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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16/05/2006
COM (2006)

COMMUNICATION FROM THE COMMISSION

**Monitoring report
on the state of preparedness for EU membership of
Bulgaria and Romania**

{SEC(2006), SEC(2006), SEC(2006) }

1. INTRODUCTION

The accession of Bulgaria and Romania will complete the fifth enlargement of the EU, which started in May 2004 with the accession of ten new Member States, mostly from central Europe. This round of enlargement has contributed to peace, prosperity and stability throughout Europe.

The conditions of Bulgaria and Romania's accession were agreed in an Accession Treaty signed in April 2005 between the 25 Member States and both countries. Bulgaria, Romania and 14 Member States have already ratified it. This Treaty provides that Bulgaria and Romania will join on 1 January 2007 unless the Council decides, upon a recommendation from the Commission, to postpone the accession of either country until 2008.

The Commission is firmly committed to ensuring that both countries successfully complete their final preparations for accession. To that end, it has closely monitored the progress made by Bulgaria and Romania and has provided targeted support to help them in their reform efforts.

Both countries can be commended on their achievements in successfully transforming their political and economic systems into functioning democracies and market economies. The Commission's October 2005 report confirmed that Bulgaria and Romania met the political criteria for membership and showed that both countries had continued progress towards meeting the economic and *acquis* criteria in full. Nonetheless, it drew attention to a number of areas in need of further improvement.

The Commission will continue to provide support for Bulgaria's and Romania's preparations for membership. Nevertheless, if shortcomings persist upon accession, the Commission will take the necessary action in its role as guardian of the treaties. Safeguards and other measures could apply to the internal market, including food safety, the area of justice, freedom and security, and to the management of EU funds.

This report follows up on the findings of the October 2005 report. It is based on the detailed assessment contained in the accompanying Monitoring Reports for each country. In this report, the Commission:

- reviews, as of end April 2006, developments and the preparedness of both countries in areas previously identified as in need of further improvement;
- examines measures required to remedy any shortcomings that might persist upon accession;
- draws conclusions on the state of preparedness for EU membership of Bulgaria and Romania.

2. SUMMARY OF MONITORING FINDINGS

2.1. Bulgaria

Political criteria

Bulgaria fulfils the political criteria for EU membership.

Since the October 2005 report, there has been progress in a number of areas, including the reform of the judiciary. As regards the justice system, the new penal procedure code and a legal framework for legal aid entered into force. Constitutional amendments have entrusted the prosecution service with the responsibility for leading investigations. Amendments to the Law on the Judiciary have been adopted.

Bulgaria has taken a number of measures to fight corruption. A code of ethics was adopted for the executive branch. An anti-corruption strategy for 2006-2008 was adopted. Constitutional amendments have reduced the scope of immunity of members of parliament. The prosecutor general presented requests for lifting the immunity of ten members of parliament. Five voluntarily abstained from their immunity and the immunity was lifted for a sixth one by a vote in parliament; the other cases are still being examined. This allowed investigations into high-level corruption cases to be launched.

Bulgaria has made progress in the field of public administration, in particular with the adoption of amendments to the laws on administration and on civil servants, and a new Code of Administrative Procedure. As regards ill-treatment in custody, there has been some reduction of incidents, while conditions have improved in certain detention centres. Policy initiatives were taken for the disabled and for the mental health care system. Social support for the disabled has been increased.

However, certain outstanding issues remain to be addressed. The accountability, transparency and efficiency of the justice system need further strengthening. Further efforts are needed to consolidate implementation of the random allocation of cases throughout the country. More objective and transparent mechanisms are needed for assessing the quality of magistrates' work. Any ambiguities regarding the independence of the judiciary need to be removed. There were bottlenecks in the pre-trial process due to procedural rules and insufficient investigators. There have been few tangible results in combating organised crime.

The structures to coordinate and implement the anti-corruption policy need strengthening in order to perform their roles effectively. Indictments, prosecutions, trials, convictions and dissuasive sentences remain rare in the fight against high-level corruption. Bulgaria needs to present clear evidence of results in this area.

The strategy to decentralise the administration has not been adopted yet. Bulgaria remains a country of transit and to a lesser extent a country of origin and destination for trafficking in human beings. There continue to be cases of ill-treatment of detainees. Living conditions in many child welfare and mental health care institutions need to be improved by implementing policy initiatives, and alternative care systems created. Social inclusion of the Roma minority still requires substantial efforts. Further efforts are needed to combat all forms of intolerance, particularly by fully applying existing

legislation on broadcasting and other activities aiming to combat any form of racism, discrimination or xenophobia.

Economic criteria

Bulgaria is a functioning market economy. The continuation of the current reforms should enable it to cope with competitive pressure and market forces within the Union in the near term. Bulgaria has broadly maintained macroeconomic stability and advanced structural reforms.

Progress has continued since the October 2005 report. Useful steps were taken to contain the external deficit. The privatisation process and the liberalisation and restructuring of utilities are well advanced. Some additional progress has been made in improving the business environment and in reducing non-wage labour costs.

However, the current account deficit widened and warrants continued prudent fiscal and wage policies. Deepening of structural reforms requires improving the functioning of the judicial system and further easing the regulatory burden on businesses. The regulatory framework for the labour market needs to be made more flexible.

Commitments and requirements arising from the accession negotiations

Bulgaria has reached a considerable degree of alignment with the *acquis*.

The October 2005 report concluded that Bulgaria would be ready by accession in a large number of areas. A number of other areas required increased efforts, and 16 areas gave rise to serious concern.

Since then, further progress has been made. Bulgaria should be ready by accession in the following additional areas if the current pace of progress is maintained: public procurement, mutual recognition of industrial product specifications; freedom to provide non-financial services; most agriculture Common Market Organisations; aviation; excise duties; taxation implementing structures; postal services liberalisation; regional policy legislation; chemicals and genetically modified organisms, noise legislation; visa policy; and customs preparations.

Progress has also been made in a number of areas, which no longer give rise to serious concern but still require increased efforts to complete preparations: the insurance sector, the protection of intellectual property rights, the paying agency for agriculture, the milk common market organisation, animal diseases control measures, veterinary border inspection posts; animal welfare, trade in live animals and animal products, veterinary aspects of public health; institutional and financial management structures for regional policy, as well as Schengen preparations and the management of the future EU external borders.

Increased efforts are also needed for: mutual recognition of professional qualifications; financial services, information society services, protection of personal data; legislation to fight money laundering; agriculture trade mechanisms; the Common market organisations on wine and alcohol and on beefmeat; legislation in the veterinary and phytosanitary sector; most aspects of fisheries; sea transport; VAT, direct taxation rules; labour law, social dialogue, social inclusion, anti-discrimination policy, the European

Social Fund, public health; energy market liberalisation; nuclear energy and nuclear safety, in particular the commitments to early closure and subsequent decommissioning of the reactors of the Kozloduy plant ; steel industry restructuring; electronic communications; programming, monitoring and procurement capacity for regional policy; horizontal environmental legislation, water quality, integrated pollution prevention and control, waste management; consumer protection; asylum, judicial co-operation; fight against drugs; protection of the EU's financial interests; and the translation of the *acquis* into Bulgarian.

There remain six areas of serious concern, which require urgent action:

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

2.2. Romania

Political criteria

Romania fulfils the political criteria for EU membership.

Since the October 2005 report, there has been progress in a number of areas. Significant steps have been taken in the reform of the judiciary. Implementing measures were adopted as regards the specialised court sections and panels, following the 2005 justice reform. The process of randomly allocating cases to judges continues to function throughout the country. It has enhanced the impartiality of the justice system. The Directorate General for Protection and Anticorruption, the Ministry of Justice's part-militarised security service, was abolished. The resources of the justice system have increased, including those of the Superior Council of the Magistracy. Working conditions in courts have improved.

Romania has made progress in fighting corruption, by establishing sound structures and launching investigations into a considerable number of high-level corruption cases. Following such investigations, four senior figures have been indicted.

Regarding public administration reform, the civil service statute was revised and decentralisation legislation was adopted. Certain progress has taken place in fighting trafficking in human beings, as well as in the reform of the systems of care for the

disabled and the mentally ill. Romania has made significant progress in the area of child protection, where the overall situation has substantially improved. Progress has been made on property restitution.

However, certain outstanding issues remain to be addressed. As regards the justice system, the procedural codes need to be further rationalised. The Superior Council of the Magistracy should step up its activities to promote the uniform interpretation of the law and check the quality of judgements. Courts and prosecutor offices need to make better use of available resources.

In the fight against high-level corruption, Romania needs to continue efforts with a view to consolidating and building on the progress made in its fight against corruption. The reforms led by the Ministry of Justice and the National Anti-Corruption Directorate (DNA) need to be followed by sustained efforts of all other state institutions so that the progress made becomes irreversible.

In the area of public administration, the government continued to have extensive recourse to emergency ordinance, which is detrimental to the parliament. The review of the public sector pay scale remains of particular importance for professional ethics in the civil service. Romania remains a country of transit and to a lesser extent a country of origin and destination for trafficking in human beings. Follow-up of cases of ill-treatment in custody remains rare and some prisons suffer from overcrowding and poor living and sanitation conditions. Living conditions in psychiatric institutions are in need of improvement. The national strategy for the disabled and other policy initiatives need to be implemented. Social inclusion of the Roma minority still requires substantial efforts. The debate on the draft law on minorities in parliament should be closely followed. Additional efforts are also needed to combat racism, discrimination, xenophobia and all forms of intolerance.

Economic criteria

Romania is a functioning market economy. Vigorous implementation of its structural reform programme should enable it to fully meet the economic criteria in the near term. Romania has broadly maintained macroeconomic stability and advanced structural reforms.

Progress has continued since the October 2005 report. More appropriate fiscal, monetary and wage policies have been adopted. Tax compliance was enhanced, corporate financial discipline was better enforced and the bankruptcy framework was improved. Restructuring continued in the energy, mining and transport sectors.

However, public expenditure reform must be advanced and tax revenue should be strengthened. Deepening of structural reforms notably requires the continued restructuring of the energy, mining and transport sectors and progress in implementing the privatisation programme. New arrears are still accumulating and the bankruptcy framework still suffers from shortcomings.

Commitments and requirements arising from the accession negotiations

Romania has reached a considerable degree of alignment with the *acquis*.

The October 2005 report concluded that Romania would be ready by accession in a large number of areas. A number of other areas required increased efforts, and 14 areas gave rise to serious concern.

Since then, further progress has been made. Romania should be ready by accession in the following additional areas if the current pace of progress is maintained: public procurement, protection of personal data; animal welfare; fisheries resource, fleet, control and market policies; regional policy legislation; visa policy; customs preparations; and protection of the EU's financial interests.

Progress has also been made in a number of areas, which no longer give rise to serious concern but still require increased efforts to complete preparations: protection of intellectual property rights; veterinary border inspection posts and animal identification and registration, animal diseases control measures, and veterinary aspects of public health; institutional and financial management structures for regional policy ; industrial pollution prevention and control; Schengen preparations and management of the future EU external borders, and fight against fraud and corruption.

Increased efforts are also needed for: industrial product horizontal and procedural measures; product requirements under the old approach including the production and marketing of GMOs; EU citizens' rights; freedom to provide non-financial services; capital requirements for banks and investment funds, motor insurance; fight against money laundering; State aid control and steel restructuring programmes implementation; most agriculture common market organisations, quality policy, agriculture trade mechanisms, zootechnics, animal nutrition, trade in live animals and animal products; structural actions in fisheries; VAT, direct taxation; labour law, occupational health and safety, social dialogue, social inclusion, equal treatment of women and men, the European Social Fund; public health; Community Youth programme; audio-visual policy; regional policy monitoring; horizontal environmental legislation, nature protection, waste management, water quality, police co-operation and fight against organised crime, judicial co-operation, fight against drugs; public internal financial control, external audit and control over structural actions expenditure; and the translation of the *acquis* into Romanian.

There remain four areas of serious concern, which require urgent action:

- accrediting fully operational paying agencies for handling direct payments to farmers and operators under the common agriculture policy, building on progress made (*acquis* chapter 7);
- setting up a proper integrated administration and control system (IACS) in agriculture, building on progress made (*acquis* chapter 7);
- building-up of rendering collection and treatment facilities in line with the *acquis* on TSE and animal by-products (*acquis* chapter 7);
- tax administration IT systems ready for inter-operability with those of the rest of the Union, to enable a correct collection of VAT throughout the EU internal market (*acquis* chapter 10).

3. SAFEGUARDS AND OTHER MEASURES

It is the responsibility of the authorities of both countries to take all the necessary measures to address the outstanding issues identified in this Report, so as to be able to carry out their obligations under the *acquis* upon accession. This concerns mainly the areas giving rise to serious concern, but also areas identified in this report as requiring increased efforts.

Failure to do so would lead the Commission, as guardian of the Treaties, to take the necessary preventive or remedial action to safeguard the functioning of EU policies.

This part sets out the safeguards and other measures which could be imposed in the event of certain shortcomings not having been adequately addressed upon accession. These are outlined in three broad areas: the internal market, the judiciary and fight against corruption, and the disbursement of EU funds.

3.1. Internal market

The *acquis* itself and the Accession Treaty provide for a certain number of safeguard measures in the event that Bulgaria or Romania is not able to abide by all its obligations upon accession. The Accession Treaty safeguard can be taken up to three years after accession. Other instruments, such as the infringement procedure, and the enforcement mechanisms for competition rules, may also be applied.

This section covers both the four freedoms, and the EU policies on competition, energy, transport, environment, telecommunication, taxation, agriculture and consumer and health protection insofar as they have cross-border effects.

Regarding transmissible spongiform encephalopathies, the *acquis* requires rendering collection and treatment facilities to be fit to ensure that no specified risk materials return into the animal feed chain. Bulgaria and Romania still need to build up such treatment facilities. If this situation is not remedied upon accession, the Commission will take a decision on the basis of the *acquis* in order to prevent the related animal products awaiting treatment from returning into the feed chain.

The EU framework for VAT and excise duties foresees computerised systems interconnected within the EC data systems. Romania's preparations need to be accelerated to ensure that its IT systems are fully operational and ready for interconnection upon accession. Otherwise the abolition of the fiscal borders will not be possible upon accession and the Commission will take measures based on Article 37 of the Act of Accession to maintain physical fiscal controls at the internal borders between Romania and the rest of the EU.

3.2. Justice, freedom and security

Judiciary and fight against corruption

The Accession Treaty provides for safeguard measures for up to three years from accession, in the event that Bulgaria or Romania is not able to abide by its obligations pertaining to judicial co-operation.

If implementation of reforms in the justice system is not sufficiently advanced in either country before accession, or if the fight against corruption in the judiciary has not yielded sufficient tangible results, the Commission will establish on the basis of Article 38 of the Act of Accession a mechanism for further monitoring in this area.

The mechanism would be in place for up to three years and would require a yearly report to the Commission on progress in implementing reforms in the judiciary and in related law enforcement bodies, and on anti-corruption measures affecting them. The decision establishing the mechanism would contain benchmarks tailored to the specific shortcomings observed in each country, and against which progress will be measured.

The Commission would report yearly on the results of the mechanism to the European Parliament and Council. Should either country fail to address shortcomings adequately, the Commission would adopt safeguard measures suspending obligations of the current Member States to automatically recognise judgements or execute warrants issued by that country's courts or prosecutors.

Fundamental rights

The European Monitoring Centre on Racism and Xenophobia monitors the protection and integration of minorities in the Member States. Upon the accession of Bulgaria and Romania, its remit or that of its successor agency will be extended to those countries.

3.3. Disbursement of EU funds

Disbursement of EU funds affects the livelihood of citizens and economic operators in the new Member States, as well as the overall balance of financial transfers between those countries and the Community budget.

A Member State needs to offer the necessary guarantees on proper spending of EU funds under shared management, i.e. the Common Agricultural Policy and the Structural and Cohesion Funds. Any shortcoming in this respect may delay the disbursement of funds or give rise to subsequent claims by the Commission for financial corrections or recovery.

In the area of agriculture, accredited paying agencies as well as a proper integrated administration and control system (IACS) are necessary for handling direct payments to farmers and operators. In Romania, the paying agencies are not fully operational and accredited. A proper IACS is not set up in Bulgaria and Romania. If this is not remedied, in addition to the existing mechanisms, the Commission may take measures based on Article 37 of the Act of Accession to withhold payments to Bulgaria or Romania.

Implementation of EU structural actions requires effective programming and monitoring structures, as well as financial management and control systems, including for procurement. Bulgaria's preparations for the control over structural funds expenditure need improvement. If these are not remedied, this would delay the release of payments by the Commission.

4. CONCLUSION

Bulgaria and Romania have continued to make progress in their preparations for membership. In many areas the countries are generally meeting their commitments or are on track to fulfil the *acquis* requirements. However, a number of outstanding issues still need to be addressed. Some of these require increased efforts, and in a few cases immediate action is needed.

The Accession Treaty provides that Bulgaria and Romania will join in 2007 unless the Council decides, upon a recommendation from the Commission, to postpone the accession of either country until 2008. The Council may so decide:

- by qualified majority, if serious shortcomings have been observed in the fulfilment by Romania of one or more of a number of the specific commitments and requirements related to justice and home affairs and competition policy, listed in Annex IX to the Act of Accession, or
- by unanimity, if there is clear evidence that the state of preparations for adoption and implementation of the *acquis* in Bulgaria or Romania is such that there is a serious risk of either country being manifestly unprepared to meet the requirements of membership by 1 January 2007 in a number of important areas.

In the light of the overall progress made by Bulgaria and Romania assessed in the accompanying Monitoring Reports and summarised in this communication, the Commission considers that Bulgaria and Romania should be prepared for membership by 1 January 2007, provided that they address a number of outstanding issues.

An impartial, independent and effective justice system properly equipped to fight corruption and organised crime is of paramount importance, as it underpins the functioning of the whole society and economy. In this regard:

- Bulgaria needs to demonstrate clear evidence of results in the fight against corruption, in particular high-level corruption, notably in terms of investigations and subsequent judicial proceedings.
- Building on progress already made, Romania needs to continue its efforts and demonstrate further results in the fight against corruption, notably in terms of further investigations and subsequent judicial proceedings.
- Bulgaria needs to further reform the judiciary, in particular to reinforce its transparency, efficiency and impartiality, and remove any ambiguity regarding its independence.
- Building on progress already made Romania needs to consolidate the implementation of the ongoing judicial reforms, and further enhance the transparency, efficiency and impartiality of the judiciary.

In addition, Bulgaria needs to:

- demonstrate clearer evidence of results in investigating and prosecuting organised crime networks; implement more effectively and efficiently laws for the fight against

fraud and corruption; intensify the enforcement of anti-money laundering provisions; set up a proper integrated administration and control system (IACS) in agriculture; build up the necessary rendering collection and treatment facilities in line with the *acquis* on TSE and animal by-products; and strengthen financial control for the future use of structural and cohesion funds.

In addition, Romania needs to:

- accredit paying agencies for handling common agriculture policy expenditure; set up a proper integrated administration and control system in agriculture; build up the necessary rendering collection and treatment facilities in line with the *acquis* on TSE and animal by-products; and ensure that the tax administration IT systems are ready for inter-operability with those of the rest of the Union, to enable a correct collection of VAT throughout the EU internal market.

The Commission will report on Bulgaria's and Romania's progress in addressing the outstanding issues no later than early October. On this basis, the Commission will consider whether the date of their accession to the European Union on 1 January 2007 can be maintained. This report will also specify any areas where safeguards or other remedial measures may be needed upon accession