

# Monitoring of Bulgaria's Accession to the European Union 2002

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## Preface

The Forum for European Policy and the Friedrich-Ebert-Stiftung present the monitoring report 2002 on Bulgaria's Accession to the European Union. This is the third report of a project which started in 2000. All three reports are published in Bulgarian and English. The objectives of this project are twofold:

(1) To strengthen Bulgarian capacities to analyze and to critical assess Bulgaria's progress on the way to the European Union. In this regard Bulgarian experts from various research institutes and universities are commissioned to write reports in their field of expertise.

(2) To inform the Bulgarian public in general about the implications of Bulgaria's EU membership. In connection with this objective, seminars, round tables and other activities are organized to present the results of the studies, to stimulate discussion on the subjects proper, and to collect the opinions and suggestions of the various stakeholders in Sofia and the main provincial towns.

The monitoring report 2002 concentrates on the work of the structural funds of the EU Commission, on regional policy and on environmental questions. I hope that the articles collected in this report provide valuable insights to all those who are interested in the accession process.

I like to thank the authors of the articles for their co-operation in this project. I am particularly grateful to Irina Bokova from the Forum for European Policy for the co-ordination of this project and to Dr. Pentcho Houbtchev from the Friedrich-Ebert-Stiftung for his valuable input.

Arnold Wehmh rner  
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## **REVIEW OF BULGARIA'S PREPARATION: 2001**

### **INTRODUCTION**

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*Irina Bokova*

Before the reader is the third "Monitoring of Bulgaria's Accession to the European Union". With this study, financed by the Delegation of the European Commission in Sofia and the Regional Bureau of the "Friedrich Ebert" Foundation, the team of independent experts of the "European Policy Forum" has the humble ambition to participate in the public discussion on the problems of Bulgaria's accession to the EU. The book does not claim to achieve deep insight on the negotiation process, but to continue to study the political, legal, socio-economic and institutional problems of integration within the preparation for accession.

This book will be printed before the publishing of the Regular Report of the European Commission on Bulgaria's Progress in EU accession and this is an additional reason for the absence of a close and detailed analysis and comment of the report and the Commission's assessment. This, however, is not the objective of the study, as it was not the objective of the previous two books.

In this relation the approach of the study team, which is at the basis of the three subsequent books, must be underlined once again, namely – Bulgaria's preparation for membership does not begin and end only with the negotiations, although they have key importance in view of the relations with the EU. The preparation for membership has a much wider spectrum, requires various efforts and strategies, which must be coordinated and supplemented carefully and subsequently. Underestimating any one of them could lead to negative consequences for the accession process – short-term or long-term. The experience of other accessions goes to show that even with concluded negotiations, insufficient preparation does not only hinder the fulfilment of the benefits of membership, but very often triggers euro-scepticism among the public as was the case with Austria, or the newly-acceded Member State moves back, instead of accelerating its growth immediately after accession, as was the case with Greece<sup>1</sup>.

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<sup>1</sup> "Cohesive Growth in an Enlarging Euroland", Michael Dauderstadt/Lothar Witte (Eds.), Friedrich Ebert Stiftung. 2001.

The year following the publication of the previous book was filled with interesting and important events in Bulgaria, the European Union and the world as a whole. The terrorist attacks on September 11, 2001 in the USA catalysed a series of processes and trends. They had, and still do, not only enormous psychological consequences, but also actual dimensions in a number of economic and political decisions both across the Atlantic Ocean and in Europe.

The need for creating an anti-terrorist coalition and the new challenges facing international security added new arguments in favour of NATO's enlargement, which were related to Bulgaria's inclusion as well. No doubt such a solution in November this year will have a stabilising effect from a domestic and foreign policy point of view. It will contribute to the overall establishment of the Euro-Atlantic values in Bulgarian political life, will provide a basis for greater economic activeness and an investment process that will accelerate the fulfilment of the criteria for EU membership.

From this study's point of view it is important to mention the presidential elections in the autumn of 2001, when the candidate nominated by a coalition of left and central-left parties and movements and supported by the Movement for Rights and Freedoms, Georgi Parvanov was elected to be the new President of Bulgaria.

Electing the leader of the Bulgarian Socialist Party for President, who immediately declared Bulgaria's Euro-Atlantic orientation and NATO membership as his priorities, once and for all eliminated the arising doubts regarding the stability of the national consensus on these issues.

At the same time the dynamics of the enlargement process gained new momentum with the decisions of the European Council in Laeken. This Council was important for two main reasons. It adopted a declaration and established the parameters of the Convention for the Future of Europe as a forum for representatives of the national parliaments and governments of the Member States and the candidate countries, as well as of the institutions of the EU, aimed at setting up a wide framework for the reform in the Union. A reform, which is necessary both due to the upcoming enlargement, as well as due to the transformed international political and economic environment.

Laeken not only confirmed the irreversibility of the enlargement process, but also declared that the EU is firm in concluding the accession negotiations with the candidate countries that are ready for this by the end of 2002, so that they can participate in the elections for European Parliament in 2004 as Member States of the Union. The Council accepted the Report of the Commission, which indicates that if the current progress in the negotiations and reforms is maintained, the following countries will be ready for accession: Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, the Czech Republic and Slovenia.

Even though a good assessment was given to the efforts made by Bulgaria and Romania, which are encouraged to maintain this course, these two countries were left in a separate group, without a clear perspective for accession periods. In addition, the Council's conclusions contained the intention of the EU to "those countries are to receive specific support, there must be a precise framework with a timetable and an appropriate roadmap, the objective being to open negotiations with those countries on all chapters in 2002."

The decisions of the European Union in Laeken placed Bulgaria in quite a different situation. Practically a decision for a so-called "big bang" enlargement of 10 candidate countries was taken, but without Bulgaria and Romania, which to a large extent altered expectations and

predictions and intensified the fears of both countries for their not so clear "European" future. What are these fears and to what extent are they justified?

**First**, these fears are related to the lack of political vision for the need of EU enlargement in Southeast Europe and the stabilising role that this process would play. It is obvious that not all 10 candidates have a high degree of preparedness and economic indicators. Some of them have problems similar to Bulgaria and Romania, but nevertheless they are considered to be perspective candidates for membership. This once again poses the need for EU confirmation of the principle of equal treatment of all candidate countries.

**Second**, the argument for Bulgaria's non-inclusion in the "big bang" enlargement due to its economic and social lagging behind is well known. The paradox arising from such a solution is that the distance between the two groups of countries will deepen with the more serious financial transfers towards the 10 countries at a much earlier stage than towards Bulgaria within the Structural funds and the direct subsidies (even if in the beginning they are 25% of those for the Communities) under the Common Agricultural Policy.

**Third**, the real threat for Bulgaria to face a situation when it will have to negotiate with not 15, but 25 Member States, which would additionally complicate this process.

**Fourth**, it is natural for public psychological attitudes to arise, which will lead to a rise in the euro scepticism.

Bulgaria's negotiation strategy until now, which placed a deadline for their conclusion by the end of 2004 in view of the possible ratification of the accession treaty by the end of 2006, was based on the scenario for future enlargement as it was laid out in the adopted in 1997 Agenda 2000. Laeken changed this scenario and imposed a different strategy upon Bulgaria, one that is aimed at accelerating the negotiations in view of their conclusion by the end of 2003.

Of course, there is sense in the acceleration of the negotiations and Bulgaria's overall preparation for membership, requiring additional internal resources and efforts when Bulgaria receives a clear timetable for its accession from the EU. At the same time it is unlikely that only the domestic resource will be sufficient for Bulgaria's preparation membership and for the implementation of the EU legislation. A more large-scale and purposeful financial support is needed to make the preparation for the participation in the Internal Market of the Community possible.

It should be noted that during the past year Bulgaria overcame the lagging behind and progressed significantly in the negotiation process. To a large extent this shortened the distance from the group of the 10 countries. However, the Government and the administration can not overcome another extremely serious problem – the need to understand and clearly define what preparation for membership means, the separate stages of this preparation, their rationalisation and transformation into subsequent strategies and actions.

Unfortunately, one of the flaws of the accession process is the reversed and somewhat distorted view that was imposed on the Bulgarian public. The negotiations for membership, as well as the opening and closing of chapters, are presented as the only step that Bulgaria must undertake in order to achieve this goal. But this is only the first of several steps that a candidate country must undertake in order to prepare for membership<sup>1</sup>.

Proof of this limited approach is also the adopted by the Government and approved by Parliament Strategy for Accelerating Bulgaria's Preparation for EU Membership, which contains

mostly short deadlines for adoption of legislation in the respective areas and acceleration of the negotiations themselves. However, once again there is no wide framework for all the actions that should accompany the negotiation process and which are part of the country's preparation for membership, namely:

- The analysis of the consequences from the implementation of the legislation in the different sectors of the economy and a clear and precise timetable for the performance of the obligations assumed during the negotiations.
- Completing the development of the necessary institutional and legal framework that Bulgaria needs when joining the EU. If after the accession our country does not have the capacity to implement the European legal norms and standards, this would have an extremely negative effect on society and the abilities of the economy to participate on the Community's Internal Market.
- Finding the optimum for Bulgaria model of managing and utilising the EU Structural Funds, which requires the introduction and gradual imposing of a new type of administrative structure and a high degree of coordination between the various social and economic strategies and programmes.
- Preparing the public for membership and maintaining permanent dialogue with the different public groups and branches. This is an extremely serious and important task that has direct economic, social and psychological dimensions. Unfortunately, this step in the preparation for membership has been ignored to a great extent. It is true that in the autumn of 2001 the Government adopted a Communication Strategy but it is yet to be implemented.
- Last but not least, this is the need to find and define the still missing vision for the national priorities and the national interest on such key matters as the institutional reform of the Union, the budget and agricultural policy reform and so on.

The issue of what must be done after the end of the negotiations is important as well. Even with the current Government strategy, which envisages the conclusion of the negotiations in 2003 and the possible membership from January 1, 2007, the question about the necessary steps that Bulgaria must take during the 2003-2007 period in order to prepare for membership are still posed and with good reason.

The need to develop namely such a vision for the future steps is more than obvious. Clearly, this will also be the implementation period of a number of the engagements assumed during the negotiations, as well as the preparation of the entire society for membership. This period should also be used for more in-depth research regarding the consequences for the different sectors of the Bulgarian economy from the participation in the Internal Market of the Community and as a result of the development of managerial and regulatory solutions.

2002 has key importance for the enlargement of the EU. There are several events and factors determining such a statement.

First, this is the fact that the existing enlargement time frame adopted in Laeken provides for a conclusion of the negotiations with the 10 countries by the end of this year, followed by the start of the ratification. To make this possible however, the EU must not only come out with a common position on the most difficult issues – the Common Agricultural Policy and the budget expenses as a whole, but these positions will also be approved by the candidate countries on the basis of the arranged budget compensations.

The problem is mostly in the fact that according to the financial framework for the budget expenses for the 2004-2006 period, which the European Commission published on September 13, 2002, some of the newly-acceded Member States<sup>1</sup> will be net budget payers and the rest will receive much smaller funds during the first years of their membership compared to the pre-accession period due to the full budget payments they will begin to make<sup>2</sup>. As a whole the candidate countries, without Cyprus, will receive 6.1 billion euro in 2004, 8 billion euro in 2005 and 10.1 billion euro in 2006 or a total of 24.2 billion euro. At the same time they will have to make their full budget payments from the very beginning – 5 billion euro in 2004, 5.1 billion euro in 2005 and 5.3 billion euro in 2006.

It's true that in January 2002, in its proposal for a common financial framework to the Member States the European Commission foresaw the need for the development of an additional package of financial assistance for budget compensations, i.e. a transition period. The planned sums however – 816 million euro for 2004, 800 million for 2005 and 814 million for 2006<sup>3</sup>, meet the serious objections of the candidate countries as insufficient. Such a package of measures was also applied during the previous enlargements, including the last one with Austria, Sweden and Finland, but the case is different now.

No doubt 2002 is a key year in the enlargement process. Nevertheless, there are some risks that should be taken into account.

**First**, these are the difficult budget problems related to the enlargement. This may sound like a paradox, having in mind the bulk of research and forecasts regarding the price of enlargement, but it seems that the authors who say that the price of enlargement is what the EU wants and is able to pay, are right. The reflection of enlargement on the budget of the Community is more of a political than an economic issue<sup>4</sup>.

For Bulgaria the fact that the complex budget problems related to the participation of the new Member States were practically postponed for 2005-2006, when the new budget will be discussed and approved, has significant importance. The decision of the EU to fit into the Berlin budget framework (2000-2006) practically delayed the discussion on the more long-term issue – will the new Member States be "second class" or will they be treated equally with the 15.

**Second**, this is the broad range of issues related to the reform of the Common Agricultural Policy, specifically with the delay of this reform. If until recently it was considered that the long

<sup>1</sup> According to the EC these are Cyprus, Malta, Slovenia and the Czech Republic.

<sup>2</sup> [www.euractiv.com/Enlargement](http://www.euractiv.com/Enlargement).

<sup>3</sup> Communication from the Commission. Information Note, Common Financial Framework 2004-2006 for the Accession Negotiations, Brussels, 30.01.02

<sup>4</sup> Heather Grabbe, "Profiting from Enlargement", Center for European Reform, June 2001, London

<sup>1</sup> Prof. Andras Inotai, "Not only the Chief Negotiator will enter the European Union, but the whole public as well", interview in "Capital" newspaper, N30, July 2002.

postponed CAP reform will nevertheless outclass enlargement, today it is clear that this will not happen. In fact on this matter the EU is in a "dead end". On the one hand, if it had started the reform before the enlargement, the Union risked opening Pandora's box and postponing the enlargement for an unspecified period of time. On the other hand, if the CAP remains in its current state, the EU will face the most difficult budget negotiations at the end of the current financial period 2005-2006<sup>1</sup>.

**Third**, among the risks is no doubt the upcoming referendum in Ireland later in 2002. The second refusal of Irish voters to ratify the Treaty of Nice following the 2001 referendum will make the institutional change of the EU impossible, despite of the declared intention of the other Member States to continue with its ratification without changing it. Of course, such an outcome will not block the enlargement<sup>2</sup>, but is very undesired and will have unpredictable for now legal and institutional consequences.

In other words, a very important period in Bulgaria's European future is coming. Even though until now the Member States have not engaged in a clearer time frame for Bulgaria's accession, the expectations are that in December 2002 the European Council in Copenhagen will outline this frame. There are also expectations that Bulgaria will accelerate its economic development so that it can benefit from its integration in this powerful economic and political union.

## ACCESSION NEGOTIATIONS

*Pavlina Popova*

The European Council in Luxembourg in December 1997 on the basis of the recommendations of the European Commission decided "to launch the overall enlargement process" for all countries willing to join the European Union. The accession process was launched on March 30, 1998 in Brussels. It covers all 10 Central and East European countries, Cyprus, Malta and Turkey. The European Commission carried out an analytical review of the EU legislation and policies with all candidate countries except Turkey. The aim of this review was to assist those countries to improve their understanding of the rules on which the EU is based and to identify the issues that must be addressed upon the adoption and implementation of the EU *acquis*. For the negotiating countries this review was also used in the preparation of the negotiations.

Thus on March 31, 1998 accession negotiations with 6 countries were opened: the Czech Republic, Estonia, Hungary, Poland, Slovenia and Cyprus. Subsequently, on February 15, 2000, negotiations with 6 more countries were launched: Bulgaria, Latvia, Lithuania, Malta, Romania and Slovakia.

### I. PRINCIPLES IN NEGOTIATIONS FOR EU ACCESSION AND THEIR CONCLUSION

Although Bulgaria has already provisionally closed 21 negotiation chapters, the more difficult ones are still ahead. Due to this we would like to make a brief review of the basic principles in the negotiations.

**First**, the negotiations are focused on the terms and conditions under which the candidate countries adopt, implement and enforce the EU legislation.

**Second**, the agreeing of transitional periods is possible, but they must be limited in scope and time and should not have an impact on competition or the functioning of the Internal Market and should be accompanied by clearly defined stages for implementation of the *acquis*.

**The third basic principle** is the concept of differentiation, namely that the decision for opening of negotiations with a group of countries simultaneously does not presuppose that they will end at the same time. Negotiations with the candidate countries are carried out individually and the pace depends on the degree of preparedness of each of them and on the complexity of the issues to be solved.

**In last place** is the principle of "catching up". Taking the decision to open negotiations with the second group of countries, the European Council in Helsinki in December 1999 provided that: "Candidate States which have now been brought into the negotiating process will have the possibility to catch up within a reasonable period of time with those already in

<sup>1</sup> "Count Down to Copenhagen, Big Bang or Fizzle in the EU's Enlargement Process". Lykke Friis and Anna Jarosz-Friis, Danish Institute of International Affairs, Copenhagen 2002

<sup>2</sup> A possible outcome, also mentioned by the President of the European Commission Romano Prodi, is regulating the participation of the newly accepted Member States in the work of the European institutions through respective texts of the Accession Treaties separately.

negotiations if they have made sufficient progress in their preparations". Thus, each country is assessed in accordance to its own merits.

In December 2000 the European Council in Nice added one more element to the negotiation process – the proposed by the EU "road map". The objective of the road map is to move the negotiation process forward and to ensure that each party to negotiations takes the obligation to adhere a realistic timetable. In addition it also tries to define the outstanding issues in the negotiations in 2001 and early 2002. In specific terms, with it the EU commits itself to submit joint negotiating positions and to negotiate on transitional measures on the different negotiating chapters in accordance with the agreed timetable. Thus, the "road map" responded to the guiding principles of differentiation and "catching up", i.e. that certain chapters could be provisionally closed before the envisaged term depending on the degree of preparedness of the respective candidate country. In June 2001 the European Council in Göteborg confirmed the "road map" as a framework for successful completion of negotiations.

However, at the same time the European Council underlined that the progress in the negotiations should go hand in hand with the progress in adoption of the EU law and its actual implementation and enforcement. Thus, in mid 2000 the European Commission began a *monitoring of the negotiations*. Its aim is to assess the performance of the obligations undertaken by the candidate countries during the negotiations and to make possible the identification of any occurring problems upon the adoption and implementation of the legislation by each candidate country as well as to outline the problems, which exists or could be expected.

## II. ESSENCE OF THE NEGOTIATIONS

Although Bulgaria is quite ahead in the negotiation process for membership, the broad public does still not know what the accession negotiations actually are. Due to this we allow ourselves to explain this process.

In the very beginning of the process Bulgaria should become aware that the negotiations with the EU follow rules, which differ strongly from those known and applied in traditional diplomacy. In the classic sense negotiations start with participants who have clear and differing positions and end with compromises that satisfy all of the parties and which eventually contain elements of the initial position of each of them. The result is a mixture of the interests of the parties.

With the EU the starting point of the negotiations are 90,000 pages of Community policies and legislation (*acquis communautaire*), which the candidate country has to adopt before the accession. So, the rules must be adopted and not negotiated on. In this sense the word "negotiations" taken alone is misleading in the context of the talks with Brussels and the EU Member States. The classic negotiation process is applied only to requests for temporary exemption of the EU rules. It includes identification of the areas in which such requests can be made and the time periods within which the candidate will implement the *acquis* in full. Here the negotiations are two-way, because the EU can also ask for temporary exemptions in areas sensitive for the Community (as a transitional period was requested for the free movement of labour and agriculture).

To sum up, it should be underlined that the candidate countries have very limited room for manoeuvring during the negotiation period. The rules for joining the club have been defined by

its present members and are not going to be rewritten as a result of the accession talks. Although in some cases, accession negotiations may lead to an amendment of the *acquis* and add new rules. This is the case with Sweden, Finland and Austria, which before the accession had tighter environmental standards, which become part of the *acquis* and became binding on the existing Member States.

A basic rule in the negotiation process is that no chapter is closed until all of the chapters are closed. So chapters already discussed and agreed on gain only a 'temporarily closed' status, as they can still be reopened as long as the negotiations last. This approach seems reasonable due to a number of reasons:

- The EU legislation is constantly changing and the new members will have to adopt and enforce it, as it exists at the moment of their accession. The *acquis* on which the candidates formulate their national positions in the beginning of their negotiations could change by the time the negotiations are concluded or when accession time comes. All changes occurring until the end of the negotiations have to be included in the accession treaty. Additional changes in the period between the signing of the treaty and actual membership must be included in a separate document up to the moment of accession.
- When formulating their positions the candidates must start from a certain date when they believe they can become members of the EU. Since most of the requests for temporary exemption have a clear timetable, they are based on this hypothetical accession date. If the accession date is postponed, some of the exemption requests may become meaningless, which automatically leads to changes in some temporarily closed chapters. Hungary, for example, originally aimed for accession in 2002 and has requested a transition period for the extension of the telecommunications monopoly for 2002-2003 but since now it becomes clear that membership will now not materialise before 2004, it will not be able to use this transition period. The same is related to Bulgaria, which has requested a transition period for a lower level of compensation of the investors until the end of 2009 (having in mind a possible accession date of 2004), i.e. in the best case of accession in 2007, Bulgaria will be able to use the said transition period for 2 years while some candidate countries will effectively use a 5-year transition period.
- Domestic developments in candidate countries or Member States may lead to alterations in the content of temporarily closed chapters. These may involve a withdrawal of requests for earlier derogation or the inclusion of new ones. Here it is important to underline that the word "derogation" should not even be used since the EU closed the door for the new Member States to make such requests, which was possible earlier – for example, Denmark and the United Kingdom stayed out of the Social Pact, several Member States remained outside the Schengen Agreement, most recently, the United Kingdom and Denmark declined to participate in the EMU. For the new Member States is not possible to opt – every new country will have to adopt the full *acquis*.

When negotiations with a certain candidate country come to an end on all chapters the final result of the negotiations is incorporated in a draft Accession Treaty, which is submitted in

the Council for approval and in the European Parliament for agreement. After being signed the Accession Treaty is submitted to the Member States and to each candidate country for ratification, which in some cases includes a referendum as well. Every Member States and every candidate country must ratify the accession treaty in accordance with its democratic procedures. After the ratification is completed the candidate country becomes a Member State.

In conclusion, it should be mentioned that before accession Bulgaria must **adopt and implement the whole EU acquis completely and correctly**. Practically at least 80% is not at all up for discussion. About 20% are to be discussed, because the accession of new Member States requires technical adaptations to the rules. And transition periods will be granted for only 1-2 % of the *acquis*. These are areas of technical complications, and areas where the budget or capacity problems require a transition period, e.g. in environment. In general however the transition periods are exceptional, limited in time and scope, and accompanied by a plan with clearly defined stages for the application of the *acquis*. They must not involve amendments to the EU rules or policies, or disrupt their proper functioning, or lead to significant distortions of competition. It also should be added that in the Single Market area the Commission considers, as a principle, transitional measures inappropriate.

### III. STATE OF PLAY OF THE NEGOTIATIONS

Up to July 2002 the state of play of the negotiations is as follows. All candidate countries have opened 30 negotiation chapters (practically all without Chapter 31 "Others") except Romania, which has opened 27 chapters. Countries from the group that started its negotiations in 1998 have provisionally closed negotiation chapters as follows: Cyprus, Estonia and Slovenia – 28, Hungary and Poland – 26 and the Czech Republic – 25. The group that started negotiations simultaneously with Bulgaria, have provisionally closed negotiation chapters as follows: Lithuania – 28, Latvia and Slovakia – 27, Malta – 24 and Romania – 13<sup>1</sup>.

Bulgaria as it was mentioned above has opened 30 negotiating chapters and has provisionally closed 21 chapters, i.e. only Romania is with less provisionally closed chapters. The chapters that remain to be closed by Bulgaria are: Competition, Agriculture, Transport, Energy, Regional Policy, Environment, Home and Justice Affairs, Financial Control, Financial and Budgetary Provisions. However, it should be mentioned that chapters Agriculture and Financial and Budgetary Provisions are not closed yet by any of the candidate countries.

#### 1. Transition Periods Requested by Bulgaria (under the provisionally closed chapters)

Bulgaria has requested transition periods under the following chapters:

##### Chapter 3 "Free movement of services"

Under this chapter Bulgaria has requested a transition period, which envisages a lower level of investor compensation until end-2009. Under this chapter all other candidate countries, except the Czech Republic and Malta (and Romania, which has not closed the chapter) have also requested transition periods. The same transition period as Bulgaria has been requested

by Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia (all of them until the end of 2007, except Slovakia – until the end of 2006). Other transition periods are requested for lower levels of bank deposit guarantees (Estonia, Latvia and Lithuania – until end-2007), exclusion of co-operative credit and savings societies (Cyprus – until end-2007), exclusion of credit unions (Poland – until end-2007), exclusion of two specialised banks; (Hungary and one specialised bank (Poland), lower level of capital requirements for savings and loan undertakings (Slovenia – until end-2004).

##### Chapter 4 "Free movement of capitals"

Under this chapter Bulgaria has requested two transition periods:

- a five year transition period for the acquisition of secondary residences, excluding EEA citizens who reside in the future Member State from the scope
- a seven year transition period for the acquisition of agricultural and forestry land, excluding self employed farmers from the scope

The first requested by Bulgaria transition period has been requested also by Cyprus, Czech Republic, Hungary and Poland (as the latter two have excluded EEA citizens who have resided at least for 4 years respectively in Hungary and Poland). Malta has reached special arrangements for the purchase of secondary residences, restricting the purchase of such property for all EU nationals that have not been resident on the island for at least 5 years.

The same transition period for acquisition of agricultural and forestry land as Bulgaria has been requested by the Czech Republic, Hungary and Slovakia (the latter has excluded self employed farmers who have been residing for 3 years and are active in farming from the scope) while Poland has requested a 12-year transition period for agricultural and forest land, excluding self employed farmers from EEA countries who have been leasing land for 3 or 7 years (depending on the region) from the scope. The remaining candidate countries Estonia, Latvia, Lithuania and Slovenia have not requested transition periods and Romania has not closed the chapter yet.

##### Chapter 10 "Taxation"

Under this chapter Bulgaria has requested the following transition periods:

- Level of VAT turnover threshold for SMEs (requested by all remaining candidate countries who have provisionally closed the chapter);
- VAT exemption for international passenger transport (requested also by Latvia);
- Special excise regime for fruit growers' distillation for personal consumption (requested by Czech Republic and Slovakia);
- Lower excise duty rates on cigarettes (requested also by Czech Republic until end-2006., Estonia, Latvia, Lithuania, Poland and Slovakia).

Transition periods by the other candidate countries have been requested for:

- Reduced VAT rate on heating. – requested by the Czech Republic, Estonia and Slovakia (which has requested a reduced VAT rate on electricity and gas);
- Reduced VAT rate on construction – Slovakia, Slovenia and Czech Republic and Cyprus (for building lands);

<sup>1</sup> The state of play of the negotiations is up to 1 October 2002.

- Reduced VAT rate on restaurants – Cyprus and Poland
- Zero VAT rate on books – Poland.

Malta and Romania have not provisionally closed this chapter yet.

### Chapter 13 "Employment and social policy"

Bulgaria has requested a transition period for maximum tar yield of cigarettes until 31 December 2010 in accordance with Directive 90/239/EEC as modified by Directive 2001/37/EEC. Transition period on the same issue has been asked also by Hungary (until December 31 2005).

Under this chapter transition periods have been requested also for:

- work equipment (Latvia, Malta and Poland);
- workplace – Latvia;
- display screen equipment – Latvia;
- working time and temporary mobile construction – Malta;
- noise at work – Malta and Slovenia;
- biological agents and chemical, physical and biological agents at work – Slovenia;

Cyprus, the Czech Republic, Estonia, Lithuania, Romania and Slovakia have not requested transition periods on this chapter.

### Chapter 19 "Telecommunications, IT and Postal Services"

Bulgaria has requested one transition period of two years for implementation of Directive 98/61/EC, notably the aspect of number portability.

Except Romania, all other candidate countries have provisionally closed this chapter and have not requested transition periods.

## 2. Transition Periods requested by EU

Except for Malta and Cyprus for all of the remaining candidate countries the EU has requested a two year transition period under Chapter 2 "Free movement of persons", which relates to the labour market. This transition period will be applied by the current Member States to the new Member States. Depending on how liberal these national measures are, they may result in full labour market access.

Following this 2-year period, reviews will be held, one automatic review before the end of the second year and further reviews at the request of the new Member State. The procedure will include a report by the Commission, but essentially leaves the decision on whether the transition period will continue to be applied to the Member States. The transition period should come to an end after five years, but it may be prolonged for a further two years in those Member States where there are serious disturbances of the labour market or a threat of such disruption. Safeguards may be applied by Member States up to the end of the seventh year. The transition arrangement also includes a number of other important aspects, whereby current Member State labour markets cannot be more restricted than that prevailing at the time of signing of the Accession Treaty. Also current Member States must give preference to candidate country nationals over non-EU labour.

A declaration will be attached to the Accession Treaty stating that current Member States shall endeavour to grant increased labour market access under their national law, in view of

speeding up the approximation to the *acquis* and even encouragement to improve access before accession.

Austria and Germany have preserved their right to apply flanking national measures to address serious disturbances or the threat thereof, in specific sensitive service sectors on their labour markets, which could arise in certain regions from cross-border provision of services. Under the transition arrangement the rights of nationals from new Member States who are already legally resident and employed in a Member State are protected. The rights of family members are also taken into account consistent with the practice in the case of previous accessions.

This arrangement has been presented to eleven candidate countries and nine have been able to accept it subject to some minor adaptations. The solution reached in respect of Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia is identical – reciprocity vis-à-vis current Member States and the possibility to apply safeguards against new Member States once at least one new Member State is subject to national measures. A statement to be made at the Accession Conference was agreed upon containing the aim of the Member States to grant increased labour market access to nationals of these seven countries.

Due to the concerns of Malta that its labour market could undergo pressure following accession, a safeguard clause has been agreed, which will run for 7 years.

## IV. BULGARIA AND THE ACCESSION NEGOTIATIONS

Bulgaria as the remaining candidate countries faced a unique challenge to prepare negotiating strategies after the green light to start negotiations on accession was given. Two major questions had to be answered: a) How should key 'national interests' be defined, represented and protected and (b) What approach should be taken on the negotiations in general and transitory requests in particular.

The problem with identifying national interests begins with defining them. 'National interests' will be differently interpreted in contexts by different groups of the society interested in various issues, as well as by different ministries and state agencies — for example political, economic, social, environmental, etc. Each group will argue, of course, that its own interests are the most important on a national level. The government is the actor, which has to take the lead in applying a systematic approach, but this does not mean that the government should define 'national interests' alone.

As it was underlined in the 2001 Monitoring in the context of approximation of legislation "the starting of the debate as early as the drafting level of the law both with the interested groups of the society and with practitioners as a permanent form in the law drafting process would lead to an improvement in the quality of the adopted laws and in particular in their effective implementation. It is natural that in such a debate the various economic interests will try to achieve different aims but here enters the role of the Government and of the legislator to account and reflect public interest in the law." These trends, which must be imposed by the Government to the newly adopted legislation should have been applied in the same manner in the preparation of the negotiating positions and in the defining the "national interest" in each of the negotiating chapters.

Unfortunately, the preparation of the positions of the interesting groups was not followed by institutionalised dialogue with the Government but it was done in a rudimentary and sporadic way. Moreover, it is unfortunate that this debate not only has not begun before the negotiations, but that it has not taken place yet. So, necessary studies on the impact of the accession to identify the economic benefits and costs of protection or rejection of different interests and to take into account the social, political, regional, institutional and psychological consequences for different sectors and at a macro level, have not been carried out. As a result the public remained unprepared as a whole to understand what is happening, how it can support with its arguments the positions of negotiating team in Brussels and how to contribute to implementation of these positions in Bulgaria. The only exception in this regard is the very strong public debate, which is still going on, on the closing down of the four NPP Kozloduy units.

Having in mind that Bulgaria has already opened all negotiation chapters and has submitted its negotiating positions, the Government should attempt to take into account at least the consequent impact on the different sectors and interested groups by the assumed during the negotiations arrangements. The provided information on which chapters are opened, how many are provisionally closed and how fast Bulgaria is moving ahead does not help the public to understand the essence of the issues and to make the implementation of the assumed arrangements more effective. The society as a whole and the interested groups in particular should be actively involved in the dialogue. Due to this it is of crucial importance that the adopted Communication Strategy (which is commented below) and the Action Plan to it to be able to close or at least to narrow this gap between the negotiations and the awareness of the public and interested groups about them.

The choosing of the appropriate negotiation strategy was very important – whether the approach should be more “concentrated”, dealing with a small number of ‘national-interest’ issues or whether a large number of issues should be discussed and more transition periods required. Both approaches have their *pros* and *cons* but Bulgaria, similarly to Slovenia and Estonia, obviously has chosen the first one since the requested transition periods are for only five chapters (from the closed until now).

The advantage of this approach is that the efforts are concentrated on vital issues and their protection, even in the final round of negotiations. It, on the one hand, leaves less room for the EU to ask for complementary transition periods or to discuss lesser problems leaving the difficult for the end of negotiations. Besides, this approach is supposed to be less problematic and conflictive in the domestic plan since the Government instead of protecting lobby interests, can devote its energy to discussions with society and preparing the public for the challenges of membership. Moreover, this approach, at least at first sight, promises faster progress in the negotiations and earlier accession.

However, it must be outlined immediately that such behaviour can only be assumed by countries that are well prepared for accession. Even then, the EU and its Member States may be understandably mistrustful towards the low number of transitory requests. It may raise serious questions about the extent to which these countries have really understood the meaning of the *acquis* and how it can be adjusted and enforced. And more important, if this approach results from failure to involve society in the preparation of the accession negotiations, the Accession

Treaty may later appear to the public to have been dictated to the economy and society. Such impressions will have unpredictable consequences in the early years of EU membership.

Since to our view such risks exist in Bulgaria, below we have attempted to make some recommendations to the Communication Strategy and the Strategy for Acceleration of Negotiations in view of avoiding them.

In the course of the negotiations, naturally, emerged and will emerge a number of other issues. For example, concerning the duration of the transition periods, which depends to a large extent on the willingness of the EU to accept or to refuse certain durations. Such a difficult issue during the negotiations was the purchase of agricultural land and forestry where the EU proposed to candidate countries requesting such a period, a 7-year transition period, similar to the requested by the EU transition period for the labour market. The EU did not accept the 18-year transition period requested by Poland and accepted 12 years and for Bulgaria, which requested 10 years, it accepted 7 years.

## V. STRATEGIES OF BULGARIA, ADOPTED AFTER THE 2001 REGULAR REPORT

In this part we will study the Strategy for Acceleration of the Negotiations and the Communication Strategy, which we consider most important for the progress and conclusion of the negotiations.

### 1. Strategy for Acceleration of the Negotiations

In the conclusions of the European Council in Laeken in December 2001, it is said that: “The European Union is determined to bring the accession negotiations with the candidate countries that are ready to a successful conclusion by the end of 2002, so that those countries can take part in the European Parliament elections in 2004 as members. Candidacies will continue to be assessed on their own merits, in accordance with the principle of differentiation. The European Council agrees with the report of the Commission, which considers that, if the present rate of progress of the negotiations and reforms in the candidate States is maintained, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, the Czech Republic and Slovenia could be ready. It appreciates the efforts made by Bulgaria and Romania and would encourage them to continue on that course. If those countries are to receive specific support, there must be a precise framework with a timetable and an appropriate roadmap, the objective being to open negotiations with those countries on all chapters in 2002.”

Thus Bulgaria was excluded from the possibility of ending the negotiations by the end of 2002 and respectively for EU accession with the “first wave” of countries. This may have been a surprise for the wide public, but for those following the process of Bulgaria's preparation this was the logical consequence of the quality of the process itself. The invitation for the start of the negotiations was a political act, of which the Bulgarian Government should have taken advantage immediately and began an accelerated adaptation of the economy, social sphere, legislation etc. towards the membership requirements. Instead it turned the negotiations into a “technical exercise”, closed them in the administration, only reported to the public how many chapters Bulgaria had opened and closed and how speedily we were actually progressing. This, of course, turned out to be merely an illusion, which was shattered by the Laeken decisions.



Therefore, the Strategy for the Acceleration of the Accession Negotiations adopted in February 2002 was timely and its adoption itself was a good try in ensuring unity in the negotiation process, taking into account its internal, as well as external aspects. The implementation of the Strategy was supposed to lead to a systemising and channelling of Bulgaria's efforts to accelerate the membership negotiations and to assist the maximum concentration of the administration's efforts.

However, we could immediately underline that the Strategy for the acceleration of the negotiation process should have been a part of a national strategy for the preparation of Bulgaria's EU membership, because the conducting and conclusion of the negotiations cannot be an aim in itself. The lack of (the Strategy for Bulgaria's Accession to the EU adopted in 1998 practically remained only on paper) such an integrated strategy has been underlined many times in the 2000 and 2001 Monitoring, as well as in a number of other studies of the European Policy Forum (below we mention this matter once again).

In the 2002 Strategy the Government sets 2003 as a date for the conclusion of the negotiations. In view of maintaining an accelerated pace of the negotiation process and its speedy conclusion, the Government sets 5 strategic goals that require priority implementation, namely:

- Objective 1:** Concentration of the efforts for the implementation of the recommendations of the 2001 Regular Report;
- Objective 2:** Acceleration of the approximation of legislation and strengthening of the administrative capacity and ensuring effective monitoring of these processes;
- Objective 3:** Guaranteeing effective absorption of the pre-accession instruments;
- Objective 4:** Ensuring the outside political support necessary for the speedy conclusion of the negotiations;
- Objective 5:** Carrying out of a campaign aimed at informing the Bulgarian and international public of the advantages of Bulgaria's accession to the EU;
- Objective 6:** Accelerating the processes of translation of the *acquis communautaire* into Bulgarian.

We would not like to review each goal in detail, as even if the strategic goal of the Government to conclude the negotiations in 2003 were fulfilled, this will not lead to an earlier accession for Bulgaria. However, we would like to underline that the approach of the adopted Strategy is quite mixed and controversial – on one hand for example, it sets the carrying out of a communications campaign for acquainting the Bulgarian and international public with the advantages of Bulgaria's accession to the EU as a main objective, and the next "strategic" goal is accelerating the work on the translation of the *acquis communautaire*, which although important, is merely a tool for the approximation of legislation.

The first objective is "concentration of the efforts for the implementation of the recommendations of the Regular Report for 2001", but we do not see a goal, which for example foresees "efforts on the implementation of the obligations assumed during the negotiations" or "monitoring of the implementation of the obligations assumed during the negotiations".

The repetition of the contents of the negotiation chapters, including the temporarily closed ones at the time when the Strategy was adopted, does not contribute in any way to its quality. The lack of any timetable is also surprising.

Therefore, the Strategy appears as if hastily written, with a lack of prioritisation of the aims and tasks, the time periods for their achievement and implementation, which in the end turns it into a formal document. Therefore, in the end of this chapter we have permitted ourselves to express our view on the strategy for the negotiation process, which we deeply consider should be only a part of Bulgaria's preparation for EU membership.

## 2. Communication Strategy

The Communication Strategy for the preparation of Bulgaria's EU membership (adopted by the Government in January 2002) is an extremely important document, which unfortunately was underestimated by the previous government and therefore is late.

The recently published data for the support of proposals concerning the process of Bulgaria's integration to the EU from a study of the "Alpha Research" agency, as well as the study "Opinion of the decision-makers", carried out among representatives of business circles, of the higher levels of the administration and free-lance professions in the country in July 2002 gives ground for serious concern. 52% of business and 45% at a national scale overrules the proposal for delegation of competences and sovereignty from Bulgarian bodies to EU bodies. 57% of business and 56% of the nationally represented reject the proposal for selling land to foreigners, which obviously outlines this matter as an extremely problematic issue in the upcoming debate for amendments to the Constitution.

Hence, it was extremely important and positive that the current Government, in the very beginning of its term, adopted such a strategy to acquaint and prepare the public about what the European Union and its institutions are, what integration in the internal market and Bulgaria's accession to it mean, what are the practical consequences of this accession for Bulgaria and so on. On the other hand, the implementation of the Communication Strategy and the Action Plan will assist the efforts of the Government itself not only for accelerating the preparation of Bulgaria, but for its effectiveness as well.

The Communication Strategy is a single document, which sets two objectives:

- to clarify to and bring the Bulgarian public closer to the "European idea" of the country and
- to acquaint the citizens of current EU states with Bulgaria's efforts for membership and its advantages as a future EU member with the aim of increasing the number of the supporters for its candidacy.

The serious analysis carried out, especially nationally, has permitted the outlining of the strong and weak sides not only in public awareness, but also in the work of the Government, which leads to this low awareness. The detailed outlining of the general, as well as of the specific goals, is a prerequisite for the successful implementation and application of the Communication Strategy, as it specifically defines the problems that must be overcome and the target groups towards which the Strategy is aimed.

<sup>1</sup> "Capital" newspaper, August 31 — September 5, 2002.

The nature of the Strategy, which determines it as decentralised, flexible and dialogic should contribute to its comprehensiveness and greater effectiveness.

The planned measures for the achievement of the outlined goals also indicate the aim of the Strategy to encompass wide public circles (from a national, as well as international point of view), which will be a guarantee for a strong and decisive future support of Bulgaria's EU membership, notwithstanding the difficulties the country will meet.

The sources of financing indicated in the Strategy show that there is vision on the matter and the specifically planned organisational structure should create the necessary administrative capacity. Both issues are a serious prerequisite for its successful implementation and therefore we have reviewed them below.

The planned three stages for the implementation of the Strategy, in accordance with the natural stages up to Bulgaria's accession to the EU and the accession itself will contribute to a prioritisation and concentration of the efforts depending on the requirements of the respective stage.

The Action Plan and Work Programme for 2002 on the implementation of the Communication Strategy follow the format of the Strategy and aim to ensure its performance. However, their adoption in the end of April 2002 to a great extent dooms to failure a number of planned events and will lead to non-achievement of the expected results.

The lack of systemisation of the planned actions, as well the unrealistic nature of some of the events is obvious. For example, "Training and qualification in European integration for high school teachers and preparation of special manuals", teachers, students and the wide public are indicated as a target group and the Ministry of Education and Science as the implementing body. An implementation deadline is not indicated.

However, it is positive that the actions on permanent issues (especially from an internal point of view), as they are determined in the Strategy, try to encompass the state institutions, as well as the local authorities, the non-governmental organisations, representatives of the media, socio-economic partners etc., which once again underlines the aim of the Strategy to inform as wider circles of the society as possible, at the same time taking into account the specific interests of the separate groups in it.

As it was mentioned above we would like to pay special attention to two issues, which we think should be addressed additionally in view of evading potential problems in the performance of the Strategy and the Action Plans:

#### **a) The organisational structure laid down in the Strategy and described in detail in the Action Plan.**

**First**, determining the Ministry of Foreign Affairs to be chief coordinator not only at an international level, but on a national one as well could seriously hinder the effective implementation of the Strategy and the specific action plans.

In our studies we have underlined many times that assigning functions in the area of European integration to the Ministry of Foreign Affairs, untypical for it functions, not only creates problems for the easier flow of the process, but often impedes the progress in this process. We have the same opinion regarding the Communication strategy, the implementation of which will be a real challenge for the whole state administration.

Due to this we consider that it would be more appropriate if the overall coordination of the implementation of the Communication Strategy were assigned to the "European Integration and International Financial Institutions" Directorate at the Council of Ministers. If such an approach

were undertaken it would be natural for the Ministry of Foreign Affairs to continue to be responsible for and to implement the Communication Strategy at an international level.

**Second**, the members of the proposed Council on European Communication to a great extent overlap with the Coordination Council for Bulgaria's preparation for EU Membership. We understand the aim to focus special attention on the issues affecting the implementation of the Communication strategy, but at the same time it must not be forgotten that the work of a number of structures hampers the coordination between them, creates a threat for a breaking of the link between the preparation process itself and informing the public and could lead to a loss of vision for the process in general. Therefore, we think that this function could be successfully performed by the Coordination Council within its duties.

**Third**, the placing of both groups outside of the coordination mechanism for Bulgaria's preparation for membership contains two risks: either their members could largely overlap with those of the Coordination Council, or if they differ significantly – lose the link between the process itself and the process aimed at informing the public. So, if we follow the logic of the approach proposed above, the two work groups will naturally fit into the mechanism for overall coordination.

#### **b) Financing the Communication Strategy**

It is extremely positive that the sources of financing are provided in the Strategy, as the lack of financing would lead to its failure. However, looking at the 2002 Work Plan, it immediately becomes evident that it does not include any information on the funds (available or necessary), which its performance will require. This leads to the thought that most of the planned events are within the frameworks of existing programmes or that an estimation of funds that will actually be needed has not been made (maybe that is why the planned events seem somewhat unrelated and chaotic).

Such an approach would place the implementation of the Strategy under an enormous risk, due to which we would recommend:

- an immediate realistic assessment of the funds that will be necessary for the implementation of the whole Strategy, as well as for its separate stages;
- an identification of the amount of the financing that the Government will provide and the funds that will be received from other sources (multinational programmes, Phare etc.);
- a singling out of other sources and ways to raise the remaining funds.

This would not only guarantee the successful implementation of the Strategy, but will bring clarity to the nature and number of the events that could be planned in the very development of the annual plans.

#### **VI. WHAT IS NEXT**

It is true that there are still three challenges before the "first wave" of accession – the final negotiations, the progress in the institutional reform of the EU itself and the ratifications of the Accession Treaty. They could all delay the membership, but the chance of any one of them stopping the process or delaying it significantly is very small. Although these are not immediate

tasks facing Bulgaria, we consider it appropriate to generally outline the perspectives and problems of the accession process.

### 1. Final Negotiations

The final negotiations on the "Agriculture", "Financial and Budgetary Provisions" and "Institutions" chapters will be the most difficult due to the following reasons:

**First**, due to their price. The Common Agricultural Policy (CAP) and regional policy are around 80% of the expenses of the EU. The EU cannot widen the currently existing generous subsidies towards so many poor agricultural countries and those that receive them now refuse to lose them because of the enlargement.

**Second**, the budget and institutions chapters cement the status of the new EU members by outlining their payments to the budget and their right to vote in the European Parliament and the Council of Ministers.

**Third**, CAP, as well as the EU institutions, is currently undergoing a serious and controversial reform. They must be altered so that the enlarged EU is able to function – the current framework is designed for six members and is already problematic for 15, not to speak of the future 25 and more. But the various interests make the reform very difficult.

On January 30, 2002 the European Commission made a proposal to the Member States for a global financial framework affecting three areas: agriculture, regional policy and budget. It refers to the first wave candidate countries and does not include Bulgaria, but such a formula will probably be proposed to us as well. The proposal contains the following principles:

- the price of enlargement between 2004-2006 is to be 40 billion euro, as this is set in the EU budget;
- the new members receive partial, but growing subsidies until 2012 with direct payments to farmers starting at 25% of the EU level in 2004, 30% in 2005, 35% in 2006, and 100% will be reached in 2013. With this 10-year transition period the EU intends to evade the negative impact of the restructuring and social problems in the regions lagging behind.
- The new members are to receive fully regional aid from 2007.

On the one hand, the proposal of the European Commission shocked the current EU Member States, as the EU has always refused to examine the issue of widening the direct payments towards the new members. On the other hand, the candidate countries also refuse to accept such a proposal and consider it to be discriminatory. This is because in the Internal Market their agricultural sectors will compete with the EU producers, which receive subsidies, which subsidies will initially be four times higher than theirs. In the end, however, the European Council in Seville in June 2002 adopted general negotiation positions, based on the proposal of the European Commission on the "Agriculture", "Regional Policy and Coordination of the Structural Instruments", "Financial and Budgetary Provisions" and "Institutions" chapters, which are to be finalised with a reflection of the financial and other issues as soon as possible.

According to the working paper of the Commission, which is based on the common financial framework for 2004-2006, for the accession negotiations from January 2002 a net sum of 8.8

billion euro is allocated for the first three years of membership of the future ten Member States. They will receive 6.1 billion euro in 2004, 8 billion euro in 2005 and 10.1 billion euro in 2006 (a total of 24.2 billion euro). But they will have to pay their share in the EU budget from the beginning: 5 billion euro in 2004, 5.1 billion euro in 2005 and 5.3 billion euro in 2006. Thus Poland will be the greatest receiver of European funds – it will receive 3.2 billion euro in 2004, 4.1 billion euro in 2005, and 5.2 billion euro in 2006, and will submit 2.4 billion euro in 2004, 2.5 billion euro in 2005, and 2.6 billion euro in 2006 – i.e. it will receive a net sum of 5 billion euro. Lithuania will receive 138 million euro, Latvia – 64 million euro and Estonia – 42 million euro. With such a proposed framework all the other candidates will lose from the first day of their accession, unless the EU does not agree to correct their negative balance with budget compensations.

The European Commission clearly stated that its financial proposal is the best that the candidate countries could receive. The Commission vowed that none of the candidate countries would be worst off after the accession in 2004 than in 2003. However, the calculations show that many of the candidates will be in a weaker position than in the first year. Naturally, the "first wave" countries are not satisfied with the proposal as they expect a significant financial improvement after the accession.

On September 13, 2002 the Commission will present its working paper to the candidate countries, but the financial state of the new Member States will remain vague, as the European Commission is still to negotiate its 2007-2013 budget. The Member States are expected to reach a common position on financing the enlargement in November so that they can conclude the negotiations at the European Council in Copenhagen in December 2002.

This position of the European Council gives the "first wave" candidate countries very little space for manoeuvres because they will be bound with the budget until 2007 as well. They can only insist for a different allocation. Having in mind, however, that there is a great chance of delaying the negotiations, the promise for participation in the elections for European Parliament in 2004 will be a strong motive for the adoption of this proposal. Moreover, the candidate countries understand that the real discussion about the money will begin when the Member States open the debate on the 2007-2013 budget and if the negotiations are concluded in December 2002, they have a real chance to participate in this debate.

### 2. Institutional Reform of the EU

The "big bang" enlargement approach seems simpler from a political and legislative point of view, but it is a problem from an institutional point of view. The number of the EU Member States will grow with 2/3 – from 15 to 25 and all but one are small countries.

In 1997 the EU foresaw that such an enlargement cannot be carried out without an institutional reform. Therefore, the European Council in Nice in December 2000 outlined three main areas, in which a reform must be carried out in order to prepare the Union for enlargement: a great reduction of the matters requiring unanimous approval from the Member States; a reduction of the burden of the votes in the Council of Ministers and the seats in the European Parliament according to the number of the population in view of evading the chance of small countries receiving a greater weight in the enlarged Union and restricting the composition of the Commission, which currently consists of two representatives from the larger countries and one from the smaller.

In the end the European Council achieved a compromise by changing the weight of the votes in the Council of Ministers and took a decision on the weight of the votes of the new members, as well as their seats in the European Parliament. It restricted the composition of the Commission to no more than 27 members and after 2005 the larger countries will have only one commissioner.

This compromise would have been sufficient for allowing the enlargement until Ireland did not reject the Nice Treaty in a referendum in June 2001. So if a solution is not found by December 2002, the enlargement becomes very problematic. The Irish government will hold a second referendum in October 2002, but to a great extent the results of it are not sure. A second rejection of the Nice Treaty would put the EU before a dilemma: can the EU continue with the enlargement without the Nice Treaty?

In the mean time however, it became clear that such a serious reform requires aimed efforts. Therefore, in February 2002 the Convention on the Future of Europe begins (see chapter 4 below "The Future of Europe", where the tasks and progress of the Convention are reviewed), which is to prepare the specific possibilities for an institutional reform for the next intergovernmental conference in 2004. In case Ireland overrules the Nice Treaty the intergovernmental conference will have to take a speedy decision on these recommendations so that the enlargement can become possible in 2005.

### 3. Ratification of the Accession Treaty

If we accept that the institutional reform will not block the enlargement, the final obstacle will be the Accession Treaty itself. After the Treaty is signed in April – May 2003 it will have to be approved by the European Parliament with a majority and by the Council of Ministers unanimously. Following this it will have to be ratified by the national parliament of each Member State and of the candidate countries. This procedure could take between 12 and 18 months.

Despite of the talk about an Austrian veto on the Czech membership and the short-lived debate in Germany about a referendum, for now it does not appear likely that the Member States will create any serious problems. It is not expected that any of them will hold a referendum and as the new members will have one common accession treaty (as it was with all of the previous enlargements), the Member States will not be able to choose among them. The European Parliament is not expected to block the enlargement process either.

However, all of the candidate countries will hold referenda. Furthermore, in confirmation of their coordinated approach on this matter the prime ministers of the Czech Republic, Hungary, Poland and Slovakia decided that they would hold their national referenda between April and June 2003. Depending on the development of the negotiations the referenda could serve an unpleasant surprise, as it happened with Norway during the previous enlargement in 1995. The support of the population for the EU has dropped in all of the candidate-countries – especially in Estonia and the other Baltic countries, where the latest data of the Eurobarometer indicate that the support has declined to less than 40%.

## VII. CONCLUSION

When the EU decided to continue with the "big bang" enlargement, it put a line between Bulgaria and Rumania and the remaining eight candidate countries from Central and East Europe. The EU considered Bulgaria and Romania to be poorer than the other candidates, although the difference between Latvia and us is minimal. Moreover, it becomes evident from the last two Regular Reports of the European Commission that to its opinion Bulgaria does not have a functioning market economy and is not capable of coping with the competition on the Internal market. According to the conclusions of the European Council in Seville in July 2002: "Bulgaria and Romania have achieved considerable progress over the last few months. The European Council encourages them to pursue their efforts and reiterates its commitment to give them full support in their preparation for accession. An updated road map and a revised and enhanced pre-accession strategy should be adopted in Copenhagen for the candidate countries still engaged in negotiations. An increase in pre-accession financial aid could also be contemplated. Furthermore, if the current pace is maintained, a more precise timetable could be set for these countries' accession process by the end of the year."

Obviously, for now it seems unlikely that Bulgaria will have a chance to conclude the negotiations at the end of 2002 and fulfil the economic criteria for EU membership so that it could be accepted with the first ten countries. As it was indicated above, in the proposal of the Commission for the financial framework of the enlargement and the negotiations on agriculture, Bulgaria is mentioned only in the context that it is "excluded" from this framework. Such an exclusion leads to at least two threats – a serious negative effect on the economic development and a reduction of its abilities to catch up with the remaining candidate countries, as well as an increase of euro scepticism.

Bulgaria should also bear in mind that any attempt to divide the "first wave" candidates, despite of the maintained by the EU principle that every country be assessed on its own merits, this is almost impossible as it would cause serious political problems due to the following most important reasons: a) Germany refuses to accept the enlargement without Poland, although it is lagging behind in the negotiations and its enormous agricultural sector could cause difficulties in the EU; b) the Czech Republic's entering without Slovakia would be an economic catastrophe for both countries, which have a Customs Union since 1993 and c) the accession of the most advanced Baltic state Estonia could cause problems for the other two.

On the other hand, Bulgaria must take into account that the EU does not want to create a new continuous division in Europe, as this would slow down the pace of the reform and could also create political instability on the Balkans. Therefore, concluding the negotiations with the first wave candidate countries, the European Commission is already preparing its plans for the next wave. As we mentioned above, at the Summit of the European Council in Seville this plan was outlined and it consists of the preparation of a new "road map" for Bulgaria and a possible additional financing after 2004/2005, i.e. when the other candidates will begin to withdraw from the financial pre-accession structures. The date Bulgaria has set as an aim for accession is 2007, but a number of observers state that the second wave of accession will take place no sooner than 2008, but Bulgaria should surely become a member in 2010.

The opinion of the Commissioner G. Verheugen, expressed at an informal meeting of the foreign ministers in Elsinore on August 30-31, 2002, gives ground for worry regarding the ability

of the European Council in Copenhagen in December 2002 to give a clearer perspective for membership, that "it is too early for us to be able to promise in 2002 when Bulgaria and Romania could join the EU". In addition to the indications that Bulgaria will not receive an accession date in December in Copenhagen and having in mind the more and more frequent assessments of observers that it is unlikely for Bulgaria to become a member before 2008, places us in quite a difficult situation. Therefore, the strategies and the tasks, which we will set now should be the result of a thorough analysis in the internal, as well as external aspect.

We think that from an internal point of view the Government should meticulously analyse:

- a) The negotiations process, namely
  - The obligations assumed on the separate negotiation chapters;
  - The effectiveness of the monitoring for the implementation of the assumed obligations;
  - The upcoming negotiations and our expectations from them
- b) The preparation for membership, focused on the following more important issues:
  - Maintaining the pace of preparation in the political, economic and social sphere;
  - Quality of the legislative process and the mechanism for introduction of the European legislation (as it should be kept in mind that with the moving away of the negotiations date, the EU will adopt new legislation, which we will have to introduce);
  - The weak and ineffective enforcement of the already adopted European legislation;
  - Ensuring the implementation and monitoring of the obligations assumed during the negotiations;
  - Coordination of the overall preparation process.

On the basis of this analysis the Government should develop an overall long-term national strategy for Bulgaria's accession to the EU. As we have often underlined, we would like to repeat that Bulgaria's EU accession is not an end to itself, but an economic imperative, as the preparation for it and the membership itself will turn the Bulgarian economy into a functioning market economy, able to cope with the competitive pressure of not only the European, but also the world markets as well. Therefore, this national strategy should:

- Link the Governmental programme in all areas of the socio-economic life with the process of Bulgaria's preparation for EU membership. The practice until now has been all the governments stating in their programmes that EU membership is a priority, but up to now we have not seen a comprehensive document, which really binds Bulgaria's preparation for membership with the transformation of the entire socio-economic life. This part should by all means contain the respective business strategies for encouraging the enterprises, which on the one hand use the transition periods, and on the other are to prepare their enterprises for the European market.
- To outline the role and responsibilities of the local authorities for the successful preparation of Bulgaria, including the key challenges facing the local authorities during the preparatory phase, the nature of the central-local authorities relations and their adaptation in view of Bulgaria's preparation.

- To outline the means and the methods, in accordance with which this preparation will pass in the different spheres. The declarative nature is a specific feature of all such documents, which Bulgaria has adopted. It is about time, however, that we take into account that the approach, the overall and sector one, are more than important. It is not a coincidence that the main criticism towards Bulgaria is that it cannot effectively enforce the EU legislation. This is due to the fact that Bulgaria very often has political will, but when it reaches the practical implementation it either does not know how to achieve it, or does it under the pressure of other circumstances, without following a permanent planned line.
- To contain realistic timetables for the achievement of the planned strategic objectives in the various areas
- To make the necessary provisions for the required financial resources and to plan the sources of financing.
- To outline the strategic goals during the separate stages until membership – until the conclusion of the negotiations, after the conclusion of the negotiations and during the first years of membership.

Naturally, this strategy should also be accompanied by a programme for its implementation, which specifies the measures in the separate areas and at the different stages. It is more than important that these documents be realistic, practically applicable and enforceable and that they are not just the newest ambitious documents, which repeat the contents of the negotiation chapters and what we must implement under them.

Moreover, Bulgaria should develop different scenarios that deal with accession dates different from the currently planned by the Government, earlier and later ones than 2007. They must take into account the real international situation, in which Bulgaria is; they must not overestimate, nor underestimate the political will for enlargement of the EU, as well as of the separate Member States; they must outline the potential cost and the benefits from the earlier or later accession and so on.

The publishing of the Regular Report of the European Commission on October 16, 2002 for Bulgaria's progress and the development of the process until the end of the year will give a good basis to Bulgaria for the preparation of the above documents and, we hope, will more clearly outline our perspectives for membership.

Along with the homework Bulgaria has to do, the immediate tasks facing the Government from an international point of view should not, of course, be underestimated as well. The possible successful conclusion of the negotiations in 2003, the active seeking of support (including financial) for the speedier accession in Brussels, as well as in the Member States (the current and future ones), the maintaining of the possibly closest links with the "first wave" candidate countries will contribute to a progress of the preparation from an internal point of view as well.

Finally, we would like to summarise that turning the conclusion of the negotiations into an end to itself, their closing in a narrow circle of the administration and the lack of communication to the public could pose a series of problems. Their timely solving will place every government before challenges, which will not be easy to solve at all. Moreover, in the long term the pursuit of quantity, without paying enough attention to quality could lead to unpredictable economic and social

consequences. It could affect wide circles of the Bulgarian society, various areas – economic, social etc. – in such a way that it could take years to repair the inflicted damage. Therefore, we assess it as especially positive that lately the current Government has been stating more and more often that Bulgaria's EU integration is a domestic policy, but we also hope that this will turn into its real policy as well.

## ECONOMIC AND SOCIAL DEVELOPMENT (2001– 2002)

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*Katya Vladimirova*

### I. ECONOMIC DEVELOPMENT

The newly adopted laws or the ones substantially amended until now were aimed at the approximation of the national legislation with the EU legislation, the creation of conditions for the establishment of a functioning market economy in the country, completion of the privatisation and the economic reforms related to the transition towards a market economy<sup>1</sup>.

#### 1. *The Achieved*

In this year Bulgaria was defined as a country with a functioning market economy meeting the criteria for the liberalisation of prices and the trade rules.

Macroeconomic stability and in particular financial and economic stability were achieved.

For a fifth year now the achievement of comparatively high economic growth continues to be reported. This fact itself means sustainable economic growth and creates good preconditions for further development of the national economy. During the last year the achieved growth of the Gross Domestic Product (GDP) is higher than the average for the EU countries and the expectations of our foreign partners. The Government programme for this year estimates a 4% growth. According to the National Statistics Institute (NSI) the actual economic growth during the first quarter of 2002 is 3.3% in comparison to the first quarter of 2001 but in spite of this the Government declares its expectations for the estimated growth laid out in the macro framework for the 2002 budget.

The foreign currency reserves were increased. Our country does not face considerable difficulties for the repayment of its foreign debt. The foreign trade deficit amounts to 2.2 bln levs.

The budget deficit remains at a low level of 0.9% compared to an average of 2.8% for the other candidates for EU membership.

During the last years the privatisation process was accelerated and although some slowing down was observed in 2001 it is expected to be completed by the end of this year.

For a fifth year now a relatively low inflation continues to be maintained. At the end of 2001 in Bulgaria it is 4.8%, whilst in the other candidate countries it is significantly higher (an average of about 7.2%).<sup>2</sup>

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<sup>1</sup> Monitoring of Bulgaria's Accession to the EU 2000 and 2001.

<sup>2</sup> Statistical News, monthly issue, May 2002, NSI, Sofia.

A growth of the end individual consumption (by 4.1%) was reported for the first quarter of 2002 thus it achieved 80.5% of the GDP<sup>1</sup>.

The efforts for the establishment of a functioning capital market continue. The banking system is stabilising.

The import of goods and services continues to increase although insignificantly in the beginning of the year (1.2%). Compared to the same period last year the growth of export is 14.2% and of import – 7.7%.

For the exporting companies the share of those carrying out primarily export is relatively high (18% sell above 75% of their production on foreign markets). We must mention that above 37% of the companies sell their production on the strongly competitive EU markets, which is proof for the quality and the competitiveness of these companies<sup>2</sup>.

**Main macroeconomic indicators 1999 – 2002**

Indicators	1999	2000	2001	2002 - 1 <sup>st</sup> quarter
GDP growth (in %)	2,3	5,4	4,0	3,2
Foreign currency reserves (bln USD)	2,9	3,0	3,2	
Foreign Investments (bln USD)	0,8	1,0	0,65	0,0468
Current account deficit (in mln USD.)	652	702	878	
Inflation rate (in %)	11,3	6,2	11,4	5,2 (3,5)
Unemployment rate (% of the economically active)	14,0	18,4	18,0	17,75

Source: IMF, NSI

Some trends that emerged in 2001<sup>3</sup> were preserved this year, namely:

- an increase of the share of services sector in the gross value added and in the GDP of the country (for the first quarter of 2002 they are respectively 62.9 % and 54.5%);
- maintaining of a low share of the agricultural sector (respectively 7.6% and 6.6% in GVA and GDP), in spite of this in the beginning of this year this sector reported a growth of 2.7% compared to the 7.2% drop for the first quarter of last year;

<sup>1</sup> Report of NSI for the First Quarter of 2002, July 4, 2002.

<sup>2</sup> Damianova, A., *Increase of Competitiveness of Bulgarian Companies: A Factor for Achieving Economic Growth*. Lecture at the Conference "National Resources and Policy for Accelerated Economic Growth", June 11, 2002.

<sup>3</sup> Statistical News, monthly issue, May 2002, NSI, Sofia.

- setting up of the private sector as a main motor of the growth (10.4% growth for the first quarter of 2002 compared to the same period last year);
- on-going restructuring of the ownership, which leads to a further decrease of the public sector (8.3% compared to the first quarter of 2001).

The economic situation remains relatively unchanged. The business environment is improving slowly. The expectations of the economic agents are still not very optimistic. The external and domestic demands are the primary factors limiting the improvement of business in the country and in particular of business in the industry.

There are some grounds for optimism, the achieved is a good basis but it is not sufficient for reaching the average economic level and income of the EU countries' population in the near future. The data for most of the 2001 – 2002 macroeconomic indicators show that there is no significant economic improvement in the economic situation of the country. The economic growth, although positive for the recent years, is not sufficient, it remains modest and does not contribute significantly to the achievement of the economic level from the end of the 80s, for the increase of employment and income in the country.

## 2. Non-achieved

The debt of the current account of the balance of payments has been growing, since the beginning of 2001 the foreign trade deficit continues to rise; the inflation rate is increasing; a significant, decrease of the foreign investments volume is observed. For January-March 2002 the foreign currency reserves of the Bulgarian National Bank (BNB) dropped by over \$338 mln. The negative trade balance is \$372.2 mln<sup>1</sup>. By the end of June 2002 the foreign debt of the country is at the amount of \$10 734.6 mln, which is about 76% of the estimated GDP for this year. The increase of the debt is linked with the rise in the indebted of the private sector and with the higher trust of foreign investors towards Bulgaria.<sup>2</sup>

The production potential of the country has declined by 50% compared to 1989. The absolutisation of the privatisation during the establishment of the market economy was accompanied by enormous tangible and intangible losses for the economy, with a reallocation of the public resources to separate groups and individuals.

The percentage of the non-operating production capacity in the Bulgarian industrial companies is high. Nearly 10% of the companies work at below 10% of their production capacity, 37% of the companies at under 50%. Only 9% of the companies use 90% of their production capacity.

<sup>1</sup> Report of NSI for the First Quarter of 2002, July 4, 2002.

<sup>2</sup> Sega Newspaper, September 4, 2002, page 12.

The average loading of the *industrial production capacity* remains low and constant (for the first five months of 2002 the average is around 60%). The material and technical foundation is growing old at an accelerated speed<sup>1</sup>.

*Investments* remain low during the last year as well – lower than the previous one. For the first quarter the equity capital investments are 4.8% of the GDP. Despite of having grown at a high pace during the first quarter of 2002 (4.5% compared to the first half of the past year), against their growth during the same period for last year (17.8%), the increase is four times lower.

The investment activity is low. For the whole transition period with its \$3.9 billion of investments Bulgaria is in last place among the countries from Central and East Europe. The predominant part of the \$110 billion invested in the region are for the Central European countries – Poland, the Czech Republic, Hungary and Slovakia, followed by the Baltic countries (the second preferred area for investments in the region). For 2002 the Government expected \$2-2.5 billion, a significant sum having in mind that since 1990 the average annual foreign investments volume in the country does not exceed \$300 million<sup>2</sup>. According to forecasts these intentions will not be fulfilled by the end of the year. The direct investments for the first quarter of 2002 are \$46.8 million (compared to \$279.5 million for the first quarter of 2001).

The passive policy in the investment area continues. Banks do not give loans – only 29% of the assets of the trade banks are granted as loans (in other countries the bank credits are between 80 and 90% of their assets). The substantial resource (around 50%) is taken out of the country and deposited in foreign banks, i.e. poor Bulgaria is stimulating the economies of other countries.

A major problem for a great part of the Bulgarian companies, which reflects on their competitiveness, is the lack of sufficient financial resources. Bank loans are used mostly for operation purposes and to a lesser extent for investment needs (a low level of financing for innovative activities), which impedes the need for renewal of production and generates a lagging behind in the future as well as in view of the technological level of production. Bank loans are used for export needs in a very low degree. The role of the capital market is very underestimated as a source for financial resource for Bulgarian industrial companies.

In Bulgaria export traditionally has decisive importance for economic growth and production development. The 4.4% drop in the export of goods and services for the first quarter of 2002 is quite concerning. It seems that there will be additional bars in this direction in 2003, in connection to the full liberalisation of our relations with the EU and CEFTA regarding industrial goods. All restrictions and quotas for Bulgaria will be eliminated and a strongly negative factor will come into action – the difference in the standards and the evaluation of our quality. This gives ground for expectations for a continued growth of our high trade deficit.

<sup>1</sup> *Statistics News*, monthly publication, May 2002, NSI, Sofia and A. Damianova, *The Increase in the Competitiveness of Bulgarian Companies as a Factor for their Growth in the Economy*, Report at a conference on: "National Resources and a Policy for Accelerated Economic Development", Sofia. June 11, 2002.

<sup>2</sup> *Statistics News*, monthly publication, May 2002, NSI, Sofia and *Statistics Guide*, NSI, 2002.

*Inflation* growth since the beginning of the year (5.2%) surpassed the expectations of the Government (3.5%). This is mainly due to the increase of the administratively regulated prices of electricity (by around 15%) and other. This is considered to lead to a decrease in the actual income of the population and to a devaluation of its savings (by 3 to 5% negative actual income on deposits).

### ● **Most vulnerable are the social results of the economic policy to date**

In view of Bulgaria's EU integration and specifically – the shortening of the distance in the population's income and the level of economic growth, the achieved economic growth cannot be assessed as sufficient. The main reasons for the low growth are internal. There is a drop in industrial production. The general economic environment does not favour the development of the real sector. The actual unemployment affects 25-33% of the active population of the country.

The development of the *real sector* lags behind the development of the *bank sector*. Banks also remain cautious regarding the crediting of the real economy and the most often indicated main reasons for this are: poor financial results of most corporate applicants for loans; problems in the identification of property and its continued restructuring; the non-application of the international accountancy standards; the low domestic consumption and the difficulties in accessing international markets for Bulgarian companies; low quality of management in the real sector, weak corporate management.

### ● **A change in the economic policy and in the model of the reform is necessary**

The main weakness of the implemented until now economic policy is that it, on the one hand, is not based on a developed and subsequently performed strategy, accorded with the national interests, the specific conditions in the country, and on the other – is not supported by political and public consensus. From the very beginning of the transition there is a continuing trend of subordination of the economic policy and economic development to the interests of the governing elite and the financial and economic groups tied to it.

The applied model of reforms has exhausted its capabilities to maintain financial and economic stability. If the efforts continue to be aimed only towards maintaining macroeconomic stability, the social problems and the problems related to the competitiveness of our national economy will intensify.

Therefore, a reallocation of the economic resources towards new branches and productions is needed. Effective structural changes are necessary. This means the Government giving up of such a privatisation, which is an end in itself, and aiming towards a restructuring of production in substance. The leading priorities should be high-tech productions, highly productive productions and such that create new jobs. In equal other conditions this would increase employment and especially the quality of the new jobs created and would decrease the emigration of highly educated young people<sup>1</sup>.

<sup>1</sup> A. Damianova, *The Increase in the Competitiveness of Bulgarian Companies as a Factor for their Growth in the Economy*, Report at a conference on: "National Resources and a Policy for Accelerated Economic Development", Sofia. June 11, 2002



The achievement of higher economic growth on the basis of an increasing labour productivity is becoming a key problem before the development of the national economy. The great challenge facing this necessary economic development policy is its implementation in the environment of growing employment and price of labour. Only higher productivity can be a source of stable economic growth and an improvement of the population's living standard.

However, a targeted policy for human resources development in the context of current technological and innovative requirements is necessary. In this relation the educational standards in the country must be enhanced for the successful development of the "knowledge economy". The enhancing of the education and qualification of the human resources is a condition for higher employment and productivity, but also a prerequisite for acquiring new skills.

In order to start diminishing its enormous lagging behind compared to the developed countries and to fulfil the criteria for EU membership sooner, Bulgaria sharply needs an acceleration of the socio-economic development. A new economic policy is necessary for the re-birth of the country on the basis of an effective, socially oriented market economy, able to generate a national potential during the next decade to allow us to fully participate in international integration and globalisation.

**The main challenges** facing the *Bulgarian economy* at this stage are related to the need for:

- Our successful inclusion in the current processes of globalisation and European integration, i.e. in the international division of labour; and
- Achievement of sustainable economic growth on the basis of growing labour productivity as a prerequisite for the enhancement of the living standard and Bulgaria's EU accession.

The first requires such development of the national economy, which would allow it to successfully become part of the developing economies based on knowledge, new information and communication technologies. A condition for the development of competitive, high-tech production in the country are investments in science, research and cadres. This means a strategy and policy for cardinal restructuring of the national economy, for selection of new priorities, for seeking new sources of economic growth.

*There is a need for a policy aimed at*

- Stimulating long-term growth at micro-level on the road from macroeconomic to microeconomic reforms;
- A transition from passive to active economic policy, from a resource-based growth towards an investment-oriented one, towards the introduction of new technologies, towards an economy of knowledge;
- A stirring of the investment activeness of Bulgarian companies, aiming at and stimulating innovation, the introduction and creation of new technologies, products and processes;
- Attraction of serious outside investors with preferences for the large investors;
- Stimulation of the export of goods with a higher level of manufacturing and based on the development of high-tech productions.

An important condition for restructuring the economy and ensuring stable economic and social growth is placing *business in the spotlight of the state's economic policy*; balanced development of small, medium-sized and large business; formulation of clearer, more transparent and simpler rules and procedures for all economic actors; the establishment of a competent, independent and speedy state administration; clear rules for the delivering of administrative services; restriction of the permit, registration and approval regimes to a sensible minimum; the development of common information systems in the administration; public procurement regulation; decentralisation of the managerial rights; active combating of corruption; dialogue with business<sup>1</sup>.

The attraction of foreign investments and the increase of the local requirements for the improvement of the infrastructure and communications creates preconditions for the growth of employment and the population's income.

Innovatively oriented development requires stimulation of innovation on behalf of the state through investments in science and research, enhancing the education level, the creation of a favourable environment in the new technologies area.

One of the greatest impediments before the national economy on the way to EU integration is the *competitiveness of production*. During the years of transition towards a market economy this aim was related mainly to: the restructuring of property, i.e. with the achievement of a predominant share of private property, closing down of the ineffective, productions working at a loss; breaking the monopoly in a number of productions; restructuring of the markets of raw materials and ready production. In their greater part these intentions have nearly been fulfilled, but to a large extent production remains non-competitive. In fact, almost no new jobs are created or they are so limited that they cannot influence the non-balanced labour markets in Bulgaria.

Many serious challenges remain before the country. It is to overcome a number of barriers, to complete the restructuring and transformation of the property in the key sectors: communications, transport and energy; to continue the process of approximation of the national legislation with the EU legislation and to develop effectively functioning institutions and administration; to significantly improve the trade climate and thus to respond to the main accession criteria and mainly – a functioning and competitive economy, generating employment and a high personal income.

## II. SOCIAL DEVELOPMENT

### 1. The Achieved

In the beginning of 2002 Bulgaria closed Chapter 13 "Social Policy and Employment". This is an EU recognition of Bulgaria's achievements during the last years regarding the approximation of the Bulgarian labour and social legislation with the EU directives, and in particular in the area of labour law, social protection, social dialogue, employment, public health, equal opportunities for men and women, fighting discrimination. The measures undertaken last year contributed to this as well. They are as follows:

- Adoption of a new Law for Promoting Employment (entered into force on January 1, 2002), aimed at enhancing the active policy for employment and the better functioning of the labour market, at carrying out the division of the social security

funds for the unemployed and for the financing of the active employment policy, to guarantee further development of the labour market and other institutions in compliance with the EU policy and the legislation in this area.

- Adoption of a National Action Plan for Employment in the spirit of EU practice for a formation of a coordinated employment policy and development of national strategies and plans subordinated to it, which corresponds to a large extent to the EU policy in this area during the last years and in particular for increase of the employment of different groups of the population, for reduction of the unemployment of young people and women, an increase of the adaptation and preparation for the requirements of the economic players and others;
- Further implementation of the already started comprehensive reform in the area of social security and social protection. The setting up of the three pillars of pension social security continued, the establishment of the universal mandatory social security, which increased the social security of the persons born after January 1, 1960 started.
- The adopted Law on Family Aid for Children, which, although subject to strong debate, is aimed at increasing the degree of the purposefulness of the aid to children that are actually in need and the more immediate linkage of the aid to the income status of the household;
- The continued development of the institutions and the strengthening of the capacity of the social partners and their real participation in the preparation and implementation of the labour and social legislation and policy;
- The practical adoption of the basic EU legislation in the area of healthy and safe working conditions and the remaining directives are expected to be introduced in our social practice by the end of next year (2003).

The adoption of the anti-discrimination law (mainly with regard to the equal opportunities for men and women, to overcoming the discrimination of certain minority groups and of persons with a differing sexual orientation) is forthcoming. However, in our view, it is very difficult to intertwine the complicated problems of such differing groups of the population in one law and to find an effective solution. Due to this the overcoming or the substantial limitation of the discrimination to women, who are the larger part of the population, requires a separate law for equal opportunities for men and women as with such a law a greater compliance with the EU directives in this area will be achieved.

The strengthening of the management capacity for analysis and assessment of the labour market in the "European Social Fund" unit under the Ministry of Labour and Social Policy (MLSP) is envisaged as well as different projects in regard to future functions of the ministry as an implementation agency for measures of European Social Fund.

A positive aspect of the government employment policy is its greater decentralisation. The established Regional Employment Councils support the government employment policy and the vocational training in the different regions as they link their activities with the National Development Plan priorities, National Plan for Regional Development, National Employment Action Plan, Regional Development Plan and the municipality strategies. The main declared

aim of the regional policy for the development of human resources and the labour market is the creation of conditions for the establishment of a competitive market to satisfy the demand for jobs and the preparation for entering the internal European labour market<sup>1</sup>.

### ● The most serious problems for EU membership: unemployment and poverty

Bulgaria continues to occupy the last place among the candidate countries according to GDP per capita and level of remuneration and first place according to unemployment.

Poverty remains one of the major obstacles both in view of the terms for accession to the EU and for attraction of foreign investments and economic growth. The poverty level in the country is significant and is still weakly influenced by the macroeconomic stability and growth during the last years.

After 1997 the poverty in the country was reduced as a result of the undertaken reforms and the achieved economic growth. But the poverty level remains above the level of the pre-crisis period, i.e. remains significantly above the 1995 level.

Poverty is unacceptably high and Bulgaria is among the poorest EU candidate countries. The poverty among the population in the rural areas, ethnic minorities and unemployed households is highest.<sup>2</sup>

Poverty is significant among the large households, the households of unemployed and of ethnic minorities and in particular among the Roma households. Poverty is highest among the younger and less educated persons (almost 2/3 of the 18-21 age group with secondary and lower education are poor).

*The income of the population* remains low, one of the lowest in Europe. Bulgaria occupies 31<sup>st</sup> place according to annual income per capita among 38 European states. Bulgaria is followed only by Russia, Belarus, Bosnia and Herzegovina, Yugoslavia, Albania, Ukraine and Moldova<sup>3</sup>. The annual income per capita (986 euro) is more than three times lower than the income of the Central European countries (Hungary, the Czech Republic and Poland), more than 6 times lower than the income per capita in Slovenia and from 8 to 26 times lower than the income in the EU Member States.

This fact has serious economic and social consequences. The economic ones are related to the growingly restricted demand of goods and services, which itself makes the country very unattractive for foreign investments and the development of national production impossible. The social consequences can be seen in the high inclination towards emigration, a change in the system of values regarding labour, an increase of insecurity, poverty, social isolation of substantial groups of the population.

<sup>1</sup> Employment and Unemployment, NSI, 3 - 4, 2001.

<sup>2</sup> Jero Carletto and Tomoki Fujii, *The Poverty in Bulgaria: current situation and tendencies*, Seminar "Living Standards and the Poverty in Bulgaria", organised by the World Bank, April 4 - 5, 2002, Sofia.

<sup>3</sup> It is under the rating of Marketing Group GfK, Sega Newspaper, September 4, 2002, p. 10.

The average income per capita in the rural regions is below 60% of the average income of urban population. The structure of the income in the urban and rural regions differs significantly. In the first the dependence on salary is greater and on agriculture and social assistance – in the second.

The salaries are low, but poverty is lowest among the people receiving salaries. Mainly the people, for whom social assistance is the main source of income, are the poorest (in spite of being 1/10 of the population, they are more than 40% of the poor and are nearly 2/3 of the poverty share). The chance of being poor is greater among the pensioners in the rural regions than among those living in the cities. Poverty is highest among the people from large households, who count on social aid as a main source of income (two thirds of these people are under the poverty line).

The time comparison indicates a significant reduction of the dependence on agriculture among the poor as well as the non-poor. Although low compared to the other sources of income, the share of income from self-employment has doubled after 1997 (from 2.1 to 4.6%).

There is a high dependence on social aid. Over 1/3 of the income of the poor in 2001 comes from transfers for social aid and another 12% – from the unemployment aid. An average of 12% of the income of the Bulgarian households comes from social aid. This share is significantly higher among poor people, for which an average of 1/3 of the income comes from social aid. This proves that social aid has an important place in the survival strategy of the Bulgarian households or in other words, it has a significant contribution to easing poverty<sup>1</sup>.

Poverty is highest among the unemployed and the economically inactive people. The people living in a household with an unemployed are 15% of the total population, but nearly 40% of the poor. Poverty is highest among the unemployed in the rural areas. For those living in a household, in which one person works, the chance of being poor is two times higher than in the homes, in which there are two sources of income.

The income received by a predominant part of the households does not allow the achievement of savings and for a large part they are insufficient for the current consumption of goods and services. Households spend around 50% of their income on food products, consume chiefly essential products and in a lower degree expensive foods such as meat and milk products.

An average of over 1/4 of the income of Bulgarian households is allocated for utilities. Their payment is a serious problem for poor households<sup>2</sup>.

**Social differentiation** remains high. Nevertheless, compared to other countries from the region, Bulgaria is still characterised by a high degree of equality. There are serious differences in the poverty between the different regions. Poverty is concentrated in the rural regions. According to the World Bank study<sup>3</sup>, poverty in the rural regions is four times higher than in the urban regions. The poor in the villages are substantially poorer than the poor in the cities, which

<sup>1</sup> Jerro Carpetto and Tomoko Fuji, *Poverty in Bulgaria: State and Trends*, Seminar "The Living Standards and Poverty in Bulgaria", organized by the World Bank, April 4 and 5, 2002, Sofia.

<sup>2</sup> Jerro Carpetto and Tomoko Fuji, *Poverty in Bulgaria: State and Trends*, Seminar "The Living Standards and Poverty in Bulgaria", organized by the World Bank, April 4 and 5, 2002, Sofia and *Living Standard*, CITUB, Institute for Social and Trade Union Research, Information Bulletin, 3/2001.

<sup>3</sup> Jerro Carpetto and Tomoko Fuji, *Poverty in Bulgaria: State and Trends*, Seminar "The Living Standards and Poverty in Bulgaria", organized by the World Bank, April 4 and 5, 2002, Sofia.

is specifically indicated in the higher shares of poor, the differences in the poverty levels and the significantly higher indicators for poverty depth. A comparison in the dynamics of these processes in the last years shows that the poverty level in the cities drops faster after 1997 than in the rural areas, which reduces the differentiation in the poverty between the urban and city population. Due to the fact that farmers count on their own production to a larger extent, they have a better opportunity to cope with financial difficulties and inflation. During a crisis their consumption does not shrink so drastically as it does in the cities.

The poverty among the Roma population is especially concerning. Among it the chance for a person to be poor is ten times higher than among the Bulgarian population and they form the predominant part of the poor contingent.

Unemployment, especially long-term, is the most important factor leading to poverty and insecurity in the country.

Poverty and unemployment increase insecurity for the individual, as well as for society as a whole.

The *unemployment rate* in the country is high, large-scale, with a deteriorating structure and continuing. According to unemployment level our country is in one of the first places in Europe. The unemployment rate grew rapidly and in 2000 exceeded 18% (even 19% for some periods) of the economically active population (the data is for the officially registered in the Labour Offices).

In May 2001 the total number of the registered unemployed in the system of the Employment Agency (EA) reached 678 528 people. A year later (in the beginning of May 2002) the number of the unemployed remains the same – 678 600<sup>1</sup>.

The unemployment level for the economically active population remains high (17.75% in May 2001 and May 2002) and strongly differentiated according to regions, education, age, and ethnic group. For example, according to region the unemployment rate is between 4.6% for the capital and up to 33% for Targovishte Region (according to Employment Agency data, June 2002).

One of unemployment's most serious problems is its duration. For over half of the registered unemployed it is continued and for over 1/3 it is more than 3 years. For a substantial part of them and their households this means *impoverishing, transforming into poverty*. In 2001 less received compensations than in 2000 (by 16.7%) and they are only 23.4% of the total number of unemployed. A small share receive social aid for unemployment for a short period of time. The new Government policy practically plans a strong reduction, even cessation of the aid<sup>2</sup>.

Continuing unemployment leads to "depreciation" of the professional knowledge and skills, to marginalisation. This, the growing individual insecurity and lack of confidence sharply reduce the access to employment. The most serious problems affect those with a *lower education* and

<sup>1</sup> *Information on Unemployment and Measures for Encouraging Employment*, May 2002, Employment Agency, June 2002.

<sup>2</sup> *The Labour Market 2001. An Annual Review*, Employment Agency, C., 2002.

especially the people with *no professional background*. They are the groups of the population most endangered by insecurity, poverty and social isolation.

The share of the *unemployed registered for 3 and more years* is high (34.5% of the total unemployed, including 44.7% of the registered unemployed in the rural areas at the end of 2001). With the increase of the age, the share of the unemployed for 3 and more years grows as well<sup>1</sup>.

*The share of the continually unemployed is strongly determined by the education level* – 51.5% of the unemployed with elementary or lower education are unemployed for over 3 years and of the continually unemployed in total (over 1 year) over 78% have this level of education. In second place are the unemployed with primary education: 46.2% are unemployed for over 3 years and 72% are continually unemployed. Among the people with high school education the unemployed for over 3 years are 28.7%, and the continually unemployed in total – 61.6%. Among those with university education the unemployed for over 3 years are only 22.1% of the unemployed with such education and the continually unemployed are around half (53.3%).

Therefore, the greatest chances of fulfilment on the labour market have the unemployed with university education, due to which they also maintain the lowest unemployment rate compared to the average for the country and the unemployed with a lower education level. The greater professional mobility, readiness for additional training and qualification, as well as their ability and readiness to occupy a job requiring a far lower education level of those with university education also contributes to the low unemployment rate.

The high youth unemployment is due mainly to: the lack of professional experience and the absence of a professional background.

The consequences of the high and continual youth unemployment is indicated by the increased external migration, high crime rate, prostitution, drug use, the dropping birth and marriage rate and other.

Employers' preferences towards candidates with professional experience and skills make the labour market inaccessible for a large part of the unemployed youths, but also for those graduating or prematurely leaving the educational system.

The low payment level, the existing barriers for hiring and exploitation lead to a re-orientation of a great share of youths towards activities from the so-called "shady", "illegal" economy.

*The increasing age of the economically active population* is becoming a more and more significant factor in the access to the labour market, "the price" and security in employment. The reduction of the upper limit of the preferred by the employers age for employing, results from the high unemployment rate and the very limited demand for workforce.

Two other main reasons for the rise of the *unemployment rate over 50* are: the restructuring of property and the closing down of ineffective productions, which laid off many people over the age of 50. Until then a great part of them had a stable and secure, continual job in one or two enterprises.

The unemployed over 45-50 years of age are also not preferred due to the "high" price of their labour related to the relatively high additional payments for labour experience (especially in cases of collective labour agreements) and the connected high obligatory security payments.

The low level of social security among the *elderly, pensioners*, and the practical absence of legislation restricting the upper limit of employment in the paid labour area, i.e. the legislatively set possibility for a person to be employed and receive a pension and a salary at the same time made the labour of pensioners "attractive" to employers. In order to have the opportunity to be employed, they accept jobs with no contract, no social security, at a lower remuneration level, which makes the price of their labour "appealing" to employers. Thus a paradox on the labour market is observed: "elderly" economically active people, with 10-15 years until retirement are unwanted, while the "young" pensioners – 60 or more years old – are preferred<sup>1</sup>.

### • *State of Employment in the Context of Poverty and the EU Aim for Full Employment*

*The population's employment* continues to drop, which pulls the country away from the EU aim and from its social model and pursuit of full employment.

The average number of employed in 2001 is less than 3 million (2 940 285). Compared to 2001 the number of employed in the economy has dropped with around 40 thousand. A trend of employment reduction is maintained – generally and in most of the branches. A small number of branches have increased the number of the employed, among them with the highest rise for 2001 is the Government (by over five thousand).

The trend of a rise in the number of the employed in the private sector continues. In 2001 nearly 74% (73.8%) of the total number of the employed worked in the private economy. In the beginning of 2002 the employed in the private sector are already 3/4 of the employed. At the same time however, over 2/3 of the registered unemployed in the last year are from the private sector<sup>2</sup>. There is a great intensity in the circulation of the employed in the private sector. On one hand this indicates a high insecurity in employment in this sector and on the other a development of processes aimed at increasing the labour effectiveness, of its productivity.

The number of the non-working is nearly twice as high as the number of working. Bulgaria has the most negative ratio of working and non-working among the countries from Central and East Europe, which are in a process of EU accession: from a population of 7 929 483, under 3 million working and nearly 5 million non-working.

Compared to the other Central and East European countries the level of activeness among the economically active population in 2000 is lowest for Bulgaria and Hungary (respectively 60.2 % and 59.9 %) at an average of 66.8 % for the 10 countries and over 70% for the Czech Republic, Lithuania, Estonia and nearly 70 % (over 68 %) for Latvia, Slovakia and Romania. The dependency coefficient (children, elderly people and non-working in an economically active

<sup>1</sup> Vladimirova, K., *Employment and Security in the Years of Transition Towards a Market Economy in Bulgaria*, International seminar "Statuses in Employment, Labour Contracts and Security", Varna, June 24-26, 2002

<sup>2</sup> National Statistics Institute Report for the first quarter of 2002, July 4, 2002 and the *Labour Market 2001*. Annual Review, Employment Agency, C., 2002.

<sup>1</sup> Also there.

age) is highest for Bulgaria and is substantially higher than in the other countries – 150% at an average of 97.6 % for the 10 Central and East European countries. From a macroeconomic point of view this situation triggers high insecurity and gives priority to the problem of the employment level and the insuring of the employed<sup>1</sup>. At the end of 2001 the level of employment of the population over 15 years of age is 38.7 % (41.8 % for men and 35.8 % for women), significantly differing among the urban (43.6 %) and rural population (28 %).

The part-time or hourly employment in Bulgaria, as well as in the other Central and East European countries, remains weakly developed, but with a trend towards growth. The development of this form of employment (regulated and wanted by employers and those seeking employment) would reduce the unemployment rate and increase the population's labour income<sup>2</sup>.

The high social security payments (a total of 42.7%) are considered to be one of the main reasons for evading the conclusion of labour contracts, i.e. work with no labour contracts and no social security or for the payment of salaries close to the minimal. It is estimated that among the actually employed in the country<sup>3</sup> around 25-40% do not have labour contracts and respectively – social security. This means that around 1 million are losing years of experience. The problem is that around 1.1 million of the employed (over 1/3) make their social security payments at the minimal salary. This, however, has several important consequences for the present, the near and farther future:

- *Maintaining of uncertain security funds.* Nearly all of them experience difficulties from time to time, cannot pay the guaranteed indemnifications or other expenses, utilise credits or alter the security scheme. This produces lack of confidence in the security systems and the voluntary choice of the employees to accept employers' proposals not to conclude labour contracts and not to be secured.
- *A lower demand of labour.* The non-opening of new jobs and the using of other opportunities for satisfying the arising needs for labour: non-conclusion of labour contracts; labour at a non-determined duration; lengthened working hours; over work.
- *Securing income above the minimum salary* dooms a large part of the employed to poverty, and labour without a contract and social security (respectively wide spread during the past decade) – to no pension and a high degree of insecurity and a deepening differentiation among the population.

The number of the employed in the private sector with no labour contract concluded is high, i.e. not accounted for as working, who do not have the status "employed".

A widening gap between the status of the population able to work or the economically active population, i.e. the differentiation of the population able to work in employed, unemployed and economically inactive<sup>4</sup>.

*The employed* are becoming more and more differentiated in degree of employment, remuneration and security.

## 2. Social Policy: the Unachieved and the Necessary

The amendments to the Law on the Settlement of Collective Labour Disputes made a year ago provided for the development on a tripartite basis of a National Institute for Reconciliation and Arbitration under the Ministry of Labour and Social Policy. Until now the new Government has not achieved much in its policy and practice for social partnership and especially in the development of the necessary institutions, including the development of the institutions of labour arbitration, common in most European countries.

During the past year the Government numerously stated a social policy, maintaining and increasing employment, as well as the ensuring of a functioning labour market and balancing the processes of seeking and demand of labour at the same time as its main priorities. For now this remains mainly in the sphere of good intentions. A main priority in this policy should be the higher degree of its implementation, finding the optimum between its social and economic effectiveness, between the development of the secondary and primary labour market.

All of the Governments from the transition years, including the current one, did not make anything more than general declarations for the young people of Bulgaria, for its future. The results are the high external emigration, the highest level of unemployment (among the other EU candidate countries, as well as among the other age groups in the country), the dropping marriage rate and especially birth, the decreasing literacy level and other. The problem is mainly in the unemployment, in the "dead end" situation young people are in, in the impossible professional fulfilment.

Reducing youth unemployment requires an active policy, which takes into account its state and the trends in its development, the low effectiveness of the measures until now and chiefly: the discrepancy between the level of education and professional skills and the seeking of labour and the needs of the economy; the non-existence in educational institutions of a system for professional orientation and information on the requirements of the labour market regarding the professional areas and the necessary qualities; the insufficient training for entrepreneurship, initiative and active behaviour on the labour market; deficient information on those offering, but also those seeking labour for the regulatory framework and the stimuli for the unemployed youths; insufficient measures for an active policy on the labour market in favour of labour employment (practices, jobs for students, training combined with professional practice, incentives for entrepreneurship and employment, very low offering of hourly employment and other).

For the past year the Government has not achieved any significant changes in the social policy and even more in the living standard of the population. The expectations of large groups of the population for an increase of income, a reduction of unemployment and an improvement in security were not fulfilled.

In reality the inconsistency between the political actions in the regulatory framework area, the institutions, the plans and programmes and the actual results, expressed in the level of unemployment and poverty of the populations, continues to exist. An example for this are also the unutilised opportunities offered by the Socio-economic Fund for reducing unemployment and for the creation of stable employment.

Among the Central and East European countries in the process of EU accession Bulgaria continues to have the highest unemployment and the lowest income level. This moves the country away from the living standard and the social protection of the population of the EU countries, as well from the selected by them social security models for the population.

<sup>1</sup> Vladimirova, K., Employment and Security in the Years of Bulgaria's Transition Towards a Market Economy. International seminar "Statutes in Employment, Labour Contracts and Security", Varna, June 24-26, 2002.

<sup>2</sup> Ibid.

<sup>3</sup> Statement made by Minister Shuleva, published in Monitor newspaper from April 25 this year.

<sup>4</sup> Vladimirova, K., Employment and Security in the Years of Bulgaria's Transition Towards a Market Economy. International seminar "Statutes in Employment, Labour Contracts and Security", Varna, June 24-26, 2002.

## JUDICIARY REFORM

*Pavlina Popova*

### I. GENERAL

The legal and judiciary reform is inextricably bound to Bulgaria's preparation for EU membership. Well functioning legal and judicial system allows the state to regulate the economy and to support private business, to contribute for the economic development. The law and the legal environment must secure a favourable business environment in order to stimulate investments and job-creation. To this end the whole legal and judicial sector must function effectively, transparently and with due procedures.

The legal and judiciary reform is a long-term process and in order for this process to be sustainable a respectively long-term commitment by all participants in it – public and private institutions, is necessary. Therefore it is of primary importance that each effort in this area is laid down in a long-term sector strategy, which includes all reforms directed towards the entire legal and judiciary systems and towards all of their participants. The activities of the legal and judiciary sector should be approached strategically, as comprehensive sector reforms should be developed and implemented. This approach requires:

- A legal and judiciary sector assessment;
- The development of a comprehensive plan;
- Identification of the priorities and the sequence of the measures based on the existing capacity and coordination with reforms in the other sectors;
- Dialogue with all participants at each stage of strategy and plan implementation.

### II. MAIN ATTRIBUTES OF THE DEMOCRATIC JUDICIARY SYSTEMS

With the permanent imposing of clear rules, an independent and impartial judiciary system supports the legal reform and promotes the economic and social development. The effective judiciary system implements and enforces the laws and secondary legislation impartially, predictably and effectively. Economic growth and social development cannot be sustainable in countries where the judicial system does not work. Therefore, the development and implementation of a programme for a judiciary reform should be aimed at the achievement of economic growth and social development based on an effective exercise of rights, equal opportunities and security for all citizens.

**What are main attributes of such a judicial system?**

#### ● *Independence and impartiality*

Judiciary independence has two functions. The first limits executive powers and the second protects individual rights. A truly independent judicial system makes and issues judgements respected and enforced by the legislative and executive branches, receives an adequate budget

and is not compromised by political influence. Judicial independence is effective when the judges are well qualified and make decisions with integrity and impartiality as the "guardians" of public trust. The essence of an independent and impartial judge lays in her/his integrity. Independence allows the judges to perform their duties in compliance with the law and guarantees them job tenure, adequate compensation and security.

#### ● *Accountability*

Government accountability is of crucial importance for the rule of law. Traditionally the judiciary is primarily an accountability mechanism through its legal review of government actions. Accountability, or the means of holding government bodies responsible for possible misuse, abuse and misapplication of power, is increasingly important. Maintaining an appropriate balance between judicial accountability and independence is critical for ensuring that the judiciary maintains its role to hold executive accountable. However, accountability has one more dimension – exclusion of the possibility for external pressure and control, which presumes the existence of internal institutional control mechanisms. Civil society as a whole and in particular bar associations, media, NGOs and others play an important role by monitoring judicial performance and can be effective resources for this second aspect of accountability, including for avoiding corruption in the judicial system.

#### ● *Integrity*

The judicial system plays an important role in fight against corruption. Since corruption in the judiciary contributes for citizen distrust and damages judicial integrity there must be mechanisms for addressing corruption. The key to successful anti-corruption judiciary programmes should be subject to a broad and deep debate in the judiciary itself as a result of which standards for behaviour in and out the courtroom should be formulated, ethical codes and intensive educational programmes on the Codes on ethics should be prepared and implemented. For reduction of the corruption the judiciary requires adequate state funding. Although the salaries alone are not sufficient to avert corruption, funding and salaries are important for controlling corruption in the judiciary and other law enforcement institutions.

#### ● *Judicial Training*

Judicial independence requires a well-trained and educated judiciary. A judiciary must often address delicate matters concerning liberty, property and access to public services due to which it has to be well prepared. In many countries, including in Bulgaria, judges are personally responsible for developing their knowledge and skills. Although some seminars and other courses are offered they are not on a regular basis. Lately continuing education is seen as a judicial responsibility and is a common element of many judicial reform programmes (including in the Bulgarian strategy).

#### ● *Access to Justice*

Improving, facilitating and expanding individual and collective access to justice supports economic and social development. Access to justice allows citizens to effectively exercise their individual and property rights.

### III. JUDICIARY REFORM IN BULGARIA

#### 1. European Context

In the European context the judiciary reform in Bulgaria means meeting the political criteria for full EU membership. It means building of such a judicial system, which on the one hand is capable of securing the rule of law and on the other – to interact effectively with the other EU Member States on civil and criminal matters.

Taking into consideration the forthcoming enlargement, the Treaty of Amsterdam (Article 49 in relation to Article 6)<sup>1</sup> laid down that the candidate countries must respect the rule of law as a common principle of all Member States. Conclusions of the Conference in Noordwijk<sup>2</sup> contain the most important elements of the rule of law and in particular independence of the judiciary, effective access of citizens to justice, respect of court decisions, objective system of public prosecutors, etc. are underlined, i.e. essential qualities, which are expected by the judiciary in the democratic states.

At the Tampere summit in 1999<sup>3</sup> the heads of EU Member States decided to propose new measures, which lead to a further strengthening of the cooperation between courts of the Member States. It was dictated by the need to secure faster and more effective access to justice for EU citizens wherever they may be in the EU.

Therefore, EU Member States give primary importance to judicial cooperation which requires that Bulgaria prepare its judicial system in such a way that it, in addition to all other domestic tasks it has to perform, is capable of effectively performing its functions when Bulgaria becomes an EU member. Due to this the development of the judiciary is subject to a thorough analysis and assessment by the EU. In its Regular Reports from 1999, 2000 and 2001 for Bulgaria's progress, the European Commission concludes that deep reforms are necessary before Bulgaria meets the standards in the Member States for administration of justice and enforcement of the law.

#### 2. Judiciary Reform Strategy and Action Plan

The 2001 Monitoring analysed the situation in the judicial system and made a number of proposals as regards to what Bulgaria should focus on for the improvement of judiciary in view of Bulgaria's preparation for EU membership. Certainly in first place the need for a deep judiciary reform was underlined and the main directions for its development and implementation were outlined.

In 2002 Judiciary Reform Strategy is already a fact and although subject to a strong debate in the judicial system itself, its implementation has begun. It should be mentioned that the Strategy and the Action Plan fully meet the views stated in the 2001 Monitoring.

The issue about the role of the judiciary in meeting the criteria for EU membership has two aspects: on the one hand, performance of the political criteria for EU membership, including the rule of law and on the other – the capability of the judiciary to enforce the newly adopted legislation. Since the second aspect is thoroughly dealt with in Monitoring 2001, this year it was considered more important to focus the attention on the improvement of the performance of the judiciary in view of meeting the EU criteria for membership.

<sup>1</sup> Treaty of Amsterdam, signed 2 October 1997.

<sup>2</sup> Conference on the rule of law in a democratic society, Noordwijk, Netherlands, 23/24 June 1997.

<sup>3</sup> Presidency Conclusions, Tampere European Council, 15 – 16 October 1999.

In the new Constitution of Bulgaria adopted in 1991 in Article 4, subparagraph 4 it is laid down that "Bulgaria shall be a state of law. It shall be governed in accordance with the Constitution and the laws of the country". In spite of the numerous definitions, it is deemed that the rule of law exists when a) the Government itself is bound by the law, b) every individual in the society is treated equally by the law, c) human dignity is acknowledged and protected by the law and d) justice is accessible for all.

The rule of law is achieved through the legal and judicial activities. Due to this the new Bulgarian Constitution provided for a new organisation of the judiciary including structural and functional changes. With the adoption of the Law on the Judiciary in 1994 the structural changes in the judiciary were carried out as courts of appeal, Supreme Cassation Court and Supreme Administrative Court were established. In 1998 the Code on Criminal Proceedings and Code on Civil Proceedings were amended and the three instance proceedings were introduced – first instance, appeal and cassation.

The Strategy for a Judiciary Reform presented by the Government in the beginning of 2002 is developed on the basis of a serious analysis of the situation in the judiciary and the assistance of foreign experts has contributed to the clear identification of the problems and to the definition of measures for their overcoming. As it was mentioned above these problems are thoroughly dealt in the 2001 Monitoring due to which they will not be discussed now but it should be mentioned that they fully correspond to those identified by the Ministry of Justice.

In addition the Index of Judiciary Reform developed by Central and Eastern Europe Legal Initiative of American Bar Association should be mentioned in particular. Its authors mention that: "ABA/CEELI sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental international norms, such as those set out in the United Nations Basic Principles on the Independence of the Judiciary; Council of Europe Recommendation R(94)12 "On the Independence, Efficiency, and Role of Judges"; and Council of Europe, the European Charter on the Statute for Judges. Reference was also made to a Concept Paper on Judicial Independence prepared by ABA/CEELI and criteria used by the International Association of Judges in evaluating membership applications." The extensive research and the summing up of the experience of different judicial systems and international organisations as well as the applied methodology provide quite a good basis for the monitoring of the Strategy for the Judiciary Reform and the Action Plan.

The main objective of the Strategy for the Judiciary Reform adopted by the Government is fully subordinated to Bulgaria's preparation for EU membership, namely "the development of European standards in justice". In the very beginning the four general principles towards the establishment of which the Strategy is directed are indicated:

- Principles of the government of law and strengthening of the rule of law.
- Principles of separation of powers and guaranteeing the independency of the judicial system.
- Maximum level of protection of the rights and interests of citizens and ensuring equal access to justice.
- Strengthening of the European standards in justice and international judicial cooperation

Namely, the strengthening of these principles is at the core of the democratic state and their clear mentioning in the very beginning of the Strategy contributes to the further formulation of sub-objectives and measures for their achievement.

The sub-objectives are focused both on the solution of the existing problems and on the improvement of the work of judiciary as a whole. The sub-objectives are reduced to 13:

- I. Enhancing the enforcement capacity of the judiciary
- II. Improvement of the administrative activities of the judiciary
- III. Strengthening the capacity of the Supreme Judicial Court for performance of its functions
- IV. Strengthening the coordination between the Supreme Judicial Court and Ministry of Justice in the management of the judicial system
- V. Reorganisation of the Centre for Training of Magistrates into a public institution
- VI. Improvement of the execution of the court decisions aimed at effective and speedy protection of the rights of individuals and legal persons
- VII. Registrar's Offices
- VIII. Introduction of alternative mechanisms for dispute settlement
- IX. Providing equal opportunities for access to justice
- X. Budgeting of the judiciary
- XI. Material foundation and protection of the judiciary
- XII. Enhancing the public image of the judiciary
- XIII. Legislative changes

Mid-term and long-term priorities to each sub-objective are indicated, which is also a very positive aspect of the Strategy. The further development of the strategy in the Action Plan to it gives it quite real dimensions regarding the implementation of the priorities and the outlined measures. It is also positive that the financial resources necessary for the carrying out of the Strategy and the implementation of the Action Plan are identified as well as their sources.

Upon the adoption of the Strategy and the Action Plan the Ministry of Justice launched its implementation with the amendments to the Law on the Judiciary as of June 2002 (SG No. 74/2002). The proposals for amendments were developed by all parts of the judicial system. However, the amendments triggered intensive political debate, which although broadly covered by the media, unfortunately did not turn into a public debate. The debate still remains obscure for the public and the prevailing opinion is that this is the sequential fight between the executive and judiciary branch and that this is just an arena for the political forces struggling for the control over it.

At the same time the polls indicate that the judiciary marks the lowest public confidence among the other branches – about 20%. In the context of the debate for amendments of the Constitution<sup>1</sup> according to a public poll "the area, which requires fundamental legislative changes to the largest extent according to the greater part of the citizens is the judicial system. It is clear

<sup>1</sup> In 2002 the political forces initiated a debate on the necessary amendments of the Constitution of Republic of Bulgaria in view of its future EU membership. The debate, however, went beyond this framework and expanded on a number of other issues, including structure and effective operation of the judiciary.

even to the ordinary citizen that the constitution of the judiciary in a new way would solve the worrying for each one of us problem of high criminal activities<sup>1</sup>".

A comprehensive approach (as is the approach of the Bulgarian Strategy) to the judiciary reform must secure the establishment of a system, which on one hand must have the above attributes and on the other be integrated, internally consistent and effective. It should take into consideration, however, that different institutions and interested parties develop, implement and evaluate the reform process and each one of them and each of its stages are important. For example the executive and legislative branch, the judicial system, the attorneys, civil society organisations, academicians, media, business and others play a specific but interrelated role in the judiciary reform. The way in which these institutions cooperate very often determines the success or failure of a judiciary reform. Hence reaching of a consensus and collective activities are necessary for generating the commitment of the individual actors and for tangible results.

In this regard it should be mentioned that the Ministry of Justice devoted significant efforts to the inclusion of representatives of all parts of the judicial system in the development of the Strategy and the Action Plan. However, the intense debate on the amendments to the Law on the Judiciary indicates that further efforts in this direction are necessary. And the lack of a communication strategy for raising public awareness regarding the proposed changes and the expected results, particularly in view of the fight against crime, deprived the Strategy of public support and, as it was mentioned above, the debate remained misunderstood.

### 3. The Debate on the Judiciary Reform

The Law on the Judiciary was the most radically amended law by the currently ruling majority but it also turned out to be the most disputed one, both by the opposition and by the prosecutor's office and supreme courts. What are in fact the amendments in general terms?

*First*, one fifth of the Supreme Judicial Council may ask for the removal of the immunity of any magistrate, including of the Chief Prosecutor, and a procedure for the removal of the Chief Prosecutor while he is under investigation for violation of the law was envisaged as well.

*Second*, the appointed in the judiciary bodies become irremovable after their evaluation by a special commission under proceedings defined by the Supreme Judicial Council.

*Third*, the National Investigation Office closed down in 1998 by the majority at that time (this issue was discussed in the 2001 Monitoring and the closing down of the NIO was assessed as very negative in view of the fight against crime and especially against serious crimes) was restored.

*Fourth*, a new separate chapter "Minister of Justice" was set up in the Law on the Judiciary, which increased the powers of the minister and raised criticism both from left and right.

*Fifth*, within three months of the entry into force of the law the Council of Ministers is supposed to adopt a decree on the financing of an integrated information system for the fight against crime. Such a system is of a crucial importance for Bulgaria because it will make possible the tracking down of the proceedings on every criminal case from the registration of the

<sup>1</sup> The data is from an express national representative poll of LINKS Agency by order of Capital newspaper, done between October 7 and 9, 2002.



crime till the serving the sentence by the violator. The system was developed in 1996 but its financing was stopped by the previous Government and it was not completed. However, it is obvious that its introduction would extremely contribute not only for raising of effectiveness in the fight against crime but also for elimination of the sense of "impunity" for crimes, which prevails in the general public and particularly in the criminal contingent.

On September 16, 2002 the newly amended Law on the Judiciary was submitted to the Constitutional Court upon the request of the Plenum of the Supreme Cassation Court. The Plenum asked for the declaring of 40 provisions as non-compliant with the Constitution and also asked for repeal of the whole Law on the Amendments of the Law on Judiciary due to violations of fundamental constitutional principles. These provisions also include the provision allowing the Supreme Judicial Council to remove the immunity of each magistrate, including the Chief Prosecutor (the argument for this is, according to a statement of the Chairman of the Supreme Cassation Court before the media that in spite of the revision of the Law on Judiciary, the Chief Prosecutor remains "untouchable" as the members of the Supreme Judicial Court may not collect evidence and the investigation bodies are controlled by the Chief Prosecutor). Furthermore, the Plenum of the Supreme Cassation Court asked the Constitutional Court to interpret to what extent the constitutional provision that the Council of Ministers organises the management of the state-owned property concerns the property of the judiciary as well.

The session of the Plenum of the Supreme Cassation Court was attended by 61 out of a total of 66 supreme judges and the decision for referring the amendments of the Law on Judiciary to the Constitutional Court was adopted with unanimity. In this connection most observers noted two things: first, that such unanimity is surprising and second that the speedy convening of the session is also surprising, having in mind that during the last years it meets very rarely (although one of its main tasks – namely uniforming the controversial court case law – requires quite more frequent sessions of the Plenum).

In addition, the Union of Democratic Forces submitted to the Constitutional Court a request for mandatory interpretation regarding to what degree the powers of the Regular Parliament are extended concerning changes in the Constitution and when should a Great National Assembly be convened<sup>1</sup>. The request for an interpretation affecting the judiciary is whether a regular National Assembly has the right to amend the Constitution regarding the "formation of the judiciary only by judges and introduction of mandates for head-judges", as well as the possible removal of the investigation and prosecutor's office from the judiciary and their placing in the executive or whether such amendments to the Constitution could be made by a Great National Assembly.

#### 4. Independence and Accountability

Obviously, the independence of the judiciary is the issue raising the most heated discussion in the Bulgarian judiciary reform either due to its misunderstanding or due to unwillingness to understand it. In view of the current debate and the willingness to support the positive outcome of it for the judiciary and eventually for the whole public as well, further to its outlining in the 2001 Monitoring as a main problem, we would like to explain some distinctive elements of judicial independence and accountability characteristic for a developed democracy.

Judiciary independence is the first main feature of a judicial system personifying it as democratic. In order to overcome the legacy of the past, namely independence was the

<sup>1</sup> According to art. 158, item 3 of the Constitution only Great National Assembly "decides on the changes of form of the state organisation and state management".

understandable objective of the early judiciary reforms in all of the Central and Eastern European countries.

Independence was understood as putting an end to the inadmissible external influence over the judgments, strengthening the position of the judges and the judiciary body in the society in general. The idea was – introduction of a system where the courts besides settling disputes between individuals also monitor the other branches. This imposed the need for functioning of the judiciary, independent from the other branches. In addition, the judiciary had to consist of independent judges.

However, soon it became clear that these tasks are not easy to implement. Many obstacles (for example the natural reluctance of the executive to lose control over the judiciary; establishment of the opinion that the judiciary is undeveloped and has no capacity and cannot manage on its own; influence of the executive over judiciary funding and budget, etc.) blocked the way to successful reforms.

What **judiciary independence**, which should be a main feature of the free and democratic society, actually mean? Where should the balance between judiciary independence and separation of powers be sought? What does judiciary independence and accountability mean?

Judicial independence is a system of impartial justice enabling judges to protect and enforce the rights of people, and allowing them without fear of reprisal to strike down actions of the legislative and executive branches. Independence is not for the personal benefit of the judges but rather for protection of people, whose rights can be preserved only by an independent judge. A truly independent judiciary is one that issues decisions which are respected and enforced by the legislative and executive branches and one that is not compromised by politically inspired attempts to undermine its impartiality.

Judicial independence includes the independence of the individual judge (otherwise known as individual independence) as well as that of the judiciary as a branch of state. Individual independence is both substantive, in that it allows judges to perform the judicial function subject only to the law, and personal, in the sense that it guarantees judges job tenure, adequate compensation and security.

Institutional independence involves matters affecting the operation of the judiciary as a separate branch of state. The impartial administration of a justice system requires that the judiciary be given a significant degree of independence from other branches. However, it is generally accepted that complete separation of the judicial from the legislative power can never be achieved practically in any system, since the former remains dependent on the latter to some extent and due to various reasons. In some states, for example, the legislative has the power to control the judiciary's budget, in others, as in the case of Bulgaria, to vote the judiciary's budget on the proposal of the executive.

Therefore, the tension caused by the dependence of an equal and independent branch on another branch, due to its budgeting for example, is inevitable in a government of separated powers. Therefore, mutual respect and understanding between the branches is required in order to maintain equilibrium in such a state. The judiciary's independence must in some way co-exist with the legislative and executive in order to regulate the functioning of the courts for example (in this sense the situation in the Bulgarian judicial system is more complicated because it includes the courts besides the prosecution office and investigation office, the tasks and functions of which differ significantly from those of the courts).

By defending its independence the judiciary sometimes "self-injures" itself, as the public is unsatisfied with the slow handling of the cases or the inexplicable disparity in criminal sentencing

for example. Consequently inter-branch respect, ongoing constructive dialogue and adequate reactions to particular legislative initiatives when they are prudent and cannot be otherwise addressed are necessary.

To this end it may be worth it to hold discussion on an idea for the establishment of some permanent national body (out of the Supreme Judicial Council), consisting of members of the executive, legislative and judicial branches to channel the efforts of three branches in the area of justice. Such a body would improve the quality of justice and would ensure the ongoing dialogue between the three branches. In support of this idea Constitutional Court Decision No 1 of January 14, 1999 could be mentioned. According to it "Separation of powers does not mean that they should not interact and should not function in coordination. On the contrary, the three branches of the state are bound by the principle of mutual checks and balances, which is laid down in the Constitution. Separation of powers should not lead to isolation but to cooperation and interaction between them".

With respect to individual independence, it is generally accepted that the judges (in Bulgaria also the prosecutors and investigators) are independent and are ultimately accountable to the people. However, a judiciary consisting only of "judicial angels", no matter how selective the process for appointment is, does not exist. The misconduct of a particular magistrate, even if this is the Chief Prosecutor, could impair the respect towards the judicial system as a whole, which requires a judicial removal procedure. No country with separation of powers tolerates the existence of "untouchable" positions, even more when these positions are directly linked to the protection of the general public interest.

Disagreement with a judicial decision cannot, of course, be ground for removal of a judge but the absence of an effective and working procedure for removal of judges and withdrawal of immunity for bribery, other crimes or misconduct is not normal. Due to this alone with the procedures of removal of judges additional disciplinary procedures, administered by the judiciary itself, are necessary.

However, the procedures for dealing with complaints against judges must be communicated to the public and be well known by it. The Ministry of Justice should put in further efforts in this regard.

In addition to removal, the individual independence is further constrained by a judge's obligation to decide cases according to law and not to personal preference – religious, political, etc. In the Bulgarian judicial system there are some striking examples but very often the borderline is so thin that it is difficult to define whether a certain judgement is not just a matter of interpretation of the law by the judge. The low public rating of judiciary as a whole, however, should make the Supreme Judicial Council plan and implement steps to improve this situation and recover the judiciary's prestige before the public. It certainly does not mean that the judges should not rule unpopular judgements and that they should go beyond the law in order to satisfy public expectations.

At the same time it should be taken into account that if the judiciary becomes alienated and loses public confidence it cannot perform its role adequately. In the more recent years not only the loss of confidence and respect towards the judiciary is obvious, but also the increase of misunderstanding about the role of judges and independent judiciary for protection of the rights of citizens. It is inadmissible for the greatest part of the Bulgarian society to have lost confidence in the guaranteeing of "equality" before the law. The disputes between the judiciary and other branches carried out before the eyes of the public do not contribute at all neither for the strengthening of the reputation of any of them, nor for defending judiciary independence (both

institutional and individual). Therefore, the magistrates themselves are interested in working in close cooperation with the other branches and in developing a mechanism capable of giving appropriate answer and proper information to the public on ungrounded criticism to magistrates, to their judgements and to the judiciary as an institution.

Unfortunately in the debate on judiciary reform in Bulgaria the issue of independency and accountability was not posed as "two sides of a coin". It was focused only on the removal of magistrates' and withdrawal of immunity in the context of damaging the independence of the judiciary as a system, which indicates that there is great misunderstanding of independence as such and of accountability of the judiciary towards the whole society for imposing the rule of law.

#### IV. CONCLUSIONS

No doubt that a judiciary reform struggles to solve many issues starting from procedural provisions, challenging instances and court types, going through institutional organisation of the judiciary itself and reaching independence, impartiality and effectiveness of the courts. For Bulgaria the judiciary reform is also linked with changes imposed by its preparation for EU membership since the successful integration is possible only if the Bulgarian judicial system has capacity (financial, administrative and personnel) to function in a new legal and economic environment, effectively implementing the Internal Market rules.

The criticism towards all parts of the Bulgarian judicial system in the EC Regular Reports for Bulgaria's progress concerns the lack of transparency and effectiveness, the existence of weak administrative capacity and corruption. For overcoming these problems, however, it became obvious that an essential structural reform of Bulgarian judicial system needs to take place. Therefore quite properly the restructuring of the judiciary is one of the starting points of the Strategy for Judiciary Reform and its successful implementation will lead on the one hand to a raising of the role and reputation of the judiciary in the society, and on the other will allow it to perform its duties which Bulgaria's preparation for EU membership puts before it.

This Monitoring discussed mainly one aspect or rather one of the main objectives of the judiciary reform – independence and accountability – since it lies to a large extent at the core of the solution to all of the remaining problems of the Bulgarian judicial system. In view of the current public debate however it should be underlined once again that independence of the judiciary means accountability – accountability to all citizens and the public in general. As the Minister of Justice mentioned in a speech: "It is not coincidence that the Constitution imposes upon the prosecutor's office to prosecute perpetrators, the court to protect legal rights and interests of citizens, legal persons and the state, including through controlling the legal compliance of acts and regulations of the administrative bodies, control over the National Assembly to adequately regulate public relations, the Council of Ministers to manage and carry out foreign and domestic policy in compliance with the Constitution and the laws, including to carry out public and national security. That is why all of us, no matter what power we are in, bear our political responsibility towards the sovereign", i.e. towards society.

Certainly, the statement that the judiciary must be accountable is easy to say but difficult to achieve. Transparency, clear standards and procedures, checks and balances between the branches, free media and civil society are the key elements of its independence.



## THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

### THE CHALLENGES OF ACCESSION

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*Radoslav Ivanov*

#### I. EU ENVIRONMENTAL POLICY AND SUSTAINABLE DEVELOPMENT

##### *1. General*

Environment appeared on the European political agenda in the beginning of the 70s. The report of the Rome Club attracted attention to the exhausting of the natural resources and the rapid deterioration of the quality of the air, water and soil. This made the politicians to realize that the environmental problems are of a trans-border nature and therefore they need trans-national solutions.

The real start of the EU environmental policy came when in 1972 the European Council decided to create a Community environmental policy. The starting point of this policy are the Environmental Action Plans (EAP), which are a combination of midterm programmes and strategic guidelines. The First (1973-1977) and the Second EAPs (1977-1981) emphasized on the necessity of water and air protection. The Third (1982-1986) and the Fourth (1987-1992) EAPs were more linked to the completion of the Internal market, which approach shifted from a quality approach to an emission-oriented approach.

In 1981 a General Directorate "Environmental Policy" to the EC was established.

In 1987, the Single European Act gave environmental protection its legal basis with a special chapter in the Treaty. With the fourth EAP a more integrated approach to these problems was undertaken. It laid the basis for the later shift to a "sustainable development" framework, i.e. environmental objectives were being seen more and more as tools for the improvement of economic performance and competitiveness.

In the 1990s, new global environmental risks (e.g. climate change) and the UNCED Conference of 1992 underlined the need for environmental "leadership". The Treaty on the European Union<sup>1</sup> extended qualified majority voting and the role of the European Parliament in

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<sup>1</sup> Treaty on European Union, signed in Maastricht on February 7, 1992.

environmental policymaking. The old command-and-control approach was replaced by the use of **economic and fiscal instruments**. The Fifth EAP (1993-2000) reflected this new strategy and the Amsterdam Treaty<sup>1</sup> in 1997 enshrined the sustainable development concept into core EU policy.

However, the 90s also saw a rollback of environmental policies, as national governments became more interested in the competitiveness of their industries and started to use the principle of subsidiarity. This application was used to re-nationalise EU environment policy.

At the European Council in Helsinki the EU leaders reviewed the general assessment of the Fifth EAP results and asked the EC "to prepare a proposal for a long-term strategy dovetailing policies for economically, socially and ecologically sustainable development to be presented to the European Council in June 2001."<sup>2</sup>

Thus in May 2001 the European Commission adopted the EU Strategy for Sustainable Development, which consists of specific proposals on how the EU could improve its policy and make it more integrated and purposeful in a long-term aspect, as well as a number of aims and measures for their achievement.

At the EU Summit in Gothenburg in June 2001 the Sixth EAP was adopted. In it the Commission lays out the environmental objectives for the next 10 years and describes the necessary actions for the achievement of these objectives. The Programme is focused on four main areas of action: climate changes; natural and biodiversity; environment and health; sustainable use of natural resources and waste management. In 2005 the Programme will be reviewed in order to be updated and to reflect the occurred changes and developments.

## 2. Basic Principles of the EU Environmental Policy

The principles on which the EU environmental policy is based are:

- **Polluter Pays Principle:** The polluter should bear the expense of carrying out measures decided by public authorities to ensure that the environment is in an "acceptable state". In other words, the cost of these measures should be reflected in the cost of goods and services, which cause pollution in production and/or in consumption.
- **Preventive Action Principle:** 'Prevention is better than cure'
- **Precautionary Principle:** When an activity poses threats of harm to human health or the environment, precautionary measures should be taken even if direct cause and effect relationships are not fully proven scientifically.
- **High Level of Protection Principle:** The EU environment policy should be aimed at a 'high level of protection'
- **Integration Principle:** Environmental requirements must be integrated into the definition and implementation of all other EU policies.

<sup>1</sup> Treaty of Amsterdam, signed in October 2, 1997.

<sup>2</sup> Presidency Conclusions, Helsinki European Council (10-11 December 1999).

- **Proximity Principle:** Aims to encourage communities to take more responsibility for the waste they produce.

## 3. EU Environmental Law

### a) Primary law

After the Maastricht and Amsterdam Treaties the legal basis of the environmental policy is laid down in Article 174 to 176 (ex 130r to 130t).

**Article 174** (ex Article 130r) contains the objectives of the environmental policy and namely: preserving, protecting and improving the quality of the environment; protecting human health; prudent and rational utilisation of natural resources; promoting measures at international level to deal with regional or worldwide environmental problems. The same article also states that the EU environmental policy "shall aim at a **high level of protection** taking into account the diversity of situations in the various regions of the Community. It shall be based on the **precautionary principle** and on the principles that **preventive action** should be taken, that environmental damage should as a priority be rectified at **source** and that the **polluter should pay**."

**Article 175** (ex Article 130s) identifies the **legislative procedures** for the environmental policy. **Article 95** (ex Article 100a) on the approximation of laws (harmonisation) is also important for environmental policy as it states that for harmonisation of the legislation concerning health, safety, environmental protection and consumer protection, the Commission will take as a base a **high level of protection**. **Article 176** (ex Article 130t) allows Member States to adopt more stringent standards. Last but not least, **Article 6** (ex Article 3c) defines the need to integrate environmental protection requirements into the definition and implementation of the Community policies and activities in particular in view of promoting **sustainable development**.

### b) Secondary law

The secondary environmental law covers a broad range of legal instruments, most of which are directives as since the 70s up to now the EU has adopted above 200 directives, regulations, decisions and recommendations. From them 70 Directives and 20 Regulations are the basic environmental *acquis*. Recently there has been a trend towards lesser regulation, but an emphasis on voluntary agreements with industry, seeking market oriented solutions and the introduction of tax incentives.

In broad terms the European environmental legislation covers environmental quality protection, polluting and other activities, production processes, procedures and procedural rights as well as products. Apart from the horizontal issues (environmental impact assessments, access to information on the environment, combating climate change), quality standards are set for air, waste management, water, protection of nature, industrial pollution control, chemicals and genetically modified organisms, noise and nuclear safety and radiation protection.

Below a brief review of EU Directives will be made following the basic environmental components:

#### Air

The air pollution causes a broad range of environmental problems. The presence of air pollutants may bring about lung and heart diseases, early death. They cause deterioration of

plants and buildings, including historical monuments. At remote distances these pollutants are transformed into acid rains, which damage eco-systems, forests, fish resources, etc.

*Air Framework Directive<sup>1</sup>.* The Directive contains the basic framework for the management of the air quality in the EU member-states as it does not provide for precise parameters for its quality. The Directive lays out the need for new air quality standards and the outlined aims for that, provides for the need for public information and the development and implementation of programmes for maintaining air quality at the required levels. The limit values of the different pollutants are in the "daughter" directives, first of which concerns sulphur dioxide and fine particles, nitrogen dioxide and lead. It includes the degree of impact on parts of the population and sensitive groups, the impact on the flora, fauna, habitats, etc.

*Emissions from transport vehicles.* In this group are the directives related to the regulations of emissions from transport vehicles or machines. The four basic types of emission for which limits are defined are carbon oxide, hydrocarbonate, nitrogen oxide and fine particles. The directives also include the methods for testing and monitoring of the emissions.

*Industrial volatile organic compounds.* The Directive is aimed at the limitation of the emissions of volatile organic compounds (VOC) upon using solvents in different industrial sectors. It complements other EU measures aimed at the VOC control, limiting the formation of secondary pollutants caused by VOC.

*Air quality – ozone<sup>2</sup>.* The Directive does not establish limit values for ozone. With the purpose to control the ozone levels, the Directive requires the setting up of a permanent monitoring basis for the ozone levels in the Member States in view of the future development of measures against photochemical pollution. According to the directive upon the exceeding of a certain ozone level in the air the public should be warned.

*Directive on integrated pollution prevention and control (IPPC)<sup>3</sup>.* The Directive is aimed at the control of the emissions from industrial sources. IPPC is applied to big industrial sites from six categories: energy, metallurgy, production of minerals, chemicals, waste management and "others", including for examples pig-breeding complexes, etc. The Directive regulates the industrial sites through a licensing regime. The license defines the pollution levels, based on "the best existing technologies", which should be applied for the ensuring of a specific level of environmental protection. The different standards specified in different EU documents should be used for defining minimal values of the emissions.

*Lead in fuels.* The Directive forbids the sale of fuels containing lead since January 2000. It is directly linked to the Directive on emission from transport vehicles. The Directive is an additional component to air protection because it treats the problem with the lead emissions from old motor vehicles.

*Substances depleting the ozone layer.* The Regulation is aimed at the implementation of the Montreal Protocol to the Vienna Convention for protection of the ozone layer, supplemented in London (1990) and Copenhagen (1992) and goes further. The Regulation limits the use of a number of substances depleting the ozone layer, including CFCs. They cause depletion of the ozone layer, which protects the earth from an injurious radiation leading to skin cancer, etc.

<sup>1</sup> Framework Directive 96/62/EC on AAQ Assessment and Management.

<sup>2</sup> Directive 92/72/EC on air pollution by ozone.

<sup>3</sup> Directive 96/61/EC on integrated pollution prevention and control (IPPC).

CFA's are used in aerosol deodorants, refrigerators and air-conditioning installation and as solvents. The benefits from the implementation of this regulation are global and it is very difficult to define the benefits for a specific country because they depend on complex factors in the atmospheric processes.

*Large combustible installations.* The Directive regulates the sources causing acid rains through limitation of emissions of sulphur dioxide (SO<sub>2</sub>) and nitrogen dioxide (NO<sub>x</sub>) from combustion of coals, oil refineries, etc.

### Waters

The policy for protection of the waters in EU covers a broad range of environmental measures. The framework directive sets up environmental requirements on the basis of protection of eco-systems and human health. Various measures for the protection of waters are adopted, such as:

- product standards (for example drinking water);
- ecological standards (for example fish-farming, dangerous substances, bathing water);
- emissions standards (e. g. for urban waste-waters, etc.)

It is important to mention that protection of the waters has many cross-points with other directives, for example with IPPC. Therefore the determination of the benefits of their implementation by sectors is complex and sometimes impossible.

*Framework Directive on Waters<sup>1</sup>.* The framework Directive on Waters is adopted in October 2000. It has a long period for implementation and none of the Member States have applied it yet. The Directive covers quite a broad range of problems. It is aimed at maintaining surface waters in a good ecological condition, which is not based on individual chemical parameters but on the basis of protection of eco-systems. It also requires integrated management of the waters with full inclusion in the process of the users. The Directive requires a sustainable level of water use of surface and ground waters.

*Directive on Dangerous Substances<sup>2</sup>.* This Directive provides for requirements in respect to the reduction or averting of direct or indirect discharge of dangerous substances in the waters (specified in the list). The substances covered by the Directive as general have a toxic impact both on people and water organisms.

*Directive on urban waste-water treatment<sup>3</sup>.* The aim of the Directive is the improvement of waste-waters, which requires a differing degree of treatment depending on the size of the urban area and the "sensitivity" of the water receiver. It is focused on the determination of technical standards rather than ecological. The implementation of this Directive requires significant financial resources. At present in the candidate countries a relatively low degree of servicing the population with sewerage systems and purification stations is observed.

<sup>1</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

<sup>2</sup> Directive 80/68/EEC on the protection of ground water against pollution caused by certain dangerous substances.

<sup>3</sup> Directive 91/271/EEC on urban waste-water treatment.

*Directive on Nitrates*<sup>1</sup>. The Directive is aimed at reducing and averting pollution of water caused by the use and storage of fertilizers and composts in agriculture. It provides for protection against pollution both of drinking water sources and of ecological pollution such as eutrofication of lakes and seas in principle.

*Directive on Bathing Water*<sup>2</sup>. The Directive is aimed at averting the deterioration of waters used for swimming. It covers microbiological pollution from improperly purified waste-waters and flow from agricultural lands. Such pollution may cause a number of diseases and in particular through the food chain. The implementation of the Directive is important not only for protection of public health but and for a harmonious development of economic activities throughout the Community.

*Directive on Waters Intended for Human Consumption*<sup>3</sup>. This Directive is intended for disease protection of consumers through ensuring a high quality of the drinking water. It is not directly related to environmental protection but to the subsequent water-treatment. The problems of the bad quality of water include microbiological pollution, existence of lead and pesticides.

*Directive on Surface Waters Used for Human Consumption*<sup>4</sup>. The Directive is aimed at the improvement of the quality of the surface waters used for human consumption. It sets up different levels of treatment, which need to be applied before using the water for water supply.

*Directive on Waters for Fish Farming*<sup>5</sup>. The Directive lays out requirements for chemical standards for the waters used for fish farming, which is an important economic sector.

*Directive on Shellfish Water*<sup>6</sup>. The Directive requires protection of waters in seaside areas used for fish production.

*Directive on Ground Waters*<sup>7</sup>. The Directive is aimed at the protection of ground waters from pollution.

### Waste Management

In general the directives in this area lead to a significant change in the management of waste, its registration, treatment and disposal in existing and new landfills. As a result new ways of treatment of different types of waste are introduced. The Directives require:

- registration and storage of specific flows of waste with the purpose of controlling the transportation of hazardous waste;
- improvement of the technologies for waste treatment;

<sup>1</sup> Directive 91/676/EEC on the protection of water against pollution caused by nitrates from agricultural sources.

<sup>2</sup> Directive 76/160/EEC on the quality of bathing water.

<sup>3</sup> Directive 98/83/EEC on the quality of waters intended for human consumption.

<sup>4</sup> Directive 75/440/EEC on the quality of surface water intended for the abstraction of drinking water and related Directive 79/869/EEC on sampling and analysis of surface water as amended by 91/692/EEC.

<sup>5</sup> Directive 78/659/EEC on the quality of fresh water needing protection or improvement in order to support fish life.

<sup>6</sup> Directive 79/923/EEC on the quality required for shellfish water

<sup>7</sup> Directive 80/68/EEC on the protection of ground water against pollution caused by certain dangerous substances.

- prohibition of certain waste. Here it is taken into consideration that the treatment of one type of waste with the purpose of elimination of some pollutants would lead to their substitution with others, etc.

The basic legislation related to the waste management includes: framework Directive on Waste<sup>1</sup>, Directive on Landfills<sup>2</sup>, Directive on Packaging of Waste<sup>3</sup>, atmospheric pollution from incineration of waste<sup>4</sup>, hazardous waste<sup>5</sup>, disposal of waste oils<sup>6</sup>, residues of treatment stations, batteries and accumulators<sup>7</sup>, disposal of PCBs and PCTs<sup>8</sup>, animal waste, toxic and hazardous waste<sup>9</sup>, disposal and control of cross-border transportation of hazardous waste<sup>10</sup>, etc.

### Protecting Nature

The directives in this area are aimed at raising the concern about the protection of biodiversity and provide for an integrated approach towards protecting nature.

## II. PREPARATION FOR ACCESSION AND NEGOTIATIONS

### 1. Preparation for Accession

The adoption of the EU environmental legislation and its implementation are the main tasks facing all of the candidates for membership. To this end the priorities are:

- The framework EU legislation, including access to information and impact environmental assessment;
- Measures related to the international conventions to which the EU is a party;
- Reduction of general and trans-national pollution;
- Environmental legislation aimed at protection of biodiversity;
- Measures ensuring the functioning of the Internal Market, e.g. product standards.

The implementation and enforcement of the EU legislation requires a strong and well-equipped administration. Furthermore, in accordance with Article 6 of EU Treaty an integration of the environmental requirements in other policies is necessary in view of achieving sustainable development.

<sup>1</sup> Directive 75/442/EEC on waste.

<sup>2</sup> Directive 99/31/EC on landfill of waste.

<sup>3</sup> Directive 94/62/EC on packaging and packaging waste.

<sup>4</sup> Council Directive 94/67/EC of 16 December 1994 on the incineration of hazardous waste

<sup>5</sup> Directive 91/689/EEC on the hazardous waste.

<sup>6</sup> Directive 75/439/EEC on waste oils.

<sup>7</sup> Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances.

<sup>8</sup> Directive 96/59/EC on disposal of PCBs and PCTs.

<sup>9</sup> Directive 94/67/EC on the hazardous waste incineration.

<sup>10</sup> Regulation EEC/259/93 on the supervision and control of shipments of waste within, into and out of the European Community.

Ensuring compliance with the EU environmental legislation would require, according to preliminary estimates, investments at the amount of 80-100 bln euro only for the "first wave" of candidates from Central and Eastern Europe. However, a study financed by the EC shows that the implementation of the EU environmental directives – respectively the achievement of higher environmental protection – in the candidate countries will bring major benefits for public health and will lead to a reduction of the costly damage of the forests, buildings, soil and water resources. According to the said study the forecasts for the total value of benefits from the introduction of the EU directives by the candidate countries is at the amount of 134-161 bln euro.

## 2. Negotiations

Based on the general principle that transitional measures should be limited in time and scope, the EU has underlined from the very beginning of the negotiations that transitional measures will not be granted on transposition of *acquis* (as opposed to implementation); framework legislation (air, waste, water, impact assessment, access to information); nature protection (habitat, birds); essentials of the internal market (all product-related legislation); new installations; **while they can be considered where substantial adaptation of the infrastructure is required, which needs to be spread over time.**

Requests for transitional periods need to be justified by detailed implementation plans ensuring that compliance with the *acquis* will be reached over time. These plans also allow the candidate countries to define intermediate targets, which will be legally binding.

Requests for transitional measures need to be justified by detailed implementation plans ensuring that compliance with the *acquis* will be reached over time. These plans also allow candidate countries to define intermediate targets, which will be legally binding. Hence, transitional measures aim to allow the future Member States to deal with the legacy of the past but not to attract new investments with lower environmental standards.

## 3. Negotiations' State of Play

The Chapter "Environment" is provisionally closed with Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovenia and Slovakia. The negotiations with Bulgaria, Malta and Romania remain open.

All candidate countries have requested transitional measures and technical adaptations. As a result of negotiations, clarification and substantial additional efforts by the candidate countries, several of these requests have been withdrawn. As a result, limited transitional periods have been granted in relation to volatile organic compound (VOC) emissions from storage and distribution of petroleum, sulphur content of certain liquid fuels, urban waste water treatment, drinking water, discharges of dangerous substances into the aquatic environment, packaging and packaging waste, landfill of waste, asbestos waste, shipments of waste, integrated pollution prevention and control, large combustion plants, incineration of hazardous waste and ionising radiation in relation to medical exposure.

In cases where the chapter has been provisionally closed, the schedules for transposition and implementation of the environment *acquis* have been fully clarified, including plans on further strengthening of the administrative capacity.

## 4. Bulgaria and the Negotiations

Bulgaria opened Chapter 22 "Environment" in July 2001 and the chapter is still open.

The Negotiating Position<sup>1</sup> of Bulgaria on environment is a justification of preparedness of Bulgaria for accession and follows the basic environmental issues. Also, it describes the problems which hamper the full implementation of the environmental *acquis* as well as it contains requests for transitional periods.

Bulgaria's Position contains the adopted EU legislation entered into force until December 31, 1999 as well as the legislation, which is under preparation and for the implementation of which Bulgaria is undertaking the necessary steps. The different sectors in the Negotiating Position on the chapter "Environment" are as follows:

- Horizontal legislation;
- Air quality;
- Waste management;
- Industrial pollution control and risk management;
- Protection of the nature;
- Chemicals and genetically modified organisms;
- Noise of machines and equipment;
- Nuclear safety and radiation protection;
- Civil protection.

In the submitted Negotiating Position Bulgaria has requested transitional periods on eight EU directives.

### Directive 99/32/EC on the maximum admissible sulphur content in gas oil

For the implementation of the requirements of this directive Bulgaria has requested a transitional period of **three years, i.e. until 01.01.2010** due to the necessary investments for reconstruction and modernisation of the existing installations. Regarding the 1% limit value for sulphur content in heavy oils, Bulgaria has requested a transitional period of **eight years, i.e. until 01.01.2015**.

### Directive 94/63/EC on the control of volatile organic compound (VOC)<sup>2</sup>

According to Bulgaria's negotiation position this directive is fully transposed in the Bulgarian legislation but for its full implementation Bulgaria has requested a transitional period of three years, i.e. until January 1, 2010 for achieving compliance with the established technical requirements for existing installations.

<sup>1</sup> Negotiating Position of Bulgaria on Chapter 22 "Environment", submitted on March 26, 2001 in Brussels.

<sup>2</sup> Directive 94/63/EC of 20 December 1994 on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations.

**Directive 99/13/EC on the limitation of emissions of volatile organic compounds (VOC)<sup>1</sup>**

For the full implementation of the requirements of this directive to the existing installations and activities Bulgaria has requested a transitional period of **five years, i.e. until January 1, 2012** due to the investments required for reconstruction, modernisation, optimisation etc., including the expected changes in raw materials used and the installation of new abatement equipment, as well as the time and financial resources needed for the implementation of these measures.

**Directive 99/31/EC on landfill of waste**

Bulgaria has requested a transitional period of **two years** for the implementation of the targets set by Article 5, items 2a and 2b of the Directive, as follows:

- A reduction of biodegradable municipal waste to 75% of the determined quantities to be applied at latest by **January 1, 2012**;
- The reduction of municipal biodegradable waste to 50% of the determined quantities to be applied at latest by **January 1, 2015**.

In case the Commission does not confirm the definition of "liquid waste" laid out in the existing Bulgarian legislation, Bulgaria requests an additional **transitional period of eight years, until January 1, 2015**, for non-application of the ban on liquid waste landfilling. The need for such a transitional period is determined by the significant investments required for altering the currently applied technologies in mining, energy, metallurgy and other industrial sectors and by the quantities of waste disposed in such a manner, which annually exceed 10 million tons.

**Directive 94/62/EC on Packaging and Packaging Waste**

Bulgaria has requested a transitional period of **five years, until January 1, 2012**, in view of reaching the minimum recovery target set by Article 6, item 1a of the Directive.

**Directive on Urban Waste-Water Treatment<sup>2</sup>**

Due to the extremely high investment costs and the technological time necessary to put in place the facilities needed, Bulgaria has requested transitional periods as follows:

- **four years, until January 1, 2011** for meeting the requirements for settlements with a population of over 10 000,
- **nine years, until January 1, 2015** for meeting the requirements for settlements with a population between 2 000 to 10 000.

**Directive 76/464/EEC on the Aquatic Environment<sup>3</sup>**

The measures for elimination of water pollution by the substances included in List I of the Directive involve technological aspects, which require a certain period of time for implementation, as well as the investment of substantial financial resources. Due to this Bulgaria has requested

<sup>1</sup> Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations.

<sup>2</sup> Directive 91/271/EEC on urban waste-water treatment.

<sup>3</sup> Directive 76/464/EEC on pollution caused by certain dangerous substances discharged in the aquatic environment.

a transitional period of **four years, until January 1, 2011**, for the implementation of the requirements of the Directive, respectively of article 5 of the Daughter directive 86/280/EC.

**Directive 96/61/EC on Integrated Pollution Prevention and Control (IPPC)**

According to the new Environmental Protection Act the deadline for issuing integrated permits for *existing installations* is **January 1, 2012**. Due to this for the full implementation of the Directive Bulgaria has requested a transitional period of **five years**.

### III. REVIEW OF THE DEGREE OF PREPAREDNESS OF BULGARIA

#### 1. Legal Basis

The preservation of the quality of the environment in the ecologically clean areas of the country and the improvement of the state of the environment in the polluted and deteriorated areas is the main objective of the environmental legislation. It includes legal, administrative and investment measures in the water, air and waste sectors. Eight laws in the environmental area are adopted as well as most of the respective secondary legislation.

In general the approximation with the EU law in the areas of air quality and waste management is nearly completed. The adoption and implementation of the most difficult directives related to the integrated permissions and ecological labelling.

The Environmental Protection Law was adopted on September 19, 2002, which is the framework environmental law. It also provides for public access to information on the environment. The procedure, scope and active public participation in general environmental impact assessment procedures were harmonised as well.

The basic requirements for environmental protection by components are laid down in the respective framework laws: Law on Clean Air, Law on Limitation of the Harmful Impact of Waste on the Environment, Law on Waters, Law on Protected Territories, Law on Medicinal Plants, Law on Protection Against Harmful Impact of Chemical Substances, Preparations and Products.

Five programmes for the implementation of the legislation and for ensuring control mechanisms on its enforcement have been prepared:

- National Programme for Waste Management;
- National Strategy for Biodiversity;
- National Programme on Priority Building of Waste-water Treatment Plants for settlements with more than 100 000 inhabitants;
- National Programme on Gradual Suspension of the Production and Use of Leaded Benzenes;
- National Programme on Suspension of the Use of Substances Depleting the Ozone Layer;

#### 2. Industrial Pollution and Risk Management

Integrated prevention and control of pollution (Directive 96/61/EC (IPPC)), is one of the most important documents, which will have an impact on the industrial sector and the orientation of technologies and equipment to the environmental protection in the near future. As a main tool for its implementation the Directive provides for the issuing of "integrated permits" to enterprises,



which will impose conditions and requirements for the application of "the best available equipment". The adoption of the Directive is a logical continuation of the EU environment-related policy and is one of the main instruments for the implementation of the principles and the policy of the Union and in particular:

- prevention, reduction and possible subsequent maximum elimination of pollution;
- giving priority to measures and activities against the source of the pollution;
- optimisation of consumption and improvement of the management of the natural resources through the implementation of the principles of "the polluter pays:" and "prevention of pollution".

Upon the adoption of Directive 96/61/EC and later as well, many other regulations related to pollution and emissions in different environmental components and waste management were adopted. These documents provide for the use of specific tools for limitation and prevention of pollution, which creates a threat, particularly in productions with an integrated impact, of shifting pollution from one component to another without attaining a reduction of the impact on the environment as a whole.

It is important to mention that the implementation of the Directive is mandatory regarding certain activities and productions with a specific minimum threshold capacity, to which the implementation of such an integrated approach is considered to be effective and would justify the resources necessary for its implementation. It is not an obstacle for each country to apply this approach to enterprises with a smaller production capacity or to other activities. The basic obligation of the countries implementing the Directive is to guarantee that for each installation covered by its scope they will undertake the respective measures to prevent or reduce the emissions in the air, water and soil and thus achieve a high degree of environmental protection.

The laws related to industrial pollution and risk management are: Regulation on the Conditions and Procedures for Determination of the State Liability for Ecological Damages Caused by Previous Activities or Omissions and the Law on Protection Against the Harmful Impact of Chemical Substances, Preparations and Products.

- Two pilot integrated permits for two sites have been issued: leather enterprise "Sevko" in Sevlievo and Thermal Power Plant "Republic" in Pernik.
- Within a World Bank pilot project the issuing of integrated permits for two sites was launched, as the objective of the project is the issuing of pilot integrated permits for the biggest Bulgarian chemical and metallurgical enterprises in three years.
- An information system for the guidelines and the reference documents concerning the best available equipment published by the EC is established.
- Directive 96/61/EC has been transposed in Chapter VII of the newly adopted Law on Environmental Protection, section "Integrated Permits".

### 3. Air Quality

Three new regulations related to air quality are in force since January 2000: Regulation No 7 on AAQ assessment and management; Regulation No 8 on limit values for ozone in the ambient air; Regulation No 9 on limit values for sulphur dioxide, nitrogen dioxide and oxides, particulate matter and lead in the ambient air. These Regulations transposed EU Directives 96/

62/EC<sup>1</sup> and 99/30/EC<sup>2</sup>. Since January 1, 2002 the amendment to Regulation No 14 on the norms for limit values of dangerous substances in the ambient air is in force. The abovementioned regulations impose a number of changes in the submission of data, new indicators for limit concentration of the pollutants and the respective statistical processing.

The air quality is controlled in 40 settlements in about 75 sites from the national network for quality control of the air.

The last published official data for the first quarter of 2002 (from 61 controlled sites) shows that the highest exceeding values of the component "dust" have been registered in Pleven and Sofia. Regarding the component "fine dust particles" exceeding according to the indicators for limit concentration has been registered in Plovdiv; hydrogen sulphide in Sofia and Dimitrovgrad, phenol in Sofia and Silistra, ammonia in Nikopol, etc.

The adopted legal measures and the amendments to the existing legislation are as follows:

- Regulation No 16 on the reduction of VOC emissions from storage, loading or unloading and transport of petrol. The Regulation transposed into the Bulgarian legislation Directive 94/63/EC<sup>3</sup> on volatile organic compounds (VOC) emissions resulting from the storage and transportation of petroleum.
- Regulation No 17 on limit values for content of lead, sulphur and other harmful substances in liquid fuels, which transposes Directives 85/210/EEC<sup>4</sup>, 93/12/EEC<sup>5</sup> and 98/70/EC<sup>6</sup> on limit values of harmful substances in different types of liquid fuels.
- Regulation No 32 of the Ministry of Transport on periodic checks for control of the technical condition of motor vehicles.
- Regulation No 14 on the norms for limit values of dangerous substances in the ambient air.
- Law amending the Law on Ambient Clean Air transposes Directives 96/62/EC, 93/12/EEC, 98/70/EC, 88/609/EEC<sup>7</sup>, 94/13/EC<sup>8</sup>, 99/13/EC.

A National Programme on limitation of emissions of sulphur dioxide and nitrogen oxides from big incineration installations within the framework – PHARE – Tinning 98 is being prepared. Within the same Programme a plan for the implementation of Directive 94/63/EC is under preparation.

<sup>1</sup> Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management.

<sup>2</sup> Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air.

<sup>3</sup> European Parliament and Council Directive 94/63/EC of 20 December 1994 on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations.

<sup>4</sup> Council Directive 85/210/ which covers some motor fuels.

<sup>5</sup> Council Directive 93/12/EEC of 23 March 1993 relating to the sulphur content of certain liquid fuels.

<sup>6</sup> Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC.

<sup>7</sup> Council Directive 88/609/EEC of 24 November 1988 on the limitation of emissions of certain pollutants into the air from large combustion plants.

<sup>8</sup> Council Directive 94/13/EC (OJ L 92, 9.4.1994, p. 27).

A development of a programme for air quality management in Pernik Municipality and the elaboration of a manual for such programmes in other "hot spot" municipalities are forthcoming.

In the framework of subproject 6 of Twinning Project BG9807 financed by PHARE two pilot plans for management of solvents will be developed, which will be aimed at the determination of the opportunities for implementation of Directive 99/13/EC.

The new Protocol to the Convention on cross-border air pollution is signed

#### 4. Waste Management

The legal measures in the existing legislation contain a Regulation amending Regulation No 5 of 1998 on the permissions for import, export and transit transportation of waste.

- "Manual on the issuing of permits for waste management activities and of permits for building of installations for waste disposal" is adopted.
- A software product ensuring the maintaining and exchange of data within the framework of a Register of the issued permits has been developed and installed.

Other legal acts related to the waste management sector are being drafted, namely:

- Draft Regulation on batteries and accumulators containing dangerous substances in compliance with Directive 91/157/EEC<sup>1</sup>.
- Draft Regulation on the disposal of waste oils in compliance with Directives 75/439/EEC<sup>2</sup> and 87/101/EEC<sup>3</sup>.
- Draft Regulation on the procedure for collection and treatment of unused old automobiles.
- Draft Regulation on the procedure for collection and treatment of unused household appliances.
- Draft Regulation on the procedure for disposal of polychlorinated biphenyls and polychlorinated terphenyls in compliance with Directive 96/59/EC<sup>4</sup>.
- Draft Regulation on limitation of the packaging quantities in the waste flow in compliance with 94/62/EC<sup>5</sup>.

#### 5. Water Quality

Regarding the state of the surface waters in the main river valleys the recent published official data for the first quarter of 2002 show exceeding results for the different rivers and coastal waters as follows:

- Danube basin – dissolved oxygen non-dissolved substances, ammonium nitrogen, nitrite nitrogen, phosphates, etc.;

<sup>1</sup> Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances.

<sup>2</sup> COUNCIL DIRECTIVE of 16 June 1975 on the disposal of waste oils (75/439/EEC).

<sup>3</sup> Council Directive 87/101/EEC of 22 December 1986 amending Directive 75/439/EEC on the disposal of waste oils(s).

<sup>4</sup> Council Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCBs/PCTs).

<sup>5</sup> Directive 94/62/EC on packaging and packaging waste.

- Black Sea basin – dissolved oxygen, non-dissolved substances, ammonium nitrogen, nitrite nitrogen, phosphates, etc.;
- East-Aegean basin – oxidation, ammonium and nitrite nitrogen and phosphates;
- West-Aegean basin – not measured.

Water is one of the areas regulated in most detail by the EU legislation. In 2000 a Framework Directive on EU water policy is adopted. Its objective is to create a framework for the achievement of four main preconditions in view of sustainable water development:

- Sufficient quantities of drinking water;
- Sufficient quantities of water for the other economic needs;
- Environmental protection;
- Easing of the unfavourable impact of floods and droughts.

The main components, respectively directives, forming water management issues are:

- "Good state" of waters by 2010;
- Water management based on an integrated principle – river basins;
- Surface waters;
- Ground waters;
- Coordination of measures related to pollution control;
- Public involvement;
- Legislation in different areas (for example on fish-farming waters, flow of dangerous substances, etc.);
- Full recovery of the expenditures (for production, distribution, treatment, etc.).

The legal measures adopted in Bulgaria are:

- Adoption of the Law on Waters, which is in compliance with Framework Directive 2000/60/EC on the EU water policy.
- Regulation No 11 of February 2002 on the quality of bathing waters, which is in compliance of Directive 76/160/EEC<sup>1</sup>.
- Regulation No 12 of June 2002 on quality requirements for surface waters used for human consumption, which is in compliance with Directives 79/869/EEC<sup>2</sup> and 91/692/EEC.
- Regulation on the exploration, use and protection of ground waters, which is in compliance with Directives 80/68/EEC<sup>3</sup> and 91/692/EEC.
- Regulation on the quality of the water used for human consumption, which is in compliance with Directive 98/83/EC<sup>4</sup>.

<sup>1</sup> Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water.

<sup>2</sup> Council Directive 79/869/EEC of 9 October 1979 concerning the methods of measurement and frequencies of sampling and analysis of surface water intended for the abstraction of drinking water in the Member States.

<sup>3</sup> Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances.

<sup>4</sup> Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption.

- Regulation on the procedures for exploration, design, approval and exploitation of sanitary security areas around water sources and drinking water facilities and around the mineral water sources used for medical, prophylactic, drinking and sanitary need, which is in compliance with Directives 98/83/EC, 91/676/EEC<sup>1</sup> and 79/869/EEC<sup>2</sup>.

The following pieces of legislation are being drafted:

- Draft Regulation on protection of waters against pollution with nitrates from agriculture in compliance of Directive 91/676/EEC.
- Draft Regulation on the quality of the coastal seawaters in partial compliance with Directives 76/464/EEC<sup>3</sup> and 91/271/EEC<sup>4</sup>.
- Draft Regulation on the emission values for the allowed content of dangerous and harmful substances in waste-waters discharged in water sites (Directives 76/464/EEC on the dangerous substances and its five daughter Directives and 91/271/EEC);
- Draft Regulation on the procedure and means for the setting up of the networks and the National Water Monitoring System.
- Draft Regulation on the issuing of permits for discharging of waste- waters in water sites and the determination of the individual emission limits of point sources of pollution in compliance with Directives 91/271/EEC and 80/68/EEC<sup>5</sup>.
- Draft Regulation on the water quality for fish farming and for breeding of shellfish in compliance with Directives 78/659/EEC<sup>6</sup> and 79/923/EEC<sup>7</sup>.
- Draft Regulation on the categorisation of waters in the water sites in compliance with Directives 78/659/EEC and 91/271/EEC.
- Draft Decree on the determination of the tariff for charges on water use and water site use.
- Draft Regulation on the procedure for discharge of industrial waste-waters in the sewerage systems of the settlements, partially in compliance with Directives 91/271/EEC, 96/61/EC<sup>8</sup> and 76/464/EEC. The Implementation of the project started within the framework of Subproject 5 of the BG9807 Twinning Project, financed under the PHARE Programme.

## 6. Chemicals

The adopted and entered into force laws and regulations related to this area are:

- <sup>1</sup> Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources
- <sup>2</sup> 79/ 869/EEC This Directive concerns the reference methods of measurement and frequencies of sampling and analysis for the parameters listed in Annex II to Directive 75/ 440/ EEC.
- <sup>3</sup> Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community
- <sup>4</sup> Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment.
- <sup>5</sup> Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances
- <sup>6</sup> Council Directive 78/659/EEC of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life
- <sup>7</sup> Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters
- <sup>8</sup> Council Directive 96/61/EC concerning integrated pollution prevention and control (IPPC)

- Law on Protection from the Harmful Impact of Chemical Substances, Preparations and Products, which is in compliance with Directives: 67/548/EEC<sup>1</sup> related to the classification, packaging and labelling of dangerous substances; 76/769/EEC<sup>2</sup> relating to restrictions on the marketing and use of certain dangerous substances and preparations; 88/379/EEC<sup>3</sup> related to the classification, packaging and labelling of dangerous preparations; SEVESO 96/82/EC<sup>4</sup>;
- Regulation 793/93 on the assessment and control of risks emerging from existing substances;
- Decree 254/30.12.1999. Of the Council of Ministers on the control and management of substances depleting the ozone layer and Regulation on control and management of substances depleting the ozone layer;
- Law on the Ratification of the Montreal amendments to the Montreal Protocol of 1987 on substance depleting the ozone layer.

In the short-term the preparation of Draft Law on Genetically Modified Organisms is envisaged, which will transpose the requirements of Directives 90/219/EEC<sup>5</sup> and 2001/18/EC<sup>6</sup> in the national legislation.

## 7. Protecting Nature

The adopted and entered into force laws and regulations related to protecting nature are:

- Law Amending the Law on Protected Territories;
- Regulation on the Developments of Plans for the Management of Protected Territories;
- Law on Hunting and Game Protection
- Law on Biodiversity, which transposes the requirements of Directives 92/43/EEC<sup>7</sup> and 79/409/EEC<sup>8</sup> in the Bulgarian legislation and creates a legal basis for the establishment of an administrative structure for the implementation of EU Regulation EC/338/97<sup>9</sup>.

<sup>1</sup> Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances

<sup>2</sup> Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations

<sup>3</sup> Directive 88/379/EEC for the classification, packaging and labelling of dangerous preparations.

<sup>4</sup> Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances

<sup>5</sup> Directive 90/219/EEC on the contained use of genetically modified micro-organisms.

<sup>6</sup> Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC

<sup>7</sup> Council Directive 92/43/EC of 21.5.1992 on the conservation of natural habitats and of wild fauna and flora.

<sup>8</sup> Council Directive 79/409/EEC of 2.4.1979 on the conservation of wild birds.

<sup>9</sup> Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein

- Plans for the management of two national parks, one natural park, four reservations and six protected territories (moist zones and dunes) are developed. The preparation of plans for the management of six more territories has been assigned. Most of these protected territories are sites under the CORINE<sup>1</sup> Programme and they will be part of the Bulgarian participation in the EIONET.
- A pilot project for creating of a database compatible with the EMERALD<sup>2</sup> Programme for determining seven especially protected territories was developed under a contract with the Council of Europe.

### 8. Nuclear Safety and Civil Protection

The International Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Management<sup>3</sup> is signed by Bulgaria on September 22, 1998.

In 1999 the Council of Ministers adopted a National Strategy on the Safety of Spent Fuel Management and Radioactive Waste. A review of this strategy is envisaged in view of its compliance with the Joint Convention and the Agreement between the EC and Bulgaria from November 29, 1999.

The regulations on the determination of the amount of contributions and the procedure for raising, expenditure and control over "Safety and Storage of Radioactive Waste" and "Decommissioning of Nuclear Facilities" Funds are being updated. The main objective is the carrying out of a detailed analysis of the financial mechanism and the need for reconsideration of the financing for the respective activities.

In a process of development are the safety criteria for the spent fuel and radioactive waste storage facilities, as well as the requirements to the analysis reports on the safety of the said facilities, which will be provided for in a Regulation of CUAEEP on safety of the facilities for storage of spent fuel and radioactive waste.

The requirements on the carrying out of an impact assessment of nuclear decommissioning facilities on the environment are provided for in the newly adopted Law on Environmental Protection, which aimed at achieving compliance of the national legislation with Directive 97/11<sup>4</sup>.

In 1999 Regulation No 1 on the standards for radiation protection and safety in the elimination of the consequences of uranium mining and processing in Bulgaria was adopted. In a process of drafting is an Instruction for the implementation of the said Regulation.

Under preparation are a number of laws, regulations and instructions related to the protection of public health from the harmful impact of the ionising radiation, a procedure for informing the

<sup>1</sup> CORINE — Working programme of the Commission for experimental projects for collecting, harmonization and coordination of information related to the state of EU environment and natural resources.

<sup>2</sup> Network Emerald is a network of areas subject of a particular interest for conservation which should be built on the territories of the Member States and observer countries to the Bern Convention (Convention on the Protection of European Wild Life and Habitats, signed on September 19 1879 in Bern and entered into force on June 1, 1982), including the countries from Central and Eastern Europe and EU Member States.

<sup>3</sup> International Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Management (Joint Convention), opened for signing on September 29, 1997 in IAEA headquarters.

<sup>4</sup> Council Directive 97/ 11/ EC on the assessment of the effects of certain public and private projects on the environment.

public in emergency situations related to nuclear safety and radiation protection, prevention and limitation of the exposure to radiation and radioactive pollution upon transportation of radioactive substances etc.

### 9. Administrative Bodies Responsible for Environmental Protection

The central institution responsible for environmental protection in Bulgaria is the Ministry of Environment and Water. It is in charge of:

- The implementation and development of the national environmental policy;
- Drafting of the legal basis related to the management of the different environmental components;
- Approximation of the national legislation with the EU environmental legislation;
- Management of the protected territories;
- The permit regime for using natural resources and environment impact assessment.

Executive territorial bodies to the MEW responsible for the implementation of the environmental control are the Regional Environmental and Water Inspections. Three National Parks Directorates have been set up, which are responsible for their management and protection. In 2002 are established four Basin Directorates for water management. The Executive Environmental Agency is a specialised body under the MEW, which is responsible for monitoring and laboratory activities.

Other government bodies concerned on different environmental aspects are:

- The Ministry of Regional Development and Public Works;
- The Ministry of Health;
- The Ministry of Energy and Energy Resources;
- The Ministry of Transport and Telecommunications;
- The Agency for Energy Efficiency;
- The Committee on the Use of Atomic Energy for Peaceful Purposes;
- The National Statistics Institute;
- The State Agency for Standardisation and Metrology;
- The State Agency "Civil Protection";
- Local municipal administrations

## IV. CONCLUSIONS AND RECOMMENDATIONS

### 1. Conclusions

The EU environmental policy during the last decade obviously regards the environment as a whole and seeks an integrated solution to pollution assessment. One and the same environmental component may have the potential to perform more than one function. The different technologies in one and the same activity may have different environmental aspects.

Therefore, the solving of the problems related to the environmental pollution depends on many parameters and restrictions determined by technological, natural, financial and human resources. The main lines of the activities are:

- Shifting from measures aimed at specific surroundings to an impact assessment on all surroundings;
- Shifting from a reaction to pollution to the undertaking of preventive measures at the pollution source;
- Shifting from law-imposed measures to measures based on the voluntary obligations of the economic operator;
- Broadening the scope of the control over the impact from the individual machine to the technological production line with a subsequent utilisation of the products as the assessment of the life cycle becomes a priority.

Bulgaria's benefits from the approximation of the national environmental legislation with the EU legislation are primarily the reduction of the emissions as well as protection of the natural resources from excessive exploitation and pollution. It is hard to give a qualitative evaluation of the benefits for the subsequent improvement of the state of the eco-systems and biodiversity. The environment is not something isolated from the other areas of public life. The quality of the environment is directly linked to the social and economic area, including in the candidate countries. It is not a coincidence that the environmental policy is a basic component, together with the social and economic policy of the EU Strategy for Sustainable Development. This is due to the fact that the better quality of the environment immediately leads to:

- Direct benefits for public health from the improvement of the air quality, water quality and the direct impact of harmful substances;
- A better preservation of the eco-systems, which are under the direct impact of the air and water pollution and the industrial activities impact. Lower impact on the water eco-systems such as Danube bio-sphere reserve, Black Sea, etc. The Directive on substances urban water-waste and the treatment of water-waste treatment will significantly decrease the burden of these systems;
- A positive impact on the eco-systems from the better waste management. For example, less emissions of heavy metals and dioxins from incineration, less pollution of the ground waters as a result of inadmissible waste disposal and from unprocessed waste. These consequences might be prevented through the implementation of the Directives related to the waste treatment;
- The Directive on Habitats will reduce the impact of the uncontrolled urbanisation, intensive agriculture, etc.

The benefits for the natural resources used for commercial purposes and production (e.g. fisheries and forestry) are obvious as well. The damages of these resources decrease their economic potential as a whole.

The economic benefits are related to bringing some of the concerned industrial operators into compliance. Most directly linked is the group of operators who may offer new ecologically compatible services, for example ensuring "clean" technologies, ecologically clean fuels, etc. In addition, many enterprises use natural resources, such as water, as the benefit of the water being clean is obvious. The said benefits are numerous and they are reflected in the individual directives:

- The directive on bathing water will support tourism through certification of the beaches. In addition, many enterprises will purify their water to a lower degree, which will decrease the exploitation expenditures. This leads to investments in the

local infrastructure, development of the regional infrastructure and the respective reduction of unemployment;

- The clean atmosphere and waters, combined with the ecological infrastructure could promote "the local quality" of the territory and attract investments.

Environmental protection plays an important social role. Municipalities with environmental problems may be avoided by investors, which may lead to a high unemployment rate. In this regard environmental protection should not be underestimated and in particular in the candidate countries where the social choice in the context of the overall economic and political transition plays an important role. Moreover, the solving of the problems related to recycling and composting will promote the collection and second use of raw materials through the establishment of accompanying productions, which will respectively contribute to the creation of new jobs.

Thus the main problems, which Bulgaria faces during its preparation for EU membership in the environmental area could be outlined as follows:

- In the first place it is obvious that further progress is necessary in the field of waste, nature protection and industrial pollution.
- Implementation of the legislation is a problem.
- Investments are limited, which does not allow accelerated compliance with the European standards.
- The structures necessary for monitoring the enforcement of legislation are not yet adequate and further training is required to ensure that the staff has the necessary knowledge to implement legislation.
- The mechanism for data collection, analysis and reporting is not well developed yet.
- The Ministry of Environment and Water and its Regional Inspectorates are still understaffed.
- Whilst the "polluter pays" principle is generally accepted, it is not clear how it will be applied.
- The principle of sustainable development needs to be integrated into other sector policies.
- Lack of consultations with the economic operators and providing of information about their future responsibilities and obligations.

## 2. Recommendations

### a) Approximation of Legislation

The needs and benefits of the implementation and approximation of the Bulgarian legislation with the EU environmental legislation are obvious. Bulgaria as a candidate country for EU membership must introduce the EU environmental law **before** its accession as a full member. It should be mentioned that in general the level of the approximation of laws is relatively good. The adoption and implementation of its basic principles lead to the improvement of the ecological situation in the country for which of course the closing down and modernisation of a number of enterprises, economic restructuring, etc contributed as well.

The approximation process is obviously a priority and the Bulgarian Government has made significant efforts in this area. At the same time, along with the acceleration of this process,

further efforts are needed to raise of awareness of the benefits both of those adopting it and of the public, including the business circles. Due to this it should be mentioned that:

- The benefits must be considered and discussed in view of the real implementation of the different directives in the different areas;
- The benefits can be seen as soon as the reduction of the emissions, the state of the air and the waters and waste management improve. It is clear that on the one hand this leads to increase of the expenditures but on the other the accelerated investments lead to a longer exploitation period, respectively a longer period for exploitation expenditures and maintenance costs;
- The generation of benefits is not restricted only to the introduction of the environmental directives but to the introduction of the directives related to the other areas. Interrelation between the directives is of particular importance and their simultaneous implementation would lead to a greater effect. Due to this the prioritisation of some of them should be avoided, but an integrated approach should be undertaken;
- The implementation programmes should take into consideration not only the financial analysis but also other aspects, which may not be shown in figures as well, for example biodiversity. Financial analyses should be used as a strong indicator and tool;
- The ecological benefits will be raised if the policy in the other areas, such as agriculture, transport and energy, takes into consideration the environmental aspects and follows the principle of sustainable development. Therefore, the implementation of the law in other areas should also take into account the benefits from the implementation of environmental measures.

The main weakness of the adopted legislation are the insufficient measures for control and determination of standards for the permits on the basis of fixed generally permissible limit values for emissions (emission standards) applied to different environmental components as it is required by the IPPC Directive, but not on the basis of elimination and reduction of the emissions.

During the drafting of legislation and upon the undertaking of a specific decision on certain ecological problem there is need for "flexibility". This means that the direct application of the existing legal base for all sites on equal footing leads to high expenditures as at the same time the requirements of the different standards contradict one another. It should be underlined that two identical sites from technical and technological point of view do not exist and the approach to the solution of each problem should be individual and integrated.

It is also necessary to speed up the preparation of some pieces of legislation related to the issuing of the permits. For example, the lack of categorisation of the waters in the water basins leads to a long procedure for the obtaining of permits, difficulties in the taking of investment and technical decisions, non-observance of timetables, financial losses.

#### **b) Administrative Capacity**

The administrative capacity, knowledge of the existing legislation and its implementation, available information, expert evaluations at regional and local level remain a problem. Better

coordination between the different ministries and agencies, imposed by requirements for observation of the environmental standards, is necessary.

A significant improvement in the organisation of the individual structures for the practical implementation of the environmental measures is required.

Continuity in the administration and in the teams participating in the drafting of legislation, management and implementation of the environmental activities is necessary as well. Lack of continuity leads to loss of time, a termination of the processes and the arising of problems upon the implementation of the legislation and different projects.

#### **c) Financial Aspects**

A low level of awareness of national and international financing sources in the environment as well as of the requirements and rules for the use of these sources is observed.

Particular attention should be paid to the preparation of the projects in the application for financing before international programmes and under agreements. It concerns the whole chain of preparation of the projects, and in particular: definition of the priorities; ensuring the financial framework (co-financing); development of research, analysis, working projects, etc. at a high technical level; ensuring all the required permits and decisions; detailed knowledge of the procedures; allocation of the responsibilities on the decision taking and control; preparation of the tender documents and the tender procedures; preparation of realistic timetables and terms; strict observation of the set timetables and terms; coordination between the institutions; control over the implementation of the projects or programmes during the whole period of their implementation; monitoring of the results of the activities carried out, etc.

Lack of knowledge on the above issues lead to non-utilisation of financing under pre-accessions funds and programmes.

A certain drop in the quality of the technical decisions and operating projects is observed as well. Weakly prepared technical decisions lead to unjustified investments, subsequently high exploitation expenditures, non-achievement of the expected effects. It is also necessary for the problems to be solved at a high technical level at optimum price with the use of the "best available technologies".

Taking the decision on each problem should be based on a mandatory analysis of whether the owner or the public can "afford" the additional expenditures in the long-term perspective.

## **BULGARIA'S PARTICIPATION IN THE EU STRUCTURAL POLICY**

*Irina Bokova*

### **I. STRUCTURAL AND REGIONAL POLICY OF THE COMMUNITY**

#### **1. General**

Bulgaria's participation in the structural, or also known as regional, Community policy is one of the most important issues during the preparation for accession.

The Treaty on European Union sets the economic and social cohesion as one of the three pillars of the European construction at equal footing with the Economic and Monetary Union and the Internal Market. The implementation of a policy for promotion of a comprehensive harmonious development and for reduction of the differences in the level of development of different regions and the underdevelopment of the most underdeveloped regions, including rural areas, through a re-allocation of financial resources is an expression of the solidarity of the Member States. This policy contributes significantly for the economic stability of the EU and for the growth of the employment level.

The Community provides financial support for the achievement of the objectives, defined in the Treaty on European Union through the Structural Funds (the European Regional Development Fund, the European Social Fund, the Guidance Section of the European Agricultural Guidance and Guarantee Fund), Cohesion Fund, European Investment Bank as well as through other existing financial instruments such as initiatives, programmes and others.

Undoubtedly, the European Union is one of the most economically prosperous areas in the world but the differences in the level of development among its 250 regions is drastic. The most important indicator for the evaluation of the level of development of the different regions is the Gross National Product *per capita*. The GNP per capita for Greece and Spain for example is 80% of the average GNP for the Community. Luxembourg on its part has a GDP exceeding 60% of the average of the Community. The ten most dynamic regions in the EU have a three

time higher GNP than the ten most underdeveloped regions. These differences, which find its dimension in the access to jobs, competitiveness of the companies and investments in new technologies, lead to the need for re-allocation of the funds and their directing towards more underdeveloped regions as well as to the development and implementation of a policy for sustainable development at a national and local level.

An important role for the Structural Funds is played by regional statistics, which are based on the geographical division of the territory of a certain country. In the beginning of 79s Eurostat in cooperation with other services of the European Commission developed the Nomenclature of Territorial Statistical Units – NUTS as an integrated comprehensive system for division of the EU territory on the basis of uniform statistical indicators. NUTS is a hierarchical classification of three levels. Normally the administrative structure of the Member States consists of two main regional levels<sup>1</sup>.

Depending on the Member States these levels may be NUTS I and NUTS II, NUTS I and NUTS III or NUTS II and NUTS III. In order to "complement" the structure of each country "the missing level" is achieved as the respective units are grouped at a lower level. It should be mentioned that the NUTS regions are normative regions, which express political will and usually coincide with the administrative division of the country. They are recognised by the national statistical system as territorial units for collecting, processing and distribution of statistical data.

There is still no have legal basis for the existence and use of NUTS regions, i.e. there is no regulation to determine the rules for collecting and processing of the information. Still this process is based on the so called "gentlemen agreements" between the Member States and Eurostat which are reached sometimes after long and tough negotiations and after them NUTS are published by Eurostat. However, the forthcoming EU enlargement raises the issue about the development of such clear and concrete rules. In the beginning of 2001 the European Commission submitted to the European Parliament and the Council of Ministers a proposal on the drafting of such a regulation, which is still subject to discussion but it is expected to be adopted soon<sup>2</sup>.

## 2. Main Stages in the Development of Community Structural Policy

### 1957

The preamble of the Treaty of Rome sets the need "to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions".

### 1958

Setting-up of two sector-based Funds: the European Social Fund (ESF) and the European Agricultural Guidance and Guarantee Fund (EAGGF).

<sup>1</sup> Lander and Kreise in Germany, regions and departments in France, Comunidades autonomas provincias in Spain, regioni and provincie in Italy, etc.

<sup>2</sup> Proposal for a Regulation of the European Parliament and of the Council on the establishment of a common classification of the Territorial Units for Statistics (NUTS), Brussels 14.02.2001 COM (2001) 83 final, 2001/0046 (COD).

### 1975

Creation of the European Regional Development Fund (ERDF) to redistribute part of the Member States' budget contributions to the poorest regions.

### 1986

The Single European Act lays the foundation for a genuine policy of social and economic cohesion designed to offset the burden of the single market for more underdeveloped regions and whole countries.

### 1992

The Treaty on the European Union is adopted and came into force in 1993. It designates social and economic cohesion as one of the main objectives of the functioning of the Union, alongside with the Single Market and Economic and Monetary Union. The Cohesion Fund to support projects in the fields of the environment and transport in the least prosperous Member States is also created.

### 1994-99

A new financial instrument – Financial Instrument for Fisheries Guidance (FIFG) is created.

### 1997

The Treaty of Amsterdam confirms the importance of the cohesion policy and also stresses on employment and reduction of unemployment.

### 2000-2006

The Berlin European Council (March 1999) reforms the Structural Funds and adjusts the operation of the Cohesion Fund as envisages a budget for them at the amount of 213 billion over seven years. The Instrument for Structural Policies for Pre-Accession (ISPA) and the Special Accession Programme for Agriculture and Rural Development (SAPARD) the objective of which is to promote the adaptation of the economies of the candidate countries.

## 3. EU Structural Policy

The financing within the framework of the EU structural policy is aimed at the creation of conditions for accelerated and competitive development, maintaining of economic growth and creation of jobs on the territory of the EU. In performance of the common goals laid down in the Treaty on European Union for each financial period the Community defines specific priority objectives the implementation of which is financed through the funds and other financial instruments as interrelation and coordination between them, coordination between the economic and social policy of the Member States, coordination of the national regional policies and national schemes for assistance are ensured. Thus all of the Community activities are directed towards the achievement of the priority objectives for the period as it is determined which funds, to what extent and under what conditions will contribute to their attainment.

The achievement of economic and social cohesion was introduced by the Single European Act and thus the reform of the Structural Funds was launched. The Structural Funds, the Cohesion Fund, European Investment Bank and the other Community financial instruments should contribute to the following three priority objectives of the EU regional structural policy as they are laid down in Agenda 2000 adopted in 1997:



**Objective 1** (territorial) – development of regions, which are lagging behind and which are facing the most serious difficulties regarding income, employment, production systems and infrastructures.

About 50 regions are considered as such and about 22% percent of the EU population lives on their territory. They receive about 70% of the available funding under all of the Structural Funds.

**Objective 2** (territorial) – achievement of economic and social restructuring of the regions suffering from structural problems (regions subject to economic changes in the area of industry and services, declining rural regions affected by the crisis, fisheries-dependant regions). The said problems of economic restructuring are most often a high unemployment rate or depopulation.

About 18% of the Community's population lives in these crisis-hit areas, which receive 11.5% of total funding from the European Social Fund and European Regional Development Fund.

**Objective 3** (thematic) – modernisation of education and qualification systems and ensuring employment, elaboration of strategies for human resources development, modernisation of the labour market in a way corresponding to the annual plans for employment and the new Chapter related to employment, included in the Treaty of Amsterdam.

For the achievement of this Objective the European Social Fund allocates 12.3% of all funding for the structural policy.

## II. STRUCTURAL FUNDS AND THE EU COHESION FUND: ECONOMIC AND SOCIAL DIMENSIONS

### 1. Types and Tasks of the Funds

The specific tasks of each fund are defined as follows:

- **The European Regional Development Fund** participates in the financing of: productive investments; creation or modernisation of infrastructures which contribute to the adjustment of the respective regions; measures aimed at the exploitation of the internal regional development; investments in the area of education and health in regions subject to the Objective 1 definition; financing of research or pilot schemes related to regional development at Community level, in particular when they concern border areas of the Member States, tourism, urban development and culture.
- **European Social Fund** – main task: providing financial support for the achievement of Objective 2 and 3 in the fight against unemployment. The financing within the Fund specifically contributes to: facilitating the access to the labour market; promoting equal opportunities for all in accessing the labour market; improvement of skills and professional qualification; promoting the creation of jobs; financing research and pilot schemes related to aspects, which are common for several Member States.
- **European Agricultural Guidance Fund – Guidance Section** – in compliance with the principles of Article 39 of Treaty on the European Economic Community the financial assistance is directed specifically to the performance of the following tasks: strengthening and reorganisation of the rural and forest structures, including

their processing and marketing; easing of the natural problems in agriculture; ensuring adjustment of agriculture and promotion of supplementary activities for farmers of both genders; support for ensuring a good standard of living; improving the development of the social network in the rural areas; environmental protection and protection of nature (including through conservation of the natural agricultural resources); providing technical assistance and information, as well as support for research and pilot projects for promotion of agricultural development at Community level.

- **Financial Instrument for Fisheries Guidance**, which is aimed at the adjustment and modernisation of fisheries.
- Of particular interest for the candidate countries is the **Cohesion Fund**, created in 1993 with the purpose of assisting the less developed Member States – Greece, Portugal, Ireland and Spain. In compliance with the European Council Conclusions (Lisbon, June 26-27, 1992 and Edinburgh December 11-12, 1992) the Fund provides funding for activities mostly in the areas of transport and environment in a 50:50 ratio in addition to the financing through the Structural Funds in view of attaining economic and social cohesion.

The decision for the setting up of the Cohesion Fund is linked to the difficulties faced by these Member States to achieve the macroeconomic indicators required for Economic and Monetary Union membership. All of them have GDP per capita under 75% of the average for the Community upon the creation of the Fund but at present this per cent is under 90%. Apart from the financial transfers under the Cohesion Fund, they are the only Member States whose territories are covered as a whole by the criteria for assistance as underdeveloped regions by the remaining Community funds and periodic assessments are done on the compliance of their economic indicators and the criteria for receiving assistance<sup>1</sup>. In contrast with the structural funds the Cohesion Fund supports objectives, countries and specific projects but not the general development of the individual regions as the investments are aimed at improving the competitiveness of the national economies in a long-term perspective.

Social and economic cohesion was introduced for the first time as a Community policy with the adoption of the Single European Act in 1987. Later on the Treaty of Maastricht tied down the economic and social cohesion with the achievement of Economic and Monetary Union.

The philosophy of the creation of the Cohesion Fund is linked with the completion of the Internal Market. At the time when it was to begin functioning the less developed Member States had to make large investments in order to catch up with their more developed neighbours and increase their growth capacity and thus participate adequately in the Community Internal Market. This meant significant additional investments for the expansion and modernisation of their infrastructure or high costly environmental projects. Moreover, if these countries were willing to join the Economic and Monetary Union they had to reduce their budget deficits and strictly control the public debt and public expenditures.

The Treaty of Maastricht found an exit out of this dilemma by creating a new fund through which to direct the financial support towards the less developed Member States – the Cohesion

<sup>1</sup> Next assessment will be done by the end of 2003.

Fund. This fund in particular allowed the four countries recipients of transfers under the fund to meet the convergence criteria for the Economic and Monetary Union and at the same time to invest in the development of their infrastructure.

The Cohesion Fund, which continues to cover the four less developed Member States – Ireland, Greece, Portugal and Spain, is a financial instrument allocating the funding under certain conditions. If the country beneficiary, for example has a large public deficit over 3% of its GDP, new project are not approved until this deficit is not reduced and under control. The maximum financing of projects may not exceed 80-85% of the required expenditures. This percentage may be decreased in compliance with the "polluter pays" principle or where a certain project starts to generate income.

The projects are selected and implemented by the country-recipient, which is responsible both for the management of the project and for the financial monitoring. Of course, the European Commission monitors the projects as well.

The Berlin financial framework (1999) for the allocation of financing under the Cohesion Fund in percentages is as follows:

Greece – 16-18%

Ireland – 2-6%

Portugal – 16-18%

Spain – 61-63.5%

The financed environmental projects should correspond to one of the three main objectives:

- Preservation, protection and improvement of the quality of the environment;
- Protection of public health;
- Providing reasonable and rationale use of natural resources.

In this regard the Cohesion Fund gives priority to projects related to drinking water, wastewater and waste treatment as well as to forestation, erosion control and preserving of nature.

As far as the transport infrastructure is concerned the projects within the framework of the Trans-European Networks (TEN) or projects, which provide access to TEN have priority.

Some examples for large-scale projects partially financed by the Cohesion Fund between 1993 and 1999 are: supply of drinking water for Athens from the Aivinos River and the wastewater treatment in the area of Thessalonica, the belt way of Madrid, satellite monitoring of water quality and forestation in Spain, modernization of Ireland's road network, water-supply network in Dublin, Tuam and Limerick in Ireland, the construction of the bridge Vasco da Gama above Tejo River in Lisbon and controlled destruction of waste in Oporto, Portugal.

There are **four Community Initiatives** which allocate 5.35% of the Structural Funds funding:

- INTERREG III for cross-border, trans-national and interregional cooperation.
- URBAN II, for sustainable development of the cities and declining urban areas
- LEADER + for development of rural areas through local initiatives;
- EQUAL, for elimination of factors leading to inequalities and discrimination in the labour market access.

Structural policy instruments are also the projects under **Innovative activities** at the amount of 1 billion euro intended to support the latest ideas, which have not yet been adequately exploited and have an experimental nature, as well as fisheries (out of Objective 1). The working topics for innovative activities for 2000-2006 are three:

- regional economies based on knowledge and technological innovation;
- e-EuropeRegio: the information society at the service of regional development;
- regional identity and sustainable development.

In order to understand the philosophy of the regional and structural Community policy more clearly as well as the ongoing discussion in the context of enlargement we must be mention the criteria and the economic indicators in accordance to which the less developed regions are defined.

Regarding Objective 1, in first place these are regions the GDP per capita of which does not exceed 75% of the Community average, as well as the thinly populated regions of Finland and Sweden, fewer than 8 people per sq.km., and the outermost regions (French overseas departments, Canary Islands, Azores and Madeira). This group includes also some coastal areas of Sweden, along with Northern Ireland and the border counties of Ireland, where there is a special programme for peace and reconciliation. The main economic indicators of all these regions are:

- low investment levels;
- a higher than average unemployment rate;
- lack of services for people and businesses;
- poor basic infrastructure

As far as the regions undergoing conversion (Objective 2) are concerned four main characteristics should be mentioned:

The difficulties facing these regions may be of four very different types:

- industrial or service sectors subject to restructuring;
- loss of traditional activities in rural areas;
- declining urban areas;
- difficulties in the fisheries sector.

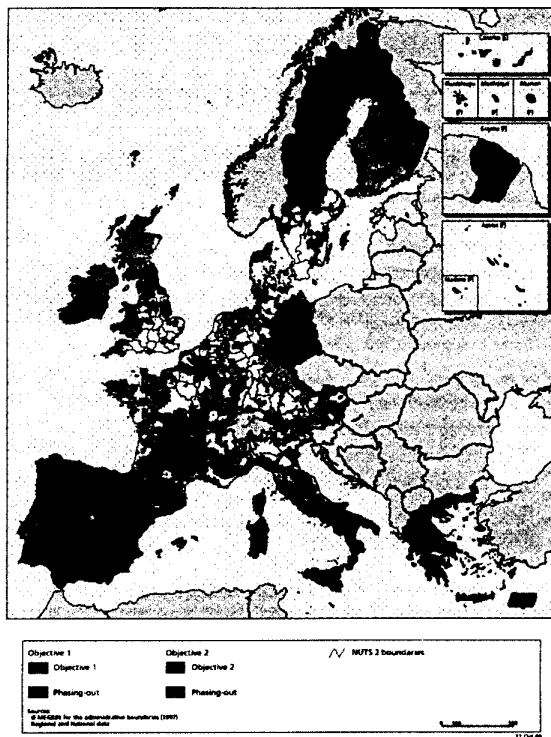
The history of the development of Community structural and regional policy shows a significant increase of the financial resource, which for example reach 3.1% of the GDP of Portugal and 2.6% for Greece and Ireland in the 1989-1994 period. Practically all Member States obtain funding equal to about 1% of the GDP for the said period.

During the 1994-1999 period these levels are increased and reach 3.5% for Portugal, 3.2 for Greece, 2.2 for Ireland and 1.6 for Spain. These figures give an idea about the large scale of the provided funds, which may not however exceed the ceiling of 4% of the GDP of the respective country.

The map of regions receiving financial resources under Objective 1 and 2 of the Structural Funds shows that practically there is not Member State that has not received such support. It is

another issue that some of "the richer" Member States are net payers to the Community budget, i.e. the funding they receive under the Structural funds or under the Common Agricultural Policy are less than their contribution to the Community budget as for example are Germany and the Netherlands.

The criteria in accordance with which it is determined whether a specific region will receive assistance under Objective 1 of the Structural funds depend on whether it is covered by the classification of Nomenclature of Territorial Statistical Units (NUTS II) and has GDP per capita under 75% of the average for the Community.



Map of the EU regions meeting the criteria for receiving support in accordance with Objective 1 and 2 of the EU Structural Funds for the 2000-2006 financial period.

Very interesting are the data and the analysis of the thus implemented structural policy and the consequences of the financial transfers for the individual Member States. From this point of view of interest are also the regular reports on these results as the last, 6<sup>th</sup> report contains three main conclusions:

1. Unconditional progress regarding the cohesion and economic restructuring;
2. The need for further activities in relation to the remaining high unemployment, poverty and social exclusion of some groups in some of the regions;
3. The operations under the Structural Funds have contributed to a reduction of the disparities which have not led, however, to an absolute solving of the problems. Cohesion and closing the gap between the level and quality of life in the separate regions is a long process.

As far as the achieved progress is concerned some data<sup>1</sup> should be mentioned:

- Over the 1986-96 period, the GDP *per capita* in the 10 poorest regions grew from 41% of the EU average to 50%;
- The GDP *per capita* in the four Cohesion countries (Greece, Spain, Ireland and Portugal) rose from 65% of the EU average to 76.5% over the same period, and subsequently to 78% in 1999;
- In accordance with the EC evaluation for the 1989-99 period, the Structural Funds added approximately 0.5% a year to economic growth in the Objective 1 regions;
- Over the same period a reduction of the unemployment rate in the same regions is observed as well;
- The support led to a significant reduction of the disparities in the infrastructure, such as telephone digitalisation, etc.;
- The structural policy has a strong impact on the reforming and strengthening of the institutions in regions lagging behind as well as on the manner of management of the public sector, in particular regarding the evaluation and management of resources and programmes;
- The strengthening of the interaction between the different factors in social and economic development – state, local, private and non-governmental organisation at a local level.

A number of studies show that the Union has a serious contribution in the achievement of these results. The policy of "catching-up" to a large extent is stimulated by the process of European economic integration and is considerably supported by the Structural Funds.

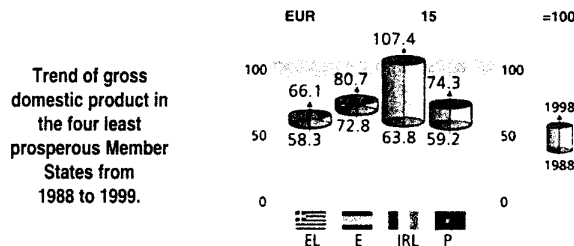
In the regions-recipients under Objective 1 the Structural Funds have contributed to a growth of about 1.2% between 1989-1999. The cumulative effect adds 10% more to the GDP of Greece, Ireland and Portugal and more than 4% for Spain. In other words, one-third or even more of economic convergence of these regions would not have happened if the European

<sup>1</sup> "Structural and Cohesion Funds: Objectives and Driving Principles in Member States", Guy Crauser, Director-General for Regional Policy, High Level Meeting Budapest, 22 March 2000.

funds had not existed. In particular, it is calculated that over the 1989-1999 period in all of the supported EU regions 2,200,000 jobs are created or exist due to the Structural Funds.

In spite of the favourable trends the data shows that the disparities between "rich" and "poor" continue to exist and are expressed in the lack of balance regarding the research and technological level, access to skills and information technologies, opportunities for education and permanent qualification and quality of the environment.

Moreover, the achievements of the regional policy may not and should not to be viewed only and solely from a statistical point of view. The participation in the implementation of some of the measures and initiatives of broad a range of formations from the Community Member States, the partnership between different countries, the attention paid to the environment and equal opportunities, the cooperation, exchange of experience and experimenting with new approaches towards development – all these are advantages, which give the regions the opportunity to move forward and fully use their potential.



**Gross domestic product in the least prosperous region where 10% of the Union's population lives (1988 to 1998)**

## 2. Regional Policy: From Theory to Practice

For the structural policy to be effective and productive it should combine on the one hand the EC views on the development of the EU as an integrated economic subject and on the other the view of the national and local authorities on the problems and development of the individual regions. It requires a high degree of administrative and institutional preparedness and coordination mostly from the national and local authorities, coordination of the efforts, an ability to analyse the problems and a wide range of instruments for their solution.

This need is even more obvious if we consider that the financing through the EU structural policies does not mean independent financing of individual projects but that it complements the budget and private expenditures for the development of the regions. The co-financing from the EU is different for the different programmes and regions and may reach but not exceed the ceiling of 80% of the needed resource. Financial transfers may directly supplement the national budgets and serve as savings or reserves.

The structural policy activities are based on four basic principles:

- Concentration of measures on priority development objectives.

- Programming which ends with a multi-annual development plan. This process has several stages after which the adopted measures become the responsibility of the management body.
- Partnership, which presupposes the closest possible cooperation between the European Commission and the respective authorities at a national, regional or local level from the preparatory stage until the implementation of the measures.
- Complementing, which practically means that the Community assistance complements the resources of the Member States but does not reduce them. Only in extraordinary circumstances the Member States should maintain public expenditures for each Objective at a level not lower than the preceding period.

Certainly the subsidiarity principle as it is set up in the Treaty of Maastricht also continues to be valid regarding the structural policies and cohesion policy, namely a more senior body may not and should not intervene in case the set objective could be achieved at a lower level. In the specific case this means that the responsibility for the selection and supervision of project implementation lies on the managing bodies determined by the Member States.

As it is pointed out in the Regional Policy General Guidelines developed by the European Commission and containing the strategic development directions the main areas of activities are three:

- **Improving regional competitiveness**, which is aimed at helping firms expand their activities, create jobs and become more profitable. From this point of view what projects are supported specifically?

**First**, a safe, modern and fast transport infrastructure offering efficient connections between all forms of transport.

**Second**, this is energy. The excessive dependence on a single energy source drastically reduces the room for manoeuvre available to businesses. The Member States and regions have every interest in diversifying their sources of energy and creating interconnections between distribution networks. Investments in renewable energy sources and low-consumption technologies are to be particularly encouraged.

**Third**, this is the fuller and wider use of the Internet and new communication technologies. Investments in the telecommunications network are normally undertaken by telecom operators, but Community Funds can provide assistance to ensure universal services, thus providing network access to these areas where demand is not met by the market.

**Fourth**, this is the modernisation of the manufacturing methods. Regions and regional companies are encouraged to open up to new production techniques or to devise regional strategies for innovation. Partnerships between public and private organisations in the area of research, which could have a real impact on economic development. Regions can promote innovative production through technology transfers and dissemination of know-how and by encouraging life-long training.

**Fifth**, this is the special attention, which should be paid to the needs of small firms so that they can achieve a high degree of specialisation and secure commercial advantages. In this regard tourism, culture development, the environment and social economy are considered to be important sectors for regional development and job-creation and they are financed and encouraged by the EC.

**Sixth**, this is environment. According to the EC a high-quality environment improves the attractiveness of a region and increases its chances for economic development. This means

better sewage and water systems reducing losses, waste treatment and recycling, etc. to secure sustainable regional development.

### ● Expanding and improving employment

During the last years job-creation has become one of the most important EU aims at both a national and Community level. In 1999 the European Council in Lisbon adopted a special strategy based on an integrated approach including through more active and concentrated use of Community Structural Funds.

The newly introduced in this approach is the aspiration to prevent unemployment and to focus the attention on the people, which are at risk of becoming unemployed. Practically it means life-long education and qualification, improvement of the educational systems as well as particular attention to vulnerable groups – further steps for elimination of discrimination towards women and improvement of their access to a professional career, improvement of the conditions for professional fulfilment of disabled people etc.

### ● Balanced development in urban and rural areas and areas dependent on fisheries

The harmonious development of the Union is based on the understanding that the aid provided to urban and rural areas should be aimed at the achievement of balance between them, taking into consideration the specific characteristics of these areas.

Towns and cities have the advantage of being centres of communication, trade, innovation and culture alongside the disadvantages of consuming enormous quantities of energy and producing considerable quantities of waste. The role of urban areas in regional growth is to provide increased employment opportunities. Balanced urban development requires the regeneration of the most run-down areas and greater advances in social integration. Living standards and health protection could be reinforced by devising clean and cheap transport systems, exploiting renewable sources of energy and by rationalising the use of traditional energy sources. The EU aspiration is to improve urban management and its efficiency, bringing it closer to inhabitants and thus to improve the living environment.

On the other hand, many areas in the countryside are under-populated, the level of the services is low and the job opportunities are very limited. These problems primarily stem from the decline in agriculture, which is still the main subsistence in rural areas as at the same time agriculture maintains the landscape and produces essential raw materials.

To maintain a living countryside incentives are needed to encourage farmers to modernise production and marketing of high-quality products. The competitiveness of rural areas also depends on a wider range of job-creating activities as a mean of stemming out migration from rural areas. Rural areas are often synonymous with a healthy environment and natural heritage, assets, which are favourable both for recreation and tourism. It is therefore vital to preserve the countryside, protect nature and encourage the renovation of villages.

Particular attention is also paid to fishing, on which the development of many EU coastal areas depends. This means rationalisation and modernisation of fishing and the fishing industry, modernisation of vessels, of fishing techniques, aquaculture and thus giving a fresh boost to towns and villages dependent on fishing.

### 3. New Challenges

In the beginning of the third millennium the EU regional policy faces three main challenges:

*First*, this is the preparation for enlargement and accession of countries in which the economic and social environment is quite poorer compared to the less developed regions of the 15 Member States. This situation led to the decision for creation of the pre-accession programmes ISPA and SAPARD for the candidate countries in addition to the PHARE Programme.

*Second*, this is the incredibly enlarged competitive environment as a result of world trade liberalisation. Companies are becoming more and more mobile and they are speedily moving to where the conditions regarding infrastructure, services, qualified labour, are better. On its part it places less developed regions in a more unfavourable situation and thus poses the need to support the creation of a modern infrastructure and effective services.

*Third*, the new requirements of the technological revolution and of information society for speedy and permanent adaptation to the continuously changing environment are undoubted. It requires from the inhabitants of regions, which are lagging behind to have access to the newest technologies through telecommunications, technological innovations and high qualification.

Namely on the basis of these three challenges the European Commission in its Agenda 2000, developed in 1997, set the launching of deep budget reforms aimed at, on the one hand, making the enlargement possible and on the other at creating conditions for sustainable development, modernisation of the employment systems and improvement of the living conditions. Agenda 2000 explicitly underlined that the further reform of the structural policies and the Common agricultural policy should deepen the Union's concern towards the economic and social cohesion during the period of its preparation for enlargement.

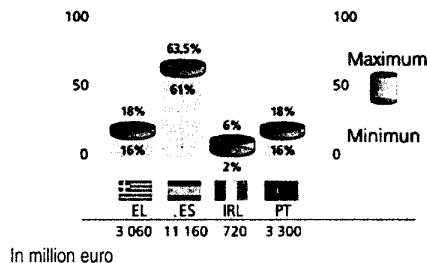
The meaning of the reform, which was also reflected in the 2000-2006 budget, is cutting down the then existing six Objectives to three as well as the increase of the responsibility of countries-recipients regarding project implementation and financial control.

In real terms the financial resources for 2000-2006 are allocated between the individual Objectives as follows<sup>1</sup>:

Structural Funds	195 billion (in Euro at 1999 prices)
Priority Objectives 1-3	182,45 billion
Objective 1	135,90 billion
Objective 2	22,50 billion
Objective 3	24,05 billion
Community initiatives	10,44 billion
Fisheries	1,11 billion
Innovative activities	1,00 billion
Cohesion Fund	18 billion

<sup>1</sup> Europa>European Commissions>Regional Policy>Infoarena.

Allocation of funding of Cohesion Fund for the 2000 – 2006 period  
(at 1999 prices)



It is particularly important to mention that the Structural Funds unlike the Cohesion Fund do not finance individual projects but multi-annual regional development programmes developed jointly by the regions, Member States and the European Commission on the basis of the approved by the EC Structural Policy General Guidelines to EU.

Although the main criteria for the assessment of Community regional and structural policy remains the GDP per capita no less significant for the competitiveness of the different regions are such factors as employment, education and professional qualification, infrastructure and technological development. The objective is the achievement of the best possible environment for high competitiveness both in the EU as a whole and in its individual regions in the world of globalisation.

The need for reforms in Community structural policy is called forth not only by the enlargement process although it serves as a catalyst of these changes. The already gained significant experience in their use gives chances for a more deepen assessment concerning the regional and cohesion policy impact on the economic and social development of the different regions and on economic indicators such as distribution of income, labour productivity in the different regions and opportunities for attracting investments, emergence of new disparities, etc. and on this analysis the formation of new ideas and proposals for its reforming<sup>1</sup>.

### III. ENLARGEMENT AND COHESION POLICY'S CHALLENGES

#### 1. General Background

Undoubtedly, the regional and structural policy, along with the agricultural policy, are among the most difficult negotiating chapters. This is so mostly because through the Community structural

policies 40% of the EU budget is re-allocated and because the implementation of existing criteria for allocation of the financial aid in the present type would lead to a reduction and in most cases a sharp ceasing of the transfer of this funding to the current recipients.

Practically the issue about the challenges facing the cohesion policy is reduced to the price of the enlargement or as some researchers pose it – to that who will pay for the enlargement. In spite of the predominant opinion that eventually everyone will benefit from the enlargement – both the current Member States and the candidate countries, the difficulties are obviously linked to the budget expenditures<sup>2</sup>. Agenda 2000 provided for an increase of the contributions to the EU budget from 1.17% to 1.27% of the GDP of the Member States as it was the maximum possible increase for the biggest payers to the Community budget and the idea of a change of this ceiling in the foreseeable future is not even realistic.

Lately there are different estimates about the expenditures under the Structural Funds or about the direct payments under the CAP for 8, 10 or 12 candidate countries if the current criteria and rules are applied. As far as the Structural Funds are concerned most of this research is getting close to the amount of 10 billion euro annually in case 8 candidate countries join the EU before 2004, i.e. the expenditures would be quite affordable having in mind that this represents a bit more than one tenth of the per cent of the EU GDP, which is at the amount of 8 trillion euro<sup>3</sup>.

Three are the main challenges before the cohesion policy in view of the enlargement:

**First**, the disparities in the level of the development will grow significantly. The EU population and territory will expand with one third but the GDP with only 5%. A whole group of countries with an income of less than 40% of the EU average will appear in the European Union.

**Second**, the gravitation centre will move sharply to Eastern Europe in case the current system for transfer of financial resources remains. This will lead to a sudden redirection or even ceasing of structural support to regions and Member States.

**The third challenge** is linked to the fact that the disparities between the regions in the existing EU will not be abolished and that the need to provide financial support for the development of the needing regions of the current Member States will remain. It should not be forgotten also that the structural problems exist not only in the more poorly developed regions, but also in the cities where sometimes the differences in the income are drastic.

The problems of the social and economic cohesion of Member States are a subject of two reports of the EC to the Council: the first one was published in 1996 and the second one in January 2001. The third report is expected to be published by 2006 and in it the EC will make the necessary proposals for continuing the cohesion policy after the possible EU enlargement as well.

In the meanwhile the EC published the first of the series interim reports on the progress in economic and social cohesion, which has two main objectives:

- To update the analysis of economic and social cohesion as it is reported in the Second report of 2001 and for the first time to analyse the consequences of EU

<sup>1</sup> "Cohesive Growth in an Enlarging Euroland", Michael Dauderstadt/Lothar Witte (Eds.), Friedrich Ebert Stiftung, 2001.

<sup>2</sup> "Profiting from EU Enlargement", Heather Grabbe, Center for European Reform, 2001.

<sup>3</sup> CEPS Commentary, "Who wants to pay for enlargement", Daniel Gross, April 2002.

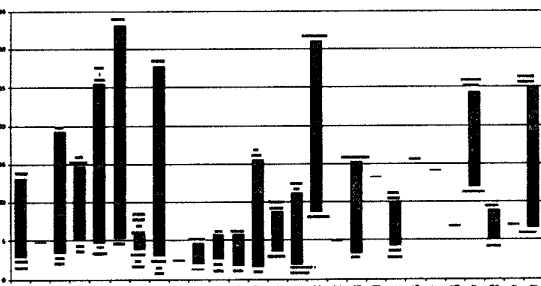
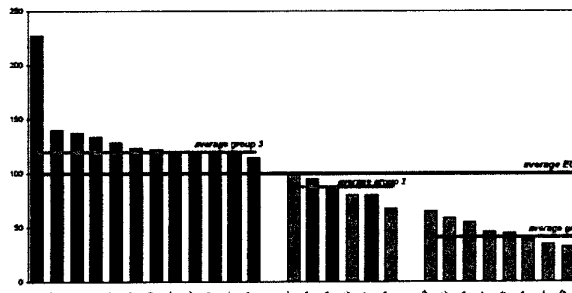


enlargement and the disparities in the Europe of 25 Member States are analysed, i.e. enlargement with 10 countries in 2004 as it is envisaged in the decision of European Council in Laeken;

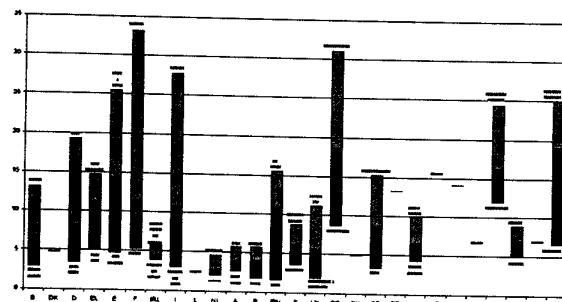
- To outline the basic parameters of the debate on the future of the cohesion policy for the period after 2006 and to prepare the next steps.

It should be mentioned that at this stage most of the financial and economic analyses as a rule do not include Bulgaria and Romania due to the fact, which is also mentioned in the Commission's report, that they themselves have set a later date for accession. If Bulgaria and Romania are still included, as it is in the Second cohesion report it is in order to show that the average macroeconomic indicators for the 27 compared to only 25 decline due to the weak economic development of both countries.

The data in the tables below, which is based on such important economic and social indicators as GDP per capita and unemployment level demonstrates the significant disparities between the future 27 Member States.



GDP per capita (PPS), 2000  
Index, EUR- 27 = 100



Unemployment rate and regional underdevelopment, 2000

With the approaching end of the negotiations with the candidate countries, which will probably join the EU in 2004 if the negotiation process develops within the framework set by Laeken European Council, the number of the so called impact studies on the consequences of the enlargement on the cohesion policy grows. In May 2001 the first big European forum on the future of Cohesion Policy was held where the EC proposed 10 questions for discussion accompanied by comments on the existing trends<sup>1</sup>:

1. What will be the role of cohesion policy in an enlarged Union of nearly 30 Member States in a context of rapid economic and social change? Is it possible to continue the process of economic convergence and preserve the European model of society?
2. What should be done in order to make the Community policy more coherent? How should the contribution of other Community policies to the pursuit of cohesion be improved?
3. How should the cohesion policy be modified in the process of preparation for an unprecedented expansion of the Union? Should the cohesion policy also address territorial cohesion in order to take better account of the major spatial imbalances in the Union?
4. How can the cohesion policy focus on measures, which have a high Community added value?

<sup>1</sup> Europa>European Commission>Regional Policy>inforegio

<sup>2</sup> It is particularly important to mention that the forthcoming enlargement will accelerate and give new dimension to the discussion on the cohesion policy in view of the territorial or spatial imbalances. The principle for spatial imbalances as they are called in the EC report on the cohesion policy characterized the difference in the level of development between prosperous and underdeveloped regions. The data from the recent years indicates that economic activity and the population is primarily concentrated in a very small and limited central part of the EU, which leads to unfavorable economic, social, environmental and even psychological consequences. This model of development center/periphery will become more and more visible when the 12 candidate countries join and this is in a strong contrast with the far more even distribution of economic activity in the United States for example.

5. What are the priorities leading to a balanced and sustainable territorial development in the Union?
6. How should the economic convergence of lagging regions of the Union be encouraged?
7. What kind of Community intervention is required for the other regions?
8. What methods should be used to determine the division of funds between Member States and between regions?
9. What principles should govern the implementation of Community intervention?
10. What should the response to the increased needs regarding the economic, social and territorial dimensions of cohesion be?

All these questions discussed on the European forum show the deepening of the debate and the need for transformation and new solutions, which will affect both the 15 Member States and the candidate countries.

It is generally acknowledged that this is only the beginning of the discussion because the issue is the future of one of the fundamental Community policies related not only to financial and budget matters, but also to a comprehensive vision concerning the future of the European Union. Evidence for it is the fact that only a few of the governments of the Member States have presented their own national position although at the informal meeting of regional policy ministers held in Namur in July 2001 during the Belgium Presidency, several general trends were outlined. The expectation is that in its Third Report on cohesion policy the EC will submit concrete proposals and recommendations to the Council and the European Parliament.

### WHAT ARE THE OUTLINED TRENDS?

**First**, this is the issue of priorities. The general opinion is that the cohesion policy should continue to be aimed at the improvement of the living standard in the less-developed regions. In spite of mentioning other synthetic indicators, GDP per capita does not have an alternative as a main criterion for the use of the funding under Objective 1. Without arguing the need to direct the funding to the future new EU members it is delineated that the support for regions from current Member States, which would lose their priority status after the enlargement continue. However, there is still no clear vision how this will be done specifically although there are different schemes and ideas.

Of particular interest to the candidate countries are the four options regarding the criteria according to which the regions with lower level of development are defined, contained in the EC Second report on cohesion policy, namely:

- Option 1.** The application of GDP per capita lower than 75% of the EU average irrespective of the number of countries joining the Union. This option on its own would eliminate a large number of regions in the current 15 Member States and their future eligibility for EU support would depend on the priorities and criteria for support outside the least developed regions.
- Option 2.** The same approach, but regions currently receiving financial support under Objective 2 will begin to receive temporary support (phasing-out), the level being higher the closer their GDP is to the eligibility threshold of 75% of the average Community GDP. Two levels of temporary support could be envisaged, one for regions which at the end of the 2006

period would reach the threshold if there were no enlargement and the other for those which would be under the 75% threshold in any case;

**Option 3.** The setting of a GDP per capita threshold higher than 75% of the Community average, which would eliminate the effect of excluding the underdeveloped regions in the EU15 simply because of the reduction in the average EU GDP per capita after enlargement;

**Option 4.** The fixing of two thresholds of eligibility, one for the regions in EU15 and one for the candidate countries, leading de facto to two categories of lagging regions and therefore to different interpretation of regional prosperity.

The predominant opinion at the regional level is also that the future policy should not focus only on the most undeveloped regions but it should also take into consideration the problems of the urban areas, the regions that are under economic restructuring and the cross-border regions.

Among the priorities is the need for closer links of the structural policy activities and the general strategic objectives adopted by the European Council in Lisbon, namely more and better jobs, greater social solidarity, equal opportunities as well as further incentives for achieving a society based on knowledge.

**Second**, this is the whole range of issues related to the financial aspects and the management of the funds. Agenda 2000 particularly underlined the need for further decentralisation of responsibilities and simplification of procedures and mechanisms combined however with more incentives for better effectiveness and reliable management. The gathered experience, the started discussion and the forthcoming enlargement demonstrate that local and national authorities are facing new challenges:

*At the administrative level* because the successful management of the funding and the achievement of the structural policy objectives assumes the existence of technical expertise for management of strategies for economic development regarding planning, implementation, monitoring, evaluation and control.

*At the financial level*, because every financing from the EU should be co-financed with national resource, which remains a lasting and permanent principle of the EU structural policy. Ensuring of such co-financing requires political will and determination, particularly where the budgets are carefully balanced in view of income and expenditures.

*At the economic level*, because large-scale investments funded by the EU should not replace national public and private sector investments, but only add value in view of higher competitiveness and participation in the other Community policies.

These challenges are becoming greater and more realistic for the countries and regions, which will begin to receive funding under Objective 1 and from the Cohesion Fund for the first time. In contrast to them the current Member States have passed through a smoother process of acquiring experience and expertise in the using of gradually growing funding. For example over the three successful financial periods (1989-93, 1994-99, 2000-06) annual transfers per capita in accordance with Objective 1 have increased from 143 Euro, to 187 Euro and to 217 Euro.

And although the open questions are more than those on which agreements have more or less been reached, the European Commission in *Commission Communication, First Progress*



*Report on Economic and Social Cohesion* mentions that it remains firmly attached to three basic principles:

*Sound and effective management of the funds.* While financial management and control are primarily and foremost a responsibility of the Member States the Commission considers that it should continue to certify the existence of the necessary management capacity. In general the Commission considers that it should seek to be a catalyst for the exchange of experience and best practices in relation to the management and administration of resources.

*Transfers conditioned to results.* A major step in this direction was taken with the introduction of the so-called *performance reserve* for the 2000-2006 financial period. The Commission's opinion however is that much more could be done to link the payments with the achievement of the clearly defined objectives.

*Due accounting of absorption capacity.* It is obvious that all attempts to devise a simpler and more effective system for providing of funds will be thwarted if the resources transferred exceed the real administrative, financial and economic capabilities for absorption. According to the existing *acquis* the ceiling of all transfers to Member States cannot exceed 4% of their GDP. Although in the Second Cohesion Report the European Commission said that this ceiling could be exceeded after 2006 to permit the implementation of large-scale projects of particular Community interest, at present neither Member State supports such an idea.

The initiated discussion on the interconnection between the enlargement and the structural Community policy finds interesting dimensions in other directions as well. These are not only specific financial dimensions but a new reading of basic principles and relations that are in the basis of the deepening and expanding integration process. Moreover, these discussions are not isolated at all from the debate on the Future of Europe but are an integral part of it.

In this respect of particular interest are the studies of the Centre for European Reforms, London, the Centre for European Political Studies, Brussels and the Bertelsmann Foundation, Germany. In the study "Thinking Enlarged" for example, carried out by the international expert group Villa Faber under the aegis of Bertelsmann Foundation interesting and brave ideas for the reform of EU institutions and policies from the point of view of the enlargement are introduced<sup>1</sup>.

Particular attention deserve the ideas related to solidarity and cooperation in the future enlarged Union considered as a "community for development", based on the "increased support for the members whose development is lagging behind" as the principle of solidarity must be one of the fundamental principles compared to the subsidiarity principle. The international expert group insists on a more clearly expressed solidarity and openness towards the candidate countries and their inclusion in the development of new and in the reforming of existing policies as well as for equal treatment with equal rules for all, new or old, Member States.

According to Villa Faber Group the support under the Structural Funds should be focused in general on the less-developed Member States. The present admissible ceiling should be preserved, the share of the required national co-financing should be differentiated and the

ceiling of Structural Funds financing should be increased if the respective state has a greater absorption capacity. Expenditures for the development of rural areas, which are currently part of the Common Agricultural Policy should be integrated into the Structural Funds. The international expert group also raises the issue about the need for clarification of the term community/public benefit or community/public policy. As such a community/public benefit are mentioned for example conflict prevention in Europe or reduction of social and economic disparities on the continent or successful protection of European interests in the international organisations and institutions.

## 2. Accession Negotiations and Regional Policy

The European Council in Nice (December 2000) in its Strategy Paper on Enlargement declared Chapter 21 "Regional policy and coordination of structural instruments" along with Chapter 7 "Agriculture" and Chapter 29 "Financial and budget issues" as priorities for the first half of 2002.

The said chapter is opened with all candidate countries, including with Bulgaria (November 2001) and is provisionally closed with Cyprus, the Czech Republic, Estonia, Hungary, Lithuania, Malta, Slovenia and Slovakia. In November 2000 the European Commission presented to the Council an information document containing the main principles by which the EC is guided in the negotiations on this chapter. Among them is laid down the proposal that the results of these negotiations will not be affected by the discussions on the future of the cohesion policy after 2006.

The major issues subject to discussion in relation to Chapter 21 concern the administrative capacity, programming capacity and degree of compliance with the criteria for using the Structural Funds. The particularities in the preparation for participation in the EU structural policies during the negotiation process, unlike in the other "difficult" negotiation chapters, are due to the fact that there is *acquis* to be introduced in the national law. As a rule the Structural Funds are based on Regulation 1260/99 as well as on a number of implementing regulations and decisions. Upon the accession however the candidate countries should be in compliance with certain requirements related to important institutional and administrative changes that are also part of the negotiation process.

*Legal framework:* In spite of the lack of *acquis* to be introduced in the national law the candidate countries must have the respective legal framework allowing the implementation of specific regulations in this area.

*Territorial organisation:* Candidate countries should coordinate with the EC the *provisional NUTS classification* for the use of the Structural Funds.

*Programming capacity:* Candidate countries should:

- elaborate a development plan in accordance with Council Regulation 1260/1999,
- introduce appropriate procedures for multi-annual programming of budget expenditures,
- ensure implementation of the principle of partnership at different stages of the programming, financing, monitoring and evaluation of Structural Funds funding,
- observe specific requirements for monitoring and evaluation, particularly as far as the evaluation *ex-ante* of the development plan is concerned.

<sup>1</sup> "Thinking Enlarged – The Accession Countries and the Future of the European Union". A Strategy for Reform by the Villa Faber Group on the Future of the EU, Bertelsmann Foundation and Center for Applied Policy Research, 2001.

**Administrative capacity:** Candidate countries should very clearly define the tasks and responsibilities of all institutions and bodies, which are to be involved in the preparation and use of the Structural Funds and the Cohesion Fund, as well as secure active coordination between the ministries.

**Financial and budget management:** Candidate countries should be in compliance with the specific requirements for control, which are applied in relation to the Structural Funds and the Cohesion Funds. In addition, they should provide information regarding their co-financing capacity and on the level of public or other expenditures for structural projects and activities.

Besides the criteria for closing of negotiating Chapter 21, the European Commission also proposed the way for implementation of Community structural policy and the financial support in accordance with Objective 1 for the candidate countries which would join EU in 2004. For this purpose the EC will apply GDP per head criteria on the basis of the data for the last three years before the 2000-2006 programming period, i.e. 1997, 1998, 1999 and it will compare it with the average of the 15 EU Member States.

On January 30, the EC made a specific proposal on the financial framework for the enlargement for the 2004-2006 period. Based on the assumption that 10 new countries will join the EU in 2004, the Commission proposed an allocation of 40 billion euro for the purpose of their accession, 25,6 euro of which is to be provided for the implementation of a structural policy. One third of these means should be used for projects under the Cohesion Fund, namely projects in the area of transport and environment.

However, the most important element of the structural policy implementation remains the elaboration and implementation of a national policy for development, drafting of the first programming documents, clarifying the role of the different regions and the creation of administrative capacity.

### 3. Bulgaria's Preparation for Participation in the EU Structural Policy: Alternatives, Priorities and Realities

Bulgaria's preparation for participation in the Community structural policy during the pre-accession period is of crucial importance since it is directly linked to the preparation of Bulgarian's economy for participation in Community Internal Market. Practically, it means understanding the philosophy of the Community structural and regional policy, the establishment of an institutional and administrative framework for its implementation, monitoring and control and establishment of appropriate mechanisms for coordination during the analysis, identification and determination of the economic and social priorities at a national and regional level, which may be the key issue in view of the objectives of this policy.

The main principles in regional policy organisation, laid down in Regulation 1260/1999 are two: complementarity and partnership<sup>1</sup>. Complementarity means that the financing under the Structural Funds complements the national financing of projects, i.e. that they are already a

priority of Member States budgets, which financing would not be affordable under normal conditions. On the other hand, partnership means that these projects should be elaborated and adopted in close cooperation and consultations between national and local authorities and the other competent government bodies, between economic and social partners and other bodies and organisation interested in certain projects. There should be partnership during the whole process of preparation, financing, monitoring and evaluation of the support and for this purpose the government should establish effective associations of all institutions and organisations interested in the objectives of the regional policy and considered to have a common aim.

Regional policy implementation is subordinated to a strict system of institutions – mostly at a national level, or mixed, i.e. jointly with the European Commission, and to documents, which accompany the whole process of implementation. In view of the debate on this issue, which gained publicity in the last year in Bulgaria, some clarifications must be made.

Council Regulation 1260/1999 lays down the legal framework for the use of the Structural Funds and the Cohesion Fund, as well as the other financial instruments of the Community structural policy for the 2000-2006 financial period. It sets strict and clear definitions of the most important documents and terms in this area. The understanding of its essence is of crucial importance for an accurate assessment and development of a working formula on how Bulgaria could prepare for using EU funds in the best possible and useful way in view of development. It should also be underlined once again that in the process of reforming of the Community structural and regional policy the responsibility at a national level, i.e. of the Member States, is growing. Respectively, the role of the European Commission is diminishing although it continues to play an important role during the overall process of use of EU funds.

In this regard key importance has the term *programming*, which means process of organisation, decision taking and financing at the different levels of implementation of the joint activities of the Community and the Member States on a multi-annual basis for achieving the objectives of the EU Structural Funds and the Cohesion Fund. *Programming* starts with the elaboration of a *Development Plan* which assumes an analysis of the situation in a specific Member State in view of structural policy objectives, priority needs and a respective strategy for the achievement of these objectives, planned priority activities, their specific objectives and the respective indicative financial resources.

The *National Development Plan*, after its approval by the European Commission, serves as a basis of the developed by the Commission in consultations with the respective Member State Framework for Community Support, which contains the strategy and the priority activities under the Structural Funds, the amount of the financial support and other financial sources. The *Community Support Framework* is divided according to priorities and is implemented through individual *operational programmes* that are also approved by the Commission. Each *operational programme* consists of a set of priorities containing the so-called measures – a set of ways for multi-annual funding of projects through different financial schemes or grants under one or more of the Community funds or through a combination of sources. It is followed by a *Single Programming Document* approved by the Commission and containing the same information as in the Community Support Framework plus the specific operational programme. Each *Community Support Framework*, *operational programme* and *Single Programming Document* should cover the whole financial period as it is approved by the Community<sup>1</sup>.

<sup>1</sup> Council Regulation (EC) 1260/1999 of 21 June 1999 laying down general provisions on the Structural Fund, Chapter IV, Art.8, Official Journal of the European Communities, L.16/11, 26.06.1999.

<sup>1</sup> In the case of the 2000-2006 financial period even a seven year financial period is spoken of.

As far as the institutional framework is concerned important meaning has the designation by each Member State of a *Managing Authority* that is responsible for the efficient and proper management of the funds. In addition, the establishment of one or more *Paying Authorities* is provided, which practically means assigning of these functions to certain government, local or regional authorities or to especially established bodies to serve as mediators between the European Commission and beneficiaries. The *paying authority* is responsible for the preparation and submission of the requests for payments and for receiving the funding from the EU. It certifies before the Commission that the made expenditures correspond to the conditions for providing of the support and carries out the financial management of the funding.

The monitoring of the *Community Support Framework*, of the measures under the Cohesion Funds and of the *operational programmes* is carried out by the respective *Managing Authority* under the supervision of the *Monitoring Committees*. They include representatives of the paying authority, of regional and local authorities, of non-governmental organisations, of economic and social partners. In their work also participate representatives of the European Commission, and where appropriate of the European Investment Bank, in an advisory capacity.

Financial control is carried out in compliance with the national legal provisions and practices. In the current Member States it is carried at three levels. The first level is internal control, the second level is internal audit and the third level is the independent external audit carried out by the Court of Auditors. The European Court of Auditors is also able to carry out independent or joint audits on the management and absorption of the EU provided funding with the respective national Court of Auditors.

The model for the establishment of the structure and the administrative capacity under the two pre-accession instruments, which is the requirement for provisional closure of Chapter 21, was described in the approved in June 2002 Strategy on Bulgaria's participation in the EU Structural Funds and the Cohesion Fund<sup>1</sup>. Currently Bulgaria receives about 120 million euro annually under the PHARE Programme, under SAPARD – about 54 million and under ISPA – about 104 million euro. It is another matter that this funding is not fully absorbed and in some cases, as it is with SAPARD, the situation is critical. Over the period of 1998 – 2000 the budget under the PHARE financial memoranda is 379,084 million euro and of it hardly 172,108 million euro is utilised. In 2000 with budget for 124,104 million euro, 24,989 million euro are contracted and 20,536 million euro are utilised. Under SAPARD since the beginning of 2002 only 5% of the funding is utilised, which means that until the end of the year hardly 25-30% of the total allocated funding will be spent.

Under ISPA for different infrastructure projects (transport and environment) with a total budget of above 620 million euro, a little over 65 thousand euro are utilised. Since 2000 until now Bulgaria has realised only 9 projects under ISPA while in Poland they are 35, in Hungary – 23, in Romania – 22, in Latvia – 17, in Czech Republic and Estonia – 14 each, in Slovakia – 10 and in Slovenia – 9<sup>2</sup>.

<sup>1</sup> The opinion of the author is that it would be better to use Bulgarian term for "cohesion" rather than the literal repetition of the term "cohesion" (as it is in the government's strategy), which to Bulgarians has no meaning.

<sup>2</sup> "Fight for Eurofunds", Galina Alexandrova, Capital newspaper, 6-12 July 2002.

This data shows that Bulgaria faces serious difficulties in the utilisation of the pre-accession funds. This assumes very careful preparation and finding of the optimal model for institutional building of the administrative capacity in a way that creates the necessary conditions for utilisation of the funding with maximum achievement of their objectives.

The Governmental strategy sets four operational programmes – regional, development of the competitiveness of the Bulgarian economy, human resources development, development of agriculture and rural areas. Three sub-programmes are set up – development of the products sector, business infrastructure development and human resources development as well as two programmes for development of the business infrastructure in transport and environment.

As managing authority is designated the Ministry of Finance where a directorate is established with a minimum staff of 25 persons, which will carry out the overall co-ordination of the utilisation of the structural funds. According to the Government's strategy and in compliance with Regulation 1260/1999 this ministry will be responsible for the collection of reliable economic, financial and statistical information, for preparation and for the approval by the European Commission of the operational programme. The Ministry of Finance will be also in charge of developing and co-ordination of the proceedings and conditions for selection of projects and their submission for approval to the respective monitoring committee, as well as for organisation of the evaluation of the projects, monitoring and control during their implementation.

It is provided for that the Ministry of Finance will also be the managing authority for the Cohesion Fund, the executive agencies of this fund, which will be responsible for the project selection and implementation, for preparation of applications to the EC, of the reports on the implementation and the monitoring of the projects. For executive agencies of the Cohesion Fund are designated the Ministry of Environment and Waters and the Ministry of Transport and Telecommunications. To this end the strengthening of the existing administrative units responsible for the implementation of the pre-accession instruments in both ministries is envisaged. As far as the paying authority is concerned the government strategy provides for one paying authority under the Ministry of Finance, which will participate in the procedure for the preparation of the state budget and will be responsible (along with the Support Framework managing authority and Cohesion Fund managing authority) for securing co-financing from the state budget.

The Strategy for Bulgaria's preparation for participation in the Structural Funds generally attempts to follow the requirements of Regulation 1260/1999, but at the same time has some substantial deficiencies and does not take into consideration a number of EU requirements.

**First**, it does not provide for a preparation of a national development plan, which is a mandatory prerequisite and the most important element in the process of preparation for utilisation of the EU funds. It is true that the preceding Government adopted such a plan. However, many experts consider that it had a non-realistic financial part and was not a focused document with clear and purposeful priorities.

**Second**, surprising is the lack of a clear and strict definition of the role of the local authorities, which according to Regulation 1260/1999 play an important role practically during all of the stages of utilisation of the funds – from the programming to the evaluation of the efficiency of the projects. No doubt the local authorities will have an increasing role when Bulgaria joins the EU and when the reform of the structural funds aimed at their decentralisation continues.

**Third**, excessive responsibilities and unusual functions are assigned to the Ministry of Finance, for the performance of which it does not have the required capacity and expertise. It is unlikely that the Ministry of Finance will be capable to prepare the National Development Plan

that requires the collection and analysis of quite a large volume of information, coordination of different bodies and potential partners – local and regional authorities, social partners, non-governmental organisations, etc.

**Fourth**, by eliminating the Ministry of Regional Development from the coordination of some of the programmes and shifting them to other bodies, mostly to the Ministry of Transport and Telecommunications and Ministry of Environment and Water, the government moves away from structural and regional philosophy, namely implementation of an integrated approach towards the issues of economic development and competitiveness of the regions. The so needed model for coordination between the ministries that would guarantee the required comprehensive expertise during the planning, evaluation and implementation of the projects is absent as well.

**Fifth**, the Government strategy also provides for quite complicated management and control procedures.

Bulgaria still has not closed provisionally this negotiating chapter. Nevertheless, the approach that will be chosen by the Government should take into consideration the principles listed above as a basis for the building of the philosophy and institutional framework of the national mechanism for participation in Community regional policy. This issue is of a crucial importance because although not a direct investment process, the financing under the Structural Funds and the Cohesion Fund creates conditions for active participation of Bulgaria in the Community's Internal Market.

## REGIONAL DEVELOPMENT AND LOCAL SELF-GOVERNANCE IN BULGARIA IN THE PERSPECTIVE OF EU ACCESSION

*Ginka Tchavdarova*

The well grounded **regional development policy** could assist Bulgaria in achieving several important objectives – it could be an instrument for economic growth and social development; it could support the efficient use of public resources; it could encourage partnership between the different government levels; and it could be a step towards EU accession. To accomplish these objectives, there must be a common vision on regional policy, as well as consensus on the role of the different government levels concerned with its implementation. The implementation of these tasks is a precondition for Bulgaria to be able to develop draft laws and prove the expected progress under Chapter 21.

The adopted in 1999 Law on Regional Development marked the beginning of the regulation of the planning, management and resources provision for regional development. The application of the Act served as a basis for the creation of a planning documents system, which encompassed the municipal, district, and national levels.

A National Plan for Regional Development was prepared and updated several times. An attempt was made to apply some European principles for regional planning and the building of capacity in the field of regional development began.

Currently, on the agenda is the development of a new law on regional development, which will regulate the processes in a modern manner. The discussion being held at the moment on the different drafts outlines several main directions for improvement:

- Local governments to be considered a generator of ideas, initiatives and projects for regional development, an important partner of the central government in the process of elaborating and implementing the regional development plans;
- Clarifying the role of the planning regions, which correspond to NUTS II, as well as their institutional strengthening in the regional development process;
- Determining the interaction and relation between the National Economic Development Plan and the National Regional Development Plan;
- Interrelating the regional development plans and the plans and schemes for urban development;
- Developing adequate financial mechanisms for implementing the most efficient regional projects;
- Encouraging the partnership between local governments, businesses and the NGO-sector for contributing to the implementation of the regional development plans.

The **local self-governance system**, which is currently a one-level (municipal) system, is an important factor for the democratisation of society and direct citizen involvement in the governance. Important changes have been made in the system during the years of transition.

Municipalities are legal persons, entitled to own property, and have own budgets. Citizens directly elect the mayor of the municipality and the municipal council. The existing 263 municipalities are considered large enough in terms of territory and population to be able to successfully apply their powers and currently there is no plan for rationalisation of the local government system.

The major problems of local self-governance in Bulgaria are:

- The powers of municipalities do not correspond to their responsibilities. They are not entitled to make independent decisions on the development of the community. The responsibilities assigned to them are much larger than the real powers necessary for their exercise.
- Municipalities are not financially independent. The powers of municipalities to influence their revenues and expenses are limited. Municipalities cannot determine the local taxes and fees on their own. Local taxes are determined by the law and constraints are set for local fees. Bulgarian municipalities are free to influence in some way about 12-14% of their total revenue base, and about 17-18% of the expenditures.
- Due to the method of determining local taxes and fees, Bulgarian municipalities fall behind most European municipalities in terms of powers to generate own revenues. No incentives are created for local governments to increase their own revenues, and the cost-efficiency of the services provided.
- The mechanism for allocation of budgetary relations between the state and the municipalities must be improved mostly in terms of transparency and objectiveness.
- Municipalities are trying to overcome the budget deficit through sale of assets, which decapitalises them and threatens their financial stability.
- The system of services provided by municipalities and the state must be optimised.

The abovementioned problems entail serious difficulties for municipal budgets. Each year local governments accumulate unsettled payments. The major reason for this is the discrepancy between the expenditure and revenue assignments. Consequently, the most urgent issue on the agenda of local governments is the implementation of the financial decentralisation.

Consensus has already been reached on the issue that local finance is probably the only sphere within the local government system that remains unchanged so far. A number of preconditions for initiating financial decentralisation in Bulgaria exist:

- Individuals and institutions are inclined and motivated to make changes;
- A minimum of common ideas is formed;
- Political will to implement government decentralisation was declared:
  - The need for real government decentralisation was recognized in the pre-election platforms of the major political parties during the last parliamentary elections in 2001.
  - Concrete goals and objectives for financial decentralisation were adopted in the Government Program, including a constitutional amendment for providing local authorities with taxation powers.
  - Four mayors of municipalities became ministers in the Government. Many MPs also recognize the values of local democracy. This presupposes an efficient dialogue between the local and central governments.

- The EU-accession process entails certain amendments to the legislation in view of the application of the European Charter for Local Self-Governance.

On the basis of the above mentioned conditions, on December 11, 2001 the National Association of Municipalities in the Republic of Bulgaria (NAMRB) and the Bulgarian Government signed an Agreement for Cooperation (see Appendix 1). That was the most important result of the Association's efforts for the establishment of durable relations and interaction with the central authorities. The document sets two major objectives: 1) "gradual implementation of government decentralisation and increasing the financial independence of municipalities", and 2) "implementing the criteria and requirements for local authorities for the accession of the country to the European Union" on the basis of permanent dialogue and cooperation between the central and local governments.

Within the implementation of the Agreement for Cooperation, on March 11, 2002 the Council of Ministers established a joint working group on financial decentralisation with members: the Deputy Prime Minister, representatives of ministries (of finance, education and science, labour and social policy, healthcare), the Court of Auditors, the Council of Ministers, the National Association of Municipalities in the Republic of Bulgaria. In June 2002 the working group developed and the Council of Ministers adopted a **Concept and a Programme for Financial Decentralisation**.

The main objective of government decentralisation in Bulgaria is to deliver public services of quantity, quality and at a price that is affordable and which correspond to the needs of citizens, on the basis of a sustainable and durable balance of the expenditure responsibilities of municipalities with stable revenue sources, and effective citizen control.

For the achievement of this objective it is necessary:

- To assign the expenditure and revenue powers to the government level that is closest to the citizens in accordance with the principle of subsidiarity.
- To match the expenditure responsibilities with the revenue sources.
- For the municipalities to take into account, as far as it is possible, the preferences of citizens when determining the type, scope and financing of municipal public services and their efficient delivery.
- For the municipalities to develop and improve their financial management capacity and observe a strict financial discipline.
- To establish balance between local discretion and the need for financial stability at the national level by ensuring certain service standards.
- Transparency and equitable treatment by the state of all entities in the public sector.
- Equal access to resources for provision of a minimum level of public services.

The following measures should be undertaken in the long run:

- **Improving the expenditure responsibilities of the local governments.**
  - *Proper application of the principle of subsidiarity:* the responsibility for the provision of services should be at the lowest level of government, and in conformity with the size of the area where the services are delivered.

- *Clear and stable expenditure responsibilities:* local governments know exactly what services they are responsible for and what minimum standards should be observed.
  - *Income redistribution to be a central government responsibility:* the central government should secure the necessary equalisation, e.g. funds for social welfare, healthcare, etc.
  - *The expenditure responsibilities of the municipalities to be in accordance with the powers they have to control the delivered services.*
- **Reform of the system of intergovernmental transfers**
- The system should guarantee an adequate level of resources to municipalities to fund local services;
  - The transfer mechanism should reflect the true current expenditure need and not be based on past trends;
  - Equal access to resources must be ensured for the municipalities;
  - The poor municipalities must be supported in the providing of an adequate level of services;
  - Rationalisation of the system of shared taxes – horizontal equity could be improved by allocating shared taxes on the basis of a per capita distribution, and not on a return-to-origin basis.

#### What has been achieved so far?

Within the framework of the concept and the program and through the work of the group on financial decentralisation at the Council of Ministers the following results for the 2003 budget were achieved:

- The responsibilities of the municipalities were conditionally divided into: municipal responsibilities (to be provided by local revenues) and responsibilities delegated by the state to the municipalities (to be ensured by revenue from shared taxes and general supplementary subsidies).
- Standards were adopted on the 2003 expenditure responsibilities for education, healthcare, social welfare and social services, cultural activities. The main goals of the development of the standards are to unify the criteria for financing similar activities by the state and the municipalities; to financially ensure the responsibilities delegated by the state to the municipalities;
- Draft laws amending the Municipal Budgets Act, Local Taxes and Fees Act, Personal Income Tax Act, Corporate Income Tax Act, and Municipal Property Act are prepared. They are expected to be adopted by the end of 2002.

The intensive work on the financial decentralisation will continue in 2003. According to the Programme for Financial Decentralisation steps for the monitoring of the results from the implementation of the new powers and responsibilities of local authorities must be undertaken. The improvements of the standards for delegated state tasks will continue and standards will be developed for municipal tasks. A working group is established for the preparation of a Draft Municipal Crediting Law. Currently, a system for monitoring and evaluating the implementation of the Programme for Financial Decentralisation is being developed and it will measure the results of the reforms. The preparation of the Local Finance Law is planned as a further step.

**The role of local and regional authorities in the process of building a united Europe** is generally recognised. According to a commonly shared opinion, the European Union cannot function effectively as a hierarchical structure, on the vertical principle. The country's development does not depend only on the actions of the EU and the national governments of its Member States, but also on the local and regional authorities, which are the main institutions responsible for the implementation of the EU policy and which are closest to the needs and expectations of citizens.

The subsidiarity principle, which was introduced with the Treaty became the foundation of the modern governance system. The EU Member States also established the Committee of Regions with the Treaty. This is the EU institution, which expresses and protects the interests of the local and regional authorities before the EU institutions within the decision-making process.

By taking into consideration the growing importance of the sub-national level of governance, the European Commission created the "White Book on European Governance", which, although unable to change the provisions in the Treaties, determines the principles on which the new European model should be built, namely subsidiarity, proportionality, partnership, consultations, participation, transparency, and democracy. A positive fact, which could be pointed out, is that the European institutions, and the European Commission in particular, understand and apply the view that local authorities must be consulted.

The expertise of the EU Member States' local and regional authorities shows that they can practically influence the decision-making process in three ways: through the Committee of Regions, through their national governments, and through their own and their associations' lobbies in Brussels. Below is described the experience of Bulgarian local authorities in using these tools for increasing their involvement in the EU-accession process.

**Bulgarian local governments and the Committee of Regions.** In spite of being an institution with only consultative functions, the Committee of Regions plays an important role in increasing local and regional authorities' awareness of the various EU policies and endorses their active incorporation in the integration processes through widening its consultative functions. The Committee of Regions has expanded its activity on EU enlargement issues in the last years. The "Support for the Institutional Structure Development at Local and Regional Level in the Associated Countries" report, which has been recently prepared by EU experts, stresses on the necessity for initiating a discussion with the European Commission on the strengthening of the administrative structures of the local and regional authorities in the associated countries and on large-scale initiatives for cooperation between the EU candidate countries and the Member States. The European Charter on Local Self-governance, which was adopted by the Council of Europe and ratified by Bulgaria in 1995 is the foundation on which the readiness of the candidate countries to join the EU will be evaluated in terms of the state of their local and regional authorities.

*Bulgarian local governments made significant efforts to benefit from the actions of the European institutions, and the Committee of Regions in particular.* In December 2001 the representative organization of Bulgarian municipalities – the National Association of Municipalities, started a procedure for establishing a Joint Committee between NAMRB and the Committee of Regions, and they signed a joint declaration for partnership in the process of Bulgaria's EU preparation. The permanent contacts between Bulgarian municipalities and the Committee of Regions will enhance the possibility for local governments to be better informed on the developments of the regional policy in the EU, to discuss and explore solutions to the current

problems, as well as to participate in the decision-making process at a European level. The preparation of joint activities of Bulgarian municipalities and the Committee of Regions already has already begun.

*Bulgarian local governments benefit from the activities of the national government in the preparation process for accession.* Another way in which the interests of the local and regional authorities could be advocated before the EU institutions is through the activities of the national governments. It goes without saying that each EU Member State determines the internal procedures to be used by the local and regional authorities in the decision-making process regarding the EU policies. In the countries that are in a process of negotiations for EU accession, the cooperation between central and local authorities is of crucial importance. It is a prerequisite for achieving success in meeting the requirements for membership, in building the administrative capacity necessary for undertaking the responsibilities of membership, in mobilising public support for EU integration.

As a result of the efforts of the National Association of Municipalities in Bulgaria, local governments became directly involved in some of the structures and the negotiations on Bulgaria's accession to the EU:

- two representatives of the National Association are members of the Working group 21 "Regional Policy and Structural Funds" at the Council for European Integration.
- the President of the NAMRB is a member of the Council on European Communication, headed by the Minister of Foreign Affairs;
- a member of the Board of Directors of the Association is a member of the working group for the National Communication Campaign.

All this will provide local governments with the opportunity to better evaluate the consequences and to influence the accession processes in the socio-economic sector, as well as to undertake measures for limiting the negative consequences for municipalities.

*Direct lobbying in Brussels.* The third way, in which the decision-making process at the European Union level could be influenced is by direct lobbying on the part of the local and regional authorities and their associations for their interests before the EU institutions in Brussels. The importance of this tool has been growing over the last years. More than 90 local and regional governments and their associations have representative offices in Brussels and their number is constantly increasing. Many international and European organisations, such as the Union of Cities and Towns, the International Union of Local Authorities and its European branch, the Council of European Municipalities and Regions, The Association of European Regions and other also play an important role in that process. Currently, Bulgarian local governments are not officially represented in Brussels, but there are plans for establishing a representative office of their Association.

As a conclusion, it must be stressed that the experience of the EU Member States undoubtedly proves that the timely and effective involvement of local and regional authorities in the EU integration process is a must for its success.

## COOPERATION AGREEMENT

### between the Council of Ministers of the Republic of Bulgaria and the National Association of Municipalities in the Republic of Bulgaria

- Recognizing that the local authorities are a pillar of the state structure of the country;
- Being convinced that the implementation of the state policy that guarantees the correspondence of the national and local interests, is possible only through the interaction and joint implementation of governance by both central and local authorities;
- Recognizing the legally guaranteed right of NAMRB to represent and defend the interests of local authorities;
- Led by the desire to further develop local democracy on the basis of the principles of the European Charter of Local Self-Government

#### Agreed on the following:

#### I. OBJECTIVES OF THE AGREEMENT

1. Gradual implementation of the government decentralization and increasing the financial independence of municipalities.
2. Implementing the criteria and requirements for local authorities for the accession of the country to the European Union.
3. Establishing rules for interaction between the central and local authorities as a necessary condition and prerequisite for mutual coordination of the interests in the implementation of the overall state policy.

#### II. SPHERES OF COOPERATION

##### 1. Legislative process

- Joint development of draft legal acts along with the necessary analyses, prognoses and other relevant information on their justification;
- Establishing joint working groups for monitoring, analysis and evaluation of the current legislation.

##### 2. Operational governance

- Interaction, coordination and control between the central and territorial units of the central executive power;
- Coordination and optimisation of the structure, the number and the competences of specific administrative units;
- Participation, under conditions determined by the Government, of NAMRB representatives in the meetings of the Council of Ministers, when important issues on municipalities are discussed.

### III. PRIORITIES FOR COOPERATION

**1. Development and gradual implementation of a program for financial decentralization** to provide public services of the necessary type and quality and to increase the efficiency of financial resources management in accordance with the following principles:

- Correspondence between the expenditure responsibilities and revenue sources;
- Correspondence between the powers on revenues and the political responsibility;
- Correspondence between the benefit of the activities and the source of financing;
- Expanding the participation of the civil society and local authorities in the budget process;

**To this purpose to be provided:**

- Clear legal division of competences between the central and local authorities – division of the activities to state and municipal ones;
- Acquiring structural correspondence and permanent balance between the legally regulated revenues and the legally entrusted expenditure responsibilities of municipalities;
- Expanding the powers of municipalities to independently determine and manage the revenue and the expenditure part of their budgets;
- Increasing the taxation powers of municipalities;
- Establishing a permanent legal framework for state transfers to municipalities;
- Allocating the subsidies for municipalities through clear, understandable and permanent criteria;
- Introduction of a durable economic incentives for reasonable and efficient usage of the funds by municipalities;
- Control by the competent institutions over the implementation of municipal budgets solely in terms of lawfulness;
- Drawing the private businesses for providing local services, as well as for activities providing for new job openings;
- Expanding the participation of citizens and their organizations in determining the financial and investment policy of municipalities.

**2. Providing conditions for development of the investment potential of municipalities and balanced regional development through:**

- Optimisation of the state and municipal property for increasing the financial resources of local authorities and their powers in managing the technical infrastructure objects;
- Increasing the resources for recovering and developing the municipal infrastructure;
- Expanding the investment opportunities of municipalities and facilitating their access to the capital market;
- Assuring a fair and equal access of municipalities to the investment programs and projects for regional development;
- Guaranteeing the direct participation of municipalities in the development and implementation of the regional development plans and programs.

### 3. Involving local authorities in the EU-integration process

- Direct participation of local government representatives in the structures and the negotiations on Bulgaria's accession to the EU;
- Preparation of Bulgarian local authorities for EU membership;
- Analysis and evaluation of the consequences and influence of the accession processes in the socio-economic sector and undertaking measures for limiting the negative consequences for municipalities.

### IV. MECHANISMS FOR THE IMPLEMENTATION OF THE AGREEMENT

To the achievement of the objectives of the Agreement both parties will hold regular meetings

#### 1. At political level:

- Between the respective ministers and the NAMRB Board of Directors – on quarterly basis,
- Participation of NAMRB representatives in interdepartmental and departmental governmental and consultative bodies;

#### 2. At expert level – between the executive director and the Secretaries General of the respective ministries and other senior officials appointed by the respective minister – on monthly basis;

#### 3. At national level – between the Council of Ministers and the NAMRB Board of Directors – once a year, for revising the implementation of the issues agreed on the priorities of the cooperation, for evaluating the results and for setting concrete tasks for the following year.

### V. TERM OF THE AGREEMENT

The agreement will be in force for the whole mandate of the Government. It could be amended with a mutual consensus between the parties on the basis of the annual analyses and evaluations.

The agreement is made in two identical copies – one for each party.

Sofia, 11<sup>th</sup> December 2001

On behalf of the Council of Ministers: On behalf of the NAMRB:

Prime Minister  
of the Republic of Bulgaria  
Simeon Saxe Coburg-Gotha

Chairman of the BD  
of NAMRB  
Velin Uzunov



## THE SAPARD PROGRAMME AND INCREASING COMPETITIVENESS IN BULGARIAN AGRICULTURE

*Antoaneta Simova*

One of the main objective of the agricultural policy in Bulgaria during the pre-accession period is increasing the competitiveness of the producers in order to make them able to withstand the pressure of the West European farmers and processors in a future membership in the Union.

The comparison of the competitiveness of the Bulgarian and West European agriculture may be made according to various indicators – level and dynamics of the total produce and of the value added of each worker or per area unit, development of export and of the foreign trade balance of the agricultural products, changes in the export structure and other.

### I. A COMPARISON BETWEEN THE LABOUR PRODUCTIVITY IN THE AGRICULTURE OF BULGARIA AND THE EU.

The data shows that depending on the used indicator the productivity of the Bulgarian agricultural sector is between 11% and 27% of the one in the European Union (Table 1).

**Table 1**

**A comparison between the labour productivity in the agriculture of Bulgaria and the EU \***

1998	Value added per employed in ECU	Value added per unit arable land in ECU	Total produce per unit arable land in ECU
Bulgaria	2 256	289	479
EU	20 968	1 059	1 931

\*Source: Eurostat and Bulgaria's Statistical Handbook

The more in-depth analysis of the average statistical data permits an even more unfavourable assessment of the labour productivity of the Bulgarian producer. It is well known that our country has one of the highest percentages of population working in the area of agriculture among the candidate countries. As a result of the land reform in the 90-ies a dualistic structure of land utilisation was established, in which a large number of small farms coexist, producing mainly for their own needs and a relatively low number of large farm structures. The first type of farms

encompass around one third of the arable land and the greater part of the employed population. It produces chiefly intensive products – vegetables and animals. The second type is the farms that produce for the market and which are included in the term "agricultural product" from the point of view of West European agriculture. At this stage they use extensive production methods and have much lower values of the "value added per unit arable land" indicator compared to the small farms. However, the Common Agricultural Policy will address namely these market-oriented farms, due to which special attention from the state must be paid to their low productivity and competitiveness.

And, in fact, while the value of the total agricultural production of vegetable growing per arable unit in Bulgaria is hardly 22% of the one in the EU, in animal breeding (where micro family farms predominate) it is higher – 29%. Above 90% of milk production farms in the country have up to 5 cows. These farms will not be beneficiaries of the CAP funds and their productivity should not play an important role in the present analysis. However, if these micro farms are ignored the average labour productivity values for the country would be even lower.

**Table 2**

**Agricultural Production Indexes for 1989-2000 (1989-90=100) \***

1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
88	87	70	68	62	66	71	70	76	75

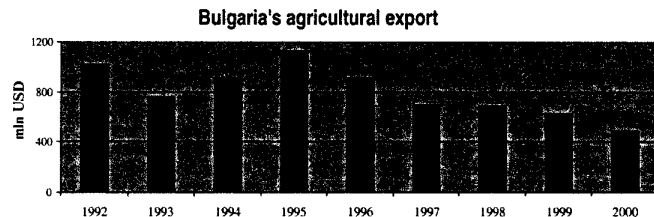
\*Source: Statistical Handbook, 2002, NSI

It is clear that the labour productivity in Bulgarian agriculture is far below the average EU indicators. For the levels to come together it should have a significant growth pace of production increase or a reduction of the number of employed with a maintaining of the production volume. The analysis of the data shows however that the mentioned conditions for the convergence of the Bulgarian and European agriculture have not occurred during the 90s (Table 2). Due to lack of alternative employment the number of people working in the agricultural sector remains almost unchanged while the agricultural production index, even in 2000 cannot reach the level of the end of 90s.

### 1. Export and Foreign Trade Balance Dynamics as Competitiveness Indicator

Evidence for the decreasing competitiveness of Bulgarian agriculture in the 90s is also the data for the agricultural export and foreign trade balance. From \$1.343 million in 1989 the value of the agricultural export drops as early as 1992 to \$1.018 million and after 1997 it is already below \$700 million (Diagram 1). It reached its lowest level in 2000 – \$490 million when it marked its minimal value for the last 10 years. Particularly alarming is the trend during the second half of the 90s when the export in every next year is lower than in the preceding year.

Diagram 1



The increase of the EU share in the total agricultural export (from 23% in 1992 to 34% in 2000) is not an expression of Bulgarian agricultural convergence to the EU because it is due fully to the severe drop of the export to traditional until the beginning of the transition markets. For example, the export to Russia has dropped more than 16 times over 1992-2000. At the same time the value of the sales of Bulgarian products in the EU in 2000 is hardly 65% compared to 1992.

In the 90s there is an aggravation of the trade balance for almost all positions up to the second sign of the customs tariff. In some production groups the aggravation is measured by times. For example during 1992-2000 the positive balance for live animals decreases 10 times, for milk and dairy products – 5 times, for fresh vegetables – 9.5 times, for farina – 13 times, for processed fruits and vegetables – 8 times, for tobacco products – 5.5 times.

In fact the total positive trade balance for agricultural products is preserved due to the significant reduction of import of some production raw materials as raw sugar and fodders as well as for luxury goods as alcohol and cigarettes. It is clear that the positive balance remains due to the acute reduction of domestic production of some products which require imported raw materials as well as to the reduction of purchase power of the population, which turns to the cheaper local products.

This trend is worrying because it indicates the severely deteriorated competitiveness of Bulgarian agricultural products. If the exchange rate of the lev remains unchanged in the future and the domestic inflation grows local producers will become more and more unproductive and they will be pushed away from the international markets. They could also lose a significant share of the domestic market if the purchase power grows and people start buying luxury products or products with a higher degree of processing.

## 2. Ways to Increase the Competitiveness of Bulgarian Agricultural Products

Under the currency board arrangement and the fixed exchange rate the competitiveness after 1997 could have grown only upon a significant accumulation and investments in new production capacities. Because this did not happen (Table 3) the export potential is narrowing

further. It is a vicious circle of insufficient use of the capacities where the permanent expenses increase significantly and cheaper labour turns out to be insufficient to counter balance the sharp growth of the remaining expenditures. Bulgarian agricultural products become more and more expensive and their sales on international markets drop. In the midterm this trend is expected to deepen further if a radical change in the macroeconomic framework (it comes down mainly to a change of exchange rate or significant investments) or in the carried out agricultural policy (providing of support analogous to the provided in the developed countries and in particular provision of export subsidies) does not occur.

Table 3

Investments in Agriculture during the 90-ies (in millions of USD)

1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
320	109	85	42	28	43	32	35	55	52

\*Source. An Agricultural Policy Review – Bulgaria, OECD, 2001

Of the ways to increase the competitiveness of Bulgarian producers and to enhance the ability of some of them to resist the competitive pressure of the West European farmers laid out above, the only real alternative is carrying out capital investments that allow the renewal of the production funds and increase labour productivity. Stimulating export through a currency devaluation turned out to be impossible to use as an instrument in the conditions of the announced by the Government intent to maintain the currency board until our entry into the EU. The ability of the Bulgarian state to give production and export premiums is quite restricted as well and at least until now practice indicates that when selecting branches and sectors to support, priority is given to social and not economic criteria (for example currently subsidies are granted to one of the most intensive branches – tobacco production and dairy cattle-breeding where small owners prevail). Thus the granting of subsidies does not contribute to increasing labour productivity, but assists the maintaining of the functioning until now ineffective small farms, which have no chance to develop in the EU conditions. As the subsidies are very restricted and only some branches are supported selectively, there is also a real threat for them to assist the artificial redistribution of the production factors (and mainly of labour and land) and thus to additionally and unjustly damage the competitiveness of other sectors with a much greater development potential within the Union. Thus, for a few years now production subsidies are granted not only to oriental, but to large-leaf types of tobacco as well. The latter are grown in flat lands, where other crops could be grown as well, but their production turns out to be less beneficial and is naturally evaded by farmers.

It is clear that due to the lack of sufficient financial resources, as well as due to the entirely different conditions in the beginning of the 21<sup>st</sup> century, Bulgarian agriculture can not follow the model of gradual restructuring and enlarging of small family farms and turning them into competitive analogues of EU farms. Therefore, the inability to grant significant production subsidies in the long-term is more of a positive, rather than negative fact, as it does not stabilise the existing land-owning structure, in which around one third of the arable land is concentrated in small and economically weak farms. Commercial farms and foodstuffs companies that manage to adapt to the high requirements of the single market will stand in the basis of Bulgarian agriculture within united Europe. Enhancing their competitiveness through ensuring investment subsidies should be a number-one concern of the Bulgarian state and Government.

## II. INSTRUMENTS FOR CONVERTING BULGARIAN AND WEST EUROPEAN AGRICULTURE.

The main instruments, through which the EU aims to assist Bulgaria in overcoming the lagging behind of Bulgarian in the pre-accession period are three: the Europe Agreement, the White Book for Approximation of the Legislation and the EU Structural Funds.

The Europe Agreement has been in force since 1993 and aims to liberalise trade with agricultural products. Despite of the asymmetry in the concessions in favour of Bulgaria (especially in the initial period of the conclusion of the Agreement), Bulgarian producers and processors are not able to increase their sales on the EU market. The majority of the granted preferential quantity quotas are not absorbed. This is due to numerous reasons and they are not subject to this analysis. However, it is clear, that even upon a full elimination of duties in the EU, our producers will not be able to increase their sales significantly, as their products do not respond to the high hygiene and veterinary requirements.

The second instrument for bringing Bulgaria's agriculture closer to the EU one is the White Book for Approximation of the Legislation. Whilst a part of the regulatory acts introduced in the pre-accession period are necessary for the transition from a central planned to a market economy, others arise only from the future membership in the Union and are an additional "burden" for Bulgarian producers. Operating in an unfavourable macro-environment and in an undeveloped infrastructure, not receiving almost any subsidy from the state, these producers must make efforts to adapt to the changing legislative framework and assume the same obligations as the West European farmers and processors regarding hygiene and veterinary requirements and environment protection. At this stage the survival of a large part of these producers is possible thanks to the fact that the legislation has not been fully harmonised yet or is practically not applied. With Bulgaria's accession to the EU however, the measures for the regulatory implementation will become incomparably more stringent and only the producers that make the necessary investments and adapt to these higher requirements will be able to continue to exist.

The two instruments mentioned above, therefore, are more of an impeding condition, rather than a favourable opportunity for the development of business agriculture in the pre-accession period. The stronger one always has the greater benefit from the liberalisation of mutual trade. West European farmers have not only higher productivity, but are also actively supported by the

state, which places Bulgarian producers in more unfavourable positions on the internal, as well as on the international markets. As it was noted, the introduction and above all the observance of EU legislation is an additional financial burden for Bulgarian producers towards which the same high criteria are applied as the ones applied to the West European farmers and processors, working in the conditions of an incomparably more favourable market environment.

### 1. Structural Funds as a Means for Overcoming the Lagging Behind

The third main instrument are the structural funds. It has the greatest significance for our country due to the following reasons:

- Bulgaria is one of the candidate countries with a most sharply expressed dualistic land-using structure. Hence the investment subsidies, concentrated on the most viable farms and processing enterprises, are the better form of state support compared to the granting of production subsidies for all agricultural producers.
- The material and technical foundation of the agricultural sector is very old and its renovation is a decisive factor for increasing the labour productivity in Bulgarian agriculture and the foodstuffs industry.
- The foreign capital investments in the economy and specifically in the private sector in Bulgaria are among the lowest in the region. After our country is not able to attract private investments, the EU structural funds turn out to be the only source of capital investments in the agricultural sector.
- The inability to use other macro-economic mechanisms and, above all, the altering of the currency rate (unlike almost all of the other countries in accession) makes increasing the competitiveness of Bulgarian agricultural producers impossible, unless this happens through an increase of investments and a renewal of the capacities.
- The management of the structural funds helps the administration to prepare for its practical activities related to the application of the Common EU Agricultural Policy after Bulgaria's accession.
- The pre-accession funds will have greater importance for Bulgaria than for the majority of the East European countries, not only due to its relatively large lagging behind, but also due to the production and foreign trade structure of its agricultural sector. Our country produces mainly Mediterranean types of vegetable products and imports chiefly stock-breeding products, which are supported mainly by high duties. Our trade balance regarding the EU is expected to deteriorate after Bulgaria becomes a full member and the duties are dropped due to the eased penetration of the West European stock-breeding products on the Bulgarian market. This loss could be neutralised through the transfer of funds from the common EU budget.

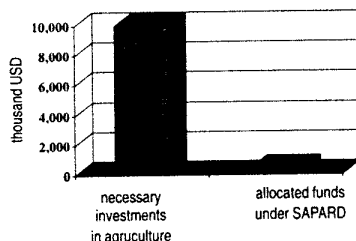
Therefore, the effectiveness of the management of the structural funds will be a decisive factor, which will determine whether the agricultural sector will gain or lose from our membership in the EU. While the free movement of goods, including agricultural, will be achieved from the very beginning of the membership, the full absorption of the funds could be delayed in time. This will additionally aggravate the balance between the transfers from the common EU budget towards our country and those of Bulgarian producers towards West European producers. The

pre-accession funds could, therefore, play the role of a significant catalyst for bringing Bulgarian agriculture closer to West European, if their volume is adequate to the needs and if the funds are absorbed.

The first condition related to the volume of the financing granted under the structural funds by the EU has not been fulfilled according to the opinion of nearly all of the pre-accession countries, including Bulgaria. At the Summit in Berlin in March 1999 the EU decides that the financing under the structural and cohesion funds granted to the candidate-countries cannot exceed 4% of the gross domestic product. According to an approximate assessment of the material and technical foundation of our agriculture, compared to the one of Greece – which has one of the most poorly developed such foundations in the EU, between 10 and 20 billion USD are necessary. This sum includes only agriculture, not the foodstuffs industry. At the same time under the SAPARD Programme during the next 7-year period our country can absorb a sum, which is around 3% of the necessary investments (Diagram 2). Moreover, the funds will be used not only for investments in agriculture and foodstuffs, but also for other activities related to the development of the rural regions. It becomes clear that the pre-accession aid under the structural funds will have more of a demonstrative rather than structure-determining effect on Bulgarian agriculture.

Diagram 2

#### A Comparison between the Necessary and the Granted Investments under the SAPARD Programme in Bulgarian Agriculture



The second condition related to the degree of absorption of the granted funds, therefore, plays a decisive role for the further EU assistance: if the granted subsidies, however, insufficient they are, are not absorbed, the candidate country will not have much ground to ask for an increase of the sums.

## 2. The SAPARD Programme in Bulgaria.

The main programme, according to which the financing of projects for the development of the agricultural sector and the rural regions will be carried out, is the SAPARD Programme. It is

planned for our country to gratuitously receive each year a sum of around 53 million euro for a six-year period (Table 3).

Table 3

#### Allocation of the Annual Funds under the SAPARD Programme among the Candidate Countries (in thousands of euro)

Country	Sum
Bulgaria	53 026
Czech Republic	22 445
Estonia	12 347
Hungary	38 713
Latvia	22 226
Lithuania	30 345
Poland	171 603
Romania	153 243
Slovakia	18 606
Slovenia	6 447
<b>Total</b>	<b>529 001</b>

Source: *The Common Agricultural Policy – 2000 Review*, Luxembourg, Office for Official Publications of the European Communities.

It becomes clear that only Poland and Romania receive larger absolute sums than Bulgaria under the SAPARD Programme. Actually, the allocation of the funds is done on the basis of a combination of indicators, including the relative share of agriculture, the size of the exploited land, the gross domestic product per capita etc. The significance of the SAPARD Programme funds is also great for our country in view of their proportion towards the aid granted from the national budget. Thus, while in Hungary the funds within the SAPARD are around 10%, and in Poland – around 20% of the total aid for agriculture from the national budget in 1998, in Bulgaria they are over 100% of the aid granted during the last years. Therefore the degree of absorption of the SAPARD Programme funds is a much more important condition for the acceleration of agricultural growth in Bulgaria than it is for the majority of the other candidate countries for EU membership.

In Bulgaria the SAPARD Programme was launched on June 1, 2001. On the basis of the National Plan for the Development of Agriculture and Rural Regions three of the total nine foreseen investments areas (called measures) were accredited and funds were granted for them, namely: investments in farms, processing and marketing of agricultural products and diversification of the economic activities.

Although one year is a relatively short period of time to make final conclusions and assessments, it is nevertheless sufficient for the outlining of some main problems and weaknesses in the Programme. As it was already noted the degree of absorption of the funds is the decisive indicator for the effectiveness of the Programme, having in mind the wide discrepancy between the needed and available investment resources in Bulgarian agriculture. Until June 11, 2002 (i.e. one year after the launching of the Programme) the SAPARD Agency has paid an investment subsidy 5 563 227,90<sup>1</sup> levs for the European part of the Programme, which means that we have absorbed around 5% of the allocated funds. Such a result is very concerning and should be a serious signal for the administration to undertake decisive actions for overcoming the weaknesses.

During the first year of operation projects at the total amount of 146.4 million levs were approved for financing. If we were to accept that all of these projects will be implemented and paid during the coming year, this would mean that for two years we would be able to absorb nearly all of the funds allocated for the first year. During the next year, however, the funds for the second year will have to be absorbed as well, which means that in order to overcome the lagging behind, for the period June 2002 – June 2003, our country would have to absorb funds amounting to around 103 million euro. It is clear that our administration must entirely change its style and manner of management of the Programme for the investments subsidies to be put into the agricultural sector speedily. The argument that the absorption period could be extended is not in the interest of Bulgarian agriculture in view of the heavy crisis it is in. Until the great delay for the first year is not overcome, our country has no grounds to insist before the European Commission for greater subsidies for the modernisation of the agricultural sector. At the same time if the farmers from the first wave of new East European members begin to receive subsidies from the European Union as early as 2004, the gap between them and Bulgarian farmers and processors will become even wider.

The structure analysis of the approved projects indicates that most of them refer to the "Investments in farms" and "Processing and marketing of agricultural products" measures, while the "Alternative income" measure has a quite humble share both in the total number of projects and in the funds allocated (Table 4).

<sup>1</sup> The data is from a press release of the Ministry of Agriculture and Forests.

**Table 4**  
**Relative Share of the Projects According to the Three Approved Measures Under the SAPARD Programme**

Measure	Number of projects - percentage	Sum of the approved projects - percentage
Farms	80	52
Processing and Marketing	16	46
Alternative income	4	2
Total	100	100

**Source.** The data is obtained on the basis of a list of the projects approved under the SAPARD Programme, published on the web site of the Ministry of Agriculture and Forests

The indicated data for the allocation of the funds between the three accredited until now measures respond to the actually existing needs in the real sector. A lack of balance in the allocation of the funds for the other measures, which have not been accredited by the European Commission yet, is expected as well. Whilst at the current level of low absorption of the pre-accession funds the manner of distribution of the funds between the different measures is not a problem, in the future a need for giving preference to another or other investment areas could arise. Therefore, the administration should in beforehand consider how to solve this problem. In any case, the solution should be based on a classification of the needs in view of increasing the competitiveness of the Bulgarian agricultural sector. For example the study on how to load the purchased agricultural machines or the new equipment in processing enterprises is very interesting. In any case the large number of potential areas, in which investments subsidies from the SAPARD Programme could be used, is more of an advantage rather than a defect, although the prioritisation in a future exceed of demand over supply is a task of the administration.

### 3. Main Flaws of the Application Procedure for the SAPARD Programme

During the past year in their statements some representatives of the Ministry of Agriculture and Forests have underlined that the major problem in relation to the low level of absorption of the funds is the insufficiency of the means for co-financing by the candidates (every beneficiary of the subsidy is required to invest 50% personal means in the investment). This statement cannot be denied entirely as for part of the producers and processors, especially the small ones, ensuring personal financing is a problem. Due to the low profits and the significant risk in the agricultural sector, banks are especially cautious and require high guarantees when granting credits. This problem is not new and is not an issue of this study. Practice shows that through administrative measures banks cannot and should not be compelled to grant credits, for which there is no guarantee that they will be returned. The credit procedures will therefore be eased as a result of the actual growth of the effectiveness in the activities of the credit receivers and not due to some kind of external pressure. Instead of concentrating on an elimination of the weaknesses in the SAPARD Programme application procedure, during the first year of the operation of the Programme the heads of the State Agriculture Fund and the Ministry of

Agriculture and Forests aimed their efforts at negotiations with commercial banks for easing the credit conditions. These efforts would not have been meaningless, if they were not the only attempt of the administration to activate its activities for the absorption of the funds.

The main problem facing potential beneficiaries of the SAPARD Programme funds, however, is not the lack of personal financing or the inability to propose good projects, but the preparation of the supplementary documentation. The barriers before the candidates can be summarised in several main groups:

**a) Required unclear documents in view of their contents or issuing body**

Under the measure "Processing and Marketing of Agricultural Products", for example, a copy of a certificate for the quality of the used raw materials is required. However, there is no established by the state organisation responsible for the issuing of such a certificate. There is no regulation or instruction related to the SAPARD Programme that clarifies the meaning of the term "quality certificate". The only solution for the applicant is to turn the Regional Directorates of the State Agriculture Fund for information and to count on its reliability (as it becomes clear below there is no guarantee that the interpretation of some of the documents in the Regional Directorates and the Central Management Unit of the Functional SAPARD Structure will concur).

Another similar document is the assessment of the environmental impact. This document also gives ground for differing interpretations: whether proof is required that the candidate's activities until now have not violated the environment protection legislation or is it merely an issue of assessment for the project the candidate is applying for. If the second assumption is true, it should be indicated which body issues such a decision depending on the specifics of the investment. There are projects that have presented an assessment of the activities and it was accepted at the Regional Directorate, but at the Central Management unit it was rejected on grounds that an assessment of the project is necessary. If there is a difference between the interpretations of one and the same document within the internal structures of the Functional SAPARD Structure, how could the candidate be expected to cope with the problem on his own?

**b) Required meaningless documents, which do not carry any information on the quality of the project or the candidate**

Part of the required supplementary documents, besides being unclear in view of their contents and origin, are also absolutely useless as they do not contain any information on the effectiveness of the project or the work of the candidate. It turns out that the Central Management Unit of the Functional SAPARD Structure accepts as a quality certificate the so-called "acceptance protocols", existing from the time of the centrally planned economy. It is interesting what fundamental conclusions the respective bodies could reach on the basis of this document in the beginning of the 21<sup>st</sup> century, when the ISO quality management systems and the best production practices are being introduced. It is a paradox for a candidate applying such systems not to be able to understand what certificate for the quality of the raw materials means and to have to resort to various bureaucratic interpretations.

Another similar supplementary document for the second measure is the one for the description of the technological project. Once again it is not clear whether a description of the technology of the whole production is required, or of the buildings and the equipment that will be

reconstructed or purchased as new. The foodstuffs industry is a traditional branch with relatively small in numbers (especially for Bulgaria) unique or revolutionary technologies. There are textbooks, in which these technologies are described and if the Committee on Project Assessment wants to enhance its knowledge it would be easier for it to use such textbooks, instead of requiring sketches and drawings from the candidates. Besides being unnecessary, in some cases this document is quite labour consuming, because there are enterprises with tens of varieties, for which separate schemes must be prepared.

**c) Existence of unannounced or illogical requirements, which serve as a motive for the rejection of the projects**

The listed serious weaknesses related to the required documents with an unclear or subject to differing interpretations contents, give the administration an opportunity to reject projects under the pretext that unannounced in advance conditions have not been met. For example, in the official notification letters for project rejection the State Agriculture Fund indicates as motives for the rejection of a project the circumstance that the contract prices for the purchasing of machines or construction are not given in euro or leva. The currency clause is one of the key prerequisites of every contract, with enormous importance for its effectiveness, especially in cases of significant sums or when there is a long period between the conclusion, performance or payment of the contract (as it is with most investment projects). Hence, the currency of the transaction is not a whim, but one of its most important conditions. After the legislation in the country permits such a practice even in relations between local companies, the administration of the SAPARD Programme has no grounds to determine the currency of the transaction. Should there be an accountancy problem with the accounting or the payment of the subsidies later, this is a problem of the agency itself and it should lay out rules for actions in such cases and a rate for accounting the expenses. However, it is clearly unacceptable for it to pose requirements that have not been announced in advance.

**d) A slow and bureaucratic procedure that delays the application process**

The many documents mentioned above, which are unclear to the candidate in many cases force him/her to devote nearly six months to the preparation of the supplementary documentation, without having any guarantee that he/she will meet the requirements. We could also question how it is possible for various units of the SAPARD Functional Structure to give differing interpretations of the same documents. If the Central Management Unit can reject documents, recognised as being in order by the Regional Directorates, then what is the use of the existence of these structures? Or if the Directorates have made a mistake, has the Central Management Unit sanctioned them and how? All these issues become especially important now, when taxpayers have the right to question the benefits of such a numerous state administration, which has not carried out the necessary training of its own personnel. Moreover, having in mind that this is an administration directly engaged in the absorption of the EU pre-accession funds for which the country feels a sharp need. The proportion between the number of the staff of the State Agriculture Fund and the sums absorbed during the first year of the SAPARD Programme indicates an extremely low administrative capacity and serious weaknesses.

The slow and ineffective application procedure is related to a loss of much time, means and nerves for the producers and processors. Many of them wonder whether the procedure is

so slow and tortuous because of the low competence of the staff or because "something else" is required from them for their project to pass the committee. There are many cases of returned supplementary documents, which indicate that the capacity of the administration to lay out new and new requirements before the candidates is almost unlimited. The manager of a company must present a document that he is the same person because the last name on his identification card and diploma is different (despite of the fact that all the other data in the other two documents matches). However, such a document is not required from the technologies specialist in the same company, who has an absolutely analogous problem – her maiden and marital last name differ in her identification card and her diploma. Another company is required to have a seal on the contract with the buyer of its production, even though the buyer is a multi-national company that does not use seals on its official documents anymore (a wide practice in the developed countries during the last years). A third company with foreign participation is required to register in accordance with the Foreign Investments Law even though the registration is not compulsory and such a requirement is not included in the regulations for the SAPARD Programme application.

The period of several months from the preparation of the supplementary documents until the notification letter for the rejection of the project means that in case of failure the greater part of the documents must be revised and this implies more time and means lost. Therefore many of the candidates give up further participation and concentrate on more effective activities. What is more, these are established companies, successfully working with Bulgarian and foreign banks, but they are not able to meet the "high" requirements regarding the supplementary documents in the application for the SAPARD Programme.

#### e) Inability of the civil society to exercise control over the SAPARD Functional Structure

The ability of the civil society to exercise control over the SAPARD-related activities of the administration is very limited. The Check System is in the hands of the State Agriculture Fund, accredited for the application of the Programme. The Committee for the Implementation of the SAPARD Programme that was set up consists mostly of representative of various ministries and bodies, who must observe and assess themselves. Even though formally working groups on the separate measures, which include representatives of non-governmental organisations and producer associations, have been set up, these working groups do not have the actual power to change or significantly influence the activities of the administration. During the first year of the launching of the Programme two sessions of the Observation Committee were held. In the telegraph excerpts from their protocols on the web sites of the Ministry of Agriculture and Forests, it is not clear what the problems in the implementation of the Programme are and how they will be solved. The announcement for the holding of the third regular session of the Observation Committee on June 28, 2002 completely follows this line. In the face of the 5% absorption of the SAPARD Programme funds during the first year, the information published by the "Information and PR" Directorate states: "At the Third session of the Observation Committee for the SAPARD Programme progress in the implementation of the Programme so far was noted. Information from the EC mission for the audit of the SAPARD Agency was presented. The members of the committee were informed by the Executive Director Assen Drumev that *no significant omissions in the implementation of the programme were observed*". The quote shows

that the state administration gives its activities for the first year a positive appraisal and does not intend to undertake any significant changes for their improvement.

The absence of a third independent party to exercise control over the management of the funds is also the reason for the lack of effect of the complaints or objections submitted by the candidates. The signals for dissatisfaction from the SAPARD-related work of the administration in the end reach the same administration, which makes civil control impossible. In spite of the large number of employees in the Central Management Unit of the SAPARD Functional Structure there is no clear and transparent system to guarantee that every citizen is able to receive full and precise information on the requirements regarding the supplementary documents that are subject to differing interpretation. There is no telephone number available to candidates, where they could receive information on the time of the next session of the Project Approval Committee or at which stage of the approval procedure their projects are. The indicated weakness creates the impression that this is some kind of closed system between the Bulgarian and Brussels administration, on which the local producers of agricultural raw material and processed products have no influence.

The above analysis gives ground for the following more important conclusions:

- The level of absorption of the funds within the SAPARD Programme during the first year (5%) indicates an extremely low administrative capacity.
- Despite of the symbolic absorption of the gratuitous EU financing the administration gives itself a positive appraisal, which is a danger signal for its ability to lead the agricultural sector out of the heavy crisis it is in.
- The unsuccessful launching of the Programme means not only loss of profit for the time when the investment subsidies should have been absorbed, but also during the next years when we could insist on an increase of the means within the structural funds for Bulgaria.
- As the SAPARD Programme is also the first large pre-accession programme, the formation of euro optimism and scepticism among the Bulgarian public to a great extent depend on its success or failure. The lack of clear and precise (and most of all written) rules for the preparation of the supplementary documents in the application does not give guarantees to potential beneficiaries against one of society's most negative occurrences – corruption.
- The paths for overcoming the weaknesses in the management of the SAPARD Programme do not require any fundamental changes and are not related to additional research and investments. Mainly they consist of an immediate simplification of the application procedure and especially of the supplementary documents so that they are understandable and clear to every potential candidate. We could also think about a reduction of every project's journey from the moment of its submission to its approval.

During the first year of operation of the SAPARD Programme in Bulgaria a great part of the local producers and processors of agricultural products formed the belief that the investment subsidies are not for them. If the Bulgarian administration does not significantly change its activities in the future, it will force many more people to believe that Europe belongs not to citizens, but to bureaucrats. And this conclusion is much more damaging to society than the insufficient size of the necessary, but unabsorbed in time funds.



### DEBATE ON THE FUTURE OF EUROPE

*Pavlina Popova*

The composition and functions of the European institutions and bodies were agreed in 1950 when the Union had only six members (Belgium, Germany, France, Italy, Luxembourg and Netherlands). After then the EU passed through four enlargements and currently it has 15 Member States (the six states-founders plus Denmark, Greece, Spain, Ireland, Austria, Portugal, Finland, Sweden and United Kingdom). After the establishment of the European Community up to now besides the introduction of direct elections for European Parliament in 1979 no major reforms of the institutions have taken place.

Thus in 2000, when conducting accession negotiations with 12 candidate countries the EU faced the necessity to answer a very important question: how can the European Union function effectively when the number of the Member States will almost double?

The answer of this question was given with the Treaty of Nice (signed on 26 February 2001) that was a result of the work of Intergovernmental Conference beginning on 14 February 2000 and ending in December 2000. Thus the Treaty of Nice, which will enter into force after its ratification by all Member States, either through adoption by the national parliaments or through a referendum, marked a new stage of EU preparation for enlargement and made the biggest enlargement done by the EU possible<sup>1</sup>.

The Treaty, however, made only a partial institutional reform that was in relation to the accession of new members. At the same time it was clear that in order to ensure the effectiveness of the European institutions in an enlarged Union reforms going more further than the achieved in the Treaty of Nice, are unavoidable. Due to this the European Council in Nice adopted a Declaration on the Future of the Union calling for a "broad and open debate on the future development of the Union"<sup>2</sup> as this debate was to involve all groups of the society: representatives

<sup>1</sup> The entry into force of the Treaty of Nice depends on the results of the second referendum for its ratification by Ireland that will be held on October 19, 2002.

<sup>2</sup> Declaration on the Future of the Union, adopted by the heads of state and governments of the EU Member States in Nice (7-9 November 2000).



of the national Parliaments; political, economic and academic circles; representatives of the civil society (social partners, business, non-governmental organisations, etc.) and the candidate countries.

## **I. CONVENTION ON THE FUTURE OF THE EUROPEAN UNION**

### **1. Establishment of the Convention**

The European Council in Laeken (14-15 December 2001) adopted a new Declaration on the Future of the European Union<sup>1</sup>, which took a decision for the establishment of a Convention on the future of Europe. The Convention brought together European and national parliamentarians and representatives of the national governments, it also included the countries candidates for EU membership and the current Member States in order to discuss a number of questions concerning the constitutional framework of the Union and the basic political system.

It was decided that the Convention would have its meetings in Brussels on the 11 official languages of the EU. It began its work on March 1 2002. According to the Laeken Declaration its work should end one year later with final document.

### **2. Structure of the Convention**

According to the Laeken Declaration the Convention is headed by a Presidium composed of a Chairman, two Vice-Chairmen and 9 members (three representatives of Member State governments presiding the EU during this time – Spain, Denmark and Greece, two representatives of national Parliaments, two members of the European Parliament and two members of the European Commission). The Laeken Declaration designated for Chairman of the Convention the former President of France Valéry Giscard d'Estaing, and for Vice-Chairmen Giuliano Amato (former Prime Minister of Italy) and Jean-Luc Dehaene (former Prime Minister of Belgium.).

The Convention itself is composed of 105 members – the Chairman of the Convention and the two Vice-Chairmen, 15 members – representatives of Member States governments, 13 members – representatives of the candidate countries (12 plus Turkey); 30 members, representatives of the Member State national Parliaments – two from every Member State; 26 members representatives of the candidate countries national Parliaments – two for each of the 12 and 2 from Turkey; 16 members of the European Parliament and 2 members of the European Commission. 3 representatives of Economic and Social Committee of the EU, 3 representatives of the social partners/non-governmental organisations, 6 representatives of the EU Committee of Regions and the European Ombudsman participate in the work of the Convention as observers.

### **3. Tasks of the Convention**

The four sections in Laeken Declaration included under the title "Challenges and reforms in a renewed Union" change, reorganise and add to the questions of the Declaration of Nice. It formulates above 50 questions, such as: how to set up and carry out monitoring for a more

precise division of competencies between the EU and the Member States to reflect the subsidiarity principle; what should the role of the national Parliaments in the EU be; what level of competencies is the most efficient; should a distinction be introduced between legislative and executive measures; should the number of the legal instruments be reduced; should the European Union be endowed with a European constitution; how can the Treaties be simplified in order to make them more understandable and clear without changing their meaning; what institutional changes should be made in order to ensure transparency and democracy in the future; what should be the status of EU Charter of Fundamental Rights; should the Council of Ministers and the European Parliament evolve into a bicameral Parliament, etc.

The basic questions related to the internal affairs of the Union and which should be addressed by the Convention are grouped into four sections:

- Clarification of the principles concerning who decides what and the possible reorganisation of the competencies between the EU and Member States (and the regions);
- Simplification of the EU legislation;
- How to improve "democracy, transparency and effectiveness of the EU" and
- Constitutionalisation of the Union in the process of simplification of the Treaties and incorporation of the Charter of Fundamental Rights.

### **4. Work of the Convention and Timeline for Completion of its Work**

The work of the Convention is organised in plenary sessions and in working groups.

The Convention plenary sessions are public and take place at least twice a month and the Presidium meets at closed doors ones every two weeks.

Within the framework of the Convention to the initially created 6 working groups ("Subsidiarity", "Charter of Fundamental Rights in EU/European Convention of Human Rights", "Legal Personality", "National Parliaments", "Complementary Competencies", "Economic Governance") by the demand of a number of Convention members 4 more were added – "External Action", "Defence", "Simplification of procedures and instruments" and "Freedom, Security and Justice".

Having in mind that so far no explicit doubt has been expressed that the Convention as is envisaged by the Laeken Declaration, is supposed to end in March 2003, all Working Groups should report their recommendations in a plenary session by December 2002. Then in fact on the basis of these recommendations at the Convention plenary the real political dilemma likely to determine the future of integration, which has been avoided so far will be confronted. According to some observers it is hard to believe that such a final, fundamental and comprehensive debate in a relatively large and heterogeneous assembly will take less than three or four months in order to achieve shared, coherent conclusions – probably in the form of a constitutional text – to be submitted to the Intergovernmental Conference in 2003.

Some observers consider that the deadline for ending the Convention work should be openly tackled and the option for postponing the final document for June 2003 or even later (which is very possible since the Convention President already said that the final document will be ready in mid 2003) should be considered. That would allow the Working Groups to have a

<sup>1</sup> Declaration on the Future of the European Union, Annex I, Presidency Conclusions, European Council Meeting in Laeken, 14-15 December 2001.

serious debate and submit their recommendations in 2003 but would, of course, require much thinking as to the implications for the subsequent timeline: IGC, European elections, ratification of the Treaty and accession of new Member States.

The four major points raised by the Declaration on the Future of Europe of Nice (delimitation of powers, status of the Charter, simplification of the Treaties and the role of national Parliaments) are covered by the Convention Working Groups. Turning to the Laeken Declaration however and looking at the major questions set by it, we will see that only twenty of them are more or less directly addressed by the mandates of the Working Groups established up to now. For example, the issue for adoption of a constitutional text is addressed but in a fragmented and incomplete way, conveying the impression that this is not a central priority of debate.

Most notably, entire sets of fundamental questions remain almost untouched. For example, simplification of EU instruments (only loosely debated by the Convention plenary in May and on 10 September 2002 the discussion-paper of the Convention Secretariat was distributed), how to ensure democracy, transparency and efficiency of the EU institutional framework (directly addressing the balance between the Commission and the Council), how to improve the efficiency of the decision-making process (focusing on the need to extend qualified majority voting).

Therefore, two related points were rightly stressed by various members of the Convention, and by the Presidium, as to the future proceedings of Working Groups. First, they should develop their debate in a consistent way and not depart from the overall debate in the plenary, where they should ultimately report. Second, they should bear in mind the wider implications of their debate for ongoing reflections in other, parallel groups. Based on that some observers recommend a drafting of a list of questions to focus the work of the different groups. This, on one hand will assist for the identification of the issues where Working Groups mandates overlap and on the other – will stimulate joint work where necessary.

### 5. Final Document

Along with the national debates on the future of the Union the final document will be the starting point for discussion at the next Intergovernmental Conference, which will take the final decisions and should be held in 2004. This document could contain both different opinions (indicating however the support received by them) and recommendations where consensus is achieved.

The final document of the Convention will be very important for the work of the next IGC. Obviously, it will not have a binding effect. The legally binding document will be adopted by the European Council (in 2004), which will take place after the end of the IGC. However, the outcome of the Convention, which will be laid down in the final document will perhaps to a large be respected by the IGC and the European Council.

Due to this it is very important what document the Convention will produce. It could produce a single detailed document of a quasi-legal character, which would be a kind of legislative proposal of the future treaty adopted in 2004. However, the Convention could limit its outcome to a catalogue of recommendations and fundamental principles of the future Treaty and the details will be left to the IGC and European Summit. Of particular importance will be the homogeneity of the final document. The Convention could produce a document supported by all (or a vast majority) of the members of the Convention. The advantage of this document would be higher legitimacy while its disadvantage, according to some observers, could be the reduction

of the document to the lowest common denominator because of its compromise nature. The second alternative is a variety of documents representing opinions of different fractions of the Convention. According to some observers such an outcome would be more coherent and is likely to contain clear and ambitious objectives. However, the variety of competing documents excludes in principle the possibility of a detailed quasi-legal document and allows the Convention outcome to be only a catalogue of principles and recommendations.

## II. MAIN ISSUES REVIEWED BY THE CONVENTION

The objectives of this section were on one hand the outlining of the main problems in the different major categories and on the other – the different proposals and positions on them. Our attempt was to follow discussion or other papers submitted by the individual Convention working groups, because this would reflect the different opinions and proposal on the various issues.

### 1. Division of Competence and Principle of Subsidiarity

#### a) Division of Competence

The issue on the division/delimitation of competence consists of a clarification of the principles of who does what in the EU and the possible reorganisation of competence between the EU and the Member States.

The Nice and Laeken European Councils requested that the delimitation of competence between the EU and the Member States be examined in order to respond to criticism that the Union should take less action in certain areas and more in others. It was also pointed out that it is difficult for citizens to understand how such a delimitation is made, i.e. "who does what" within the European Union. The said objective included also an examination of the problems raised with regard to the existing system of delimitation of legislative competence between the European Union and the Member States, while suggesting certain avenues to be explored to solve such problems

The existing system of delimitation of competence was established according to objectives to be achieved and means for achieving those objectives. In certain areas, the fields in which the Union may act are listed in detail, as doing so the system endeavours to reconcile the need for precision in delimiting competence with the need for flexibility in order to enable the Union to adapt to new challenges and respond better to citizens' expectations. As the merits of such a system have been widely recognised, most of the criticisms made tends to relate to the system's "excesses" or to the need to clarify it further rather than the need for a thorough overhaul

According to the Convention discussion paper<sup>1</sup> the main problems raised with regard to the system of delimiting competence and the avenues to be explored, are as follows:

- **The system's lack of clarity.** Certain provisions of the Treaties are complex and impenetrable. In addition to that there are no provisions in the Treaties describing the principles governing the allocation of competence between the European Union and the Member States. Due to this the discussion paper suggests that the

<sup>1</sup> Delimitation of competence between the European Union and the Member States — Existing system, problems and avenues to be explored, 47/02, The European Convention, Presidium, 15 May 2002.

Convention should examine in particular: explanation in the Treaties of the principles governing the existing system of allocation of competence and in particular the principle of allocation of competence; further clarification of the various types of competence and the areas covered by each type; further explanation the Member States' competence and in particular, the general principle that Member States have legislative competence except in the cases where this has been allocated to the Union.

- **The lack of precision of certain provisions of the Treaty.** Here in particular are pointed out Articles 94, 95 and 308 related to the decision-making power of the EU. At the same time, it is widely recognised that those are the provisions, which have enabled the Union to develop dynamically. Due to this the Working Group proposes that the Convention examine: possible clarification of the scope of Articles 94, 95 and 308 of the TEC; the possibility of laying down stricter rules governing recourse to Article 308; whether it is necessary to introduce clarification into other provisions; whether a "catalogue" of the Union's powers should be compiled, which is demanded by a minority of the Member States.
- **Failure to comply with the principles of subsidiarity and proportionality.** Many believe that the principles of subsidiarity and proportionality are not always applied by the legislator, with political reasons or reasons of urgency taking precedence over observance of those principles. The document of the Working Group proposes that the Convention examine whether and, if so, how the application of those principles could be stepped up by the Institutions participating in the legislative procedure. (the principle of subsidiarity will be discussed below).
- **In some cases the powers of the Union do not match citizens' expectations.** As a majority considers that the expectations of citizens are one of the main criteria for deciding on the tasks to be carried out at Union level, the Laeken Declaration stresses that citizens want the Union to play a greater role in certain areas, while at the same time they find that the Union intervenes too much in other areas. On the basis of this principle, the Working Group suggests avenues to be explored to examine the Union's powers in view of adaptation.
- **Insufficient checks to ensure compliance with the delimitation of competence.** At present, political monitoring of compliance with the delimitation of competence is for the most part exercised by the Institutions of the Union. Legislative bodies at a national level, in particular the national parliaments, exercise that monitoring only to a lesser degree. As a broad majority of the members of the Convention call for such monitoring to be intensified, the discussion paper suggests avenues to be explored to strengthen political and/or judicial review of compliance with the delimitation of competence and the principle of subsidiarity, in particular by strengthening control by national parliaments and/or setting up "ad hoc" monitoring mechanism

In addition to the Working Group discussion paper, the joint document submitted by Germany, France, United Kingdom, Ireland and Poland on 13 June 2002<sup>1</sup> on the delimitation of competence, which reflects the main trend dominating in the debate, should also be mentioned. This document underlines in first place that "establishing a clearer division of responsibilities as well as precise rules for exercising these competences will make Europe more efficient and help make it easier for citizens to understand." As far as the idea for the creation of a "catalogue of competences" these states consider it unnecessary since flexibility has allowed the Union and its members to respond rapidly and pragmatically to new challenges. They consider that it would be better to clarify this matter by means of a new principle that explicitly states that "the Union has no competences other than those conferred on it by the Member States through the treaties and that any matter for which the Union has no competence remains the exclusive preserve of the Member States." For the achievement of an effective and transparent Union the position proposes the establishment of clear categories of competence for the Union (exclusive, shared and complementary), adoption of a set of principles on how these competences should be exercised (namely the principles of subsidiarity and proportionality, respect for the national identities of the Member States, including their internal structures and an explicit statement of the present situation that any matters where the EU has no competence remains the preserve of Member States), introduction of a new checks and balances system to ensure compliance with the agreed rules (establishment of a political body to strengthen procedural control).

#### b) Subsidiarity

The principle of subsidiarity means that what the lower level can do adequately should not be done by the higher level unless the higher level would take a better decision. Taken over into EU policies, it is used as an instrument for determining when the Union is to act in areas not coming under its exclusive competence.

The subsidiarity principle was first introduced in the Treaty of Maastricht as a general principle applicable to all areas of non-exclusive competence. The Edinburgh European Council of 11-12 December 1992 set a global approach for the application of this principle. The Protocol also lays out obligations for the institutions, primarily for the Commission, which is required to substantiate its legislative proposals in regard to the principle of subsidiarity. Moreover the Commission is also required to submit an annual report on the implementation of the subsidiarity principle (Article 5 of the Treaty) to the European Council, the European Parliament and the Council.

The Working Group on subsidiarity set up under the Convention made the following proposal in its final report, adopted in September 2002:

- reinforcing the taking into account and the application of the principle of subsidiarity by the institutions participating in the legislative process, (i.e. the European Parliament, Council and Commission) during the drafting and examination phase of the legislative act;
- setting up an "early warning system" of a political nature, intended to reinforce the monitoring of compliance with the principle of subsidiarity by national parliaments;

<sup>1</sup> Joint contribution on the issue of the division of competence (13 June, 2002).

- broadening the possibility of referral to the Court of Justice for non-compliance with the principle of subsidiarity.

According to the Working Group the principle of subsidiarity would be applied all the better the earlier it was taken into account in the legislative process. In drawing up its legislative proposals, the Commission should have specific obligations concerning subsidiarity as any legislative proposal should contain a "subsidiarity sheet" setting out circumstances making it possible to appraise compliance with the principle of subsidiarity. In addition to that the presentation of the Commission's annual legislative programme would be an important occasion providing an opportunity for a preliminary debate on subsidiarity. The Group therefore proposes that this programme be discussed by the European Parliament and national parliaments.

The Working Group also considered the possibility of the appointment, within the Commission, of a Mr or Mrs Subsidiarity, or of a Vice-President specifically responsible for ensuring his institution's compliance with the principle of subsidiarity as any proposal of a legislative nature would necessarily be referred to him.

Introduction of an **early warning system** would allow national parliaments to participate directly in monitoring the compliance with the principle of subsidiarity. The Working Group proposes the creation of a new political monitoring mechanism involving national parliaments and it should be underlined that for the first time in the history of the EU, this proposal involves national parliaments in the European legislative process. Such a mechanism would enable national parliaments to ensure correct application of the principle of subsidiarity by the institutions taking part in the legislative process through a direct relationship with the Community institutions. The Working Group also makes some concrete proposals concerning the future of the Treaty in this regard.

The Group also proposes that the national parliaments, which have delivered a reasoned opinion under the early warning system be allowed to refer the matter to the Court of Justice for violation of the principle of subsidiarity. The Group further proposes allowing the Committee of the Regions the right to refer to the Court of Justice violations of the principle of subsidiarity on matters, which have been submitted to the Committee of the Regions for an opinion.

### c) Conclusion

At this stage it seems there is no enthusiasm for an exhaustive "catalogue of competencies" but there is consensus on strengthening the application of subsidiarity. The question should be achieved through enhancing the judicial control or through establishment of a new body with specific responsibilities is still open. The second option could lead to participation of members of the national Parliaments.

Furthermore it could be mentioned that there is no strong aspiration towards giving new powers to the EU unless in relation to internal security and to some extent in the area of foreign policy.

## 2. Institutional Reform

As the work of the Convention on the Future of Europe gets underway, difficult issues approach as to the reform of the EU institutional framework. After the so-called 'listening' stage, dedicated to defining the missions and values of the Union, and the ongoing debate on key

policy areas including Justice and Home Affairs (June), and Common Foreign and Security Policy (July), Members of the Convention and observers know that the 'institutional package' is next in line.

The debate on institutional reform has, however, not been waiting for the formal including in the Convention agenda. It started with particular intensity following the controversial proposal by Tony Blair and Jacques Chirac for the appointment of a President of the European Union. Some fears emerged that this project, and the subsequent debate, would eventually pre-empt the task of the Convention to address comprehensive institutional reform and the future functioning of the Union. Further to that, some observers expected that the European Council in Seville could pose a threat to the development of a transparent exchange and to the free identification of final solutions within the Convention. However, the European leaders did address the reform of the Council of Ministers, of the European Council and of the Presidency system but they held back from any decisions on Treaty reforms.

Before entering a more detailed analysis of the outcome of Seville and the debate on this issue, it is important to emphasise that the prevailing opinion is that any discussion on an institutional reform should be undertaken in view of strengthening all the institutions essential to the functioning of the Community method: the Commission, the Council and the European Parliament. Each institution, of course, could advance proposals as to its own organisation and working procedures, but such reform initiatives would lose much value if they were uncoordinated or even contradictory.

### a) European Council

In order to play its role as giving an impetus and determining the general political guidelines of the EU, the European Council undertook, in parallel with the Convention, a process of revision and negotiation of a reform of some aspects of the operation of the Council and European Council in view of reaching agreement on the decisions needed for enlargement, which do not require an amendment of the Treaty but concern solely rules of procedure. Thus the European Council in Seville (15-16 June 2002) took a decision<sup>1</sup> for improving and modification of its work. First, it was decided that the meetings of the European Council would be held in principle four times per year (twice during each Presidency) as upon extraordinary circumstances the European Council could be convened in an extraordinary meeting. Some decisions were taken in relation to improving the preparation for the meetings and conducting the meetings themselves.

The decision taken in Seville concerning the reform of the Presidency was directed to enhanced cooperation between the consecutive Presidencies. This cooperation would not go beyond operative cooperation since the creation of a collective Presidency would require changes in the Treaty. As far as the wider reform in the 6-month rotating Presidency, the European Council in Seville asked the Danish Presidency to prepare an initial report for the Copenhagen Summit in December 2002. It in any case will address the key issues affecting the equality of the Member States as well as the balance between the Council and the Commission.

<sup>1</sup> Presidency Conclusions, Annex I "Rules for organizing the proceedings of the European Council" — Seville, 21 and 22 June 2002.

As it was mentioned above one of the main proposals (supported by France, the United Kingdom, Spain, Italy and Giuliano Amato, Convention Vice President) concerning the European Council reform is that the rotating Presidency should be replaced by a permanent EU President. According to the supporters of this idea it will strengthen the EU's identity and will give a public face of the EU). It is proposed that the EU President take over the work of the current EU High Representative, to be elected for five years (coinciding with the term of the Commission President) and to have no political responsibilities in his/her own state. He/she will be assisted by a team of 5-6 heads of state, appointed on a rotating basis, who would chair different ministerial meetings.

The idea caused a number of reactions. It won the support of some national governments (Spain) but led to certain reservations (or even open rejection) from Germany and small Member States, the Commission and members of the European Parliament.

#### *b) Council of Ministers*

##### **Reform of the European Council in Seville**

There were a few proposals for reform of the Council, which could be fulfilled without amendments of the Treaties. So the European Council in Barcelona (15-16 March 2002) decided to prepare a reform of the functioning of the European Council and the Council of Ministers and the Seville Summit (21-22 June 2002)<sup>1</sup> reached an agreement on it.

The European Council in Seville reviewed the structure and functioning of the Council of Ministers and addressed five main issues:

- Future functioning of General Affairs Council
- Reduction of Council of Ministers configurations
- Programming of Council activities
- Reform of Presidency system
- Opening of Council meetings to the public in case of co-decision procedure

A new Council General Affairs and External Relations was established, which replaced the former General Affairs Council and will deal with the horizontal co-ordination of the decisions and with external relations. In fact the old General Affairs Council changed its name and the new configuration will have separate meetings (of foreign ministers and European ministers) with a different agenda and perhaps on different dates depending on the area, i.e. it will separate on one hand the preparation and results of the European Council, institutional and horizontal matters and on the other hand – the entire external activities of the Union.

The number of the Councils of Ministers was reduced from 16 to 9 as currently they are: "General Affairs and External Relations", "Economic and Financial Affairs", "Justice and Home Affairs", "Employment, Social Policy, Health and Consumer Affairs", "Competitiveness (Internal Market, Industry and Research)", "Transport, Telecommunications and Energy", "Agriculture and Fisheries", "Environment" and "Education, Youth and Culture".

<sup>1</sup> Presidency Conclusions, Annex II "Measures concerning the structure and functioning of the Council" Seville, 21 and 22 June 2002.

Further to that the European Council in Seville decided that the meetings of different Council on acts adopted under the co-decision procedure be more transparent and public under certain circumstances. According to the observers this is a constructive step towards higher transparency when the Council acts as legislator but most of them consider that the publicity is limited to the initial stage of the procedure (presenting by the Commission of its legislative proposal) and to the final stage – voting and explanation of voting.

The adopted changes entered into force on 31 July 2002.

#### **Proposals**

The main proposal for a Council reform was made by the EU High Representative for Common Foreign and Security Policy, Javier Solana, and it is aimed at strengthening the role of the Council. Its main features are: refocusing the Council's role in laying down strategic guidelines; a more clear separation of the Council's "general affairs" and "external relations" roles: two separate Council formations to meet on different dates with different agendas; more extensive programming work over several Presidencies; reduction of the number of Council formations to ten; strengthening the role of the High Representative; bring the public in on the Council's deliberations on all matters for which legislative decision-making is being shared with the EP. It is obvious from the above mentioned that some of the proposals were accepted by the European Council in Seville.

Another proposal, supported by the Commission, that Germany, the Benelux countries (Belgium, the Netherlands, Luxembourg), Finland, Austria and other smaller Member States move towards is aimed at a more federal Europe, where a powerful Commission protects the interests of all Member States. Its main features are:

- expanding the qualified majority decisions for the common policies;
- co-decision to apply to all legislative work;
- merger of the functions of High Representative for CFSP and the Commissioner for External Relations, giving that function political initiative and integrating it in the Commission;
- opposed to Council president as it would weaken the Commission;
- the Commission to be able to make proposals (not just recommendations) on justice, home affairs, security policy, foreign affairs, the Broad Economic Policy Guidelines, and opinions on the Stability Programmes.

#### *c) European Commission*

In March 2002 the EC approved the Strategy on reform of the EC (containing the Action Plan and timetable). The main objectives of the Strategy were in three directions: reform of the policy to the employees; modernisation of the financial management and a new system for strategic planning.

Further to this management and administrative reform in June 2002 the President of the Commission Romano Prodi shared<sup>1</sup> his view and the general framework for the reform of the

<sup>1</sup> Romano Prodi, Speaking Points concerning the Seville European Council, 18 June 2002.

European Commission to be applied in 2004. It proceeds from the assumption that since the beginning of 2004 the Member States will be 25 and since it is possible that the future Treaty is ratified a certain time after the enlargement, the proposed reforms could be carried out without amendments of the Treaties. The main features are:

- Designation by the President of the Commission (after consultations with all Commissioners) of not more than 10 Vice Presidents to supervise some group of areas. Each Vice-President will work closely with two or three Commissioners depending on the scope of the fields covered.
- Adaptation of decision-making process. Under President leadership the Vice-Presidents will prepare the decisions to be taken by the Commission. They will meet at least once a week.
- The full Commission will continue to meet once or twice a month to set the political priorities and plan the work

In the beginning of July 2002 Romano Prodi presented a detailed proposal on the reorganisation of the Commission itself. It should be underlined that the proposals of the President faced strong opposition by the small countries stating that they would lead to a two-tier Commission and thus the principle of collegiate, the basic principle of the decision-making process of the Commission, would be undermined.

The observers account that there is growing consensus on the issue for the strengthening of democratic legitimacy of the President of the Commission. Some consider that the President of the Commission should be elected by the European Parliament after holding European elections and then be confirmed by the European Council rather than be appointed by the European Council and confirmed by the EP. Others support the idea that a Congress should be established, involving members of national Parliaments and of the European Parliament with specific tasks to elect President of the Commission. There are proposals that the President of the Commission to be elected directly but it is unfeasible in the foreseeable future. However, it should be mentioned that while the consensus for strengthening the powers of the President of the Commission is growing neither the idea to give him/her the right to select her/his own Commissioners, nor the idea of giving him/her the right to determine the number of the Commissioners are supported.

As to the size of the Commission there is no obvious agreement. Opinions vary from 10 Commissioners to one Commissioner from Member State. In case the agreement for less than one Commissioner for Member State is reached it will be necessary to discuss the stipulation of the mechanism for automatic rotation in the Treaty.

#### d) *Positions on Institutional Reform*

The Convention will debate the reform of the EU institutions in September and October 2002 but from the below mentioned positions of the different Member States and other actors in the process it is obvious that the discussion will be complicated and will require a number of compromises.

The German Chancellor, **Gerhard Schröder**, warned that the proposal to elect EU President would affect the relations between the EU institutions. He supports the Commission's proposal for the community method of EU integration, giving more power to the institutions rather than to the governments. He favours a federal Europe with the Commission as a "strong executive",

and the Commission President as the President of a European government, appointed by the European Parliament. According to him the European Council should become "a legislative chamber".

**The Danish EU Presidency** also rejected proposals by Tony Blair and Jacques Chirac for a powerful new EU Council President. Denmark warned that the new position would be a means of strengthening the power of the bigger countries in the EU to the detriment of the smaller ones. The Danish Government insists on equal treatment for big and small countries.

**Giuliano Amato, the Convention Vice-Chairman**, joined the position of France, Britain and Spain for a powerful EU President. But he has also called for an important role for the Commission. He proposes that most of the legislative work be compressed into a single meeting of EU ministers, while the Commission preside over less formal meetings to co-ordinate policy. Giuliano Amato believes the EU needs a President "who remains long enough not to change the priorities every six months" as he added that the President should not necessarily be a politician from a large country.

On the eve of the Seville European Council the **Benelux countries** presented a Memorandum<sup>1</sup> containing their views on the reform of the European Council and the Council of Ministers. Supporting better and timely preparation of European Council meeting agendas, the Memorandum points out that is hard to believe that the European Council would benefit from being given a role as legislator, "as this would not be in keeping with institutional relations, especially the position of the European Parliament." Concerning the reforming of General Affairs Council the position of Benelux countries does not support the creation of a new formation composed of Deputy Prime Ministers or Ministers/State Secretaries for European Affairs since it would mean the "EU abandoning the one ministerial forum that can make the crosscutting links needed for a coherent internal and external policy". The Memorandum called for the European Council to take practical steps to enhance the Council's operations, in particular in view of the enlargement – circulation of more information in writing before Council meetings, restriction the Council's agenda to issues requiring a decision or a political direction, convening of Council meetings only when the agenda really demands it, as in many cases decisions could be formalised by a written procedure. Regarding the Presidency reform the Memorandum does not support the election of the European Council President for a long period as it considers that this not a satisfactory alternative to the current practice of rotating presidency. Stressing on the advantages of the Presidency rotating every six-months (satisfying the principle of equality of the Member States, giving a fresh impetus every six months and giving the Union a more visible profile for the public, press and parliament of the presiding country, learning from experience of the presiding Member State, which also facilitates co-ordination) the Memorandum underlines also the disadvantages of this system – not all of the presidencies are always successful in fitting their programme neatly into the European agenda and the lack of continuity in the external representation of the European Union. Based on this the Memorandum emphasized that whatever modifications of the existing system could be considered they should preserve its advantages, must respect the principle that the Member States are equal and must eliminate the disadvantages in an enlarged Union.

<sup>1</sup> Preparation of the European Council of Seville: Benelux Memorandum on the reform of the Council. The Hague, 4 June 2002.

### e) Summary

The outcome of the Seville European Council on the institutional reform came as a disappointment to those who had hoped to flag up a comprehensive reform strategy for the Council, which would have shifted the focus of future power far more to that body. It is true that some sensible measures to improve the preparation of future European Councils were agreed but in essence there will be fewer subjects and more focus on decision-making outcomes in future summits.

There was a broad consensus on the reduction of Council formations, which was done in Seville, since it did not required amendments in the Treaties. Due to this it is hard to believe that this issue will be on the agenda again.

At the European Council in Seville only very cautious steps towards a formal division of the Council between "General Affairs" and "External Affairs" were taken since there was broad consensus that General Affairs Council does not operate in an efficient way. However, many considered that the General Affairs Council should not be separated from the Common Foreign and Security Policy since the first one would be composed of ministers responsible for European issues and appointed by the Prime Minister and the second one – of foreign ministers. Nevertheless the Seville decisions opened the way for governments to send Europe ministers (or others) instead of foreign ministers when "General Affairs" are being discussed. However, some observers consider that this could now open the way for a power struggle over this in a number of national governments. Therefore it is likely for the discussion on this issue to continue in the framework of the general debate on the institutional reform.

All moves to change the present system of six-month rotating Presidencies have been abandoned for now. This issue was left for the Convention and the 2004 Intergovernmental Conference. In the meantime however some micro reforms aimed at improving the cooperation between present and future Presidencies have been agreed.

There is however broad consensus that the Presidency organisation needs serious changes. There are no, so far, features of consensus as well as any package of proposals or individual proposals. In case the Presidency is abolished it is likely to lead to every Council appointing its own Chairman for a period longer than six months.

Similarly proposals for a new Legislative Council were also left for the Convention. But Seville did agree to take a modest step in this direction by a further opening to public scrutiny of Council meetings when legislation is being decided (with the European Parliament). Both the first reading of new laws and the final vote and explanation of vote will be public.

The voting is still not discussed seriously. From the proposals made until now it is obvious that there is broad consensus that the qualified majority voting should be extended but there are still no clear views concerning the degree to which the unanimous voting should be reduced. There is however an ongoing discussion to what extent the need for ratification of each amendment of the Treaty by the Member States could be avoided.

In Seville there was no debate about choosing a possible "President of the European Union" or creating a new, collective or shared Presidency system. The outcome of the debate on reform reflects, among other factors, the determination of a number of leaders (notably the Finnish Prime Minister, Paavo Lipponen and his Belgian colleague, Guy Verhofstadt) that nothing would be agreed in Seville, which "pre-empted" the wider reform debate getting under way in the Convention.

As it could be seen from the above some of the larger Member States proposed that the President of the European Council be appointed for 2,5 or 5 years but so far the idea is quite controversial.

The Commission President, Romano Prodi, presented his own plans for reform of the Commission, which consist of the reduction in the number of Councils by creating an "inner group" of key Commissioners. Mr Verhofstadt spoke out against a reform, which would create "first and second division teams" within the Commission. Instead of creating ten or so Vice-Presidents who would be in charge of groups of lower Commissioners – the small countries fear that they would be dominated by larger ones – the Belgian premier argued for a smaller Commission after enlargement. Obviously the smaller countries have a fear that they would be dominated by the larger.

Notwithstanding the advantages of the many proposals made during the last few months it is clear that the Member States are far from a common vision on the future EU institutional framework and in particular on the balance between the Commission and the Council. Thus, most of the observers consider that it is of crucial importance for the Convention to abandon all hesitations and take its responsibility to address all these and other key issues of the institutional reform (based on the proposals made by the different institutions) so it submits submit to the IGC a proposal for a balanced and working institutional system.

### 3. Role of National Parliaments

#### a) General Remarks

As it was mentioned above the Nice and Laeken European Councils requested that the delimitation of competence between the EU and the Member States be examined in order to respond to criticism that the Union should take less action in certain areas and more in others. This discussion includes the role of the national parliaments in the EU. The role of national parliaments in the future EU is one of the key issues discussed by the European Convention.

As to the role of the national parliaments in the Union two questions in particular have been under discussion. First, given that a sizeable proportion of national legislation in the economic and social spheres is in fact the product of the transposition of Community directives, some claim that the national parliaments merely serve as a "rubber-stamping chamber" in such matters. Secondly, in a number of new areas such as police and judicial cooperation policy, economic and monetary policy in the framework of EMU and common foreign and security policy, some consider that national parliamentary scrutiny procedures are inadequate.

Aware of these problems, the Member States began by adopting a Declaration<sup>1</sup> annexed to the Maastricht Treaty, which stressed the need to step up the exchange of information between national parliaments and the European Parliament. The Declaration stated that the governments should ensure "that national parliaments receive Commission proposals for legislation in good time for information or possible examination".

<sup>1</sup> Declaration (No 13) on the Role of National Parliaments in the European Union, Treaty on European Union, signed in Maastricht on 7 February 1992.

When the Amsterdam Treaty was adopted, a Protocol<sup>1</sup> was also adopted on the role of national parliaments in the European Union, which introduced a six-week period for submission of the legislative proposals in all languages to the European Parliament and the Council. This Protocol also determined the role of the Conference of European Affairs Committees (COSAC), established in Madrid in May 1989. In a special Declaration annexed to the Nice Treaty, the Conference called for a deeper and wider debate about the future of the European Union with "all interested parties: representatives of national parliaments and all those who reflect the public opinion and in particular political, economic and university circles, representatives of the civil society, etc"<sup>2</sup>.

Finally, in the context of the democratic legitimacy of the European Union, the Laeken Declaration put the following questions on the role of national parliaments: should they be represented in a new institution, alongside the Council and the European Parliament; should they have a role in areas of European action in which the European Parliament has no competence; should they focus on the division of competence between Union and Member States, for example through a preliminary checking of compliance with the principle of subsidiarity.

At the moment the national parliaments participate in the activities of the Union in three different ways:

- *In drafting and implementing Union law.* National parliaments participate in drafting Union legislation at two different levels: at the level of primary legislation (Treaties and other texts with the same status) and at the level of secondary legislation (unilateral acts of the institutions based on the Treaties).

The implementation of Community law is a matter for the Member States, which take all of the appropriate measures to ensure fulfilment of the obligations arising from the Treaties or resulting from actions taken by the institutions of the Community. To that end, the Member States comply with the rules resulting from their national law, in particular their constitutional law, in determining which bodies are competent and which national procedures are applicable. As a result, the national authorities competent to see to the implementation of Union law may vary from one Member State to another. In certain cases competence is shared between national parliaments and governments. In other, federal or regionalised Member States, the national constitution gives the federal or regional bodies law-making powers in certain respects.

- *Exercising political scrutiny of the positions adopted by their respective governments within the Council.*

Scrutiny procedures are a function of the constitutional organisation and practice in each individual Member State. It is therefore obvious that the effectiveness of the control depends on the parliamentary procedures in place in each Member State. In some Member States the national parliament gives negotiating directives to the government's representative who is to take part in the Council's proceedings (e.g. Denmark, the Netherlands for third pillar activities, Austria and Finland). In other cases, there are more or less effective systems providing for national parliaments to express their views on a legislative proposal, while leaving their respective

governments free to decide whether or not to take them into account (for example, Belgium, Spain, France, Luxembourg and the United Kingdom).

- *Cooperation with other parliaments in the EU.*
- *Cooperation between national parliaments and European Parliament.*  
Practices regarding cooperation between national parliaments and the European Parliament vary considerably. Members of the European Parliament generally do not take part in the work of national parliaments. There is, however, a trend towards the establishment of closer cooperation procedures: in two States (Belgium and Greece) there are joint committees composed of members of the national parliament and of the European Parliament, in which the latter have the same rights as the former. In other cases, members of the European Parliament may participate in European Affairs Committee meetings in their national parliaments and have the right to speak (Luxembourg, Germany, Spain, Italy, Netherlands, Austria). In some Member States, members of the EP may not participate in the proceedings of their national parliaments unless they have a dual mandate (Denmark, Ireland and United Kingdom). Finally, in three national parliaments no formal provisions are made for participation of members of the EP (Finland, Sweden and Portugal), although this does not prevent meetings, for example, between national and European parliamentarians. Conversely, national members of parliament participate on a relatively regular basis in European Parliament Committee meetings and have the right to speak, but not the right to vote in the Finnish, Netherlands and Swedish parliaments.
- *Multilateral cooperation.* In 1989 the Conference of EC Parliaments (COSAC) is established. On an invitation from the Parliament of the State holding the Presidency of the European Union, twice a year it brings together representatives (six per country) of the European Affairs Committees of the parliaments of the fifteen Member States, six representatives of the European Parliament and three observers from each of the candidate countries. Its role is in particular to improve the information given to the parliaments through the systematic exchange of the texts they adopt, the forwarding of any useful information on their activities and the development of mutual relations between them. As was mentioned above the Amsterdam Treaty acknowledged the role of COSAC. The Protocol annexed to that Treaty also stipulates that COSAC may examine "any legislative proposal or initiative... which might have a direct bearing on the rights and freedom of individuals"; that it may address to the European Parliament, the Council and the Commission any contribution it deems appropriate on the legislative activities of the Union, notably in relation to the principle of subsidiarity.

#### b) Proposals

After the beginning of the debate on the Future of the Union a number of proposals for the future roles of the national parliaments of the Member States and in particular for their greater involvement in the work of EU were made. Some of them do not require amendments of the Treaties but the fulfilment of others requires significant changes.

<sup>1</sup> Protocol on the Role of National Parliaments in the European Union, Treaty of Amsterdam, signed 2 October 1997.

<sup>2</sup> Declaration on the future of the Union, Treaty of Nice, signed on 26 February 2001.



### ● *Proposals without Amending the Treaties*

In general these proposals concern the issue of more effective political scrutiny by parliaments on their national governments. In certain cases national parliaments claim that they are unable to exercise effective political scrutiny on their own government in relation to the activities of the Union. Some attribute this to the fact that the Council meets behind closed doors and that there is not enough time to examine Union documents. However, the solution to this problem could lie, at least to some extent, with the States themselves, since the power to organise and implement parliamentary scrutiny of national government positions on the activities of the Union is a matter of exclusive Member State competence<sup>1</sup>. In this connection, the possibility has already been suggested that representatives from the national parliaments be included in Member State delegations when the Council acts in its legislative capacity<sup>2</sup>; use of COSAC proceedings for exchange of good practices; adoption by the Communities of framework acts, which would leave national legislators more room for manoeuvre when transposing them.

### ● *Treaty amendments providing for compulsory consultation of national parliaments*

It is proposed that these consultations be conducted on an individual basis, particularly in the following cases: adoption of supra-legislative acts; adoption of legislative acts under the present second and third pillars; monitoring of compliance with the principle of subsidiarity.

### ● *Proposals involving changes to the institutional architecture provided for in the Treaties*

The aim of some of the proposals is to directly involve national parliaments in the European decision-making process, either by setting up an autonomous body with its own powers or through the establishment of a new "chamber" where national parliament will be represented. The main ones are:

- *The adoption of a Convention model.* This proposal seeks to follow a different procedure for revising the Treaties and has been put forward following the success of the Convention, which drew up the Charter of Fundamental Rights. It would have the advantage of involving the national parliaments, the EP, the governments and the Commission in thorough discussions on amendments to the Treaties. The subsequent ratification of these amendments by national parliaments would thus be made easier.
- *The establishment of a congress.* This would be a Permanent Conference of Parliaments (European Parliament and national parliaments), which would meet at intervals in particular to check compliance with the subsidiarity principle, to review annually "the state of the Union", and to assess amendments to the Treaties.
- *Strengthening the role of COSAC.* As was mentioned above COSAC has no formal competence but can submit "contributions" to the European Union institutions. Questioning the effectiveness of its work (views adopted unanimously and not binding

on national parliaments), it is proposed that it should meet more often and be strengthened by a permanent secretariat so as better to ensure the continuity of its proceedings and establish regular contacts between representatives of the specialised national parliamentary committees and those of the EP. The so strengthened COSAC could also undertake political scrutiny (ex ante or ex post) of compliance with the subsidiarity principle regarding any legislative initiatives from the Commission.

- *Establishing an independent chamber.* The idea would be to propose a second assembly at European level in addition to the European Parliament as the new chamber would comprise of representatives of the national parliaments. According to some of the proposal it should not take part in the ordinary legislative procedure of the Community but could have competence for matters coming under the current second and third pillars<sup>1</sup> and in addition it would also have to conduct scrutiny ex ante on compliance with the principle of subsidiarity, by examining Commission legislative proposals to this effect. Some, also supporting this idea, consider that it could also take the form of a committee comprising of two or three members of each national parliament, which would give an opinion on the compliance with the principle of subsidiarity and on the Union's competence to act (ex ante scrutiny). These opinions would be given on request of a Member State or of the EU institutions or on the initiative of its chairman<sup>2</sup>. Some proposals also include ex post scrutiny.
- *The creation of a second chamber within the European Parliament.* According to other proposals the second chamber representing national parliaments should rather form part of the European Parliament<sup>3</sup> and the latter would thus become bicameral – with an upper chamber, composed of representatives of the national parliaments, and a lower chamber – the present EP. The representatives of the national parliaments, thus designated, would exercise a dual mandate, both national and European.

### c) *Positions*

According to **President of the European Convention, Valéry Giscard d'Estaing**, a "Congress of the peoples of Europe" in charge of several key tasks should be established. Its chief responsibilities would be: holding confirmation hearings for key EU posts and consultation on EU enlargement, deciding on greater powers for EU institutions; hearing annual reports by the presidents of the Council and the Commission.

According to **Danish, Swedish, Finnish and partly Austrian parliamentarians** the national parliaments should retain control over any delegation of national sovereignty, especially the principle of subsidiarity.

<sup>1</sup> European Parliament resolution of 7 February 2002 on relations between the European Parliament and the national parliaments in European integration process.

<sup>2</sup> M. Barner "L'Urgence européenne, Note personnelle de Michel Barner", 17 October 2001.

<sup>1</sup> This proposal has again been submitted to the Convention by the French Senate.

<sup>2</sup> Ingolf Pernice, *The role of National Parliaments in the European Union*, Walter Hallstein-Institut, July 2001.

<sup>3</sup> Proposal made by Mr Fischer, speech at the Berlin Humboldt University on 12 May 2000; speech by Mr Blair in Poland on 6 October 2000.

**Italian and Spanish parliamentarians** consider that the Conference of Community Affairs Committees (COSAC) mandate should be enhanced, it should meet more frequently, a permanent General Secretariat should be set up to it and it should be able to hold hearings of EU officials.

**Government representatives of France, Britain, Germany, Ireland and Poland** to the Convention consider that a new body formed of national parliament representatives or members appointed by the Council should monitor the principle of subsidiarity.

**The Danish Presidency of the Conference of Community and European Affairs Committees (COSAC)** presented a working document to be discussed at the next meeting of the Conference (October 2002), which rejects the proposals for the establishment of a second chamber of the European Parliament but recommends systematic integration of the EU policies in the work of national parliaments as its main proposals are:

- the role of the national parliaments in EU politics is to be enhanced;
- COSAC is to be reformed into a Forum of Parliaments, which will be tasked with enhancing the role of the national parliaments in EU politics, enhancing parliamentary co-operation between the national and European parliamentarians and ensuring contacts and co-operation with EU institutions.

**The Working Group on Subsidiarity** in its proposal adopted on 19 September 2002 supports the shift of the balance of the powers in the EU on the national parliaments (such a proposal would satisfy the United Kingdom, France and Spain, which insist on more powers for the national parliaments and governments at the account of the common EU bodies). It also suggests that the members of national parliaments be able to reject legislative acts proposed by the European Commission if they are convinced that the issues could be solved better at a national level. The Working Group also calls for the setting up an "early warning system" through which the national parliaments would secure that the Commission does not violate their mandate. It also proposed that the Commission send the proposed legislative acts to the national parliaments which are decide whether the issue should be solved at a European or at a national level and the Court of Justice to rule in case of disagreement. The other Convention Working Group dealing with the role of national parliaments has approved this plan.

#### d) Summary

There seems to be broad consensus around the closer involvement of national parliaments in the EU, with more information fed back and more involvement in the decision-making. It is generally accepted that the national parliament scrutiny of governments is very important. National involvement in amending Treaties, however, is a "two-way process", and it was necessary to look at the extent to which members of the European Parliament are involved in the legislative process of parliaments.

At the same time it is obvious that the members of the European Parliament would like to see a strong parliament. Due to this there are a number of ideas for applying co-decision procedure to the entire European legislation, adopted with qualified majority and giving the European Parliament wide budget powers.

The support for a second chamber composed of members of national parliaments is weak. There is, however, a strong desire of national parliaments, without being a formal part of the decision-making process, to have more information and to be consulted.

There are differing views on the subsidiarity issue and the role of MPs in the process. There were also reservations about the setting up of new bodies because they become ends in themselves, and it was critically important to engage citizens. If the European Parliament is not very popular, it was worth pointing out that neither national parliamentarians nor governments are popular either.

#### 4. Simplification of Treaties and European Constitution

##### a) General Remarks

Simplification of treaties is one of the key objectives of the Convention. A simplified constitutional treaty could help to render the EU more understandable for its citizens, and the responsibilities of those involved in the decision-making process would be more clearly established.

Currently the EU is governed by several treaties that have been revised during its 50-year history. The three original Treaties founding the European Communities were the Treaty establishing the European Community, the Treaty establishing the Atomic Energy Community and the Treaty establishing the European Coal and Steel Community. They were followed by the Single Act, the Treaty on European Union (Treaty of Maastricht), the Treaty of Amsterdam and the Treaty of Nice, which has not yet entered into force.

In addition, the Treaty of Maastricht created a new entity, the European Union, with a three-pillar structure: "first pillar" or so-called Community pillar (corresponding to the three Community Treaties), "second pillar" – the Common Foreign and Security Policy (CFSP) pillar and the "third pillar" – Justice and home affairs (JHA).

The Treaty of Amsterdam transferred to the Community pillar part of the activities covered by the third pillar, which is now limited to judicial and police cooperation in criminal matters. The main characteristics of the second and third pillars are decision-making procedures and instruments of action, which are more intergovernmental in nature than the Community method.

Other EU primary legislation comprises:

- Accession Treaties;
- Acts or Decisions (for example, Decisions related to the location of the seats of institutions or other bodies, or the Act concerning the election of representatives of the European Parliament by direct universal suffrage);
- around 40 Protocols having the value of Treaties;
- many Joint or unilateral Declarations accompanying each Treaty.

A first step towards the simplification of the Treaty texts was taken by the Treaty of Amsterdam<sup>1</sup>. The simplification essentially consisted of the deletion of obsolete or lapsed provisions of the three Community Treaties and of their Annexes and Protocols<sup>2</sup>. Notwithstanding certain wording changes, the entire operation was conducted on the basis of established law, i.e. without changing the legal content of the Treaties and without affecting the Community

<sup>1</sup> Second part of the Treaty of Amsterdam (Articles 6 to 11).

<sup>2</sup> In most cases, these are related to provisions expiring at the end of a transition period or other time limits, or provisions overtaken by events.

*acquis*<sup>1</sup>. In total, the Treaty on European Community alone was relieved of around fifty Articles and around ten Protocols and Annexes, while a further fifty-odd were partially deleted or reworked. In addition to that the Treaty on European Union, of which Titles V and VI were substantially reworked, was also renumbered.

Although the simplification in the Treaty of Amsterdam made the Treaties more readable and more accessible to practitioners and citizens, it seems generally accepted to advance further along this path. In addition, several members of the Convention have already expressed their wish to simplify the language of the Treaties; moreover, the quality of the drafting of a good number of the provisions could be improved, particularly in the case of overlong provisions with a large number of cross-references. However, the issue is a sensitive one, in that the Treaty texts are often the result of difficult political compromises, which are sometimes reached only at the cost of a certain degree of ambiguity.

The Convention faces also the issue for codification of the Treaties since they have never been replaced by a new document incorporating the original content of and the successive amendments to the Treaties, this repealing the previous texts. However, such a process of codification, even if limited to reflecting the existing legal situation, is significant in that it would require the consolidated Treaties to be submitted for fresh ratification by the Member States and recent Intergovernmental conferences showed that this issues is politically very sensitive.

Another source of complexity of the primary law is the large number of founding Treaties regarding the Communities and the European Union. Aside from the codification of the original Treaties taken individually, the simplification of the Treaties could cover another process involving the merging of the Treaties in a new single document without modifying their substance. There have been several attempts at such an exercise in the past and the Secretariat has proposed two alternatives: one concerning the Treaty on European Union and the three Community Treaties, and the other limited to the Treaty on European Union and the Treaty on European Communities.

However, the Laeken Declaration raises the question – in the context of a broader “reorganisation” of the Treaties – of “*making a distinction between a basic treaty and the other treaty provisions*” and making “*amendment and ratification procedures*” correspond to this distinction. Initial discussions in the Convention have shown that the Convention’s end product could involve the drafting of a new “basic” treaty or a “constitutional” treaty, or indeed a constitution.

#### b) Proposals

The Secretariat of European Convention presented a discussion paper, which proposes a draft Treaty consisting of 11 chapters: Creation of Legal Personality of the Union; Objectives and Main Principles of the Union (with possible integration of the Charter of Fundamental Rights); Division of Competence between Member States and the Union; Citizenship of the Union; Institutional framework of the Union; Decision-making Procedures and Legal Instruments; Court of Justice Judicial Control; Financial and Budgetary Matters, including in the area of home and justice affairs and common foreign policy and security; Conclusion of Agreements between the Union and Third Countries or International Organisations; Enhanced Cooperation; General and

Final Provisions (accession of new Members, amendments or revisions of the Treaties, seats in the institutions, etc.).

The Group of the Party of European Socialist supports the simplification and reorganisation of the Treaties as it considers that two texts are necessary. First one to set out the basic principles of the Union and its Constitution and second one to set out the policy details. The Constitution must incorporate the Charter of Fundamental Rights, which will give the people a firm guarantee of the Union’s respect for their rights at EU level as the EU must accede to the European Convention on Human Rights. The new Constitution should therefore say clearly what the Union’s exclusive responsibilities are – and it should spell out those areas in which the Union shares responsibility with Member States. The PES considers that Europe must change the way in which it passes laws – and as a beginning it should use the words “laws” and “framework laws” instead of confusing jargon such as “regulations” and “directives”. The European Commission must continue to have the sole right to propose new laws and the European Parliament must have a full say in legislation through a single, clear, legislative procedure. The EU must create a single new Council for Legislative Affairs, which should legislate with open doors.

According to the Group of the European People’s Party and European Democrats (EPP-ED) in the European Parliament it should have a European constitution to build on the existing Treaties and to create a community sharing a common legal system. It should bring together in one document the current EU law and divide into five parts: the Charter of Fundamental Rights, the Principles of the Union, Organisation of the Union, Reinforced Cooperation and General and Final regulations. According to the proposal of this Group the details of how individual EU policies are to be applied should be set out in five constitutional protocols: Single Market, Economic and Monetary Union, Common Foreign and Security Policy, police and judicial cooperation in criminal matters, EURATOM. It is also proposed that actions by the Union be permissible only if action at national level is not adequate and it could be demonstrated that such action would be more effectively taken by the Union; the Parliament (as a ‘lower house’) and the Council (as an ‘upper house’) together should form the Union’s legislature, responsible for enacting EU laws and framework regulations in a single legislative procedure; the Commission’s executive functions should be strengthened, and the Commission should continue to play the role of the Union’s external representative; a Commissioner for External Relations would replace the Council’s High Representative; the Commission President should be elected by the European Parliament, a vote which the Council would confirm.

According to the British Government the EU should have a written constitution. The constitution should clarify the division of powers between the EU and national governments. It would make the Union more accountable and would bring European citizens closer to the EU. The Constitution should enshrine a simple set of principles, setting out in plain language what the EU is for. In addition the British Government proposes the establishment of a new EU body, “a subsidiarity watchdog”, comprised of members of national parliaments to check that the EU is not taking power from national and regional governments.

#### c) Summary

The Convention President, Valéry Giscard d’Estaing, pledged to table the draft proposal for a future EU Constitutional Treaty by November 2002 and the final proposal in mid-2003.

It now seems very likely that there will be a “constitution”. This is likely to be a constitutional treaty rather than a short, US-style constitution. The recommendations of the Convention will

<sup>1</sup> See Article 10 of the Treaty of Amsterdam.

be taken into account by the EU Head of States and Governments when the Inter-Governmental Conference in 2004 will be held. It will be expected to draft a new Constitutional Treaty of the Union or European Constitution.

It now seems very likely that there will be a "constitution". This is likely to be a constitutional treaty rather than a short, US-style constitution. Regarding the need for simplification of the Treaties it also seems that there is broad consensus but the tools and procedures it would be achieved through are not clear yet.

The issue on the Charter of Fundamental Rights as one of the main tasks of the Convention will be discussed below.

### III. CONCLUSION

The Convention on the Future of the EU has now finished its first half-year of work. The success of the Convention will be measured basically by two criteria. First of all, it will have to come up with innovative proposals that overcome the current deadlock on the EU reform and secondly, the Convention has to harness broad social support for the project, endowing its work with such political legitimacy, i.e. the future Intergovernmental Conference will not be able to circumvent its conclusions.

Since this period was designated as 'a listening period', one should be cautious about issuing any statements about the Convention's prospects for success. Very characteristic for the first half-year of the Convention has been the absence of fundamental confrontation. Its meetings took off with some general debates on missions, purpose and conditions of EU action. After that, the Convention examined the two policy fields on which there is wide agreement that the Union's capacities need to be improved: the area of freedom, security and justice and external action and defence.

The Convention's work programme involves three phases reflecting the chairmanship's statement that 'tasks should define the institutions and not vice versa'. First, the Convention is to concentrate on the Union's missions where an important place will take the issues of subsidiarity, legal personality and the status of the Charter of Fundamental Rights. The second phase is the filling in of this general framework by drawing on analyses of the various policy fields: economic policies, internal security and justice, external affairs and defence and security policy. The third phase is the discussion on the institutional reform.

Until the European Council in Seville, governments of the larger Member States have launched ambitious reforms of the organisation of the Council of Ministers and the European Council. These reforms aim at preserving the primacy of intergovernmental decision-making within the Union. On the other end of the spectrum stands "the communitarian" perspective, most consistently represented by the European Commission but also widely supported among the Members of the European Parliament and the smaller Member States. This perspective basically argues that both efficacy and democratic legitimacy require that all EU affairs should ultimately be subject to the 'community method', i.e. delegating the right of initiative to the Commission, adopting qualified majority voting in the Council and fully involving the European Parliament through the co-decision method.

The Convention's Chairman Valéry Giscard d'Estaing has repeatedly warned that the Convention should not get bogged down in political confrontation between these two grand designs. The observers, however, rightly wonder whether the constitutional framework that the Convention now aims to lay out by early November will be solid enough to accommodate the institutional questions that are deliberately scheduled at a later stage.

It is obvious that the Convention still has a long way to go on both its success criteria: innovativeness and support. For the time being, primacy has been given to the internal debate but the forthcoming calendar of its work promises a fruitful exchange of views. However, a simple pursuit of the calendar will not do. The Convention will be successful only if it draws up an attractive new house for enlarged Europe.

## THE EUROPEAN UNION AND HUMAN RIGHTS

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One of the central issues in the ongoing debate on the Future of Europe is for the role of human rights in the European integration process. Its concrete expression – the future constitutional status of the EU Charter on Fundamental Rights – is only the tip of an iceberg of questions and ideas, formatted in the course of nearly half a century. Here it is not possible to trace back all of the details of how the idea has emerged at all in the integration context. Even less – how it has influenced the nature of integration itself and even changed the objectives and essence of the “formation” as it has added dimensions different from the pure economic. As far as of undoubted interest is above all the current stage of the process of “drafting of the EU Constitution” in view of the work of the European Convention, it is important to outline the stages of the Union’s constitutionalisation through the problem of human rights.

### 1. Origin, Development and Current State of Play

It is generally accepted that none of three basic Treaties<sup>1</sup> contains provisions for protection of human rights because it has been considered that the economic integration process launched by these Treaties may not lead to violation of these rights. For a treaty mainly with economic aspirations aimed at the creation of a common market the subject “human” rights seems to be considered as irrelevant. It seems also that the already existing European Convention on Protection of Human Rights and Fundamental Freedoms (the “Convention”) has been expected to serve and to act as a “Bill of Rights” for Europe similarly to the catalogue, which each modern constitution contains.

At present the EU law<sup>2</sup> covers a number of areas, which also have an aspect related to human rights. The Court of Justice (CJ) has examined cases referring to the freedom of expression, right of property, right of equal treatment, etc. Permanently expanding competencies of the EU to areas, which traditionally belong to the sovereignty of the states indicates that the issue of violation of fundamental rights by the Union is not only theoretical and even less an end in itself. (It particularly concerns “the third pillar” – Chapter VI of TEU: Cooperation in the area of justice and internal affairs. Also if we consider the trend that the so called “pillar structure” will be abolished and the jurisdiction of Court of Justice expanded, it is obvious that guarantees for protection of human rights will be spoken of more and more often.) Nevertheless, the EU proclaimed its Charter on Fundamental Rights, which is not legally binding yet and the references in the Treaties to human rights remain relatively insignificant.

The most important references are contained in Article 6 of the Treaty on European Union as in Article 6(2) it is pointed out that the “Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms ... and as they result from the constitutional traditions common to the Member States, as general principles of Community law”. Article 6(1) added by Treaty of Amsterdam (signed on 1 October 1997, entered into force on 1 May 1999) states that “the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States”. In addition to that Article 7 of the Treaty on European Union provides that “the Council ... may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council”. Certainly, it is reasonable to consider that the Treaty of Amsterdam marked an important step forward in the context of a process launched with the Treaty of Maastricht (1992). Until Maastricht the idea for fundamental rights (as well as the concept for European citizenship) had not been “recognised” by the Treaties.

However, the idea for the protection of human rights in and through the mechanisms of the Community law has been borne and developed throughout several decades of European integration through the Court of Justice jurisprudence. This must be underlined because this is the court which through its case law constitutionalised the basic Treaties themselves and further develops the doctrines of the direct effect and of the rule of Community law neither of which has a legal basis in the Treaties. If both before Nice and Laeken (also before the current Convention) an “unwritten” Constitution of Europe could have been spoken of, its existence is due to this Court.

It also develops a complex doctrine on the protection of human rights. Originally the Court refuses to rule on such matters understanding its function restrictively: to interpret the Treaties and to assess the validity of Community instruments in relation to the Treaties but not in view of human rights, because they (the Treaties) do not contain provisions related to the fundamental human rights. Something more: the Court even emphasized in one of its rulings that the Community law does not contain any general principles expressed explicitly or which otherwise guarantee unconditional rights.

In the background of these as some commentators call them “errors of youth” gradually the following issue has been outlined: after the Community law has primacy over the national law but does not protect the human rights, who will protect these rights explicitly proclaimed by the Constitutions of the Member States? After the national courts may not repeal or overcome the Community law and the Court of Justice may not apply a national law to whom may the individuals refer if upon the enforcement of the Community law their constitutionally guaranteed (i.e. by their national Constitutions) rights are violated? Until this moment the answer is to nobody until the Court does not change its course, which it did in the end of 60s – first with its decision on the case *Stauder v City of Ulm*

In this and in a number of subsequent decisions (in particular *Internationale Handelsgesellschaft*), the Court of Justice became aware that it will be pernicious for the Community legal system if the national courts begin to declare invalid provisions of the Community law due to their in compliance with the constitutional law. Such a development would have an unfavourable

<sup>1</sup> For the establishment of the European Coal and Steel Community (1951), of the European Economic Community and of European Atomic Energy Commission (the latter two of 1957).

<sup>2</sup> By practical considerations the terms European Union and European Community here are used as interchangeable unless in the cases when the distinction is necessary.

<sup>3</sup> Case 11/70 [1970] ECR 1125.

effect on the uniformity and effectiveness of the Community law. Thus it reached to the inventive formula in accordance to which for the protection of the fundamental rights it must be looked in the Community law itself:

"...Indeed, the protection of the human rights is an integral part of the general principles of the Community law guarded by the Court. The protection of such rights although inspired by the constitutional traditions common for the Member States has to be in the framework of the structure and objectives of the Community."

Although forced to use this formula of the "general principles" – i.e. in order to find a way to recognize the existence of fundamental rights in written Community law – the Court may not forever abandon rhetoric on human rights. Gradually to the references to the common constitutional traditions are also added the international treaties on the area of human rights to which the Member States are party in order to reach references to specific provisions of the European Convention on Human Rights. Thus gradually a formula was shaped, which we find after 1992 in the Treaty of EU.

Meanwhile, in the context of some political developments, which are out of the topic here, the need for written catalogue of the fundamental rights started to be realised and recognised. Without assessing it as unsatisfactory, it was realised that the protection of human rights provided by the Court of Justice suffers from a lack of security because the individuals are not able to know in advance which rights would be recognised by the Court and which not. Thus emerged the idea for joining the European Convention on Human Rights as a quicker and easier solution instead of developing an own catalogue<sup>1</sup>. In 1994 the Court was asked on the basis of Article 300, subparagraph 6 (ex art. 228(6)) of TEU, to give an opinion on the following question: "Would the accession of the Community to the European Convention on Human Rights and Fundamental Freedoms be in compliance with the Treaty on the European Community?" The Court answered the question negatively with an opinion on March 28, 1996<sup>2</sup> building its opinion on the lack of competency of the EC to assess the Convention and denying the possibility of using the provision of Article 308 as a legal basis (ex art 235) of TEU.

Thus, the question about the accession did not receive permission and the necessary catalogue continues to be absent.

## 2. EU Charter on Fundamental Rights

The European Council in Cologne (3-4 June) underlines in its conclusions<sup>3</sup> the need for the creation of a Charter: "at the present stage of development of the European Union, the fundamental rights applicable at Union level should be consolidated in a Charter and thereby made more evident."

The Charter is solemnly proclaimed by the European Parliament, the Council and the Commission on December 7, 2000 in Nice. It is provided for in the Presidency Conclusions of Cologne European Council but it is also mentioned there that after that it should be discussed how the Charter could be "integrated" into the Treaties<sup>4</sup>.

In Declaration No 23 to the Nice Treaty it is declared that the debate on the future of the Union and the new IGC, which is to be convened in 2004 will discuss *inter alia* "the status of the EU Charter on European Union..."

In the Laeken Declaration on the future of the European Union in which the issue of the fundamental rights and obligations of its citizens is indicated as a possible subject of the future constitutional text of the Union it is underlined that "thought would also have to be given to whether the Charter of Fundamental Rights should be included in the basic treaty".

The evaluation of the current status of the Charter must include and to keep in mind that after the Declaration of Nice a number of General Attorneys in the Court of Justice have referred to the Charter and use it – although as they mention it is not a legally binding document – as a source for identifying fundamental rights in the Community law<sup>5</sup>. Moreover, recently in two cases the Court of First Instance refers to Charter's provisions as "affirmation" ("in addition") of the common constitutional traditions of the Member States<sup>6</sup>.

In addition in March 2001 the Commission decided that each legislative proposal and each piece of legislation, which will be adopted should be – still in the stage of drafting – subject to a check (control) for compatibility with the Charter.

## 3. Future of the Charter

The working group on the future status of the Charter (Working Group II) established by the Convention has a few available legal and technical methods (techniques) for Charter incorporation in the Treaties (or a combination of them)<sup>7</sup>: a) "attaching" the Charter to the Treaties in the form of "Solemn Declaration"; b) *indirect* reference to the Charter in the Treaty on the European Union or in a new basic Treaty following the model of Article 6(2) of the current TEU, which will give to it a meaning of inspiration upon the defining the fundamental rights in the

<sup>1</sup> It is important to mention that the precedent created by Cologne European Council, followed by the EC in Tampere (15-16 October 1999), assigning the elaboration of the Charter's draft to a "body" which later called itself "Convention". Based on this although limited experience it seems that it has become accepted to compare the use of the Convention with the Intergovernmental Conferences (IGC), i.e. with the traditional method for the amendments of the Treaty.

<sup>2</sup> In this regard should be mentioned the statement of General Attorney Legere concerning case C-353/99 P, Council vs Hautala and others: "As the solemnity of its form and the procedure which led to its adoption would give one to assume, the Charter was intended to constitute a privileged instrument for identifying fundamental rights. It is a source of guidance as to the true nature of the Community rules of positive law".

<sup>3</sup> Decisions on case T- 54/99 of January 30, 2002 and on case T — 177/01. It also should be mentioned that until then the Court has not referred to the Charter.

<sup>4</sup> The following is based to a large extent on papers of the Convention Working Group II ("Charter"). As far as until now the "decisions" of the Convention and its working groups are of a preliminary nature the objective is to outline the trends of the discussion rather than to forecast the final decisions.

<sup>1</sup> Suggested for the first time by the Commission in 1979.

<sup>2</sup> Opinion 2/94 Accession by the Community to the Convention for the Protection of Human Rights and Fundamental Freedoms [1996] ECR I -1759.

<sup>3</sup> Annex IX.

jurisprudence of the Court; c) *direct* reference to the Charter in the TEU or in a new basic Treaty; d) *annexing* the Charter to the Treaties or to a new basic Treaty through a new separate Protocol and e) *inclusion* of the full text of the Charter with its 54 articles in a separate part or chapter of the TEU or in a new basic Treaty where it will be for example the first part or chapter.

It seems that the discussion reduces the possible option to three: a) direct incorporation of the Charter in the beginning of the Constitutional Treaty (as a part or as a chapter of this treaty); b) incorporation of an appropriate reference to the Charter in a Constitutional Treaty provision as this reference might be combined with annexing or "attaching" the Charter to the Constitutional Treaty – as a separate part containing the Charter itself or in a separate legal text (for example as a Protocol); c) "indirect reference", which can be used as a way for giving the Charter legal binding status but not constitutional<sup>1</sup>.

Discussion – within the Convention and out of it – outlines the trends leading to possible final solutions. It can be said that the preferences to the first two options predominate, i.e. direct reproduction of the Charter or direct reference, combined with its annexation in a separate protocol. In the initial Constitutional Treaty draft submitted by the Chairman on October 28 2002 three alternative solutions are proposed: reference to the Charter; proclamation of the Charter as an integral part of the Constitution as its provisions will be laid out in another part of the Treaty or annexed in a Protocol; incorporation of all the provisions, i.e. to the whole Charter<sup>2</sup>.

Each of the solutions has its grounds. Different opinions are formed on the basis of the different approach to the contents, scope and effect of the Charter. It comes from different views and evaluations about the nature of the Charter during its drafting – a political document inappropriate to serve as a source of positive law or as many observers (or most of them) mention – a text, drawn up with the conscious and intention as if it is meant to be legally binding.

In a resolution<sup>3</sup> concerning the Charter and its future status the European Parliament "Finds it unthinkable to have a modern constitution of the European Union without a binding Bill of Rights, and takes the view that if the Convention drafts a new treaty without the Charter it will

fall short of having the constitutional effect which is both necessary and desirable" (item 7 of the Resolution)<sup>4</sup>.

It is difficult to say something in a more clear and categorical way. At the same time the concerns that motivate the opinions for the weaker link between the text of the Charter and the basic "body" of the future constitutional treaty must be taken into account – including in the name of the necessary consensus. (It is obvious that in such a way, however conditional, an underestimation of the constitutional status of the document is aimed.) The problems are related to the contents of the Charter and its impact on the division of competencies between the EU and the Member States.

Regarding the contents dominates the understanding that the Charter is a result of consensus reached in the previous Convention and that the current (Convention) has no mandate to rewrite it. In relation to its content however it should be mentioned that it includes three groups of rights and freedoms: a) classic rights in accordance with the ECHR as they are developed by the Court jurisprudence; b) rights emerging from the current content of the Treaties and c) rights based on modern science and technological developments. In addition the Charter reaffirms the rights and principles originating from the common constitutional traditions and reflects and respects the European social model. However, it seems that the presence of social and economic rights and the mentioning of "rights" and "principles" (in the Preamble and in Article 51(1)) create in fact part of the problem<sup>5</sup>.

The solution to these problems is sought through enhancement of some of the general ("horizontal") provisions. The most important among them is Article 51, para. 1, which provides that the Charter's provisions are related to the institutions of the Union as it takes account of subsidiarity principle and the Member States *only* when EU legislations is applied so that both will be in force regarding the rights in accordance with the respective powers. In spite of this clear formulation there is a suggestion for adding that the limits of the powers of the Union as they are granted in other parts of the constitutional treaty will be respected. The same will be applied also to paragraph 2, the original edition of which provides that the Charter does not set new powers of the Union and does not change powers or tasks set by the treaties. Instead an alternative is proposed, which includes a phrase according to which the Charter will not expand the power of the EU law beyond the Union powers.

These possible *editorial adjustments*<sup>6</sup> (to which can be added the proposal for inclusion of additional general provisions interpreting the rights originating from the common institutional traditions and the provisions of the Charter containing principles) reflect the sensitivity of certain

<sup>1</sup> In the preliminary position of the Bulgarian government, adopted with Decision of the Council of Ministers on 11 February 2002, it is mentioned that "the Charter of Fundamental Rights should be integrated in the constitutional treaty". During the debate on this issue held at the Convention meeting on 29 October 2002, the substituting representative of the Bulgarian government Mrs. Nely Kutzkova spoke in favour of the second option, i.e. "b". The Parliament on its side as "supporting the key elements of the preliminary position" supports an "additional discussion on the issue of Charter of Fundamental Rights incorporation" (Decision of 27 February 2002 concerning the preliminary position of Republic of Bulgaria on the debate on the Future of European Union, State Gazette No. 24 of 5 March 2002).

<sup>2</sup> Article 6 of the initial draft. It should be mentioned that among the contributions of members of the Convention regarding the comprehensive drafts for a Constitution (Constitutional Treaty) Elmar Broke, member of the EP, proposes a literal reproduction of the full text of the Charter in the first part of the EU Constitution; in the draft of R. Badenter is envisaged the formula that "the Union considers the Charter of Fundamental Rights as a constituent part of the Constitution" (Article 3); in a draft proposed by the representative of the British government Peter Hane, the Charter is mentioned – along with the ECHR and the common constitutional traditions of the Member States – in a provision, which to a large extent reproduces Article 6(1) and (2) of the TEU (Article 2 of the draft).

<sup>3</sup> U5 TA-PROV(2002)0508 (2002/2139(INI), submitted as a contribution to the Convention by four members of the European Parliament – CONV 368/02 (CONTRIB 128).

<sup>4</sup> In the same spirit the member of European Parliament Elena Pacciotti mentions in a Convention working document that "it is difficult to imagine European "Constitution" without the Charter of Fundamental Rights to be its first part". As Pacciotti underlines every modern Constitution includes a catalogue of the fundamental rights and principles; the EU has such a catalogue and the historical precedent to which she refers is the Constitution of France of 1791 that incorporates the Declaration of Human Rights of 1789.

<sup>5</sup> In this regard it is appropriate to mention the integrity principle or according to the said resolution of the EP: "Freedom, equality and solidarity in Europe go together".

<sup>6</sup> Out of which remain a number of other purely technical and very necessary corrections. However, the issue on the future of the Preamble of the Charter is not technical and the idea that it to become Preamble to the future constitutional treaty is quite successful.

Member States to the possible effect of the Charter's incorporation on the division of the competences between the Union and the Member States.<sup>1</sup>

On the other hand, it is important to mention that whilst until the creation and proclamation of the Charter according to the *European Convention for the Protection of Human Rights and Fundamental Freedoms* was viewed as a tool replacing the fundamental rights catalogue missing until then at present the possible acceding is understood as a complementary incorporation of the Charter but not as its alternative. In the Laeken Declaration itself the issue "whether the European Union should accede the European Convention of Human Rights" is put at equal footing with the issue concerning the incorporation of the Charter in the basic treaty. As the European Parliament states in its resolution mentioned above the existence of the Charter does not make the EU acceding to the Convention unnecessary or irrelevant: it is desirable taken alone in spite of the status of the Charter. And on the other hand, the best way to ensure coordination between ECHR and the EU legislation in the area of human rights would be the acceding of the Union to the Convention. It is considered as an important to abolish the currently existing anomaly – the EU exercising the competences granted to it by the Member States is not party to the ECHR along with these states. Its acceding to the Convention would subordinate the EU to the same external control regarding the human rights as the Member States. Besides, the ideas suggested at the plenary session of the Convention bears this spirit and sense. Among the variety of arguments of political and legal nature in favour of the acceding should also be added the strong political signal which the EU would give for coordination and consistency between it and "wider" Europe, the voice of which is the Council of Europe with its Pan-European system for protection of human rights.

Out of the scope of this paper are the variety of "technical" issues concerning the modalities, complications from a contractual point of view and the consequences of possible acceding. It is generally accepted that the Convention should express its opinion only on the introduction of *constitutional empowerment* giving the EU the right to join ECHR as the acceding alone will be decided on at a later stage by the Union's institutions entitled to take such a decision.

It is necessary however to pay attention to some specific issues linked to the possible joining.

They emerge from the possible reflection of the acceding on the division of competencies between the Union and the Member States. In this issue, as in the issue concerning the incorporation of the Charter, an important role plays the fact that the acceding to the Convention will not affect the division of competencies between the Union on one hand and the Member States, on the other.

At this point appears the issue of the "scope" of acceding. Having in mind that the EU does not have general competence in the area of human rights and the fact that it does not constitute "state-like" entity (i.e. politically organised similar to a state system) in relation to it ECHR cannot operate and to be applied as it is to the states. On the one hand, the "scope" of acceding should be limited to the range of issues on which EU has competence. On the other hand, the application of the Convention should be adjusted – in particular the part admitting restrictions of rights and freedoms – to the specific nature of the EU.

At the same time, in view of the rich experience in ECHR application, without this being a retreat from the supported solution (i.e. acceding of the EU as "High Contracting Party" to the Convention), it may be pointed out and it should be taken into consideration that despite of the "narrowness" of the acceding it will not be so non-problematic as it is expected unless the Court in Strasbourg develops a specific approach, respectively jurisprudence, which would be special for the EU. Article 1 of ECHR for example requires the contracting parties "to ensure" rights and freedoms included in the Convention<sup>1</sup>. Along with the text of the following articles this provision is interpreted as imposing both negative and positive obligations. In accordance with the negative obligation the state is required to refrain from intervention (i.e. of action) thus respecting the right. In accordance with the positive obligation the state should undertake actions in order to ensure the respective right. A number of positive obligations are explicitly mentioned or by necessity originate from the Convention text. Others are read ("solved") in the text by the European Court on Human Rights. Whether the terms of the "narrowed" acceding will be sufficient to protect the EU from obligations to which it is not entitled by the Treaty – due to the complete lack of general competence in the area of human rights or due to the set division of competences between the Union on one hand and its Member States on the other. It also is not sure whether the autonomy principle of the EU law will remain non-violated in all cases and that hypothesis where the Court in Strasbourg should rule namely on the issue on division of competencies and should determine the responsible for a specific violation – institution of the Union or Member State – are excluded.

In any case admittance of two individual independent (and even competing controversial to each other) systems for protection of human rights should not be allowed and the proposed acceding is the better solution. In cannot be expected that all questions arising by the incorporation of the Charter and the acceding to the ECHR may find their answer now. Obviously, there will be new developments in the case law of the Court of Justice (in relation to the Charter in its capacity as part of the Union positive law) and the Court of Human Rights (in relation to a completely new in its nature "side" of the Convention) as well as the establishment of interrelations between them.

It is important to once again underline that the possibilities of the "praetorian" protection of human rights in the EU have been exhausted long ago. As the Court of Justice signals alone in relation to the important issue of access to justice as a tool for protection of the fundamental rights, the current model has reached its borders. However it could be possible to develop a system for reformation of the existing one.

We are at the threshold of such a reform in the area of the system for protection of human rights in the EU.

<sup>1</sup> Article 1 states: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention."

<sup>1</sup> And the division between the "rights" and "principles" is deepening mainly because of the social and economic rights considered mostly "aspirations" rather than actual rights.