

**CONFERENCE ON ACCESSION
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– BULGARIA –**

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Subject : Supplementary information to Negotiating Position
 Chapter 24 – Cooperation in the Fields of Justice and Home Affairs

**SUPPLEMENTARY INFORMATION TO
NEGOTIATING POSITION
ON CHAPTER 24 - COOPERATION IN THE FIELDS OF JUSTICE AND HOME AFFAIRS
(CONF-BG 9/01, 19/01, 46/02, 55/02 + ADD 1-35, 3/03 + ADD 1-4, 16/03, 17/03 AND 19/03)**

In the context of the accession negotiations on Chapter 24 "Cooperation in the Fields of Justice and Home Affairs", and in supplement to its Negotiating Position contained in CONF-BG 9/01, 19/01, 46/02, 55/02 + ADD 1-35, 3/03 + ADD 1-4, 16/03, 17/03 and 19/03, Bulgaria makes the following firm commitments:

- a) **to fully implement 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 to:**
- **ensure full implementation of the envisaged plans to improve the legal aid system, guaranteeing equal access to justice for all citizens;**
 - **ensure full implementation of 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.**

Bulgaria confirms that judicial reform is a priority. This reform has the support of all political parties in Parliament (joint political declaration of 2 April 2003) as well as the representatives of the Supreme Judicial Council. To this end, Bulgaria has set up a special unit which is now operational, at the Ministry of Justice, which is responsible for the implementation of the updated Strategy for Reform of the Judiciary and its updated Action Plan.

Moreover as regards the constitutional changes necessary for reform of the status of magistrates, an important step was achieved by the adoption by the National Assembly on 24 September 2003 of amendments to the Constitution on the mandate, immunity and conditions of removal from office of magistrates (judges, prosecutors and investigators). This was the first amendment to the Bulgarian constitution since its adoption in 1991 and is a reflection of the just expectation of the whole of Bulgarian society and Bulgaria's foreign political partners for a more efficient and fair judicial system.

Bulgaria confirms that the **improvement of the legal aid system** and provision of equal access to justice is a priority. To this end the following measures have been taken/are planned:

- a list of legislative changes which will be necessary to improve the provision of legal aid in both civil and criminal cases has been drawn up by the Minister of Justice, the Supreme Judicial Council and the Bar Association in September 2003;
- a sub-project of the Phare 2002 twinning project on the Implementation for the Strategy for reform of the judiciary aims at ensuring Equal Access to Justice; to draft specific legislative amendments (by mid 2004); and to establish a national legal aid office for the coordination and provision of legal aid at national level (by March 2005);
- the drafting of the new Penal Procedure Code and Civil Procedure Code by mid-2005 with the assistance of a twinning project due to start in the second trimester of 2004.

Bulgaria furthermore confirms that in line with the amended Judicial System Act already submitted to the Conference (BG 17/03), the **separation of powers between the Supreme Judicial Council and the Ministry of Justice** and their effective independence is guaranteed.

Bulgaria is nonetheless aware that further work needs to be done to ensure that these measures are effectively implemented and that the coordination structure between the Supreme Judicial Council and the Ministry of Justice needs to be improved in particular as regards the Supreme Judicial Council's responsibility in administering the budget for the judiciary and the cooperation between the respective administrative units. In this context, Bulgaria recalls that the updated Action Plan on the Reform of the Judiciary foresees the establishment of a specialised unit for the cooperation between the Ministry of Justice and the Supreme Judicial Council. The Unit will be established by the end of 2004 and will be responsible for the drafting and preparation of the annual budget of the judiciary. Discussions are also still ongoing in the "Ad Hoc Committee drafting of proposals for amendments to the Constitution", on the need to amend the Constitution as regards the composition, powers and mandate of the Supreme Judicial Council and its relations with the Ministry of Justice. In this context Bulgaria is aware of the need to ensure mutual control and an institutional balance in relations between the Supreme Judicial Council and the organs of other constitutional powers. Bulgaria further appreciates the importance of having a decision on both of these points at the earliest possible opportunity and confirms that once it has been taken, Bulgaria will take the appropriate measures to ensure effective implementation.

As regards **funding for the judiciary** Bulgaria is fully aware of the importance of ensuring sufficient funding for personnel as well as for all necessary facilities and equipment. In this light Bulgaria confirms that the budget for 2003 and 2004 envisages sufficient funding for implementation of the updated Action Plan implementing the updated Strategy on the Reform of the Judiciary, both for personnel and for equipment and that successive budgets will continue to do so. The draft budget for 2004 foresees a 40% increase of the budget allocations for the Judicial System.

On **recruitment**, Bulgaria confirms that it is continuing its efforts to ensure sufficient human resources and qualified staffing of the judiciary at all levels. Recruitment is ongoing and all efforts are being undertaken to ensure that the recruitment procedures applied are transparent and objective. Moreover as **regards promotion and ongoing assessment of magistrates in the performance of their tasks**, the measures foreseen in the updated Action Plan will be implemented according to the timetable foreseen. Bulgaria recalls that the amendments to the Constitution adopted by the National Assembly on 24 September 2003 now provide for the removal of judges, prosecutors and investigators who have been sentenced to imprisonment for an intentional criminal offence, and for serious infringement or systematic neglect of official duties as well as for acts which prejudice the reputation of the judiciary.

On the **distribution of cases**, Bulgaria appreciates the importance of ensuring the distribution of cases to magistrates and to public prosecutors according to transparent and objective procedures. This is an essential component of meeting the general expectation of an efficient and fair judicial system. Bulgaria will keep the Conference fully informed of developments in this regard.

On the **collection of court case statistics** Bulgaria confirms that since the entry into force of the amended Civil and Penal Procedure Codes (in November 2002 and June 2003) a system has been set in place to collect data including data on the duration of court proceedings under these new provisions. This data will be collated together with data for the period prior to the entry into force of these provisions so that an assessment of the impact of the new provisions can be made. Bulgaria also confirms that work is ongoing with a view to further optimising court proceedings. This includes measures on alternative dispute resolution expected to be fully adopted by mid-2005 as well as the adoption of new Penal and Civil Procedure Codes also foreseen for mid-2005, and will also include further measures still to be defined on the simplification of procedures.

Reports on the implementation of the Strategy and the Plan (mentioning every action point) shall be approved by the Council of European Integration and the Bulgarian Council of Ministers with a view to their submission every six months as of March 2004 to the Conference. This will include the necessary information on **criminal investigation, prosecution and conviction rates in the areas of organised crime, corruption, drugs, human trafficking, and tax crimes.**

b) **to pursue reform of the pre-trial phase in accordance with the best practices in EU Member States 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, 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);**
- **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 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.**

Bulgaria confirms that in July 2003 the Parliament extended the mandate of the Ad Hoc Parliamentary Committee to draft amendments on reform of the Constitution, including any amendments necessary concerning the **pre-trial phase** and **to simplify criminal procedure**, with a view to preparing a draft for further amendment of the Constitution by the end of 2005 at the latest. Bulgaria is aware of the importance of adopting a common approach in order to ensure that the draft amendments to legislation are in line with the possible Constitutional amendments and will ensure that the legislative timetable is coordinated. Bulgaria also recognises that preparatory measures have to be put in place according to a defined timetable so as to ensure the swift, effective and efficient implementation of the amendments to the new Penal Procedure Code upon entry into force, and if necessary amendments to the

Constitution. This will include improving radically the coordination between the different services at national and regional level and increasing information-sharing and transparency. Work is ongoing and Bulgaria will keep the Conference fully informed of developments, including the necessary timetable, in this regard.

- c) **the acceleration of the necessary measures (suitable building, recruitment and training of staff, sufficient equipment) and, in any event, making the Commission for Personal Data Protection fully operational before the end of 2003 and to continue to allocate the necessary financial means.**

In May 2003 the Council of Ministers decided on the provision of premises to the Commission for Personal Data Protection. Bulgaria recognises that considerable efforts are still required in order to make the Commission fully operational by the end of 2003 especially since there have been logistic problems related to the new premises which have resulted in a further extension of the previous deadline of 1 September for the appointment of administrative staff.

Both costs for the envisaged appointment of staff and the setting up of an information system register, pursuant to Article 40 of the Personal Data Protection Act have been provided for in the budget for 2003. The budget for successive budgets will ensure sufficient allocation of resources for the full operation of the Commission.

- d) **to amend Articles 13 and 16 of the recently adopted Asylum and Refugees Act indicating a clear distinction between refusal, discontinuation of procedure and withdrawal, in order to achieve full alignment with the 1951 Geneva Convention.**

Bulgaria has already received the comments of the UNHCR on the necessity to amend Articles 13 and 16. The new texts will be drafted by the relevant Working Group and will be submitted, in accordance with the Bulgarian Council of Ministers legislative programme, to the Council of Ministers for discussion by mid 2004 at the latest.

- e) **to align the Penal Code and in particular Article 157 on sexual orientation, in order to achieve full alignment with the *acquis*.**

The necessary amendments to the Penal Code, concerning sexual orientation were adopted on first reading by the National Assembly on September 24, 2003.

The above amendments will be adopted at second reading before the end of 2003. Together with those already adopted in September 2002 their adoption will lead to 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 of 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.**

Bulgaria recognises that the fight against corruption is an ongoing task which needs to be tackled at all levels. Bulgaria therefore confirms that it is committed to stepping up and improving its efforts in all areas.

As regards the police, Bulgaria has already made considerable efforts in order to ensure full and effective training at all levels. Special emphasis has been placed on the provision of adequate specialised training of police officers directly involved in the combat of corruption, on the provision of modern specialised equipment, and on the effective prevention, control, investigation and sanctioning of officers committing corruption and extortion. In the framework of a Phare twinning project, which started in July 2003, Bulgaria will further implement the National Anti-Corruption Strategy.

- 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.**

The Ministry of Justice is due to complete its review of any amendments necessary to the Penal Code by the end of this year with a view to preparing the necessary draft amendments in 2004, in order to **fully align with the 1995 Convention on the protection of the European Communities Financial Interests**. To this end as of 1 January 2004 an expert from OLAF has been assigned to the Ministry of Justice for six months to provide support in the preparation of the necessary legislative changes.

Bulgaria confirms that the relevant working group is drafting the Administrative Procedure Code which will provide for administrative criminal **liability of legal persons** as well as for the required sanctions under the Second Protocol to the Convention on the Protection of the European Communities' Financial Interests. This draft law will be prepared for Parliamentary debate by the end of 2004.

Bulgaria confirms the importance it attaches to ensuring that the **Financial Intelligence Agency** is allocated adequate personnel, equipment and training in order to improve its implementation capacity in the fight against money laundering and confirms it will continue to ensure the allocation of sufficient resources in all respects.

- 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;**

Bulgaria confirms that the Coordination and Analysis Unit will be set up at the Ministry of Interior by November 2003. The National Drugs Intelligence Unit will become operational at the National Service for Combating Organised Crime by the end of November 2003. To this end on 3 September 2003, the Ministry of Interior and the Minister of Finance signed an Instruction on the conditions and the order governing the cooperation, organisation and the operation of the National Drugs Intelligence Unit. The instruction regulates the tasks and the functions of the National Drugs Intelligence Unit, its management and control, the information exchange as well as issues related to logistics, technical equipment and financial resources. The National Focal Point was set up in early 2003 at the National Drug Addictions Centre with the Ministry of Health. The institutional premises for the National Focal Point will be built by the end of 2003.

Bulgaria fully appreciates the need for a strong coordination structure and the allocation of sufficient financial resources. The improved overall policy coordination results in the clear definition of the tasks and functions of the different units (Coordination and Analysis Unit, National Drugs Intelligence Unit, National Focal Point and Municipal Councils); avoiding duplication in their work; a legal framework regulating their activities has been drafted and above all a mechanism has been established for monitoring and evaluating Action Plan implementation. An immediate result of the improved overall coordination has been the adoption of the approach for targeted budgeting in the different agencies.

The National Anti Drugs Strategy and its Action Plan will be reviewed and updated on an annual basis. Its implementation will be coordinated by the National Drugs Council. The Chairman of the Council will report on its implementation to the Bulgarian Council of Ministers every six months. Upon approval by the government the reports will be submitted to the Conference.

In line with the above commitments, the Bulgarian Government proposes the negotiations on this chapter to be provisionally closed on the basis of the existing *acquis*.

Should new elements of the *acquis* make it necessary, Bulgaria recognises the possibility of opening supplementary negotiations before the end of the Intergovernmental Conference.
