

BULGARIA'S EU ACCESSION NEGOTIATIONS: ACHIEVEMENTS AND CHALLENGES

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ABSTRACT

As elsewhere in Central and Eastern Europe, in Bulgaria, membership in the European Union tops the political agenda. Ever since their inception, the EU accession negotiations acquired central place in the internal discourse on Bulgaria's transition. For all practical purposes they became the concise and comprehensive equivalent of the progress in economic and administrative reforms.

In taking stock of the state of affairs in Bulgaria's negotiations with the EU as of the year 2003, the author attempts to provide the interested public with a factual background in terms of harmonization, institutional capacity building and implementation policies. Not surprisingly the text indicates that in certain areas the negotiations triggered the reform effort itself and defined its timetable.

The kaleidoscopic overview leads to reasonably optimistic forecasts about the chances of Bulgaria to accede to the European Union in the not so distant future.

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LAS NEGOCIACIONES DE ADHESIÓN DE BULGARIA A LA UE: LOGROS Y RETOS

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RESUMEN

Como en otros lugares de Europa Central y Oriental, en Bulgaria, la entrada en la Unión Europea ocupa los primeros puestos de la agenda política. Incluso desde el principio, las negociaciones de adhesión ocuparon un lugar central en el discurso interno de la transición búlgara. Para cuestiones prácticas se convirtieron en el equivalente conciso y comprensivo del progreso en las reformas económicas y administrativas.

Haciendo recuento del estado de la cuestión en las negociaciones de adhesión a la UE de Bulgaria en el año 2003, el autor intenta proveer al público interesado con unos antecedentes fácticos en términos de armonización, capacidad de construcción institucional y políticas de implementación. No sorprende que el texto indique que en algunas áreas las negociaciones marcaron el esfuerzo reformista y definió sus tiempos.

Esta visión caleidoscópica lleva a unas previsiones optimistas sobre las opciones de adhesión de Bulgaria a la UE en un futuro próximo.

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As elsewhere in Central and Eastern Europe, in Bulgaria, membership in the European Union topped the political agenda. Ever since the Bulgarian transition to market economy and democratic governance began, fourteen years ago, joining Europe emerged as the single most attractive foreign policy goal both for the political elite and for the public at large. In December 1995, on the fringes of the Madrid European Council, Bulgaria deposited its application for membership, embarking on the road towards negotiations with the European Union. The actual negotiation process started much later, in February 2000, since the screening the EU employed to assess the candidate states ranked Bulgaria in what used to be at the time *'the Helsinki group'* of countries admitted to begin negotiations for membership.

Ever since their inception, the negotiations acquired central place in the internal discourse on Bulgaria's transition. Each and every major political party devoted the bulk of its program to the EU integration matters. Alternating governments pledged allegiance to the negotiation requirements and vowed intentions to accelerate and speed up the process of coming to terms with the European partners.

The EU-negotiations acquired importance that could hardly be equaled by any other issue on the nation's agenda. They proved to be a never failing *tool for consensus building* and public support mobilization. Thus the negotiation process left the limited purposes it was meant to serve. It became the concise and comprehensive expression of the economic and administrative reforms. In other words, the state of the negotiations with the European Union did not only indicate the achieved progress in various reform areas – it also *triggered the reform effort itself and defined its timetable*. What remained somewhat astride the public attention was the very nature of the EU enlargement negotiations. As opposed to any other type of diplomatic search for compromise, the format and the set of rules of these negotiations actually left little room for maneuvering of the candidate country. Its delegation could bargain mainly over various transition periods with regards to the implementation of *the acquis communautaire* in specific areas.

Hence the usefulness of *taking stock of the state of Bulgaria's negotiations* as they stood by the end of the year 2003. The review of the situations within various chapters of the negotiations offers the best systematic way to summarize Bulgaria's achievements in terms of legislative harmonization, institutional capacity building and implementation policies.

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Negotiations over the *free movement of goods* progressed speedily as the bulk of the subject matters covered huge in volume, but mainly technical, legislation. A number of risk groups of goods were dealt with, including foodstuffs, pharmaceuticals, cosmetics, chemicals, motor vehicles, construction materials, machinery, toys, textile products, footwear, etc. Notably Bulgaria did not ask for

any particular transition periods. Additionally, the Bulgarian authorities undertook to introduce for the non-harmonized sectors measures based on the principle of mutual recognition.

The harmonization of the relevant pieces of legislation went smoothly and expeditiously through the adoption of laws, such as: the Foodstuffs Act; the Act on Humanitarian Medicine Pharmaceuticals and Pharmacies; the Act on the Technical requirements to Goods; the Weights and Measurements Act and the National Standardization Act. Furthermore, a number of amendments and supplements to the Public Procurement Act, including the set up of a Public Procurement Register, complemented the legal framework to ensure greater transparency.

On the level of secondary legislation both the New Approach directives and the traditional Old Approach ones had been adopted. By the end of 2003 twelve directives had been transposed in areas covered by the New Approach: gas appliances, construction products, machinery, recreational craft, toys, lifts, electromagnetic compatibility, simple pressure vessels, explosives for civil use, low-voltage equipment, equipment and protection systems, used in potentially explosive environment, personal protection devices. Meanwhile further progress had been made in relation to the traditional areas, such as: motor vehicles, footwear, chemicals, pharmaceuticals and cosmetics, glass, textile goods and foodstuffs. The latter proved to be particularly complicated in view of the recent EU food safety requirements, pertaining to labels, additions, packing materials, hygiene, radiation and contamination. While abolition of foodstuffs approval - before launching on the market - remained pending, it had long ago been eliminated for the industrial goods on the basis of a voluntary standardization regime.

Negotiations over the *free movement of people* were provisionally closed in July 2002. Bulgaria did not requested any transition period in this area, while accepting the EU limitations with regard to possible movement of workers from Bulgaria to other member states for a period of minimum two and maximum seven years as from the date of accession. Bulgaria had already partially brought its relevant legislation in line with the EU requirements, but some additional measures laid ahead for the country to achieve full consistency and to improve its administrative capacity to regulate the out-going labor force.

In the related field of mutual recognition of diplomas and professional qualifications progress had been achieved through relevant amendments to the Public Education Act, the Higher Education Act and the Act on Enhancing Professional Qualification. Standards for eighteen different professions were developed alongside with other measures designed to upgrade the existing professional education and training. For instance, specific regulation was introduced with respect to medical and paramedical professional activities. The Act on the Chambers of Architects and the Chambers of Design Engineers had a considerable impact on the synchronization with the existing EU provisions for recognition of qualifications and freedom to provide services in this area.

The civil rights of immigrants and foreign residents in Bulgaria had been further guaranteed by fresh amendments to the Civil Rights Act and the Foreigners in the Republic of Bulgaria Act. Under the Higher Education Act, foreign students were allowed to enroll in Bulgarian universities provided they disposed with diplomas making them eligible in their country of origin.

In January 2002, a new Act on Employment Promotion entered into force, eliminating the work permit regime for EU citizens. Three months later, under the new residence permit rules for self-employed workers, members of their families became entitled to immediate access to the labour market.

The search for reciprocity led Bulgaria to seek bilateral arrangements with interested EU member states. Spain was the first to conclude a bilateral agreement with Bulgaria, covering health insurance, pensions, unemployment benefits and family allowances for Spanish and Bulgarian nationals, temporarily residing on the other party's territory. In September 1999 Bulgaria signed a bilateral agreement with Germany with regard to the status of Bulgarian workers in the hotel and catering services. Similar arrangements with the Czech Republic became effective in December 1999. Next to the bilateral track Bulgaria intensified its preparatory work for adhering to the multilateral framework of the European Employment Service.

In the first ten months of 2001 Bulgaria reached provisional arrangements over the freedom *to provide services*. The core issues at stake included the financial services -banking, insurance and securities, the protection of personal data, the self-employed traders regime, the different aspects of the information society. The very nature of these extremely diverse and sensitive areas allowed for rather ambiguous interpretations during the harmonization assessment.

Banking turned to be a case in point. A series of new Bulgarian National Bank ordinances came into being to regulate respectively: the procedures for issuing banking licenses; the supervision and control of big exposures; the consolidated control rules; the payments; the capital adequacy of commercial banks. The next steps were of legislative nature and occurred through the amendments and supplements to the Act on Bank Deposit Guaranty and the Bank Insolvency Act.

A comprehensive legal framework had been introduced in the insurance sector. The Public Offering of Securities Act of January 2000 sought to improve the investment services and securities market. However, the EC directive on enterprises for collective investment in transferable securities remained only partially transposed.

The personal data protection saw considerable improvement by the respective law adopted in December 2001, as well as by the ratification of Council of Europe Convention on protection of individuals in respect of automatic data processing. Apart from its other content, the Act on Electronic Documents almost verbally reproduced the EC directive on electronic signature.

Major surveillance institutions for the financial services were:- the Bulgarian National Bank; the financial sector Supervision Consultative Council; the National

Securities Commission; the National Insurance Council; the State Insurance Supervision Agency; the Green Cards Motor Insurance Bureau and others.

The issues of *free movement of capital* were tackled in 2001, at a relatively late stage of the negotiations. Bulgaria committed itself to eliminate all restrictions on the free flows of capital, while insisting on transition periods of land acquisition by foreigners: seven years for ownership on agricultural land, and, five years - for second-residence.

Bulgaria proceeded to change Article 22 of its Constitution, to eliminate the general prohibition for purchase of land by foreigners. The move opened the doors before EU farmers as well as EU companies and citizens, willing to reside in the country.

The full liberalization of capital flows was attained in 2002 through the Foreign Exchange Act and the Public Offering of Securities Act. The former stipulated that all transactions between residents and non-residents would be conducted freely. It also allowed the unlimited import of national and foreign currency in cash, as well as the export of amounts not exceeding BGN 20,000 (approximately EUR 10, 000).

The new legal circumstances decreased the control over the channels used by criminal organizations for money laundering. Bulgaria had to elaborate additional Measures against Money Laundering Act, and, to upgrade the Bureau of Financial Intelligence into a governmental agency. It became central point of the respective institutional network that included the General Tax Directorate, the Insurance Supervision Agency and the Gambling Supervision Agency.

In November 2000 when the negotiating teams began discussions on the application of the EU *company law* in Bulgaria, the country's existing regulations were enlisted mainly in the Commercial Code from 1991. It was subsequently brought in line with the requirements of key EU directives: the First Directive on disclosure of information, the Second Directive on capital, the Eleventh Directive on disclosure requirements in respect of branches of foreign companies, etc. The implementation of two specific regulations was scheduled to begin on the date of accession, namely – the Regulation 2137/85/EEC on the European Economic Interest Grouping and the Regulation 2157/2001/EEC on the Statute for a European Company.

As EU membership is a prior condition for any country to adhere to the 1980 Rome Convention on contractual obligations a practical way to achieve harmonization was figured out. In February 2003 a new Part III, entitled "Law applicable to contracts with international element", was added to the existing Obligations and Contracts Act, granting protection on par with the one in EU member states. Similar approach would enforce the EU Regulation 44/2001 that has replaced the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters. The Act on Copyright and Related Rights was amended in December 2000 to protect the rights of filmmakers and to strengthen border control measures against goods infringing copyrights. The new Accounting Act, in force since January 2000, and the Independent Financial

Audit Act, in force since January 2002, completed the reform, whereby Bulgaria was brought in line with the prevailing global tendencies.

In January 2002 the National Assembly proceeded with the ratification of the European Patent Convention. Bulgarian and foreign inventors acquired protection of their inventions on the territory of one or more of the parties to the Convention through a simplified procedure, guaranteeing high degree of security of the patents issued.

The institutional network in charge of the vast and diverse scope of company law and related matters included the Ministry of Justice, the courts, the Ministry of Culture, the Customs Agency, the Ministry of Interior, the Patent Office and even the Institute of Certified Public Accountants.

The principles of *free competition*, essential as they were to ensure genuine market conditions, proved to be time and energy consuming subject of negotiations. The Act on the Protection of Competition (1998) introduced the basic anti-trust rules, while the State Aid Act (2002) sought to enhance control over governmental subsidies.

As the Commission for Protection of Competition emerged as the central body responsible for competition protection policy implementation and control, the results of its work led to a gradual increase in public awareness of the importance of the change in business culture and management in general, and of the proper application of competition rules, in particular. The public at large urged for even more deterrent sanctioning policy, prompted by the negative consequences some monopolies exerted on price levels.

Bulgaria made sustainable progress in terms of approximation of legislation and institutional building in reforming its *agriculture*, notably after it began talks with EU on the sector in March 2002. Major priorities of the reform became: efficient land and forest resources management; the further development of market structures; the enhanced competitiveness of the farming and processing sectors; the environment friendly approach; the export-oriented agriculture; the preparatory work for the introduction of the common agricultural policy; the sustainable rural development, the higher standard of life of those employed in agriculture.

In May 2000, the negotiations on further liberalization of trade with EU in the agriculture sector resulted in signing of “a double zero agreement”, that boosted the trade exchange considerably. The most important product groups in Bulgaria’s EU bound exports were wines and spirits, meat and oleaginous crops. Meat, fruit and nuts, cotton and essential oils topped the EU exports to Bulgaria.

The European SAPARD Program proved to be a vitally important tool for restructuring Bulgarian agricultural policies. Following the approval of the Bulgarian National Agricultural and Rural Development Plan, the European Commission decided in October 2000 to allocate Bulgaria EUR 53 million for the year 2000. It also conferred program management to the Bulgarian authorities for three types of measures: investments in agricultural holdings; improvement in the processing

and marketing of agricultural and fisheries products; and development and diversification of economic activities and alternative income.

Within the context of SAPARD related procedures Bulgaria established a Paying and Intervention Agency to the State Agricultural Fund. The Agency was meant to unify and manage EC funds as well as national funds for support of agricultural producers.

National registers were developed, creating the basis of a future Integrated Administration and Control System. Next came the accelerated preparatory work for participation in the European Farm Accountancy Data Network. Progress had been made in respect of alignment with EU agro-statistics and statistical reporting procedures of main yields and land use.

Rural development was interpreted as way to reach reorganization of agricultural and forestry structures, conversion of agricultural production and development of supplementary activities, environment preservation, support the creation of higher standard of life for farmers. The respective policies included *inter alia* measures on: young farmers' promotion; training; early retirement; support of rural regions with ecological problems; agro ecology; improvement, processing and marketing of agricultural products; local development initiatives.

The practical experience acquired through the SAPARD Program contributed to the build up of administrative capacity. The Code of Good Agricultural Practices was a case in point. Initially it had been prepared to describe the SAPARD eligibility criteria, but later it acquired much larger significance in agricultural management and good practices.

Furthermore, the institutional infrastructure that emerged for the purposes of SAPARD management did not limit itself to the Ministry of Agriculture and Forestry and various departments and agencies such as: the National Veterinary Service, the National Cereal Service, the Food Control Directorate, the Executive Vine and Wine Agency, the Varieties Testing, Seed Inspection and Control Executive Agency, etc. What transpired on the ground was a relatively greater involvement of various professional organizations and unions that mirrored the governmental bodies. Through the National Consultative Service on Agriculture an initial formula of public-private partnership began to take shape.

On a different scale the same approach was reproduced with regard to the negotiations and the very reform process of the *fisheries*. In April 2001 the Fisheries and Aquaculture Act replaced the old Fish Husbandry Act. Ordinances on logbooks and licensing of fishing activities were adopted in November 2001 and January 2002 respectively. In terms of the institutional process the Executive Agency for Maritime Administration and the National Agency for Fisheries and Aquaculture signed a co-operation agreement in order to fulfil the obligations on control over fishing vessels. An information system had been developed for registration of fishing and fish breeding activities as well as for assessing the fish resources and the biomass. In 2002, more than five thousand licenses for commercial fishing were issued and 120 fish breeding sites were registered. Some restocking took place, notably

at the Danube River, in order to maintain the fish population of endangered species.

In 2002 amendments to the Merchant Shipping Code targeted introduction of European maritime safety standards, as well as the necessary veterinary/hygiene requirements to the production of fish products. The EU Standing Veterinary Committee duly recognized the impact, and it decided to restore Bulgaria to the list of countries allowed to export fisheries products to the European Union.

During the negotiations on *transport* matters, Bulgaria undertook to develop its transport infrastructure in accordance with the current legislation of EU, which is primarily related to Decision 1692/96/EC for the development of the trans-European transport networks. On these grounds, the Bulgarian administration developed a medium-term (2001-2005) investment program for the national transport infrastructure with estimated total project costs of €4.9 billion. Within the framework of the Stability Pact initiative, an agreement had been finalized with Romania over the location – at Vidin – Kalafat junction - of the much-needed second bridge over the Danube river. Works commenced on a number of infrastructure projects: the construction of the roadbeds of all-European corridors IV, VII, and X, the modernization of road E-79, the electrification of major railways, and the construction of the second terminal at Sofia Airport.

The relevant legislation in the area of transport had been up-dated by introducing the following pieces of legislation: the Road Transport Act, including a number of bylaws, concerning the traffic safety, the qualification of drivers, the road tests for vehicles, registration, and statistics; the Automobile Transportation Act; the Amendment and Supplement to the Rules of the Road, introducing the road fee payment system; regulations in accordance with the requirements of the European Agreement for International Casual Transportation of Passengers, etc. The railway Transport Act abolished in January 2002 the railway transport monopoly of the state. The new regulatory body - the Railway Administration Executive Agency – had been compiled to ensure fair competition between the rail carriers within the railway sector, by institutionally dividing the services provided by the infrastructure and the carrier, and by ensuring their differentiation.

In the area of air transport, the following major commitments for implementation prior to accession had been assumed: licenses for air transport activity should be issued in accordance with the EU regulations; gradual harmonization of the conditions for access to the market of air transport services; establishment of an independent body for the investigation of air accidents. For the purpose, in addition to the Civil Aviation Act over 30 normative acts enriched the regulatory framework for air transport.

The same observation would be valid for sea transport, where Commercial Sea Transport Code became the backbone for the transposition of the whole body of relevant EU law. The Plan for Harmonization of the Legislation, 2002-2003 and the Action Plan for improvement of the safety indicators highlighted the importance of navigation safety and environmental protection. The Act on Marine Areas, Inland Waterways and Ports was adopted in 2000. A policy of complete

renewal of the Bulgarian fleet had been conceived and the decommissioning of the oldest vessels took place.

Under the motto *"timely door-to-door transport, at acceptable price"* Bulgarian carriers tried to follow the combined transport trend in modern EU transport policies. To that effect an agreement with the EC had been concluded in May 2001.

In transport, the implementation became a joint venture between the Ministry of Transport and Communications and the Ministry of Regional Development and Public Works, wherein a cluster of executive agencies proliferated: the Joint "Committee for Road Traffic Safety", the "Automobile Control", the "Roads", the "Traffic Police", the "Railway Control", the "Exploration and Maintenance of the Danube", the "Civil Aviation" Department, the "Marine Administration", the "Port Administration", etc.

In relation to the negotiations on *taxation* Bulgaria had principally undertaken the commitments set in Sixth Directive 77/388/EEC. In particular, in 2004, the transfer of enterprise and the supplies under the Labour Code would no longer be exempt from value added taxes. In 2006, the same would happen to the intra-community trade alongside with the abrogation of deduction of the transfer-related state and local taxes due for the transfer of real estate property. The year 2007 would see the preferential taxation of general tourist service supply by travel agents to non-residents.

Excise duties were scheduled to gradually increase with the view upon the date of accession to reach the minimum EU rates. For example, in 2005, the current excise rates on spirits from BGN 0.05 per alcohol degree would change to BGN 750 per hectolitre pure alcohol (BGN 0.075 per alcohol degree). A year later would see the introduction of common EU excise rate on cigarettes. The same trend would manifest itself with regard to direct taxation.

The amendments to the VAT Act of January 2003 reduced the VAT registration and exemption threshold for small and medium sized enterprises to EUR 25 000, and adjusted the scope of VAT exempt financial services. The amendments of January 2002 introduced the standard VAT rate on the supply of pharmaceuticals and pharmaceutical products and a special scheme for travel agents. The VAT refund period was shortened from four months to forty-five days. The amendments of the Excise Duty Act of December 2001 fully harmonized the scope of excise duty on beer, introduced a uniform rate per hectolitre degree Plato and introduced excise duties per tonne on LPG and methane, heavy fuel oils, and gas oil and kerosene used for industrial purposes or heating.

In terms of institutional chart the fiscal organizations tended to consolidate and centralise. In November 2002 the National Revenue Agency combined the functions of the National Social Security Institute (in respect of revenues) and the Tax Administration whereby the collection, accounting and control of revenue from taxes and social security contributions became unified and capable of developing a fully operational computerized tax information system, including interconnectivity with the customs IT system and EU IT systems.

Bulgaria's negotiations over the "*Economic and Monetary Union*" lasted almost a year - from March 2002 to April 2003. They covered certain aspects of EEMU, where Bulgaria had made considerable progress mainly because of the impact of the IMF Currency Board. In terms of the prohibition on granting the public sector a privileged access to the financial institutions certain amendment to the Insurance Act were made (October 2002), the lifting of the restriction on insurance companies to invest part of their reserves in government bonds – a provision which was in conflict with *acquis*. At the time of accession, Bulgaria would be prepared to assume an interim status within EEMU, although the euro will not be immediately introduced as means of payment.

In negotiating *statistics* Bulgaria had relatively few obstacles to overcome. In general, the Bulgarian Statistics Act, amended and supplemented in 2001 and 2002, complied with the legislation of the Community in this area – Regulation 322/97.

The medium-term strategy for the development of the statistical system for the period 2003-2006 improved the overall planning in this area. In 2003, the current versions of NACE (the Statistical classifier of economic activities of the European Union) and CPA (the Classifier of products by activity) were introduced. In terms of demographic and social statistics, surveys relating to the census of population and houses had already been published.

In the area of macroeconomic statistics, improvement in the exhaustiveness of time-lines of the national annual accounts had been observed. The statistics of debt and deficit had improved. The European Accounting System (ESA 95) was introduced for the differentiation of the institutional sectors. The National Statistical Institute introduced pilot monitoring for INTRASTAT – the system for gathering statistical data on the trade in goods between the member states of the Community.

In negotiating the *social policy* dimension of its accession Bulgaria attempted to achieve a breakthrough in labour conditions, and, in particular, in conditions applicable to the contract or employment relationship, on the safeguarding of employees' rights in the event of transfer of undertakings and on collective redundancies. The principle of equal treatment of women and men had been transposed by the adoption of the Law on Protection against Discrimination and by the amendments of the Labour Code.

The National Council for tripartite co-operation was perceived as a major tool for furthering social dialogue and fostering meaningful involvement of social partners in labour relations. The importance of such an approach increased further as Bulgaria experienced a rather high unemployment rate over the last few years.

In May 2002, amendments and supplements to the Health Establishments Act prepared in legal terms the introduction of the Strategy for restructuring hospital services 2002-2006, aimed at increasing the efficiency and quality of health care. The following bills had been developed in connection with the requirements of the European legislation: the Public Healthcare, the Blood Act and the Tobacco Act.

The awareness to ensure social inclusion and integration of ethnic minorities was demonstrated, *inter alia*, by the Framework Programme for Equal Integration of Roma into Bulgarian Society, although its practical implementation remained piecemeal.

The administrative capacity of relevant bodies, including the Ministry of Labor and Social Policy and the General Labour Inspectorate were tuned to effectively implement the *acquis*.

In the case of Bulgaria *energy* proved to be a rather complicated negotiation theme. The controversial issue – the future of the Bulgarian nuclear power plants provided the essential reason for the uneven course of the talks.

In relation to competitiveness and the internal energy market, Bulgaria managed to proceed with a gradual opening of its electricity and gas markets in spite of some delays that had slowed down the process and postponed the new legislation. It came into force in December 2002. In the same month Bulgaria signed an agreement with the neighboring countries aiming at the creation of the Regional Electricity Market in South Eastern Europe. The coincidence in time was in fact indicative of the attempt contemplated in Bulgaria to seek a central place in the regional energy supply network and to boost its electricity export. Soon after, the National Electricity Company became full member of the Union for the Co-ordination of the Transmission of Electricity, which underpins Bulgaria's physical integration into the European electricity market.

In the field of nuclear energy, Bulgaria faced the dilemma how to operate the Kozloduy nuclear power plant. With its four units of the VVER 440/230 design type (Units 1 to 4), and two units of the VVER 1000/320 design type (Units 5 and 6) Kozloduy NPP used to provide approximately 40% of the country's electricity. As regards nuclear safety, Bulgaria continued to implement the European Council recommendations and subsequent Peer Review Status Reports. Reactors 1 to 4 of the Kozloduy nuclear power plant became subject to closure commitments on the basis of a Memorandum of Understanding signed in 1999 with the European Commission. In line with these commitments, Units 1 and 2 were shut down for decommissioning in December 2002.

The final closure of units 3 and 4 of the nuclear power plant, scheduled for 2006, became subject of intense public debate, involving Parliament, the executive branch and civil society associations. A proposal was officially made, inviting for the EU to dispatch an expert mission to Bulgaria. The idea behind it was the expectation that once the technical safety of the facility was re-confirmed it would be possible to re-open the negotiations and to fix a different timetable for the decommissioning process. These expectations did not materialize, regardless of the positive outcomes of the Peer Review in 2003.

The decommissioning efforts were partially financed by the "Special Phare Programme to Support the Decommissioning of Nuclear Power Plants and Consequential Measures in the Energy Sector", worth EUR 200 million.

Energy efficiency and enhanced use of renewable energy sources remained rather low. Plans had been drafted to tackle the problem and an Energy Efficiency Agency was set up to manage the strategy.

Industrial policy, important as the theme was, did not present any particular difficulties before the negotiating teams. During the negotiations Bulgaria repeatedly reported series of measures (most recently stated in a document entitled “Industry 2002”), aiming at improving the business climate, stimulating private investment and attracting capital influx from abroad.

In 2002 the ratio of gross fixed capital formation to GDP remained stable at about 18%. Foreign direct investment in 2002 stood at EUR 511 million, compared with EUR 774 million in 2001. While many of the established foreign companies continued to expand their operations in Bulgaria, the number of significant greenfield investments remained modest.

Although privatisation advanced more slowly than expected, it reached its final stages. By August 2003, 82.3% of the state-owned assets earmarked for privatisation had already been in private hands. The liquidation of non-viable state-owned enterprises placed more than a hundred companies under the insolvency procedure.

The administrative structures, in charge of the industrial policy, encompassed an impressive cluster of institutions, ranging from the Ministry of Economy, the Commission for the Protection of Competition, the Privatisation Agency, the Agency for Post-Privatisation Control to the Foreign Investment Agency, the Trade Promotion Agency, the Export Insurance Agency, etc. All these institutions were officially contributing to policy development, what made the coherent and systematic approach a challenging task. As a result most of the announced action plans such as the economic stimulation package of 2002 often remained incomplete, whereas plans for the encouragement of investment were overly focused on state aid elements and on large-scale investment projects.

Transparent privatisation process had always been a central demand of the Bulgarian public opinion. Few examples could be cited in confirmation that the public could exert pressure to bear. Most recently the Constitutional Court decision repealing amendments to the privatisation law forced the Government to reconsider its legislative framework in this context. Attempts were made to encourage meaningful involvement of the business community in the policy-making process.

Negotiations concerning industrial policy were very much parallel to the overall enterprise policy, including *small and medium-sized enterprises*. In that particular area a new National Strategy for Promotion of SMEs was announced two years ago, when Bulgaria joined the EU Multiannual Programme for Enterprise and Entrepreneurship 2001-2005.

Since then Bulgaria made some modest progress in reducing the number of licensing requirements for SMEs. A survey, made by an inter-governmental task force, recommended the removal of 73 and the simplification of a further 119 regimes. The basic principle in the respective law on administrative regulation

and control over SMEs was the tacit consent in the event of absence of action on behalf of the administration within the stipulated period of time. Further breakthrough in the struggle against bureaucratic procedures occurred in February 2003, when a public register was launched via the Internet providing access to information on the licensing, permit and registration regimes.

Access to finance proved to be of vital interest for the SMEs. Under the pressure of stronger competition in the banking sector several banks started to offer targeted credits to SMEs. Recently the Government set up a guarantee fund for micro lending and a privately managed equity fund with 49% state participation. As a result an unpredicted phenomenon arose, where by in against the background of scarce capital availability, one sector became over-saturated with money on offer. In the opinion of some observers, SME loan programmes became simultaneously the preferred ground of short term lending by the commercial banks, and, at the same time – politically motivated grant policies.

The central body responsible for the formulation and co-ordination of SME policy became the Ministry of Economy with its SME Agency, but the national administrative structure for this sector remained fragmented and inadequately co-ordinated. In the absence of solid business organisations, local chambers in provincial centers managed to group existing SME businesses and to form a kind of informal cluster capable to offer limited in scope partnership.

Bulgaria conducted the negotiations on *science and research* matters, enriched by the experience, accumulated through its association with the Fifth Framework Programme for Research and Technological Development and the Fifth EURATOM Framework Programme. Not surprisingly the country was quick to join – in February 2003 - their respective sixth frameworks.

Although an investment fund to support high-tech companies was established and some targeted innovation project support was undertaken budgetary financial R&D support remained modest and insufficient.

The search for greater resources led to continuous attempts to increase research related administrative capacity. For example, in last August, the Council for Research and Technological Development Policy was replaced by the National Council on Scientific Research. It remained a body within the Ministry of Education consisting of 23 scientist members and 10 attached panels of up to 12 people, plus a Scientific Support Committee for the national research programme.

As in the R&D field the negotiations on *education and training* were facilitated by Bulgaria's participation in the first and second generation of the relevant EU programmes: Leonardo da Vinci, Socrates, Youth, etc.

The reform in the education and training system, defined by the National Development Plan 2000-2006, focussed on human resource development, including quality improvement in vocational education and training as a priority. In view of the needs of minorities considerable attention was attached to instruction of pupils in the mother tongue and culture as well as in Bulgarian.

Both the Ministry of Education and Science and the National Agency for Vocational Education and Training were charged with adapting education and training levels to ensure that the labour force could re-allocate from the declining to the growing sectors. Prompted by the EU Commission's Memorandum on Life Long Learning the Bulgarian authorities sought – through continuous vocational training - to avoid skills and regional mismatches and respond to the adaptability required by economic reform.

Negotiating *telecommunications and information technologies* Bulgaria simultaneously put the final touches on the full liberalisation of the telecommunications markets. The new Law of September 2003 imposed some obligations on operators with significant market power, in particular on the three mobile phone operators. In the area of information society, a Strategy on e-Government was adopted by the Council of Ministers in December 2002.

The Communications Regulation Commission emerged as the main administrative structure responsible for implementation and enforcement of the telecommunications legislation. It was also in charge of the regulation of the postal services sector. The Law on Postal Services further strengthened its prerogatives.

Repeated postponement of the privatization of the incumbent operator of fixed voice telephony services, Bulgarian Telecommunications Company, raised some questions about the pace of the modernization process and about the level of confidence in potential new investors.

The talks on *culture and audio-visual policy* went relatively smoothly. The adoption of a new Law on Radio and Television Broadcasting in 1998, which was amended in September 2000 and November 2001, brought Bulgarian legislation largely into line with the *acquis*. However, Bulgaria did not managed to ensure fully effective implementation of the regulatory framework for audiovisual policy.

On numerous occasions the regulatory authority, the Council of Electronic Media, reportedly experienced pressure from various political quarters. The Parliament failed to adopt the Strategy for Development of Radio and Television Broadcasting supposed to give a long-term vision of the development of the radio and television sector.

The longest negotiations took place over *regional policy and co-ordination of structural instruments*. As regards the legislative framework, the necessary legislation had been adopted with relevance to regional policy and Structural Funds preparation. Institutional structures involved in the implementation of EU structural policies included: the Ministry of Finance, the Ministry of Regional Development and – to a lesser degree - the Ministry of Labour. All other key line ministries contributed to the elaboration of the National Development Plan.

With regard to institutional structures, Bulgaria made commitments to create preliminary delivery system for the Structural and Cohesion Funds - both in the center and in the regions - by setting up the bodies and specific procedures for financial control, auditing and certification of expenses.

Negotiations on *environment* had recently been provisionally closed. Bulgaria asked for and received several transitional arrangements. For instance, full implementation of regulations for the sulphur content of liquid fuels would be delayed until 2011, for the recovery and recycling of packaging waste - until 2011, for urban waste water - until 2014, etc.

Bulgaria registered some progress on the integration of environmental protection into other policies such as agriculture and transport. The Environmental Protection Act adopted in September 2002 provided the framework of the horizontal legislation for further progress on environmental impact assessment and public access to information. The areas covered by regulatory legislation included: air and water quality, industrial pollution and prevention control, etc. The National Waste Management Programme was updated for the period 2003-2007. The Law on biological diversity meant further alignment in the field of nature protection.

In addition to the improvement of the administrative capacity - the Ministry of the Environment, its various regional inspectorates and the management of ISPA funds, - the government paid the necessary attention to awareness raising of public and industry about environmental issues.

In ecology, despite the considerable success, Bulgaria continued to face a major challenge - the availability of budgetary resources to meet the environment related cost of economic growth.

Negotiations over *consumer and health protection* helped Bulgaria, where the level of consumer awareness was initially very low, to introduce a functioning market surveillance system. The Law on Consumer Protection and Trade Rules created the Commission for Trade and Consumer Protection and empowered it to inspect the safety of products and non safety-issues, such as: labelling, price indication, misleading advertising, distance contracts. The Commission co-operated with the State Metrology and Technical Surveillance Agency and the Customs Agency in its daily activities. At the same time several tripartite Conciliation Commissions consisting of representatives from the CTCP, a professional organisation and a consumer organisation assisted the parties in the voluntary settlement of consumer disputes. On the other hand, the consumer organisations formed an association of their own umbrella organisation, the National Union of Consumer Associations. Through increased citizens involvement a more coherent consumer movement began to take ground.

Under the impressive impact of the negotiations on *co-operation in the field of justice and home affairs* the sensitive law enforcement area saw dramatic changes. Bringing Bulgarian legislation in line with the basic principles of the *acquis* was one part of the adjustment process, while other consequences manifested themselves in Bulgaria's accession to related United Nations and Council of Europe conventions.

For instance Bulgaria had adopted and periodically updated its Schengen Action Plan trying to maintain high level of control at the external borders. Bulgaria concluded readmission agreements with all EU Member States and some

acceding countries. The co-operation agreement with EUROPOL, signed in June 2003, crowned the bilateral arrangements.

Amendments to the law on Foreign Nationals as well as the new law on Asylum and Refugees led to further alignment with the migration *acquis*, and in particular with the EURODAC Regulation.

The Penal Code was amended several times to take into account other provisions of the EU Joint Action of 21 December 1998 on making it a criminal offence to participate in a criminal organisation, the Joint Action of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children, the European Convention on Cyber Crime, (which was signed in 2001) and numerous other documents. In November 2002 the National Strategy for Counteracting Crime 2002-2005 was adopted by the Council of Ministers, covering prevention, corruption, organised crime and terrorism. The Law on the Measures against the Financing of Terrorism and other pieces of legislation exemplified Bulgaria's determined stance in the fight against terrorism. Bulgaria took all necessary measures aimed at complying with Council Framework Decisions on the protection of the euro against counterfeiting.

Important progress was made in the area of fight against drugs with the adoption of the National Drugs Strategy 2003 – 2008, alongside with the Control of Narcotic Substances and Precursors Act, introducing stricter rules on business licenses for legal entities engaging in retail or wholesale trade in narcotic substances and precursors.

In April 2003, amendments to the Measures against Money Laundering Act entered into force, granting the Financial Intelligence Agency operational independence. At the same time legal alignment in the area of data protection had been completed.

As regards co-operation at EU level, contact points for cooperation with the European Judicial Network (EJN) had been appointed and Bulgaria kept regular contacts with the EJN, which was providing support to Bulgaria to build up effective judicial co-operation.

In the process of negotiating the *Customs union* Bulgaria introduced amendments to the Law on Customs in April 2003 further aligning its legislation with the Community Customs Code regarding provisions on transit, customs procedures with economic impact, free zones and free warehouses, placing under customs procedures and customs debt. In a similar manner the Customs Tariff became equivalent to the Community's Combined Nomenclature. Furthermore the Convention on Temporary Admission (Istanbul Convention) was ratified in December 2002.

Cooperation with customs authorities of neighbouring countries had been strengthened. Bulgaria concluded a Memorandum of Understanding with the Community on participation in the Customs 2007 programme. The Customs Agency achieved considerable degree of computerisation that made the Bulgarian Integrated Customs Information System compatible with the Community systems.

While negotiating *external relations* Bulgarian representatives were mindful of the necessity to gradually synchronize the national tariffs with those of the EC. Bulgaria coordinated its positions and policies within the World Trade Organisation with the EU. Under the Law on control of foreign trade with arms and dual-use goods and technologies of December 2002 Bulgaria updated its list of controlled items in accordance with the EU list and the export control regimes.

The most expeditious negotiations took place over the *common foreign and security policy*. Bulgaria established regular political dialogue on all relevant levels, including the expert one – between Political Directors, European Correspondents and various Working Groups. Within the context of international crises Bulgaria continued to align its positions with EU sanctions and restrictive measures, statements, declarations and *démarches*. Adopting the entire CFSP *acquis* was facilitated by the Constitutional arrangement that gave precedence of international treaties over internal laws in case of contradicting commitments.

An interesting example became Bulgaria's adherence to the Rome Statute establishing the International Criminal Court. Sofia aligned itself with the EU position of June 2003 regarding the question of prosecution of US citizens by the ICC placing at risk the US financial support for the reform of the Bulgarian army.

Furthermore, Bulgaria offered to make a contribution to the development of the European Security and Defence Policy and to participate both in the EU Rapid Intervention Force missions and in the EU civilian instruments for crisis management. It took part in the EU Police Mission (EUPM) in Bosnia and Herzegovina and in the EU military operation CONCORDIA in FYROM.

This kind of involvement came against the background of Bulgaria's impressive record of sustained participation in a series of UN, KFOR, SFOR, ISAF and OSCE peacekeeping and observer operations. In 2002 and 2003 Bulgaria was a non-permanent member of the UN Security Council, and in 2004 assumed the function of the Chairman-in Office of the OSCE. These circumstances increased Bulgaria's potential in terms of advocacy of agreed EU foreign policy positions.

Major issues in the negotiations over *financial control* proved to be public internal financial control (PIFC), the external audit and the control of EU pre-accession funds.

Parliament adopted the Law on the Amendments and Supplements to the PIFC Act in October 2002 and the National Audit Office Law in June 2003. A number of other key documents were adopted including the Internal Audit Charter of PIFCA, the Code of Conduct for internal auditors and the Ordinance on the certification procedures of the accounts of EU funds spenders.

A special programme was elaborated aiming to improve the capacity of the National Fund and the various implementing agencies to manage pre-accession funding, in preparation for the extended decentralisation of Phare and ISPA implementation (EDIS). The decisive stance to avoid misuse of funds was further illustrated by the creation of the Council on Coordination of the Fight against Irregularities concerning EU Financial Interests.

The negotiations over *financial and budgetary provisions* revealed that budgetary rules were largely satisfactory, the Treasury was functioning well and Bulgaria had made efforts to bring the budgetary procedure in line with those standards substantially applicable in the Community. However, the discussion over budgetary matters continued in anticipation of the adoption of the EU position on the financial parameters of Bulgaria's accession.

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As Bulgaria approached the final stage of the negotiation process, the analyses of the negotiations began to acquire new dimensions. Ever since Bulgaria had been excluded from the "first wave" of EU- acceding countries, the public opinion developed an acute sensitivity with reference to the contents and the timetable of the continuing talks. "The invitation to start 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," some observers claimed in retrospection, "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..."¹

"Bulgaria still needs to make sustained efforts", stated the European Commission in the specially designed 2003 Roadmaps for Bulgaria and Romania," to develop sufficient administrative and judicial capacity to implement and enforce the *acquis*. As well as continuing horizontal reform of the public administration, it needs to focus in particular on developing the capacity to be part of the internal market and to apply the *acquis* in areas such as agriculture, environment and regional policy".²

Under the pressure of the slow down in the integration process Bulgaria adopted a Strategy for Acceleration of the Negotiations.³ Progress in indicated areas began to be perceived as crucial and speedily developed documents appeared to meet fully the EU criteria, namely the Strategy for Modernization of the State Administration an Action Plan and major amendments to the Law on the Judicial System. As the judicial reform implied that the constitutional provisions on magistrates' immunity should be revised, the Parliament went as far as to introduce a change in the respective texts of the basic law of the country. ⁴

The situation tended to repeat itself when the EC issued the Accession Partnership with Bulgaria. The interconnection between negotiation progress and the overall reform process of the country became even more evident. At the initial stages the course of the negotiations, at least as perceived by the public at large, went through a large number of issues, discussed in detail and centered on transitional periods bargain. Towards the end of the road the negotiations in the eyes of the Bulgarian society became more concentrated on a limited number of issues of 'national interest'. As a result the necessity for the government to begin executing a Communication Strategy for the preparation of Bulgaria's accession

to the European Union became acute. The authorities engaged in such an exercise, mobilizing the academia, the media and the civil society to produce 'a Viable Action'⁵.

As the year 2003 was about to expire, Bulgaria reached a crucially important moment in its relations with the European Union. At the Brussels European Council the European Commission presented a Strategy Paper and Report on the progress on accession by Bulgaria, Romania and Turkey. It contained the following summary:

*"In order for accession to take place in 2007, a common Accession Treaty for Bulgaria and Romania should be signed at the latest towards the end of 2005, which would require that the negotiations be finalized in due time before that. This is to be preceded by the Commission's final recommendation on the readiness of Bulgaria and Romania for accession. The Thessaloniki European Council supported Bulgaria and Romania in their efforts to achieve the objective of concluding negotiations in 2004, inviting them to step up their preparations on the ground. Meeting this objective will depend on the real progress made on the ground and in the negotiating process on the basis of each country's own merits."*⁶

The priority areas for Bulgaria identified by the Commission's 2003 Regular Report included institution building, together with investment in *acquis*-related development, and the promotion of economic and social cohesion, with a clear focus on preparing the Bulgarian administration and beneficiaries for future Structural Funds and Cohesion Fund actions. Continued efforts were required to focus in particular on developing the capacity to apply the *acquis* in areas such as agriculture, environment and regional policy. In the accession negotiations, 26 chapters had been provisionally closed with the remaining four chapter depending heavily on the financial frameworks to be prepared by the EC in accordance with the EU Financial Perspective.

In a recent communication⁷ to the President of the European Commission Romano Prodi Prime Minister Simeon Saxe-Coburg Gotha summed up the expectations of the Bulgarians in underlining in particular Bulgaria's desire to see concrete time limits regarding its accession to the Union in January 2007. Bulgaria also aspired after the soonest possible conclusion of the negotiations in 2004 as well as the signing of the Accession Treaty at the beginning of 2005.

The commitments Bulgaria made in the negotiations with the European Union were generally being met, notwithstanding the delays in certain specific areas. The overall assessment of Bulgaria's achievements tended to be positive, in some instances even impressive and reassuring. The *tour d'horizon* over the entirety of the negotiating chapters allowed for the conclusion that the EU accession negotiations played an important role for contemporary Bulgaria. As the negotiations were drawing to a successful end, the retrospective analyses about what was right and what was wrong in their conduct could provide a good example of the lessons learned.

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- 1 Pavlina Popova, *Accession Negotiations*, in *Monitoring of Bulgaria's Accession to the European Union, 2002*, Sofia Inter, Sofia, 2002,p.23
 - 2 Communication from the Commission to the Council and the European Parliament, Roadmaps for Bulgaria and Romania, p.11 <http://www3.mfa.government.bg/documents/Roadmap2002EN.pdf>
 - 3 Strategy for Acceleration of the Negotiations, <http://www.government.bg>
 - 4 Bulgarian EuroBulletin <http://www3.mfa.government.bg>
 - 5 Krassimir Nikolov, *Information and/or Europe*, Institute for European Studies and Information, Sofia, 2002
 - 6 Continuing Enlargement, Strategy Paper and Report of the European Commission on the progress on accession by Bulgaria, Romania and Turkey, <http://www.europ.eu.int/comm/enlargement/docs/index>
 - 7 The European Commission supports Bulgaria to the conclusion of the accession negotiations before the end of 2004,27.11.2003, <http://www3.mfa.government.bg/>

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