force on 1 May 2003 of Regulation (EC) 415/2003 of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit.

The EU notes the information provided by Bulgaria (CONF-BG 55/02 and 3/03 ADD 4) on the developments on cross border cooperation with Greece and Romania as regards hot pursuit and cross border surveillance.

The EU underlines that it will closely monitor the implementation of the Schengen Action Plan as updated and invites Bulgaria to inform the Conference on a regular basis of progress made.

## **Reform of the Judiciary**

The EU underlines the importance of respect for human rights and fundamental freedoms, as guaranteed by the European Convention on the Protection of Human Rights and Fundamental Freedoms, as general principles of Community law.

The EU stresses that the establishment of an independent, reliable and efficient judiciary is of paramount importance. This notably requires sufficient financial resources and an efficient resource allocation system, sufficient human resources and qualified staff, objective and transparent recruitment, evaluation and promotion procedures relying on national standards established by the Supreme Judicial Council, as well as effective sanctions for inefficiency or prosecution for criminal offences, adequate and modern equipment, distribution of cases to magistrates and public prosecutors according to objective and transparent procedures, acceleration of court proceedings, reduction of the number of pending cases to avoid unreasonable delays, adequate public information on the progress of cases, and measures to ensure the adequate enforcement of judgments. The EU draws Bulgaria's attention to the fact that the enforcement of judgments is of particular importance in the light of the development at the European Union level of the principle of mutual recognition of decisions in civil and criminal matters, and recalls that EU instruments are already based upon this principle. Furthermore the EU underlines the importance of effective access to justice, including a system of legal aid, as well as effective witness protection and confidential preliminary proceedings, particularly in cases involving organised crime.

The EU notes that Bulgaria is engaged in a comprehensive effort to substantially reform its judicial system. In this context, the EU notes the adoption of the updated National Strategy on the Reform of Judiciary on 3 April 2003 and the updated Action Plan for its implementation on 10 April 2003 (CONF-BG 3/03). The EU also notes that amendments to the Judicial System Act, which were adopted on 31 July 2002, were necessary in order to provide the legal basis for this Strategy. The EU notes that, further to the decision of the Constitutional Court declaring 44 provisions of the amended Judicial System Act unconstitutional, new amendments to the Judicial System Act were adopted by the National Assembly on 3 July 2003, and that most parts of the secondary legislation necessary for the implementation of the amendments to the Judicial System Act have been adopted, while the remaining parts are under preparation. The EU further notes that on 23 April 2003, the National Assembly established an ad-hoc Committee for the discussion and drafting of proposals for amendments to the Constitution and that amendments to the Constitution on the mandate, immunity and conditions of removal from office of magistrates (judges, prosecutors and investigators) were adopted by the National Assembly on 24 September 2003. The EU also notes that on 30 July 2003, the mandate of the above-mentioned ad-hoc Committee was extended to elaborate proposals on the pre-trial phase and the composition, powers and mandate of the Supreme Judicial Council. The EU considers that the updated Strategy and its related updated Action Plan, taking into account the ruling of the Constitutional Court and other relevant developments, are a positive step in the reform. The EU notes however, that implementation is in its initial stage and has encountered delay. The EU therefore invites Bulgaria to provide the necessary commitment to ensure implementation of the updated Action Plan implementing the updated Strategy on the Reform of the Judiciary (CONF-BG 3/03) without further delay and according to the time schedule set, including concrete commitments to allocate sufficient funding (both for personnel and equipment); and to report every six months as of March 2004 on progress in its implementation, in particular regarding the reform of the pre-trial phase and the status of magistrates, and progress in the discussions on the role of the Supreme Judicial Council and its relations with the Ministry of Justice.

Furthermore, the EU urges Bulgaria to keep the Conference informed on progress made as regards the implementation of the National Institute of Justice training programme and to ensure that sufficient funding will be made available. In particular, the EU underlines the importance it attaches to the training of magistrates according to EU standards.

The EU underlines the importance of further improvement of the legal aid system with a view to guaranteeing equal access to justice for all citizens and urges Bulgaria to implement its plans as envisaged. In this context the EU invites Bulgaria to provide the necessary commitment to ensure full implementation of these plans.

The EU also notes the information provided by Bulgaria (CONF-BG 55/02 and 16/03) on the role, place and functioning of the investigative bodies and the penal immunity of magistrates (judges, prosecutors, investigators). The EU further notes Bulgaria's intentions to address the functioning of the pre-trial phase, which is envisaged for the period 2003-2005, in particular to include amendments in the Penal Procedure Code and the Judicial System Act by the end of 2004 and if necessary to amend the Constitution. The EU underlines that these intentions are long-term and are likely to hamper any fundamental reform of the pre-trial phase. The EU therefore invites Bulgaria to provide a strong and clear commitment to pursue reform of the pre-trial phase in accordance with the best practices in EU Member States and Articles 5 and 6 of the European Convention on Human Rights as well as the case law of the European Court of Human Rights as a matter of the highest priority. These reforms must ensure that the future pre-trial phase system is efficient and transparent and that any overlap is avoided, including the limitation of competences of sledovateli and their clear separation from those of criminal investigators (doznateli) and that it ensures equal treatment for all citizens. This commitment should include an undertaking to ensure the timely adoption of amendments to the Penal Procedure Code, the Judicial System Act, as well as the Constitution as necessary. In this context the EU invites Bulgaria to seriously consider making any relevant constitutional changes as soon as possible and by the end of 2005 at the latest, in order to provide a sound legal basis for the planned changes to the Penal Procedure Code and the Judicial System Act and to avoid the risk of their annulment. The EU will closely monitor progress in this area and invites Bulgaria to report every six months on progress as of March 2004.

The EU further draws Bulgaria's attention to the fact that penal immunity for magistrates (judges, prosecutors and investigators) is not provided for in any of the judicial systems in the EU Member States. The EU notes that the National Assembly adopted amendments to the Constitution in this regard on 24 September 2003 and therefore urges Bulgaria to revise the Penal Procedure Code accordingly.

The EU further notes the information provided by Bulgaria (CONF-BG 55/02, 3/03 and 16/03) on the division of tasks and responsibilities between the Ministry of Justice and the Supreme Judicial Council. The EU notes however, that it is not yet clear whether constitutional changes are necessary as regards the composition, powers and mandate of the Supreme Judicial Council, as well as regards the relation between the Council and the Ministry of Justice. In this context, the EU also notes that, although the division of tasks between the two bodies is provided for in the legislation, the coordination structure still needs considerable attention, in particular as regards the Council's responsibility for administering the budget for the judiciary and the cooperation between the administrative units within the Ministry of Justice and the administrative units within the Council. The EU underlines the importance of ensuring the effective independence of the Supreme Judicial Council from the Ministry of Justice and therefore invites Bulgaria to provide the necessary commitment to fully implement the division of tasks and responsibilities between the Supreme Judicial Council and the Ministry of Justice as provided for in the Judicial System Act. Moreover the EU underlines the need to take the appropriate measures according to the outcome of the discussions concerning the composition, powers and mandate of the Supreme Judicial Council, while at the same time taking into account the necessity of mutual control ("checks and balances") in the relations between the Supreme Judicial Council and the organs of other constitutional powers. The EU also underlines the importance of reinforcing the capacity of the Supreme Judicial Council in disciplinary matters.

The EU notes the information provided by Bulgaria (CONF-BG 55/02 and 3/03) on the preparatory measures for the reduction of the duration of court proceedings and the adequate enforcement of judgments. The EU notes however that amendments to the Civil Procedure Code and to the Penal Procedure Code only entered into force recently (November 2002 and 24 June 2003 respectively). In this context, the EU underlines the need for Bulgaria to further simplify procedures. The EU therefore invites Bulgaria to provide the necessary commitment to provide detailed statistics at the end of 2003, covering the period 2000-2003 and including a specification of the duration of court proceedings, in order to be able to assess the impact of the amendments to the Civil and Penal Procedure Codes. The EU further underlines that the simplification of procedures and the limitation of the duration of court proceedings to the strict minimum should be key objectives in the drafting and adoption of the new Civil Procedure and Penal Procedure Codes by June 2005 and the Administrative Procedure Code by the end of 2005.

The EU takes note of the information provided by Bulgaria (CONF-BG 55/02 and 16/03) on the measures planned for improving the occupational status of magistrates (judges, prosecutors and investigators) and strengthening the judicial review of decisions of the executive. The EU notes that the amendments to the Judicial System Act provide for upgrading the status of magistrates by introducing administrative support to judges and financial benefits for magistrates as well as security of court buildings. The EU also notes that the measures to strengthen the judicial review of decisions of the executive include the establishment of specialised administrative courts and the adoption of an Administrative Procedure Code in 2005. The EU further notes that measures for improving the fight against corruption are foreseen and will be completed by the end of 2005.

The EU underlines that it will closely monitor the overall implementation of the updated National Strategy for the Reform of the Judiciary and the updated Action Plan, in particular the implementation of judicial reform, the budget available, the adoption and implementation of necessary legislation, the strengthening of judicial capacity in general, the harmonisation of the training of magistrates (judges, prosecutors and investigators) and the reduction in duration of court proceedings, as well as the strengthening of the judicial review of decisions of the executive.

## **Data protection**

The EU underlines that effective personal data protection is essential for compliance with the *acquis* under the present chapter, particularly with regard to participation in the Schengen Information System, police cooperation, including participation in Europol, and customs cooperation. The EU stresses that effective personal data protection under the present chapter requires acceding to the Council of Europe *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (Strasbourg, 1981), guaranteeing the independence of the data protection supervisory authority and ensuring respect for the rights of the individual.

The EU takes note of Bulgaria's statement whereby all necessary amendments to existing legislation and secondary legislation to ensure full implementation of the Personal Data Protection Act, were adopted and entered into force on 1 January 2002. In this context, the EU notes that the amendments to the Ministry of the Interior Act including regulations on the use of police information, were adopted on 6 February 2003 and that the Classified Information Protection Act entered into force on 3 May 2002. The EU also takes note that under these Acts the system for the registration of automated databases and the security unit will be set up by 31 December 2003.

The EU notes that Bulgaria ratified the Council of Europe *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (Strasbourg, 1981) in June 2002 and that the ratification instrument was officially submitted to the Council of Europe on 18 September 2002.

The EU takes note of the information provided by Bulgaria (CONF-BG 55/02 and 16/03) on the preparations for the establishment of the Commission for Personal Data Protection, originally planned for September 2002. The EU notes that according to the information provided, the Commission is not yet operational and that serious and considerable efforts are still required to strengthen the capacity of this Commission. In this context the EU notes that recruitment in order to increase the administrative staff, including training, will only start in September 2003, that suitable premises have only recently been identified and that the required equipment is not yet available. Therefore, the EU invites Bulgaria to provide a commitment to accelerate the necessary measures (suitable building, recruitment and training of staff, sufficient equipment) and, in any event, to make the Commission fully operational within the already extended deadline of end 2003 and to continue to ensure the availability of the necessary financial means.

The EU underlines that it will closely monitor further legislative and institutional developments, especially the establishment of the Commission for Personal Data Protection.

### **Visa policy**

The EU recalls that with regard to the visa regulation (Regulation (EC) 539/2001, as amended by Regulation (EC) 2414/2001), Bulgaria will need to adopt the necessary provisions and put in place the necessary administrative structures in advance of accession, in order to ensure effective implementation upon accession.

The EU notes that the new regulation on the terms and procedures for issuing visas of 25 April 2002 (CONF-BG 55/02 ADD 13), entered into force on 17 May 2002 and that the EU visa lists are annexed to it. The EU takes note that Bulgaria reaffirms its commitment to introduce the visa obligation for nationals of Serbia and Montenegro and FYROM upon accession and is committed to implement the decision from December 2000 on the introduction of visas for Tunisian nationals on 31 December 2003 (CONF-BG 55/02 and 3/03 ADD 4). Furthermore, the EU takes note of the preparatory measures to revoke the visa obligations for 20, mostly Latin-American, countries and of Bulgaria's commitment to align fully with the *acquis* on visa obligations by accession.

The EU notes that alignment with Regulation (EC) 1683/1995 as amended by Regulation (EC) 334/2002 on the uniform format for visas is well advanced. In this context, the EU takes note of the information provided by Bulgaria on the installation and putting into operation of the technical equipment for issuing the new visa sticker in all diplomatic missions and consular representations by the end of 2003.

The EU also notes that the list of countries whose nationals are required to obtain an airport transit visa (ATV), fully in line with Annex 3 of the Common Consular Instructions, was adopted on 25 April 2002 and entered into force on 17 May 2002 (CONF-BG 55/02 ADD 13). The EU also notes that two more countries (Liberia and Sudan) were included in this list and confirms that this is in line with the *acquis*.

The EU takes note that secondary legislation to implement the amendments to the Foreign Nationals Act of 27 April 2001 as regards the Schengen *acquis* on obtaining a visa at the border in exceptional cases (e.g. humanitarian circumstances), entered into force on 17 May 2002 (CONF-BG 55/02 ADD 13, Annex 4).

Furthermore, the EU notes the progress made by Bulgaria concerning the on-line system by means of which the authorities issuing visas can contact the central authority, although the EU also notes that there is still a certain delay. In this context, the EU notes that at present 66 diplomatic and consular missions are connected and that the remaining 27 missions will be connected by the end of 2003.

The EU notes that 30% of Bulgaria's diplomatic and consular missions issuing visas are already equipped with basic equipment to detect forged and falsified documents. The EU takes note that further improvement of the equipment in accordance with Council Recommendation of 29 April 1999 on the provision for the detection of false or falsified documents will be achieved by accession (CONF-BG 55/02). The EU encourages Bulgaria to accelerate its efforts in this regard and invites Bulgaria to keep the Conference informed of progress made.

The EU takes note of the information provided by Bulgaria on the measures taken for training diplomatic and consular mission staff for which a modified training module will be completed by the end of June 2003.

The EU underlines that it will closely monitor further progress in this area, in particular Bulgaria's commitment to introduce the visa obligation for Tunisian nationals, as well as the on-line connection of all diplomatic and consular missions to the central authority, the purchase and installation of equipment to detect forged or falsified documents in all diplomatic and consular missions, and the training for all diplomatic and consular staff.

### **External borders**

The EU recalls that, in compliance with Article 6 of the Convention implementing the Schengen Agreement, an equal degree of control shall be exercised at external borders and has to be carried out in accordance with uniform principles. In compliance with Article 2, paragraph 2 of Protocol N°2 integrating the Schengen *acquis* into the framework of the European Union, together with the Decision of the Executive Committee of 14 December 1993 concerning the declarations by the Ministers and State Secretaries (SCH/Com-ex (93) 10) and the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (SCH/Com-ex (98) 26 def.), the EU also underlines that Bulgaria will need to satisfy as soon as possible all the preconditions contained in these Decisions for bringing the Schengen *acquis* into force. This includes having an operational National Schengen Information System. These preconditions will have to be met before a decision of the Council can be taken to lift internal border controls as far as Bulgaria is concerned. The EU encourages Bulgaria to achieve a high level of external border control upon accession, both at its sea and land borders. This means that all persons crossing the external borders are checked in a systematic way demonstrating Bulgaria's capability to align itself with Schengen principles, and that effective border surveillance is ensured between authorised border crossing points.

The EU underlines the need for effective control of Bulgaria's borders, including its international airports and ports, by specialised trained professionals, properly equipped, with the powers to tackle border related crimes. This is particularly important for combating illegal immigration, drug trafficking and car trafficking, as well as for preventing the trafficking of human beings and economic exploitation of migrants. The EU invites Bulgaria to take the necessary steps to ensure the effective control of the external border. In this respect, it is essential that the necessary training is given, infrastructure and equipment put in place and coordination between authorities organised, in particular between the regional police and the border police. Furthermore, the EU urges Bulgaria to cooperate more closely with Member States on border control.

As regards Bulgaria's borders with those neighbouring countries which will be EU Member States or candidate countries upon Bulgaria's accession,<sup>1</sup> the EU recalls that it could envisage specific bilateral arrangements, which take into account the overall situation at each border section. The EU considers that this would allow for a smooth transition when internal border controls are lifted, and avoid unnecessary investments. At these temporary external borders, the systematic checks of persons crossing the border could be carried out by the border control authorities on each side of the border working in cooperation. Shared infrastructure and removable and/or shared equipment, as well as joint patrols could also be considered.

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<sup>1</sup> Greece remains fully responsible for the control of the Schengen external borders until the lifting of the internal border controls.

The EU underlines that, should the Council decide to lift the internal border controls for Bulgaria at an earlier stage than for a neighbouring country, Bulgaria would become fully responsible for the control of its Schengen external borders. This implies that Bulgaria will have to protect its external Schengen borders without exception according to the Schengen *acquis*. The EU further underlines that before such a Council decision could be taken, Bulgaria must have taken the necessary steps to ensure the control of its borders, including those borders with those Member States or candidate countries with which internal border controls would not yet have been lifted.

The EU further underlines that cooperation between all national authorities working in the field of border security (including police, customs and the prosecution service) is essential for an effective border security system. The EU underlines that an accountable, reliable and effective method of organisation is essential for adequate implementation of the national border security strategy. The EU will closely monitor Bulgaria's practical implementation capacity in these respects.

The EU notes the information provided by Bulgaria (CONF-BG 55/02) on the simplified border crossing regime between Bulgaria and Serbia and Montenegro and between Bulgaria and Romania and that the existing agreements, which have been suspended in practice, will be officially denounced through diplomatic channels upon accession. The EU draws Bulgaria's attention to the fact that until any other decision has been taken, visa exemptions on grounds of local border traffic would not be in line with the *acquis*. In this context, the EU also notes that Bulgaria has no intention to conclude agreements on simplified border crossings with FYROM and Turkey.

The EU takes note of Bulgaria's intentions to further improve internal cooperation between the national authorities working in the field of border security, in particular through the development of a Strategy for Integrated Border Control by the end of June 2004. In this context, the EU also takes notes of Bulgaria's statement (CONF-BG 55/05 and 16/03) that internal cooperation is carried out on the basis of Memoranda of Understanding and that until the above-mentioned Strategy has been drawn up coordination will be carried out through the Interagency Border Checkpoint Council.

The EU takes note of the information provided by Bulgaria (CONF-BG 55/02) on its readiness to implement the contents of the Joint Action of 8 December 1998 to create a European archiving system (FADO).

## **Migration**

The EU notes that with the entry into force on 27 April 2001 of the Act amending the Foreign Nationals Act, Bulgaria has aligned its legislation with the *acquis* on family reunification, on entry and stay for the purpose of employment, self-employment and studies, as well as on the status of third-country nationals residing on a long-term basis and the uniform format of residence permits (CONF-BG 55/02 + ADD 18-21). In this context, the EU notes that further amendments were adopted on 9 April 2003. The EU also notes that Bulgaria no longer intends to draft an Immigration Act, and will instead amend the Ministry of Interior Act so as to provide for the establishment of a new Migration Directorate. In this context however, the EU notes that the original deadline foreseen for adoption (end March 2003) has not been met. The EU invites Bulgaria to keep the Conference informed on progress made on the adoption and entry into force of the amendments to the Ministry of Interior Act, including the deadlines set for full implementation.

The EU takes note of stricter measures taken by Bulgaria in October 2002 aiming at tightening the control over irregular migration from Bulgaria to other countries, especially the revision of the Law on Bulgarian Identity Documents and the provisions of the Asylum and Refugees Act. The EU invites Bulgaria to keep the Conference informed on the state practice which penalises irregular exit from the country.

The EU takes note of the information provided by Bulgaria on the relevant provisions in the Foreign Nationals Act and the Employment Promotion Act regarding the fight against illegal migration and illegal employment (CONF-BG 55/02 + ADD 20). In this context, the EU also notes the importance of establishing the National Migration Service and further notes Bulgaria's intention to open in 2004, at its border with Turkey, one special centre for temporary accommodation for aliens staying illegally in Bulgaria. The EU encourages Bulgaria to implement its plans according to the (already extended) deadlines set.

The EU takes note of the information provided by Bulgaria on its alignment with the accompanying measures mentioned in Title II, chapter 6 (Articles 26 and 27) of the Convention implementing the Schengen Agreement of 14 June 1985 (CONF-BG 55/02 + ADD 21). The EU notes that with the amendment to the Foreign Nationals Act on 9 April 2003, Bulgaria's legislation is now fully aligned with the *acquis*, including Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement.

The EU takes note of the overview provided by Bulgaria on the state of play as regards readmission agreements, and notes that in the period 2001-2003, 11 new agreements were concluded. The EU also takes note of Bulgaria's measures to conclude similar agreements with Turkey, Estonia, the Russian Federation and Tunisia. In this context, the EU underlines that national readmission agreements should consistently comply with EU standards, in particular the Recommendation of 30 November 1994 concerning a specimen bilateral readmission agreement.

The EU takes note of the detailed information provided by Bulgaria on the legislative provisions (Ministry of the Interior Act, Penal Procedure Code, Foreign Nationals Act and Administrative Procedure Act) and on the organisation of judicial control on detention before expulsion (CONF-BG 55/02 + ADD 21).

The EU underlines that it will closely monitor further progress in this area, in particular the establishment of the National Migration Service.

## **Asylum**

The EU notes that instead of amending the Refugees Act of 1999, Bulgaria adopted a new Asylum and Refugees Act, which entered into force on 2 December 2002 (CONF-BG 55/02 ADD 17). The EU notes, however, that the text of the exclusion and cessation clauses (Articles 13 and 16) are prone to misunderstanding because they do not differentiate between refusal, discontinuation of the procedure and withdrawal, in particular when applied in the accelerated procedure, as required under the 1951 Geneva Convention. The EU therefore invites Bulgaria to provide the necessary commitment to amend the relevant Articles so as to provide for a clear distinction between refusal, discontinuation of the procedure and withdrawal.

The EU takes note of the explanation given by Bulgaria on the provisions setting a time limit for lodging an asylum application (Articles 16(7) and (8)). The EU however considers that such provisions, introduced without any explanation for their application, could be a risk to the right of protection of asylum seekers. The EU therefore encourages Bulgaria to revise the relevant provisions in such a way as to make clear that missing the time limit cannot be the sole ground for rejection of an asylum application. Furthermore, the EU underlines the importance of flexibility in the application of the concepts of "safe third country" and "safe country of origin" in line with European guidelines and practices.

The EU notes that Bulgaria's legislation is already aligned with the main provisions of Regulation (EC) 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application (former Dublin Convention) and the EURODAC Regulation, and that Bulgaria is taking organisational measures for its active participation in EURODAC upon accession. In this context, the EU stresses the need to ensure a timely and EU-consistent implementation of EURODAC.

The EU also notes the detailed information provided by Bulgaria (CONF-BG 55/02) on the implementation of the legal provisions as regards the integration of recognised asylum seekers and the measures taken to cover the financial consequences of these provisions, as well as on family reunification. In this context, the EU notes that Bulgaria is planning to extend the financial support for housing recognised refugees for which a plan was submitted to the Minister of Finance on 25 February 2003.

The EU further notes the detailed information provided by Bulgaria (CONF-BG 55/02) on reception centres, the provision for legal aid, the reception conditions and the intention to open two new transit centres for refugees by the end of 2005. In this context, the EU also notes the information provided by Bulgaria on the capacity, including equipment and training, of the Agency for Refugees for which further strengthening of capacity is envisaged by the end of 2003. The EU invites Bulgaria to keep the Conference informed of progress made, in particular the improvement of the reception capacity and the subsequent increase of capacity of the Agency for Refugees, as well as its cooperation with law enforcement agencies.

The EU underlines that it will closely monitor further progress in this area.

### **Police cooperation**

The EU underlines the important principle of having an accountable, reliable and fully coordinated police organisation. The EU recalls that this police organisation needs to be operational in order to be able to fully and properly implement the *acquis* by the date of accession at the latest. This is essential in particular for the fight against organised crime (*inter alia* trafficking in human beings, especially women, trafficking in drugs and illegal transfer of motor vehicles) and new types of crime (financial crime, money laundering and "high-tech" crime). This presupposes practical and effective cooperation and flow of information between institutions working in this field, the availability of a computer-assisted search facility, basic and further training tailored to the fight against specific types of crime, as well as national statistical instruments for measuring the crime rate and clearing up rate. The EU therefore urges Bulgaria to adopt a strategy and action plan for the reform of the police, so as to ensure that the Bulgarian police will be able to apply effectively the *acquis* upon accession.

The EU underlines the particular importance it attaches to effective cooperation and coordination between the institutions in the criminal justice system, including the Ministries of the Interior, Finance and Justice and their agencies, the police, the National Service for Combating Organised Crime, the Bureau of Financial Investigation, customs, the tax administration and the judicial branch. This also applies to their internal division of competences and tasks, as well as to police cooperation at international level. To this end, obstacles to cooperation should be systematically removed, including banking secrecy and tax laws where these prevent effective action against organised crime.

The EU takes note of the information provided by Bulgaria (CONF-BG 55/02 ADD 23) as regards the establishment of the National Contact Point and that the necessary amendments to the Ministry of the Interior Act were adopted on 6 February 2003 and that rules for its implementation were adopted on 10 April 2003. The EU further notes the information provided by Bulgaria on the functioning, staffing and training of the National Contact Point, that further improvements will continue until the end of December 2003 and that a uniform digital communication system for police cooperation will be designed by 31 December 2005.

Furthermore, the EU notes that the amendments to the Penal Code, aligning Bulgaria's legislation with the Joint Action of 21 December 1998 on making it a criminal offence to participate in a criminal organisation and with the Joint Action of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children, were adopted on 13 September 2002. The EU notes however, that these amendments still discriminate on grounds of sexual orientation in so far as Article 157 provides a different level of financial sanction for homosexual prostitution and for a different approach as regards "the age of consent". The EU therefore invites Bulgaria to provide the necessary commitment to amend the Penal Code and in particular Article 157, in order to achieve full alignment with the *acquis*.

The EU takes note of the detailed information provided by Bulgaria (CONF-BG 55/02) on the education and training of the police in international human rights law and notes that further improvements are foreseen for 2003. The EU encourages Bulgaria to continue improvements on training thereafter. The EU underlines that it will monitor the impact of human rights training.

The EU notes that Bulgaria adopted a National Strategy for Counteracting Crime 2002-2005 on 7 November 2002 (CONF-BG 3/03 ADD 3), and an Action Plan for its implementation on 13 February 2003 (CONF-BG 3/03 ADD 3). The EU also notes that in the Action Plan the majority of actions foreseen only cover the period June 2003 until December 2004. The EU therefore urges Bulgaria to provide information on its plans for the implementation of the National Strategy on a regular basis and to provide a detailed time schedule for the actions to be implemented in the long term.

The EU takes note of the detailed information provided by Bulgaria (CONF-BG 55/02 and 16/03) on the functioning and cooperation between the different police services at national and regional level. The EU notes that given the number of different police services, particular attention needs to be paid to their functioning in practice, to putting into place solid mechanisms for information sharing, as well as transparent procedures for cooperation in order to avoid any overlap and duplication of work at national and regional level. The EU further notes that the competences of and relations between the investigative authorities in the pre-trial phase are very complex and cause duplication and delay in the whole criminal investigation procedure. In this context, the EU notes that an Action Plan has been drawn up to address this situation which will require amendments to the Penal Procedure Code and to the Constitution. The EU also underlines that the current system of serious crime investigation lacks efficiency and is not consistent with EU practice and therefore urges Bulgaria to provide the necessary commitment to simplify the criminal procedure by making the investigation phase shorter, more efficient and in line with EU practice, within a committed deadline and before accession. The EU invites Bulgaria to provide regular progress reports on pre-trial process.

The EU takes note of the information provided by Bulgaria on the number of international police cooperation agreements already concluded (CONF-BG 55/02 ADD 24). The EU further notes that a number of agreements were concluded in 2002 (FYROM, Ireland, France, Austria, Belgium, Poland, Romania, Serbia and Montenegro), that agreements with Romania and Greece on Articles 39-47 of the Convention implementing the Schengen Agreement are expected to be approved by the Bulgarian Council of Ministers on 30 June 2004, and that there will be a review of existing agreements for compliance with the provisions of the Personal Data Protection. Furthermore, the EU underlines the importance for Bulgaria to provide the necessary legislative framework to ensure the powers provided for in Article 40 (cross border surveillance) and Article 41 (hot pursuit) of the above-mentioned Schengen Convention.

The EU notes that the twinning project on management of criminal information systems was completed on 26 October 2002 in which context the concept of the National Contact Point for police cooperation and the necessary conditions for future integration of the Schengen Information System were developed.

The EU takes note of the information provided by Bulgaria (CONF-BG 55/02) on specialised training programmes on procedural and policing techniques and on the specific ethics involved in the fight against organised crime and the serious problem of corruption. The EU notes however, that the training curricula on the fight against corruption are very limited and that corruption is widespread at all levels within the police, in particular the Traffic Police. The EU therefore invites Bulgaria to provide the necessary commitment to increase training on the fight against corruption considerably, to continue investing in preventive measures and to ensure effective sanctioning of officers, at all levels in the police, committing crimes of corruption and extortion, in particular as regards the Traffic Police.

The EU takes note of the detailed information provided by Bulgaria on implementation of the Pre-Accession Pact on Organised Crime and on legislation for combating trafficking in women and children (CONF-BG 55/02 ADD 26).

The EU notes that a cooperation agreement with Europol was signed on 17 June 2003, and that cooperation will be carried out by the recently established National Contact Point. The EU also notes that Bulgaria is preparing for appointment of liaison officers to Germany, Belgium, Greece, Spain and France by 31 December 2003 and that it plans to appoint liaison officers in Poland and Turkey.

The EU underlines that it will closely monitor further progress made in this area, in particular the implementation of the National Strategy for Counteracting Crime, the pre-trial phase and the fight against corruption within the police, in particular the Traffic Police.

### **Fight against terrorism**

According to Article 29 of the Treaty of the European Union, the fight against terrorism forms an integral part of the Union's objectives in the creation of an area of freedom, security and justice. The EU recalls the conclusions of the extraordinary European Council on 21 September 2001.

The EU welcomes the fact that Bulgaria has associated itself fully with the above-mentioned conclusions, in particular as regards the need to systematically evaluate relations with third countries in the light of the support which these countries might give to terrorism. Bulgaria thus demonstrates a strong commitment to the international dimension of the creation of an area of freedom, security and justice.

The EU takes note of the information provided by Bulgaria on the role of the Security Council in the fight against terrorism. The EU takes note of Bulgaria's intentions to prepare for the ratification and implementation of the *EU Convention of 29 May 2000 on Mutual Assistance in Criminal Matters* and its Protocol. In this respect, the EU notes that the adoption of the relevant amendments to the Criminal Procedure Code, as well as the completion of the drafting of the new Extradition and Legal Assistance in Criminal Matters Law are foreseen for the end of 2004.

More generally, the EU strongly encourages Bulgaria to comply as soon as possible with the *acquis* and other international standards on the fight against the misuse of the financial system. In this context, the EU notes that with the adoption of the amendments to the Measures against Money Laundering Act on 21 March 2003 and their entry into force on 8 April 2003, Bulgaria has aligned its legislation with Directive 2001/97/EC on prevention of the use of the financial system for the purpose of money laundering, and terrorism financing.

In drawing up legislation, the EU encourages Bulgaria to ensure that the potential impact on the fight against crime and terrorism is fully taken into account and invites Bulgaria to start early preparations for the implementation after accession of the two Framework Decisions on combating terrorism and the European arrest warrant.

The EU recalls that there may be new *acquis* before the conclusion of negotiations, such as the future Framework Decision on the execution in the European Union of orders freezing assets or evidence.

## **Fight against fraud and corruption**

The EU underlines that measures planned to fight fraud should seek to ensure that protection of the European Communities' financial interests after accession is at least equal to the present level in the current Member States.

The EU notes the information provided by Bulgaria on alignment with the *Convention on the Protection of the European Communities' Financial Interests* (1995) and its Protocols, in particular the amendments to the Penal Code adopted on 13 September 2002 (CONF-BG 55/02 + ADD 22 and 16/03). The EU also notes that Bulgarian legislation is aligned with the requirements of Articles 2 and 3 of the First Protocol to this Convention concerning corruption, as well as with the requirements of Article 1 (3) of the Convention. The EU however notes, that the legislation is not yet fully aligned with the requirements for fraud and criminal liability of heads of businesses (Articles 1 (1) and 3). The EU therefore urges Bulgaria to provide the necessary commitment to fully align its legislation as regards the definition of fraud, covering all elements of Article 1 (1), and the criminal liability of heads of businesses (Article 3), well before accession.

The EU draws Bulgaria's attention to the need for alignment with the *acquis* on the protection of the Euro, in particular Council Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro as amended, and Council Decision of 6 December 2001 on the protection of the euro against counterfeiting. In this context, the EU invites Bulgaria to keep the Conference regularly informed on progress made.

The EU further notes that currently Bulgaria's legislation does not cover liability of legal persons as required by the Second Protocol to the *Convention on the Protection of the European Communities' Financial Interests* (CONF-BG 55/02 and 16/03). In this context, the EU notes that the inclusion of the required sanctions as regards the liability of legal persons in the draft Administrative Procedure Code which is expected to be adopted by the end of 2005, is under consideration. The EU draws Bulgaria's attention to the fact that full alignment is essential by accession and therefore invites Bulgaria to provide the necessary commitment to include the liability of legal persons and the related sanctions in the draft Administrative Procedure Code.

The EU takes note of the information provided by Bulgaria (CONF-BG 55/02 and 16/03) whereby Bulgarian legislation provides for the cooperation and exchange of information between the judicial and police authorities and OLAF, in accordance with Article 7 of the Second Protocol to the *Convention on the Protection of the European Communities' Financial Interests*.

The EU notes that Bulgaria adopted further amendments to the Measures against Money Laundering Act, which entered into force on 8 April 2003 and which provide for the establishment of a supervisory financial body as well as for full alignment with Directive 2001/97/EC on prevention of the use of the financial system for the purpose of money laundering. In this context, the EU notes that following these latest amendments, the updated regulations for their implementation were approved by the Bulgarian Council of Ministers on 31 July 2003 (CONF-BG 55/02 ADD 30 and 16/03).

The EU further takes note of the detailed information provided by Bulgaria (CONF-BG 55/02 and 16/03) on the staffing, training and equipment for the Financial Intelligence Agency (former Bureau of Financial Intelligence), as well as on Bulgaria's plans to upgrade the technical equipment of the Agency and the further upgrading of training. In this context, the EU further encourages Bulgaria to improve its implementation capacity in the fight against money laundering by committing itself to provide the Financial Intelligence Agency with adequate personnel, equipment and training. Finally, the EU takes note of the information provided on the number of cases received and dealt with in the period 1998-2002 and the coordination between the Agency and the various law enforcement bodies and the judiciary. The EU urges Bulgaria to accelerate the completion of the remaining operational files from this period and to improve the relations between the Agency and non-banking entities. The EU recalls that a successful anti-money laundering policy should be comprehensive covering all matters from prevention to effective prosecution and invites Bulgaria to keep the Conference informed of further progress made.

The EU notes that Bulgaria signed the *Civil Law Convention on Corruption* on 4 November 1999 and that the ratification instrument was formally submitted on 8 June 2000. The EU further notes that Bulgaria ratified the *Criminal Law Convention on Corruption* on 12 April 2001, and that this entered into force on 1 July 2002.

The EU notes the information provided by Bulgaria on its implementation capacity in the fight against corruption (CONF-BG 55/02 ADD 31 + ADD 32 and 16/03). The EU notes that Bulgaria is implementing the National Strategy against Corruption (CONF-BG 73/01) by means of an Action Plan adopted on 13 February 2002. In this context, the EU notes that the relevant law enforcement bodies are developing their own action plans based upon the National Strategy and that those activities are coordinated by a Steering Committee, established on 11 February 2002. The EU further notes that improvement of the activities of the relevant law enforcement bodies (subordinated to the Ministry of the Interior and the judiciary) is envisaged in the context of twinning projects which will start in the second half of 2003. The EU urges Bulgaria to accelerate the adoption of Codes of Ethics for judges and prosecutors and to continue its efforts to improve the prevention of and the fight against corruption in the Border Guard, the police, the Road Executive Agency, the customs administration and the judiciary. The EU further urges and invites Bulgaria to adopt an action plan for the fight against high-level corruption. The EU also invites Bulgaria to keep the Conference informed on further improvements and concrete actions, which are a result of the initiated institutional changes. The EU underlines that it will closely monitor Bulgaria's efforts in the fight against corruption, including the functioning of the national coordination structure and the allocation of sufficient financial resources, and the removal from office and prosecution of those involved in corruption.

## Drugs

The EU recalls that implementation of the *acquis* on drugs requires the preparation for participation in the European Information Network on Drugs and Drug Addiction (Reitox) of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). This is an integral part of the obligations set out in Regulation (EEC) 302/93 and in the Joint Action of 16 June 1997. The EU underlines that Member States have all set up national focal points and have all prepared a national drug strategy for this purpose. While noting the measures already taken by Bulgaria on the drug aspect, the EU stresses the importance for Bulgaria of effectively implementing a balanced and practical national drugs strategy in line with the EU Drugs Strategy 2000-2004, as well as intensifying cooperation with the Member States in this field, making full use of the possibilities for cooperation with Europol foreseen in the Pre-Accession Pact on Organised Crime. The EU encourages Bulgaria to continue and strengthen the fight against drug trafficking, both at its borders and inland.

The EU notes that Bulgaria adopted the National Anti-Drug Strategy 2003-2008 on 20 February 2003 (CONF-BG 3/03 ADD 1) and the Action Plan implementing this Strategy on 24 April 2003 (CONF-BG 3/03 ADD 2). The EU considers the adoption of both documents, as a first step in establishing an overall drug policy. The EU however notes that implementation is at an early stage and therefore invites Bulgaria to provide the necessary commitment to implement the Action Plan without delay, in particular the establishment of the Coordination and Analysis Unit (CAU), the National Drugs Intelligence Unit (NDIU), the National Focal Point, the setting up of a strong coordination structure and the allocation of sufficient financial resources as well as to report on a regular basis on the results achieved.

The EU notes that Bulgaria signed the 1995 *Agreement on illicit traffic by sea, implementing Article 17 of the UN Convention against illicit traffic in narcotic drugs and psychotropic substances* on 21 May 2003. The EU also notes that amendments to the Penal Code and the Penal Procedure Code, enabling ratification, are envisaged for the end of 2004 (CONF-BG 55/02 and 16/03).

The EU takes note of the information provided by Bulgaria (CONF-BG 55/02 and 16/03) on the establishment on 17 January 2001 of the National Council on Narcotic Drugs, as well as on its functioning. In this context, the EU notes that further development of the coordination structure of this Council and the cooperation with the Municipal Drug Councils is ongoing within the context of the implementation of the National Anti-Drug Strategy. The EU encourages Bulgaria to continue its efforts in order to enable this Council to execute its coordinating role according to the provisions of the Narcotic Drugs and Precursors Act.

The EU underlines that it will closely monitor further progress in this area, in particular concrete measures and tasks for the implementation of the National Anti-Drug Strategy 2003-2008 and the coordination of activities of the large number of the institutions involved, including the allocation of the required financial means.

### **Customs cooperation**

The EU notes the information provided by Bulgaria on its preparations to accede to the *Convention on Mutual Assistance and Cooperation between Customs Administrations* (1997) and that Bulgaria will accede to this Convention upon accession (CONF-BG 55/02). The EU also notes that Bulgaria will make reservations to Articles 20(8), 21(5) and 23(5) of this Convention. In this context, the EU notes that the legal framework allowing for controlled deliveries, cross-border surveillance, hot pursuit and joint teams has been recently adopted (CONF-BG 55/02 + ADD 33).

The EU also notes the information provided by Bulgaria on its preparations to accede upon accession to the *Convention on the use of information technology for customs purpose* (1995). The EU notes that the required legislative framework has been adopted and that Bulgaria is in the final stages of adopting implementing regulations (CONF-BG 55/02 and 16/03).

The EU notes that Bulgaria concluded four Memoranda of Understanding on combating drugs with airline companies and with three companies providing express courier services in 2000 and 2001. The EU further notes that Bulgaria intends to conclude further Memoranda with representatives of the chemical industry, shipping agents and container operators by the end of 2003.

The EU takes note of the detailed overview provided by Bulgaria on existing cooperation agreements with other law enforcement agencies (CONF-BG 55/02). In this context, the EU notes that the regulation of internal cooperation has been significantly improved.

The EU takes note of the information provided by Bulgaria on the re-organisation of the Customs Agency, which clarifies that the establishment of a Customs Police is not envisaged (CONF-BG 16/03).

The EU takes note of the progress made by Bulgaria on the conclusion of bilateral international cooperation agreements on mutual assistance and the information provided on the establishment of specialised units within the customs administration for handling requests on international mutual assistance and cooperation (CONF-BG 55/02).

The EU takes note of the detailed information provided by Bulgaria (CONF-BG 55/02 ADD 34) on the overall training strategy and the specialised training programmes. The EU notes that the training will be further developed in the course of 2003-2004.

The EU further notes the progress made by Bulgaria in the implementation of the measures in the National Anti-Corruption Strategy planned for the customs administration, in particular the approval of the Code of Ethics in July 2002, improved supervision and the adoption of disciplinary measures. The EU encourages Bulgaria to continue its efforts to address effectively the problem of fraud and corruption in this field and invites Bulgaria to keep the Conference informed of measures taken.

The EU notes that Bulgaria has adopted the Customs Laboratories Strategy to increase the expert and technical capacity of the customs administration, that this Strategy will be regularly updated and that for its implementation the required equipment will be upgraded. The EU also notes that since March 2002, risk analysis is used in the customs administration and that an improved module for risk analysis will be operational by the end of 2003.

The EU underlines that it will closely monitor further progress in this area.

### **Judicial cooperation in criminal and civil matters**

The EU takes note of Bulgaria's statement (CONF-BG 55/02 and 16/03) that it plans to accede to the *European Convention on the Transfer of Proceedings in Criminal Cases* (1972) and the *European Convention on the International Validity of Criminal Judgments* (1970) by the end of 2003. The EU notes that amendments to the Penal Code and the Penal Procedure Code have been adopted and takes note that this enables Bulgaria to accede upon accession to the *Convention on the Enforcement of Foreign Criminal Sentences* (1991) and the *Convention on Simplified Extradition Procedures* (1995). Finally, the EU notes that upon accession Bulgaria will accede to the *Additional Protocol to the Council of Europe Convention on the Transfer of Sentenced Persons* (1997) and the *Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters* (2001).

The EU notes that Bulgaria ratified the *European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children* (1980) and the *Convention on the Civil Aspects of International Child Abduction* (1980) on 21 February 2003. The EU notes that for the implementation of both Conventions amendments to the Civil Procedure Code and the Family Code were to be adopted by mid -2003. The EU also takes note of Bulgaria's position (CONF-BG 73/01 and 55/02) whereby it does not intend to accede to the Convention on Civil Procedure (1954).

The EU notes the information provided by Bulgaria on the steps taken to ensure compliance with the provisions of the Schengen *acquis* on judicial cooperation. The EU also notes that amendments to the Penal Procedure Code to align with the provisions of the *Convention on Simplified Extradition Procedures* (1995), were to be adopted by mid- 2003. The EU further notes that Bulgaria intends to draft a separate Extradition Act by the end of 2004. The EU invites Bulgaria to keep the Conference of progress made.

Furthermore, the EU takes note of the detailed information provided by Bulgaria on the training of magistrates (judges, prosecutors and investigators) on judicial cooperation in criminal and civil matters and on perspectives for the modernisation of equipment at courts, prosecutor's offices and the investigation service (CONF-BG 55/02 and 16/03).

The EU takes note of the information provided by Bulgaria (CONF-BG 55/02 + ADD 22) on alignment with the Joint Action of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children. In this context, the EU notes that amendments to the Penal Code were adopted on 13 September 2002, and entered into force on 1 October 2002, and that the Law on Illegal Trafficking in Human Beings was adopted on 7 May 2003, and entered into force on 20 May 2003.

The EU notes that the Penal Procedure Code (CONF-BG 55/02 ADD 25) contains several provisions on pre-trial detention and judicial control. The EU also notes that amendments to the Execution of Punishments Act on prison conditions were adopted on 25 June 2002.

The EU takes note of the information provided by Bulgaria on the establishment of the International Legal Cooperation and Human Rights Department in June 2001, as well as the number of staff, training and equipment allocated to this department. The EU notes that this Department was to be further strengthened within the framework of a 2003 twinning project and with bilateral cooperation with Member States.

The EU further notes Bulgaria's ongoing measures and progress in ensuring future direct international contacts between the competent judicial authorities and its preparations for integration in the European Judicial Network. In this context, the EU notes that the necessary legal basis will be provided by the ratification of the *Second Additional Protocol to the Convention on Mutual Assistance in Criminal Matters* (2001).

The EU recalls the importance of the principle of the mutual recognition of decisions in civil and criminal matters.

Furthermore, the EU recalls that ratified international conventions should be effectively implemented.

The EU will continue to closely monitor further progress in this area.

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Subject to Bulgaria's acceptance of the above considerations, and in the light of the firm commitments by Bulgaria (CONF-BG 20/03), in particular:

a) to ensure implementation of the updated Action Plan implementing the updated Strategy on the Reform of the Judiciary (CONF-BG 3/03) without further delay and according to the time schedule set, in particular:

- ensure full implementation of the envisaged plans to improve the legal aid system, guaranteeing equal access to justice for all citizens;
- fully implement the division of tasks and responsibilities between the Supreme Judicial Council and the Ministry of Justice as provided for in the Judicial System Act, and ensure their effective independence, as well as take the appropriate measures according to the outcome of the discussions concerning the composition, powers and mandate of the Supreme Judicial Council and its relations with the Ministry of Justice, while at the same time taking into account the necessity of mutual control (“checks and balances”) in relations between the Supreme Judicial Council and the organs of other constitutional powers;
- ensure sufficient funding for the judiciary (both for personnel and equipment);
- ensure objective and transparent recruitment, evaluation and promotion procedures in the judiciary;
- ensure distribution of cases to magistrates and public prosecutors according to objective and transparent procedures;
- provide detailed statistics at the end of 2003, covering the period 2000-2003 and including a specification of the duration of court proceedings, in order to be able to assess the impact of the amendments to the Civil and Penal Procedure Codes;

- report every six months as of March 2004 on progress in implementing the updated Strategy on the Reform of the Judiciary;
  - provide regular and detailed information on criminal investigation, prosecution and conviction rates in the areas of organised crime, corruption, drugs, human trafficking, and tax and financial crimes;
- b) to pursue reform of the pre-trial phase in accordance with the best practices in EU Member States and Articles 5 and 6 of the European Convention on Human Rights as well as the case law of the European Court of Human Rights as a matter of the highest priority, in particular:
- adopt the amendments to the Penal Procedure Code and the Judicial System Act required to ensure that the pre-trial-system is efficient and transparent, as well as to avoid any overlap, by the end of 2004 as foreseen. This includes the limitation of competences of sledovатели and their clear separation from those of criminal investigators (doznатели) and ensuring equal treatment for all citizens;
  - seriously consider making any relevant constitutional changes as soon as possible and by the end of 2005 at the latest, in order to provide a sound legal basis for the planned changes to the Penal Procedure Code and the Judicial System Act and to avoid the risk of their annulment;
  - simplify the criminal procedure by making the serious crime investigation phase shorter, more efficient and in line with EU practice, within a committed deadline and before accession;
  - provide regular progress reports on the above every six months as of March 2004;

- c) to accelerate the necessary measures (suitable building, recruitment and training of staff, sufficient equipment) and, in any event, to make the Commission for Personal Data Protection fully operational before the end of 2003 and to continue to allocate the necessary financial means;
- d) to amend Articles 13 and 16 of the recently adopted Asylum and Refugees Act indicating a clear distinction between refusal, discontinuation of the procedure and withdrawal, in order to achieve full alignment with the 1951 Geneva Convention;
- e) to align the Penal Code and in particular Article 157 on sexual orientation, in order to achieve full alignment with the *acquis*;
- f) to implement the National Strategy against Corruption according to the timeframe set, to accelerate the adoption of Codes of Ethics for judges and prosecutors, to increase training on the fight against corruption for police officers considerably, to continue investing in preventive measures and to ensure effective sanctioning of officers, at all levels in the police, committing crimes of corruption and extortion, in particular as regards the Traffic Police, and to continue efforts to improve the prevention of and the fight against corruption in the Border Guard, the Road Executive Agency, the customs administration and the judiciary, as well as to adopt an action plan for the fight against high-level corruption;
- g) to fully align Bulgarian legislation as regards the definition of fraud, covering all elements of Article 1(1), and the criminal liability of heads of businesses (Article 3) of the 1995 Convention on the Protection of the European Communities' Financial Interests, well before accession; to include the liability of legal persons and the related sanctions in the draft Administrative Procedure Code, the adoption of which is foreseen by the end of 2005; and to provide the Financial Intelligence Agency with adequate personnel, equipment and training in order to improve implementation capacity in the fight against money laundering;

h) to implement the Action Plan implementing the National Anti-Drug Strategy 2003-2008 without delay, in particular the establishment of the Coordination and Analysis Unit (CAU), the National Drugs Intelligence Unit (NDIU), the National Focal Point, the setting up of a strong coordination structure and the allocation of sufficient financial resources as well as to report on a regular basis on the results achieved;

as well as subject to confirmation by Bulgaria of its commitments to effectively take all other expected necessary measures as soon as possible and within the deadlines laid down above, the EU notes that, at this stage, this chapter does not require further negotiation.

Monitoring of progress in the adoption and implementation of the *acquis* will continue throughout the negotiations and until accession, in particular as regards Bulgaria's adherence to its planned legislative schedule and further measures aimed at developing the institutional and administrative capacity of all Bulgarian law enforcement authorities and of the judiciary. The EU underlines that it will devote particular attention to monitoring Bulgaria's implementation of its specific commitments regarding the reform of the judiciary, data protection, migration, asylum, police cooperation and in particular the pre-trial phase, combating corruption in the Traffic Police, fraud and corruption, the implementation of the National Strategy against Corruption, the implementation of the National Anti-Drug Strategy and the establishment of the relevant units. Special attention will also be given to Bulgaria's capacity to cooperate effectively with other States to implement the *acquis* and to enforce it. In this context, the EU recalls that the establishment of an independent, reliable and efficient judiciary is of paramount importance. The EU emphasises the need for Bulgaria to improve its overall administrative capacity, in particular with regard to staffing policy, professional training, infrastructure, equipment and the coordination between the relevant authorities.

A final assessment of the conformity of Bulgaria's legislation and policies with the *acquis* and its implementation capacity can only be made at a later stage of the negotiations. Particular consideration needs to be given to the links between the present chapter and other negotiating chapters, including Freedom of Movement of Persons, Free Movement of Services (concerning data protection), Free Movement of Capital (with regard to money laundering), Agriculture (concerning veterinary and phytosanitary controls), Customs Union and Financial Control. In addition to all the information which the EU may require for the negotiations on this chapter and which is to be provided to the Conference, the EU invites Bulgaria to provide regularly detailed, written information to the Association Council on progress in the adoption and implementation of the *acquis*.

In view of the particular considerations concerning the implementation of the updated Strategy on the Reform of the Judiciary and the updated Action Plan in Bulgaria, the EU will also keep under close review throughout the negotiations developments affecting the conditions under which agreements have been reached in this chapter.

Furthermore, given the inclusive nature of the enlargement process, the EU will propose a safeguard clause in the area of Justice and Home Affairs, equivalent to the one foreseen in Article 39 of the Act of Accession with the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia. In conformity with the safeguard clause in Article 39 referred to above, if six months prior to Bulgaria's accession the Commission's report indicates that there are serious concerns regarding the implementation by Bulgaria of the commitments undertaken in this chapter, in particular judicial reform, the Commission shall take all necessary measures. To that end, the European Union Common Position for negotiations with Bulgaria in chapter 31, "Other", will include such a clause.

In view of the above considerations, the EU may return to this chapter at an appropriate moment.

Furthermore, the EU recalls that there may be new *acquis* between 1 December 2002 and the conclusion of the negotiations.