Measuring Successes and Failure of EU-Europeanization in the Eastern Enlargement: Judicial Reform in Bulgaria

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This article attempts to provide a measured explanation of the political and framework relations between Eastern and Western Europe since the process of democratization in Central and Eastern Europe (CEE) began, in particular, since the inception of accession talks. It presents a critical investigation of the 'Europeanization' of the rule of law and judicial reform as a result of the process of European Union (EU) integration of Bulgaria. The article discusses the dynamic between the parallel processes of democratization and supranational integration by incorporating International Relations theory into the more commonly used top-down approach to European integration in member and applicant states. The problematic is presented through a case-study of Bulgaria, which is a particularly useful example of a punctuated democratic transition that combines the many difficulties that EU integration faces on the Balkans, not only in respect of current applicants, but also future accession states such as Croatia, Serbia, Montenegro, Macedonia, and eventually Turkey. The regional integration of the Balkans has many repercussions for the EU itself, in particular concerning the scope of the Justice and Home Affairs pillar, the European Common Foreign and Security Policy, the European Defence Policy, as well as the common market, more generally, with all the freedoms derived from it.

A. Introduction

The EU enlargement policy has yielded a number of successes, most manifestly in helping transform the Central and Eastern European Countries (CEECs) into credible democratic states, worthy of partner recognition in just over a decade.[1] Naturally, the scale of success is differentiated across the CEECs due to the distinctly different backgrounds from which those states came during the region-wide demise of socialist regimes in 1989.[2] Thereafter, the core of EU integration in the CEECs took the shape of *extended conditionality*. It is essentially sustained through the offering of the strategic objective of EU membership to the CEECs against their fulfilment of political, economic and normative criteria, the so-called Copenhagen criteria.[3] Briefly, these include: first, a respect for the rule of law to uphold a lasting and stable democratic framework of governance. Since

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1 NATO 'enlargements' in 2002 and 2004 in CEE; EU enlargement to 8 CEECs in May 2004, and a second wave of Eastern European enlargement to Bulgaria and Romania in January 2007.

2 H. Grabbe, *Europeanization Goes East: Power and Uncertainty in the EU Accession Process*, ECPR, Turin (2002), at 3.

3 Copenhagen European Council 21-22 June 1993: Presidency Conclusions: http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/72921.pdf, at 12-16, last visited 9 May 2006.

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2000, the EC has assessed that the CEECs fulfil this criterion. The second is the establishment of an open market economy that can successfully withstand the competitive pressures of the European common market. Liberalisation of the economy in the CEECs has been often marred by stop-and-go reforms throughout the 1990s and so it has been only since 2000 for the Central European states and, since 2002 for Bulgaria and Romania, that the EU has positively assessed progress in this arena.[4]

The third criterion has been the hardest to come by, although at the start of negotiations, its importance has been neglected in favour of the other two. Its objective is the successful application, and since 1999 also effective implementation through national law of the EU legislation in force, the *acquis communautaire*.[5] The focus of this article is precisely on the assessment of progress under this criterion in the area of judicial reform in Bulgaria, which was the first applicant state that ran the danger of not meeting its target EU entry date. The article restricts itself only to one period of the judicial reforms of the candidate state – the period of its accession, 1999-2004. In light of this, the article discusses: (1) how the EU ensures effective implementation of the acquis; (2) what is considered effective policy implementation; and (3) how to achieve effective and efficient policy implementation. The evidence responds to these questions by drawing conclusions about the essential questions of (1) how successfully and to what degree can the EU 'Europeanize' the applicant; and (2) whether the EU rules have penetrated deep in the domestic governance structures in the area of the rule of law, so as to have the effect of profoundly changing the nature of its political institutions and deep rooted culture and practice of conduct.

B. The Case of EU-Europeanization of Bulgaria: Methods and Tools

Bulgaria and Romania were separated from the other eight CEECs at the Copenhagen European Council in December 2002, where the decision was reached of a two-tier Eastern enlargement.[6] The two states had proven by then the 'laggards' of the CEE group, as their transition to democracy and market economy turned out more difficult and lengthier. It was marred by residual semi-authoritarianism, weak statehood, deficient civil society, and sluggish marketisation.[7] In the case of Bulgaria, it led to a severe economic crisis, coupled

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4 2002 Regular Report on Bulgaria's Progress towards Accession, COM (2002) 700 final, SEC (2002) 1400, Section: Economic criteria/ general evaluation.

5 The three criteria have been spelled out by the 1993 Copenhagen European Council as conditions in respect of the CEECs should an enlargement policy of the EU towards Eastern Europe be sanctioned. The criteria were further qualified by the 1999 Helsinki European Council concerning acquis implementation (http://europa.eu.int/council/off/conclu/dec99/dec99_en.htm, site last visited 10 May 2006).

6 Copenhagen European Council, 12-13 December 2002: Presidency Conclusions: http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/73842.pdf, at 1-5 (last visited 9 May 2006).

7 V. Bilsen & J. Konings, *Job Creation, Job Destruction, and Growth of Newly Established,*

with hyperinflation in the mid-1990s, and, thereby, hampered growth for over a decade.[8] Its delayed accession by comparison to the CEECs, which joined the EU in the first wave of the Eastern enlargement in May 2004, has led to legitimate questions as to how far Bulgaria has gone into accepting the norms and principles of the Copenhagen yardsticks. In particular, the delay of accession has been caused by a lacking implementation of the acquis and the EU 'best practice' in the area of Justice and Home Affairs. This has serious repercussions for the fight against corruption, organised crime, and money-laundering. It is a further detriment to economic and industrial development, social and civil cohesion. The shortcomings of ineffective judicial reform are far-reaching, and directly and perennially affect all spheres of activity and life.

To avoid the problem amongst the EU members, where some excel and others distort the common market, the pre-accession rules, set out for Bulgaria and Romania as Roadmaps, have had the effect of 'tying the hands' of governing elites.[9] Scholarly studies so far have taken the view that it would be costly for a state to deviate from the path of reform once accession begins.[10] However, one should question whether this is the case where there exist non-accountable governance structures, as well as a number of veto players in key implementation positions, which would simply not benefit from increased transparency and compliance resulting from effective and efficient policy implementation. EU conditionality in the Eastern enlargement has had the effect of tilting the balance in favour of a political and civil consensus on the state's EU integration as a strategic goal.[11] Yet for reforms to take root, the EU needs to generate real demand from below, from the actual national implementation actors. More importantly, still, is to generate a process where promises are binding on both sides. This occurs where the process is less political and more performance orientated than we see at present. This will have the further effect of making national elites think about what EU membership means for the state where at present we see national executives focus on the target, but not on its substance. At supranational level, a politicised approach means that the applicant's membership bid is decided through a political decision. To use a journalistic pun, this could turn into a 'game of sliding doors'.[12] Eventually a 'politicised' conditionality would benefit neither the applicant, nor the Union. A further downside of this approach is that once a member of the Union, the

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Privatized, and State-Owned Enterprises in Transition Economies: Survey Evidence from Bulgaria, Hungary, and Romania, 26 Journal of Comparative Economics 429 (1998).

8 D. Bechev, *The Successful Laggards: Bulgaria and Romania on the Road to EU Membership*, East European Politics and Societies (forthcoming).

9 Roadmaps for Bulgaria and Romania, European Commission Report, November 2002: http://europa.eu.int/comm/enlargement/docs/pdf/roadmap-br-ro-2002_en.pdf (last visited 9 May 2006).

10 A. Moravcsik & M. A. Vachudova *National Interests, State Power and EU Enlargement*, 17 East European Politics and Society (Special Issue on Theoretical Implications of European Enlargement) 42 (2003).

11 O. Anastasakis & D. Bechev, *EU Conditionality in South-East Europe: Bringing Commitment to the Process*, 1(2) European Balkan Observer 2 (2003).

12 Transitions Online, *Sliding Doors*, 6 June 2005, available at http://www.tol.cz/look/TOL/article.tpl?IdLanguage=1&IdPublication=4&NrIssue=118&NrSection=1&NrArticle=14137 (last visited 09 May 2006).

state may 'take leave' from its active part in reforming itself.[13] This may impair the goal of inducing lasting and binding democratization on the Balkans. It also has the potential to jeopardise objectives of security in the region, as well as compromise the notion of the rule of law as a substantive principle of governance in developed states.

The practice of the EU offer of membership to the CEECs has centred round the principle of the 'M&M solution': i.e. it is expected that EU rules will be effectively applied and enforced in the candidates once sufficient and qualified staff are hired and adequate amounts of resources are committed to those purposes (hence, the 'Money & Men' solution).[14] This approach is supported not only in academic circles but also by practitioners such as Transparency International and the World Bank.[15] However, this is an offer that is simply out there to be seized or not. The conditionality of EU membership means that EU demands vis-à-vis the CEECs may rise beyond the justifiable, especially in those areas primarily governed by political assent rather than through the acquis.[16] This can turn into an instrument for the EU to delay regional integration on the grounds of unsatisfactory progress of reforms. Conditionality also means that applicant states, such as Bulgaria and Romania, that have no binding membership date and feel subjected to elusive EU targets may eventually veer off the democratic path of reform because they feel uncertain that membership would be effected at all. This is especially so, where the incentives to reform (provided through the EU accession facilities – Phare, SAPARD, and ISPA, as well as post-accession access to structural and cohesion funds) are not deemed sufficient or easily accessible by the applicant. Non-quantitative barriers to membership, such as political pressure, that are, however, sanctioned through economic mechanisms may cause a further delay of reforms in states with large numbers of key institutional veto players opposed to a fundamental change of the status quo within national institutional structures. This would be an example of what in the literature on Europeanization is termed institutional retrenchment, which is the worst scenario of reform and democratization in any EU applicant and/or member state.[17]

Therefore, the first shortcoming of the 'M&M' solution in respect of the CEECs, in general, and Bulgaria, in particular, is that it completely takes the focus away from the problem of capacity-building, which is central to all lasting reform. Although the EU offer of money and personnel is open, it is essentially a matter of

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[13] Poland is an example of such a process. The state has remained politically volatile after 1990, and even more so after accession. Corruption is wide-spread and the TI CPI index for 2005 ranked it 70th, 15 places behind Bulgaria, making it the worst ranked EU Member State.

[14] P. Nicolaides, *Preparing for Accession to the European Union*, *in* M. Cremona (Ed.), The Enlargement of the European Union 43 (2003).

[15] TI: http://ww1.transparency.org/cpi/2005/cpi2005_infocus.html, supported by a study for TI by Prof. Dr. Johann Graf Lambsdorff (site last visited 05 May 2006); and World Bank Institute: http://www.worldbank.org/wbi/governance/pdf/Legal_Corruption.pdf, Kaufmann & Vicente (2005), site last visited 09 May 2006.

[16] The EU acquis communautaire is the legal framework of the European Union in force that is binding to all of its member states.

[17] C. M. Radaelli, *Whither Europeanization? Concept Stretching and Substantive Change*, 4 EIoP, at 14 (2000).

being able to import the resources in order to make any use of them. This requires continuous access to financial resources, whether national (unlikely in the early stages of reform) or supranational (EU programmes and bilateral donor facilities), to enable the state to sustain progress in development. An accession state, like Bulgaria, which in addition to EU integration is completing a parallel process of democratic transition, has as its primary task to dismantle the communist-style governance and implementation structures (including cognitive structures of actors). In their place, it is to build new ones that are compatible with liberal democratic principles of governance, while at the same time introducing market economic mechanisms. This must be done not only at central government level but also at local government level, while sufficient mechanisms for horizontal and vertical effect of policies are to be implemented from scratch. In practice, national financial resources have been, however, scarce, seeing as the economy collapsed in 1996 and the ratio of public debt to GDP roofed over 300%, the highest in Eastern Europe at the time.[18] Yet, the conditionality of the EU offer persisted, while Bulgaria had little recourse to European funds and aid. Herein lies the first failure of the M&M solution.

In addition, CEECs membership of the EU necessitates a dramatic change in the power symmetry of key traditional institutional players. Therefore, the second shortcoming of the EU integration project in the Balkans is the failure to recognise that where absorption capacities are scarce or lacking, M&M solutions without benchmarking are ineffective. This can, in turn, substantially empower national veto players at the expense of reform-minded groups and, thereby, delay the process of development. Then, this becomes a vicious circle – lack of resources leads to a lack of capacity-building, whilst deficient capacities reciprocate limited access to international aid. Thus, throughout the transition and accession period money-inflows, whether through aid, investments or credit facilities, must remain continuous to enable the state to gather momentum in institutional reform and industrial and economic restructuring. Although the EU has recognised the need for the applicant to set up appropriate institutions and agencies, the bluntness of the EU conditionality, coupled with the feeling of uncertainty that it induces in the applicant, has rendered such efforts by and large obsolete. Therefore, the main problem of reform and democratization in the Balkans lies in the fact that the concept of EU conditionality runs contrary to rapid and effective institutional reform and capacity-building.

In the absence of rules and, therefore, resources, the EU has formulated the area of judicial reform vis-à-vis the CEECs in two ways: first, as a political criterion and, secondly, as an acquis criterion under chapter 24, Justice and Home Affairs (JHA). The former makes the notion of objective assessment obsolete, whilst the contents of the latter are described as 'thin'. This arena lacks detailed regulation and has no performance-orientated benchmarks for the accession state to address. The European Commission has argued that it has enlisted targets in the respective roadmaps for Bulgaria and Romania, which should be perceived of as clear benchmarks by the candidates. However, these so-called 'benchmarks'

[18] Economic Survey-Bulgaria, 1997, OECD.

under chapter 24: JHA have remained vague and undefined throughout the accession period. For instance, in the area of the fight against corruption, both the short-term and medium-term targets read: 'Continue to implement the Annual Anti-Corruption Strategy'. In other areas of the JHA acquis, many of the benchmarks simply require 'full alignment with the acquis'.[19] In contrast to the vagueness of the reform targets, the JHA pillar is crucial for the European area of freedom, security and justice. Thus, to fill the void of lacking acquis, the European Commission, supported by the Member States, has politicised the accession negotiations with the CEECs in order to streamline the reforms and sustain the overarching significance of this arena.[20] Yet, the most dramatic flaw in this approach is that it has given traditional national veto players a leeway to contest desired reforms, while they were able to accuse the EU of subjectivity and *favouritism,* and an *a la carte* approach to accession.[21] Thus, it should not come as a surprise that as a result reform *proper* in JHA has come by only incrementally. This problem is all the more pronounced on the Balkans, where there exists a distinct culture of hierarchy, as well as a much greater number of veto players as compared to the Central European countries.[22] Therefore, the current focus of the EU on methods and effects of legal integration is highly problematic in cases, where the state does not have the prerequisite institutional capacities to implement desired reforms.

A comment here is in order. The European Communities' methods of rule implementation more generally are not performance orientated. Instead they consist of: (1) soft law or non-binding codes and recommendation; (2) minimum standards that Member States have to meet; (3) complete harmonization to pre-empt national discretion; (4) the creation of a Community level body to administer and implement EC rules. These methods have the goal of integrating the common market. Neither the Commission, nor any of the EU institutions enjoys a legal right to impose punitive sanctions if a state is deemed in transgression. They may impose fines on states, public and individual bodies but those are not defined as punitive measures. The EU has no criminal law jurisdiction; it cannot criminalise offences, or impose criminal punishments for those. The logic of integration is that national states are the sole agents and operators of facilities, institutions, and policies that amount to the effect of criminal law administration. The Communities' role in this area is to harmonise, in so far as it is afforded competence by the Member States to do so. The result is that its acts amount to more negative integration (dismantling of national barriers to integration) than positive integration (creating norms and rules). Still more important is that negative legal integration is accompanied by

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[19] Roadmaps for Bulgaria and Romania, *supra* note 9, at 19-20.

[20] This impression of the accession process has come across during a research interview with Mario Milushev, Ministry of Foreign Affairs of Bulgaria, 2 February 2006, Sofia, Bulgaria.

[21] Interviews with Neli Kutzkova, Chair of the Sofia District Court, former member of the Supreme Judicial Council, Member of the Executive Board of the Bulgarian Judges' Union, 18 January 2006 and 14 November 2005, archive.

[22] F. Schimmelfennig & U. Sedelmeier, *Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe*, 11 Journal of European Public Policy 661 (2004).

very little positive legal integration, which *de facto* explains the 'thinness' of the acquis in the area of JHA. This characteristic of the JHA acquis means that the EU has developed very few capacities of its own to generate capacities (or positive legal integration) within its realm of competence. It, therefore, should appear all the less likely that it would target capacity-building in accession states in the first instance. The sum of this is that at present the EU is ill-equipped for the kind of reforms that it wishes to promote in its applicant states. Thus, it is imperative to establish and assess how the EU has promoted democratization in Eastern Europe alternatively, in the absence of capacity-building mechanisms, but in the face of extended conditionality. This will enable us to see how effective and well rooted EU justice reforms and best practices are in reality in Eastern Europe.

C. EU Policies vis-à-vis Bulgaria: 1999-2007

Bulgaria has retained a four-level court structure with three separate instances: regional, district, and appeal courts, and a Supreme Court of Cassation. There is also a Supreme Administrative court and a system of military courts. The presidents of the Supreme Court of Cassation, the Supreme Administrative Court, and the Chief Public Prosecutor are elected by a two-thirds majority of the Supreme Judicial Council and are appointed by the President of the Republic. The Supreme Judicial Council (SJC) is composed of 25 members, of whom 3 are ex-officio: the Presidents of the Supreme Court of Cassation and the Supreme Administrative Court, as well as the Chief Public Prosecutor. Of the remaining 22, 11 are from the parliamentary quota, elected by simple parliamentary majority (i.e. the votes of the ruling party suffice), and 11 are from the judiciary (6 judges, 3 prosecutors, 2 investigators). They are appointed for a fixed term of five years. The Council is chaired by the Minister of Justice who has no voting rights. The SJC presents an annual report to Parliament on the functioning of the judiciary, which, in principle, should help ensure accountability of the SJC to the public. In practice, neither Parliament, nor the Executive has any means to perform scrutiny on the SJC.

Until recently, the judiciary was composed of three independent entities: judges, prosecutors, and investigators. They all enjoyed absolute over functional immunity against criminal proceedings. Following the adoption by Parliament of a new Criminal Code in December 2005, the judiciary is currently composed only of judges and prosecutors with functional immunity, which has come into force after a transition period.[23] The investigation was transferred to the executive branch of government and, thus, removed from the judiciary in line with the best practice of EU Member States. However, still only junior magistrates are appointed through open competition and after a further six months of training. All other appointments are made single-handedly by the SJC without competition or consultation. After three years (five years following the 2003 amendments) in

[23] The new Criminal Code came into force on 27 April 2006.

office and a positive professional track-record, the magistrate becomes immovable following a sanction of the SJC.

First important amendments to the law on the judicial system began after the opening of accession talks with the EU. Proposals for significant changes in the judicial and governance structure of the judiciary, i.e. the sharing of legislative and administrative powers between the Ministry of Justice and the SJC, were first discussed in Parliament in 2001 and early 2002. Those proposals were scrapped by two decisions of the Constitutional court in December 2002 and April 2003, respectively. The Constitutional court interpreted the constitutional text so that any changes in the governance structure of the judiciary could be introduced only by sanction of a Grand National Assembly (this requires new parliamentary elections to set up *parliament extraordinaire*) that should, first, amend the Constitution and, second, vote on the proposed new law on the judiciary. A way to by-pass the Constitutional court was eventually found in the set up of an ad-hoc parliamentary committee to elaborate the required amendments to the constitution. Its proposals were adopted unanimously in September 2003 by ordinary parliament and marked the first significant step in the reform of the judiciary. At the same time, they gave rise to grave concerns over their legality in light of the earlier rulings of the Constitutional Court and the requirement that those established that all changes to the Constitution were to be effected only by a Grand National Assembly.

Currently, the work of the courts has become more transparent and accountable through the creation of two positions, previously alien to the Bulgarian judicial system – (1) court administrator to organise the courts, and (2) court assistant to aid judges in the preparation of cases and the drafting of decisions. In spite of those, the pre-trial phase, the work of the prosecutors and investigators, as well as the dealings of the SJC remain non-transparent with next to no information concerning their proceedings. None of the very public cases of killings and intimidation have been uncovered thus far, which has made the issue of transparency and accountability in the pre-trial phase of the judicial process pressing.[24] The parliamentary quota of the SJC is most often suspected as the locus for executive and legislative influencing of the judiciary, whilst the credibility of the magistrates' quota is often questionable.[25] Finally, the prosecution favours high in corruption perception indices for corruption suspicion and trial blockage that is the root cause of backlogs. This finding is supported by the Commission Monitoring report of May 2006, where it stated that 'corruption undermines public and business confidence in Bulgaria. It represents ongoing risks of fraud against the EU budget and funds … it also hampers the economic development of Bulgaria by deteriorating the business climate.'[26] The Commission findings also declared that 'the existence of organised crime puts into questions the rule

[24] Jeffrey van Orden, MEP, raporteur for Bulgaria to the European Parliament, Speech delivered on 19 May 2006 at the Eversheds Offices, Senator House, London.

[25] Interviews with Kutzkova, *supra* note 21.

[26] Key findings of the May 2006 monitoring report on Bulgaria and Romania, MEMO/06/201, Brussels, 16 May 2006, at 2.

of law in Bulgaria; it affects directly all citizens and their basic rights.'[27] In sum, the judicial reform of Bulgaria after seven years of accession and eighteen years of transition is described as displaying the worst deformities of democratic transition – high profile corruption in office, violations of ethical codes, as well as nepotism. In light of these accusations, one needs to address the question why this may be the case, as well as establish the causality of these processes both at national and supranational level.

I. How Does the EU Ensure Effective National Implementation of the Acquis?

The EU has no developed quantitative methods or approaches to ensure that in the area of JHA an accession state fulfils its obligations. In principle, the EU has eight different approaches or methods of checking that a Member State complies with the acquis, the EC norms and regulations:[28]

1. Publication of the national records of transposition of directives;
2. Publication of surveys of business opinions about problems and barriers encountered in each Member State;
3. Encouragement of citizens and businesses to take action against their national authorities;
4. Inspection carried out by Commission officials or staff of European agencies;
5. Legal proceedings, mostly initiated by the Commission against Member States;
6. Evaluation by the Commission of the state of the internal market;
7. Monitoring and coordination of national policies;
8. Peer review and peer pressure.

The above methods are clearly applicable to Member States alone. Let us see next which one of those are also available to accession states, taking into account the fact that their accession is formally regulated by joint action *98/429/JHA*:[29]

Table 1: Accession methods to assess acquis implementation

METHOD	YES/NO
Publication of the national records of transposition of directives	No
Publication of surveys of business opinions about problems and barriers encountered in each Member State	Yes
Encouragement of citizens and businesses to take action against their national authorities	No

[27] *Id*., at 2.
[28] For further reference, *see* www.eipa.nl/publications (last visited 1 February 2006).
[29] Joint Action of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for collective evaluation of the enactment, application and effective implementation by the applicant countries of the acquis of the European Union in the field of Justice and Home Affairs.

Inspection carried out by Commission officials or staff of European agencies	Yes
Legal proceedings, mostly initiated by the Commission against Member States	No
Evaluation by the Commission of the state of the internal market	Yes
Monitoring and coordination of national policies	Yes
Peer review and peer pressure	Yes

Of the initial seven methods to assess acquis implementation, five are available in respect of the accession states. However, these five methods (marked with 'yes' in Table 1) are not objectively performance-orientated. They are 'soft' methods, which in the field of JHA do not carry quantitative targets, as the acquis is 'thin'. This is supported by the Commission Roadmap for Bulgaria, the full list of targets of which is found in Appendix 4. Therefore, the external pressure for reform of the Bulgarian judiciary is primarily driven by an external political consensus (peer review and peer pressure, as in Table 1), explaining the disproportionate rise in EU conditionality in this arena. Consequently, the implementation of the EU methods in accession states has yielded a number of disappointing results in important areas of the judicial reform. Political pressure can channel framework concerns, but not day-to-day benchmark targets. Evidence of progress of reforms is summed in the following Table 2, which presents the Commission's assessment of the implementation capacities of Bulgaria in the arena of JHA as per the end of the accession process in December 2004:

Table 2: Commitments under the final European Commission Monitoring report on the progress of Bulgaria to accession, 2005

MEASURE 2005	POLICIES	IMPLEMENTATION
Judicial reform strategy	*Urgent*: implementing regulations; staff training; considerably improving the technical quality of draft laws; implement monitoring mechanisms.	Partially
Reform of the structure of judicial system	*Urgent*: improve efficiency; case backlogs;	No
Pre-trial phase reform	*Urgent*: considerable efforts required; progress in combating organised crime is limited;	Limited
Efficiency and accountability of the judicial system	The new Penal Code of October 2005 must be made operational.	Expected (after a transition period)
Administrative capacity of the Supreme Judicial Council	61 staff at present; 2 new departments created; still many appointments of judges and prosecutors are made without competition (30 out of 173, all of which at senor positions to those 143 appointed through competition);	Partially
Ethical codes	Exist for all legal professionals; *Urgent*: little evidence of their enforcement	No

Corruption and accountability of the judiciary	*Urgent*: attention to enhance transparency and accountability, as well as investigation of magistrates unlawful behaviour	No
Functioning of court system	Commercial and administrative departments/ courts not yet established;	Largely no
Equipment and infrastructure	Large delays in installing software and equipment; *URGENT* need to adopt objective and clear rules for the manual distribution of cases in the absence of software, as at present this allows for undue influencing of magistrates' work	No
Corruption measures implementation	*URGENT*: remains widespread and is a serious cause for concern as it affects many faucets of society; weak investigation and prosecution of corruption cases; No cases of high-level corruption (among politicians and magistrates) have been reported so far;	No
Corruption measures acquis implementation	*Serious concern*: little effect of acquis adoption and implementation both in terms of institutional capacity-building and on the ground practices of officials	No
Industrial policy (Ch. 15)	Largely compliant with EU standards; URGENT: poor post-privatization control by authorities and often non-compliance with contractual obligations by new owners as a result	Partially – privatization and restructuring remain problematic
Harmonised framework of crime figures	No detection and prosecution figures as a compiled and readily accessible registry exist	No
Limiting MPs' and magistrates' immunity	*No progress*; immunity is overprotective and guarantees that MPs and magistrates cannot be prosecuted even for the gravest crimes	No
Human rights legal instruments	*No progress*; Bulgaria still has not signed Protocol 12 (on non-discrimination) of the Convention for the Protection of Human Rights and Fundamental Freedoms	No

Source: Comprehensive Monitoring Report Bulgaria, 2005

Table 2 presents a summary of the commitment of Bulgaria to reform the rule of law of the country under three captions – agreed measures, policy review, and implementation capacities. Bulgaria has maintained a judicial reform strategy since EU accession negotiations began. In terms of its implementation, however, the results that it has delivered have been extremely limited, especially in the areas of implementing EU regulations, the quality of laws, and the functioning of law enforcement agencies and monitoring mechanisms. Peer review at national level is still considered fictitious and its absence has been justified and supported by the absolute over functional immunity of magistrates. With the new Criminal

code, it is anticipated that this ought to change.[30] The quality of laws remains problematic with a number of changes to the new Criminal code and the new Administrative Code already proposed by the Ministry of Justice.[31] In terms of institutional reforms, the pre-trial phase has been singled out as most problematic with backlogs and overwhelming evidence of organised crime activity in the country. In terms of alleviating the most spurious and egregious effect of inefficient judicial reform – corruption, the EU has expressed a serious concern that this problem remains deeply rooted and widely spread, especially amongst government officials. The little evidence of Ethical Codes' enforcement amongst magistrates suggests that the application of the most basic measures to curb corruptive practices amongst officials and high profile public figures remains constrained. This conclusion is further supported by the World Bank Public Sector Ethics index for Bulgaria, which is very low at 25.2 percentage points and a still lower Corporate Governance index of 20.5 percentage points (on 1-100 percentage scale). Correlated to this, judicial effectiveness is estimated at mere 22.4 percentage points, as compared to 37.4 in the Czech Republic and 34.9 in Slovakia, and an outstanding 93.2 in Sweden and 92.1 in the United Kingdom.[32] Essentially, the evidence suggests that there are important areas of concern in the implementation of the rule of law in Bulgaria. The required measures highlight: (1) the lack of adequate implementation of those policies which ensure equal access to justice, as well as relief from double-standards; (2) a lack of implementation of the Code of Ethics for magistrates; (3) a rare use of open competition in the appointment of magistrates; (4) the insufficient investigation and prosecution of cases of corruption amongst public office holders; (5) the inappropriateness of continued absolute over functional immunity in criminal proceedings; and (6) the stalled reform of the structure of the legal system, especially the pre-trial phase.

Juxtaposed against this assessment is the Commission's own methodology, which is not effective in formulating benchmarks and targets that should ultimately relieve the said shortcomings. First, the Commission's commitment measures do not carry any quantitative targets since the acquis is scarce. This increases the uncertainty of progress in the applicant both amongst national and supranational actors. The most severe consequence of this is the empowerment of national veto players, which are opposed to further reform and integration of the state. Let us take for instance the reform of the pre-trial phase in Bulgaria. Despite the introduction of a new Criminal Code, the severe hierarchical structure of the Prosecution has been preserved. This structure was upheld by a ruling of the Constitutional court from January 2006, which refused to interpret the powers of

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[30] The latest Commission evaluation on progress of Bulgaria and Romania towards membership is anticipated on 16 May 2006. A final report of the European Commission on the two candidates is expected in September 2006.

[31] Proposals for changes to the new Law on the Judiciary: http://www.mjeli.government.bg/LawProjects/docs/zsv_20_noemvri_2003_2.doc (last visited 9 May 2006), and Proposals for changes to the new Administrative Code: http://www.mjeli.government.bg/LawProjects/docs/APC.doc (last visited 9 May 2006).

[32] D. Kaufmann, *Corporate Corruption/ Ethics Indices 2005*, World Bank Institute: http://www.worldbank.org/wbi/governance/pdf/ETHICS.xls (last visited 5 May 2006).

the Chief Public Prosecutor proceeding from the Constitutional text. This left them in end effect without clear boundaries and limitations. The top-down structure of the prosecution was, thereby, preserved, even though its lack of transparency is conducive to corruptive practice. In addition, the Law on the Judiciary has not changed the place of the prosecution within the system of justice and has retained the old interpretation of the constitutional text, whereby prosecutors are not accountable to any one person or body, except to the Chief Public Prosecutor. The lack of transparency in their work has been, thus, affirmed. Subsequent calls from the legislature to impose partial or full limitation on the prosecutors' immunity in criminal proceedings in the case of abuse of power, corruption in office or other criminal offence were met with enormous resistance from within all sides of the judiciary, judges and prosecutors alike. The former sensed that infringing on the powers of the prosecutors would necessarily be followed by a curtailing of their own competences.[33]

Second, the 'thinness' of the acquis in JHA suggests that many of the outstanding measures that the Commission enlists for implementation by the applicant are not adequately addressed neither by its own legal framework , nor by the 'best practice' of Member States. The starkest example of this is to be found in the regulation of the fight against corruption at EU level, the very policy reform that the EC has targeted in Bulgaria from the onset. The World Bank and Transparency International, among other institutions, have described the essence of corruption as anchored within a legalistic framework and focused on formal institutions.[34] The loci of corruption are, therefore, clearly defined. The growth of the problem in richer and poorer countries alike has led researchers of the World Bank to develop still finer methods of corruption evaluation. They define the gross form of corruption as 'state capture', whereby elites are rampantly and openly corrupt in the sense of bribery. As of 2004, it is, however, thought that 'legal' corruption is becoming more widespread than 'illegal', which means that corruptive mechanisms are becoming more refined to overcome national ethical codes and corruption laws and agencies.[35] Economic activity is becoming increasingly conflated with elite politics leading not only to higher perception in corruption but also to increased instances of money-laundering. Yet, in light of this reality the EU has no clearly formulated policies to fight corruption, nor has it set up any agencies to that effect. Juxtaposed against this is its requirement following the Helsinki European Summit (1999) that CEE applicants develop appropriate policies and methods to fight both traditional and new instances of corruption

[33] Interview with Kutzkova, *supra* note 21, 18 January 2006, archive. Interview with Sevdalin Bozhikov, Judge of Appeal and former Minister for Legal European Integration of Bulgaria (2001-2004), October 2004, Appeal Court, Plovdiv.

[34] D. Kaufmann, *Corruption, Governance and Security*, a World Bank working paper: http://66.249.93.104/search?q=cache:G1Jxxg_ZlgEJ:www.worldbank.org/wbi/governance/pubs/gcr2004.html+definition+of+corruption+by+the+World+Bank&hl=en&gl=uk&ct=clnk&cd=1 (last visited 5 May 2006).

[35] 'Legal corruption' defines lawful practices of publicly empowered actors whose actions are de jure legal but amount to a de facto cover for 'illegal corruption', thereby constituting a form of corruptive practice themselves: Kaufmann, *supra* note 32.

through a National Strategy for combating corruption and organised crime that the Commission shall monitor. The EU also expects the applicant to build up accompanying institutional structures, which would enable the implementation of the said anti-corruption strategy. However, in terms of acquis, the EU cannot aid the applicant because it has next to none developed. In terms of best practice for institutional structures development, it cannot provide sufficient aid either. Thus, to match its use of conditionality in this field, the EU has proposed two solutions: first, the EU has made it a condition of membership that the applicant adopted the International Conventions on corruption unconditionally, even though these are not part of the acquis while not all EU Member States have ratified them. Second, the EU has undertaken to provide limited assistance through Phare, as reviewed later in the article, and an exchange of best practice through a selection of twinning partners.

The problematic of the Commission methodology consists in a further aspect – that of forcing the applicant to change position in negotiations. This is a strategy often employed by the EU within its powers of extended conditionality vis-à-vis the CEECs, where the accession state is perceived of only as a junior partner rather than an equal.[36] This, at any rate, has been the experience of national actors in Bulgaria. However, it has been juxtaposed by the EU's difficulty in formulating concrete targets, as well as the EU's own example in this field. This suggests that any EU attempt to root such reforms in applicants is wide open to national scrutiny and possibly opposition. Bulgaria has developed an anti-corruption strategy since 2001. It has also established accompanying agencies to administer its implementation, such as an Anti-corruption agency with the Council of Ministers, a Phare funded corruption combating project with the Ministry of the Interior, a permanent parliamentary committee to combat corruption, hotlines in key ministries and in the Supreme Judicial Council. However, the evaluation of the effectiveness of their work over the past five years suggests strong resistance from national players. This is asserted with the following reasoning: If the necessary institutional structures are put in place and the normative framework is there but results are hard to come by, one can reach one of either two conclusions: (1) that actors lack the necessary ability to operate new structures and norms; or (2) that national veto players have *captured* the new institutional structures placed under their supervision. I suspect that the following indices more likely reflect a lack of enforcement of JHA reforms in Bulgaria than low levels of bribery, hence *institutional capture*:

[36] Interview with Milushev, *supra* note 20.

Table 3: Transparency International Corruption Perceptions Index[37]

Year	*Rank*	*CPI Score*	*2005/1998*	*Standard Deviation / Range*	*No of surveys used*	*Total number of surveyed countries*
1998	66= (3)	2.9		2.3	4	85
2004	54= (3)	4.1		3.7-4.6	10	146
2005	55= (4)	4.0	+1.1	3.4-4.6	8	154

Table 4: Transparency International Corruption Barometer of the loci of corruption in Bulgaria[38]

Year	*Legal system/ Judiciary*	*Police*	*Customs*	*Political Parties*	*Private sector*
2003	19.8%	4.1%	16.5%	20.2%	1.8%
2004	4.3	3.8	4.5	4.3	3.7

A comparison between the index for 1998 and 2004 as in Table 3 shows that the state has made progress from very low levels of 'cleanliness' from corruptive practices at the start of EU accession to more improved scores at the end of accession negotiations. Yet, progress remains limited as the 4.1 score in 2004 represents less than 50% of 'cleanliness' on the TI scale. A further disturbing trend is the deterioration of the index in 2005, which marks a drop on 2004 by 0.1 points. It shows that whilst corruption has improved with the end of large-scale privatization of state-owned enterprises (SOEs) in Bulgaria, the anticipation of recourse to the EU structural and cohesion funds and facilities has activated anew increased corruptive practices amongst public officials.[39] In most developed countries, the share of corruption in the public sector is smaller than corruption in the private sector. In Bulgaria, the public sector is perceived of as most corrupt with political parties and the judiciary ranking top and narrowly followed by customs and the police (Table 4).

The conclusions of the TI CPI are supported by further independent studies. The following two tables show the conclusions of two regular reports of the Open Society Institute on corruption monitoring in Bulgaria, which summarise the state of play under some of the elements of executive governance that increase institutional accountability and reduce corruption perceptions. In 2000 and 2001, criminal indicators were not released to the public and it was consequently thought

[37] Methodology: CPI Score relates to perceptions of degree of corruption as seen by business people and country analysts and ranges between 10 (highly clean) and 0 (highly corrupt). At least 3 surveys are required per country in order to be included in the CPI.

[38] 2003 Methodology: Surveys have asked, given the possibility, in which of these institutions would one chose to eliminate corruption? The results are presented as a percentage out of 100% for each institution. 2004 Methodology: Surveys have asked for people to rate these sectors with 1=not at all corrupt, 5=extremely corrupt.

[39] Conclusion also supported by the Commission key findings cited in its May 2006 monitoring report on the progress of Bulgaria and Romania to accession, at 1-2.

they did not even exist. They were supposedly first introduced in 2004, but as Table 7 shows, they provide very deficient information. Considering that the Centre for Democracy in Bulgaria has reported an estimated upward of 300,000 cases of corruption each month, a disclosure of 262 cases for the first six months of 2004 appears negligible (Table 7). Yet, this is also the highest number of disclosed cases at any one time, while there were only 95 cases of bribery disclosed in 1998 and 114 in 1999. In the period 1997-2000, a total of 93 convictions for bribe were made, as well as 10 acquittals.[40] Tables 5 through to 7 also show that institutional and policy change occurred incrementally, in that the findings from the reports of 2000 and 2001 indicated no change at all over the period, while the change in the disclosure and prosecution of cases of corruption in Table 7 indicates a very slow curve of progression towards better investigation and prosecution of cases.

Table 5: Regular Report on Corruption in Bulgaria, The Open Society Institute, EU Accession Monitoring Program, 2000

Country	*Assessment of level of corruption?*	*Criminal statistics*	*Public opinion surveys*	*Reports*	*Media*	*Control framework/ regulatory deficiency*	*Rumours/ unspecified*
Bulgaria	Yes (very serious problem)	Do not exist	Yes		Yes	Yes	Yes

Source: Monitoring the EU accession process: corruption and anti-corruption policy, OSI, EU Accession Monitoring Programme, at 47.

Table 6: Regular Report on Corruption in Bulgaria, The Open Society Institute, EU Accession Monitoring Program, 2001

Country	*Assessment of level of corruption?*	*Criminal statistics*	*Public opinion surveys*	*Reports*	*Media*	*Control framework/ regulatory deficiency*	*Rumours/ unspecified*
Bulgaria	Yes (very serious problem)	Do not exist	Yes			Yes	Yes

Source: Monitoring the EU accession process: corruption and anti-corruption policy, OSI, EU Accession Monitoring Programme, at 48.

[40] Source: Ministry of Justice of Bulgaria.

Table 7:Judicial database of cases of corruption under the provisions of the Bulgarian Penal Code, January-June 2004

CC provision	*Cases for examination*	*Sentences*	*Sentenced persons*
Active and Passive bribery of domestic officials (Art. 301-303; Art. 304, Para. 1-2 CC)	47	21	21
Active bribery of foreign officials (Art. 304, Para. 3 CC)	14	3	3
Passive bribery of foreign public officials (Art. 301, Para. 5 CC)	5	1	1
Trading in influence (Art. 304b CC)	3	1	2
Bribery in private sector (Art. 225c CC)	7	4	3
Abuse of official position (Art. 282-283 CC)	172	30	36
Corruption of military official (Art. 282-283; Art. 301-307a CC), including:			
a) abuse of position	5	2	4
b) trading in influence	3	1	1
c) bribery	11	3	3
Total	*262*	*66*	*74*

Source: Ministry of Justice of Bulgaria, 2004

Considering this evidence, I can conclude that the figures appear more likely to indicate a lack of enforcement of JHA reforms than low levels of bribery. The figures show that although the number of registered offences increased over the years, surprisingly the number of convictions dropped. Furthermore, the number of convictions compared to the number of registered offences appears negligible. Naturally, this leads us to ask after the causes of corruption. I propose an explanation that is consistent with the executive and judicial traditions of the state, namely an unusual high number of active veto players in the judicial system as compared to other CEECs.[41] This pattern is presented through an evaluation using the Giuliani index on veto players, as summed in Table 8 below:

Table 8: Giuliani index on veto points in Bulgaria

Criteria	*Response*
Rate of prompt transposition [in the case of Bulgaria the requirement is instead implementation] of directives	Low (evidence: Commission report 2005 as summarised in Table 2)
National quota of letters of formal notice	High (evidence: Constitutional court and Presidential veto)

[41] Van Orden, *supra* note 24. This view is also shared by a number of Bulgarian diplomats, whose identity shall remain anonymous here due to their currently active profiles with the Bulgarian Ministry of Foreign Affairs.

Reasoned opinions	Low
References to the ECJ, where instead of the ECJ the analysis uses references to the national Ombudsman and the Constitutional Court, as accession states enjoy no right of reference to the ECJ	High (evidence: Constitutional court)

Prompt transposition of EU directives is low and generally left to the last minute. This is supported both by the regular Commission reports and through the international media coverage of Bulgaria's accession.[42] The national quota of letters of formal notice to the Constitutional Court is high, as evidenced by the court's own case law.[43] The number of reasoned opinions is low and in fact no record of those is publicly accessible. References on the lawfulness of the legislative acts to the Constitutional court and the Parliamentary Ombudsman are high and have piled up as the speed of accession increased.[44] In the face of a high number of veto actors, I next turn to a discussion of how the EU ensures effective acquis (policy) implementation in Bulgaria.

II. What Is Effective Policy Implementation?

Effective policy implementation, as derived from the notions of Europeanization and the external incentives model, is a triad of 'knowledge-ability (capacity)-willingness (incentives)' as formulated by Nicolaides. At the heart of effective implementation, as theory goes, is (1) the ability to define specific targets, (2) identify the particular actions needed, (3) measure achieved results, and (4) assess whether they reach those targets.[45] As the preceding section shows, the EU has not done a very precise job in promoting *ability* in JHA reform in Bulgaria, mainly because it has not recognised the lack of absorption capacity in the state, while it has also failed to formulate clear benchmarks. Embedding new institutional structures within old and unreformed ones, still operated by reform-opposed players who suspect that reform would eventually jeopardise the status quo, is a mistake.

In general, there are three reasons why legal reform may be stalled or delayed: 1. Not all national magistrates benefit from the notion of empowerment by the European legal order (it is generally the highest courts that do so); 2. National judges may believe that the ECJ case law would undermine their own carefully-curated jurisprudence and thus, infringe their competences; 3. EC law would, in effect, expand the 'menu of policy choices' available to national judges and

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[42] *EU to delay Balkan bid for accession*, BBC 9 May 2006 (http://news.bbc.co.uk/go/em/fr/-/1/hi/world/europe/4753651.stm – site last visited 9 May 2006); *Commission keeps Bulgaria and Romania in limbo*, EurActive publication 8 May 2006; *Sofia's crime and corruption make it unfit to join the EU*, Sunday Telegraph, 24 April 2006.

[43] Summary of decision of the Constitutional Court of the Republic of Bulgaria: http://www.constcourt.bg/constcourt/ks_eng_frame.htm, site last visited 9 May 2006.

[44] Sofia Ombudsman: http://www.sofiaombudsman.bg/streaming.html, site last visited 9 May 2006.

[45] Nicolaides, *supra* note 14 at 56.

exploit this development creatively, but not always in pro-integrative directions.[46] In terms of domestic policy change, the EU policy effect on domestic institutions is conceptualised in the altering of '*the beliefs and expectations of domestic actors*', which may eventually lead to affecting their strategies and preferences, which may in turn lead to increased institutional adaptation.[47] The fact that a number of judicial reforms have been adopted but not implemented, shows that the EU policy effect has not yet settled into the operational logic (ability) of domestic actors (for a list of acquis implementation acts see Appendices 1-3).

By contrast, the EU promotes *knowledge* and *incentives* through its Phare programme (complimented often by Twinning, or technical assistance), the European Communities financial arm in enlargement.[48] Due to the embedded cost-benefit orientation of the programme (essentially it commits and disburses funds), it is more readily accessible to measure the effectiveness of rooting knowledge and incentives in Bulgaria than it is to measure ability. The strategic anticipated effect of this policy is a reduction in the number of veto players within the judiciary, which would in turn lead to a successful legal reform that upholds the accepted principles of the rule of law and democratic governance. The objective is reform, but in addition to that, the target of reform is the empowerment of pro-active groups of actors who will implement them on the ground. Table 9 summarises Phare projects promoting judicial reform in Bulgaria. The table identifies the project, the member state partnering Bulgaria, the project budget, its length, summary of project aim, and finally person responsible on behalf of the beneficiary.

In total 14 projects have been conducted over 8 years in the field of Justice in Bulgaria in the period 1999-2007. These are further divided into 35 sub-projects, for which a total of EUR 74 329 718 of Phare and National co-financing facility funds have been committed. In practice, this means on average EUR 9.291.215 committed per annum throughout the accession period. More than half of all projects involve Twinning, on which roughly one third of each project's budget is spent (i.e. fees to foreign counsellors). Overall, and spread across all projects, ca. EUR 7.000.000 are spent on institution-building over the full period, or less than an average of EUR 1.000.000 per year. This shows that institution-building has been neglected over the reform period for the sake of technical assistance and supply.

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[46] A. Stone Sweet & T. L. Brunell, *The European Court and the National Courts: A Statistical Analysis of Preliminary References, 1961-95*: http://www.jeanmonnetprogram.org/papers/97/97-14-.html, last visited on 8 April 2005.

[47] Ch. Knill & D. Lehmkuhl, *How Europe Matters. Different Mechanisms of Europeanization*, 3 EIoP, at 3 (1999).

[48] Information about the Phare programme: http://europa.eu.int/comm/enlargement/pas/phare/index.htm (last visited 9 May 2006).

Table 9: Phare projects in the field of Justice in Bulgaria, 1999-2007:

PROJECT ID	PARTNER	BENEFICIERY	BUDGET	DURATION
BG/IB/JH/04	Greece; Germany	Ministry of Justice, Supreme Judicial Council	EUR 2.045.000	12/2000 – 12/2002 (finished)
BG/2000/IB/ JH/01	TWINNING Germany – Bavarian Ministry of Justice	Public Prosecution	EUR 3.200.000	05/2001 – 05/2003 (finished)
BG-0103.03	Great Britain; College d'Europe, Belgium; Asser Institute, Holland	Ministry of Justice	EUR 2.000.000	06/2003 – 11/2003 (unfinished)
BG/IB/2001-JH-01	CLC, Austria	Ministry of Justice	EUR 1.200 000	09/2002 – 05/2004 (unfinished)
BG02/IB-JH-01	TWINNING BG/2002/IB France	Ministry of Justice and Supreme Judicial Council	EUR 11.870.000	07/2004-10/2005 (unfinished)
BG-02/IB/ JH/03	Germany	Ministry of Justice	EUR 800.000	10/2003 – 05/2005 (unfinished)
BG/02/IB/ JH/04	TWINNING Germany	Public Prosecution	EUR 1.800.000	12/2003 – 06/2005 (unfinished)
BG2003/004-937.08.01	TWINNING Austria and Spain	Ministry of Justice and Supreme Judicial Council	EUR 2.000.000	10/2004 – 10/2006 (unfinished)
BG2003/004-937.08.02	Unknown	Ministry of Justice	EUR 4.500.000, of which EUR 700.000 from National co-financing	07/2004 – 07/2006 (beginning)

Table 9 Continuing

AIM	SUB-PROJECTS	PERSON RESPONSIBLE
(1) Review of national law for acquis alignment; (2) Training of magistrates; (3) Pilot project – computerization and software	3	Maria Serkedjieva (Deputy Minister of Justice)
Creating institutional capacity through TWINNING and SUPPLY	0	Hristo Manchev (Deputy Chief Public Prosecutor and Director of Supreme Cassation Prosecution)
(1) Harmonisation of legal education; (2) Development of criteria for magistrates' appointment; (3) Development of a National Strategy for magistrates' training; (4) Pilot training of 136 magistrates and court clerks	4	Sevdalin Bozhikov (Deputy Minister of Justice)
(1) Judicial reform; (2) Institutional reform; (3) Training of magistrates for further qualification; (4) Information technology regarding a bankruptcy registry	4	Sevdalin Bozhikov (Deputy Minister of Justice)
Completing the National Strategy for Judicial reform and aligning national legislation with the acquis	3 (Twinning 01-A – access to justice; Investment; Twinning 01-B – National Institute of Justice)	Mario Dimitrov (Deputy Minister of Justice), Sevdalin Bozhikov (Deputy Minister of Justice)
(1) Reform of the Administrative Code acc. To best EU practice; (2) Restructuring of the system of administrative litigation; (3) Training of magistrates	3	Sevdalin Bozhikov (Deputy Minister of Justice)
Creating institutional capacity through TWINNING and SUPPLY to fight CORRUPTION	0	Hristo Manchev (Deputy Chief Public Prosecutor and Director of Supreme Cassation Prosecution)
Development of fast and effective judicial procedures in civil and criminal matters and a new framework for work	2 (01-A and 01-B)	Lilia Simeonova (General Secretary of the Supreme Judicial Council), Sevdalin Bozhikov (Deputy Minister of Justice)
Technical assistance and investment		Krassimir Katev (Deputy Minister of Finance)

PROJECT ID	PARTNER	BENEFICIERY	BUDGET	DURATION
BG/2004/IB/JH/04	Spain; Germany	Supreme Judicial Council	EUR 1.319.718	08/2005 – 07/2007 (beginning)
BG-2004/006-070.03.01	Unknown	Ministry of Justice	EUR 5.000.000	2005-2007 (beginning)
BG-2004/016-711.08.01	TWINNING CLC Austria; Spain, Sweden, Northern Ireland	Ministry of Justice	EUR 27.200.000	08/2005- 09/2007 (beginning)
BG-2004/016-711.08.02	TWINNING Spain, Germany	Supreme Judicial Council	EUR 3.600.000	08/2005-10/2007 (beginning)
BG-2004/016-711.08.03	TWINNING United Kingdom	Ministry of Justice	EUR 7.795.000, of which EUR 1.500.000 from National co-financing	09/2005 – 06/2007 (no status)
TOTAL			TOTAL	
14			EUR 74.329.718	

Of all 14 projects, only one directly targets the fight against corruption with a grand total budget of EUR 1.800.000, a third of which to be spent on Twinning. This project's end-date is now long overdue. The evidence further shows that, in fact, most of the projects are long overdue from their contracted end-date. In turn, this means that the committed funds have not been disbursed and the reforms have not taken place. This points to the conclusion that Phare as an accession instrument in the field of *capacity building in Justice* has clearly not been as effective in Bulgaria as hoped. However, it is the only available instrument that brings in EC investment and funding to the state in preparation of EU membership. By contrast, the fact that the bulk of the projects have not been finalised by their due date suggests that current levels of technical assistance and supply are not commensurate to the level of reform required in accordance with its 2005 Commission Monitoring Report (see Table 2).

The EC implementation facility in enlargement highlights an important issue of integration in CEE and further European integration, more generally: that of effective project (and reform) supervision and management. Over the years, projects in Bulgaria were implemented under the supervision of the same persons. This leads us to question as to whether the reason why the EU-Bulgarian accession partnership in JHA has not worked so well is likely to be rooted much more with the Bulgarian supervision and implementation of the projects. On the EU side of the negotiations, it is a weakness of Phare that it has not introduced

AIM	SUB-PROJECTS	PERSON RESPONSIBLE
(1) Magistrates' status; (2) Administrative capacity of the Supreme Judicial Council	2	Anita Mihaylova (Member of the Supreme Judicial Council), Manuel Mazuelos (accession advisor)
Technical assistance and investment	2	Not known
Development and application of National Strategy for judicial reform through Technical assistance and investment	4	Not known
Target assistance of the judiciary and the executive through Twinning and Investment	3	Not known
Improving the judicial process and the application of convictions	2 (04 and 05)	Not known
	TOTAL	
	35	

Source: Ministry of Justice of Bulgaria

a rotational institutional structure in the implementation of projects, considering its strong negotiating and granting powers to sanction the applicants' Annual National Phare Programme. The principle of rotation is well-established in EU governance and is a suitable tool for increasing transparency and accountability, while also promoting 'knowledge-ability-willingness' through inclusion of the greatest number of actors.

Effective reform implementation through Europeanization and the external incentives model is essentially an effective promotion of knowledge, capacity, and incentives. The former two are often actively promoted through the latter. If resources are badly managed, insufficient or targeting policy reform over capacity-building, their cost-benefit orientation is likely to be inverted. Costs increase for both sides of the reform equation. Where committed funds do not augment envisaged reforms, then the immediate and potentially the long-term cost of admitting new members rises for the Union because it may potentially stall further integration and harmonization amongst Member States. The cost of accession also rises for the applicant, where central executives would have to increase the share of the national budget committed to EU membership since Phare has not achieved its targets, yet continued reform is enlisted as a condition of membership. In practice, double-expenditure may occur. For example, between 1999 and 2005, Bulgaria has spent 2-3% of its GDP on EU membership-related reforms. Since the 2005 Commission monitoring report highlighted a number of

outstanding reforms to be implemented within a very constraint period of time, the Ministry of Finance has taken the view that integration-related expenditure must rise to 4-5% of GDP in 2006 and 2007.[49] This is a very substantial rise in the cost of accession, considering that annual GDP stands currently at EUR 21.1 billion. Compared to the amount spent from previous budgets (considering that budgets grow in proportion of GDP growth, which was EUR 13.7 billion in 2000, but EUR 21.1 billion in 2005), we see that by 2006, the actual funds to be spent by the state on enlargement have increased more than five-fold.[50] Effective policy implementation may become very costly and, therefore, not efficient.

III. Achieving Effective and Efficient Policy Implementation

In policy implementation there is necessarily a trade-off between effective and efficient implementation. Whilst effectiveness and efficiency are both as important, effectiveness should not be pursued at all costs. I hereby adopt Nicolaides' logic on policy implementation, namely that effectiveness should be done at an efficient cost. An efficient cost he defines as 'achieving a certain objective or amount of value at the lowest possible cost or achieving the largest possible amount of value from constant costs.' This 'internal efficiency' is complimented by an 'external efficiency', namely that policy measure 'which causes the minimum amount of two other types of costs: negative side effects, spillovers or externalities on third parties and compliance costs.'[51]

For integration and Europeanization, policy compliance has, therefore, some important implications. First, effective and efficient policy implementation can only occur within the right institutional framework. This, therefore, creates a necessity to create an institutional capacity with the right amount of absorption capacities. In transition and accession states, this can be achieved by taking into account all possible institutional players, including veto players, and involving them actively in a 'knowledge-ability-willingness' framework. The second repercussion falls in line with Nicolaides' expectation, which derives itself from the former: 'If compliance is costly and non-compliance is not easily observed by the authorities, it should be expected that individuals … will simply not comply.'[52] Within the democratization and accession framework of the EU vis-à-vis the CEECs, the only framework that punishes evasion of compliance is the safety clause, namely that the state's accession would be delayed by one year (or up to three years in some areas) if it is deemed non-compliant in any one area of integration. This is essentially a measure of negative integration, which has no correlation to incentives or capacity-building. After more than 15 years of transition and having achieved some level of welfare and good governance, the threat of the safety clause is not sufficient any longer to prevent an accession state from evading compliance.

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[49] Minister of Finance of Bulgaria, Plamen Oresharski, October 2005, Speech at the Bulgarian Embassy in London.

[50] Evidence of the Bulgarian National Bank and the Ministry of Finance of Bulgaria.

[51] Nicolaides, *supra* note 14, at 60.

[52] *Id*., at 61.

Finally, effective implementation of reforms in the CEECs within the EU-Europeanization framework must have the clear effect of innovation above all others.[53] Innovation ensures that state structures are compatible with EU norms but are also commensurate to the prevailing domestic governance tradition.[54] Innovative structures must further be complimented by commensurate absorption and accommodation capacities, whilst leaving domestic actors sufficient room for manoeuvre and adjustment to national-specific patterns. Following the application of Europeanization mechanisms four outcomes of EU policies are anticipated at national level: accommodation, absorption, transformation, and retrenchment, each outcome indicating the severity of the change, as well as its direction.[55] Accommodation is the most modest form of Europeanization; absorption indicates a greater extent of implementation willingness, whilst transformation is most desirable as it signals that the state has introduced the policy through national initiative. Retrenchment is the worst outcome of Europeanization, although not unknown of even among member states. Of course, applicants have a far lesser room for retrenchment than member states in terms of policy implementation, as it jeopardises their chances of membership. It is, however, a more likely outcome at institutional and cognitive level where it takes a long time for change to occur and where veto players can be very active. The type of outcome is split as direct/indirect and voluntary or coercive, resulting in four variations.[56]

Concerning Justice reform in Bulgaria, I would like to raise two points. First, in relation to the reform rational, path-dependence in the reform logic of institutions and public policies is not prevailing in Bulgaria. I have already outlined how the institutional reform of the Bulgarian judiciary has, thus far, tended to follow the model of the 'best Member States' practice'. The transfer of the investigation from the judiciary into executive authority aligns the Bulgarian investigation structure with that of the EU Member States. The debate about the introduction of functional over absolute immunity for magistrates is again an example of rational institutionalism over path-dependence. The creation of new court positions is also an instance of foreign practice. Thus, compared to studies of the Europeanization of other CEECs, the Bulgarian judicial reform has been more strongly Europeanized. Baldersheim et al argued in a cross-national study that many of the government institution-building choices made in Hungary, Poland, the Czech Republic and Slovakia since 1990 were merely a result of the 'self-transformations' of those countries, as well as a desire to resemble the standard Western form.[57] Nielsen et al further argued that many of the institutional choices

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[53] J. Trondal, *Two Worlds of Europeanization – Unpacking Models of Government Innovation and Transgovernmental Imitation*, 9 EioP (2005).

[54] H. Grabbe, *How does Europeanization Affect CEE Governance? Conditionality, Diffusion and Diversity*, 8 Journal of European Public Policy 1013 (2001).

[55] C. M Radaelli, *The Europeanization of Public Policy*, *in* K. Featherstone & C. M. Radaelli (Eds.), The Politics of Europeanization, 27 (2003)

[56] I. Bache, *Europeanization: A Governance Approach*, paper presented at EUSA (2003), at 11.

[57] H. Baldersheim & M. Illner, *Local Democracy: The Challenges of Institution-Building*, *in* H. Baldersheim, *et al.* (Eds.) Local Democracy and the Processes of Transformation in East-Central Europe, at 1 (1996).

made in the Central European states after 1990 were path-dependant because of the legacies of socialism, which created a systemic vacuum, so that the collapsed socialist institutions continued to generate certain societal expectations.[58] Therefore, many of the institutional choices made in other CEECs immediately after the collapse of socialism emanate from a desire to abandon the same political model of a strongly centralized state, which respected two basic doctrinal rules: democratic centralism and homogeneous state authority.[59] However, considering that the impetus to reform in Bulgaria was provided much more strongly by the goal of EU membership than the desire for self-transformation, the anticipated effects of the Europeanization of the rule of law are much more pronouncedly rational-institutional than path-dependent. Of course, the main explanation for this trend is the particular permanence of old governing elites in Bulgaria [as in Romania].

Second, we are interested to see how efficient the implementation effects of Europeanization have been. I anticipate much fewer effects of innovation (transformation) in JHA reform than effects of accommodation and retrenchment. The reasoning for this is two-fold: first, the time-frame of reform is relatively constrained considering that integration is accompanied by a parallel democratization of the state. Second, the EU resources committed to reform of the rule of law in Bulgaria are relatively small in amount and poorly managed in scope. The precedence given to policy over institutional reform has failed to reduce the high number of veto players in the judiciary and has increased the cost of compliance. In the absence of measures to preclude non-compliance or evasion, other than the safety clause, veto players have been empowered at the expense of the large national political and civil consensus in favour of European integration.

D. Conclusion

We have seen thus far that in the area of JHA reform some reforms work and others do not. The transparency and accountability of judges and the trial phase has increased favourably as accession has come to a close. This is a positive result of European integration. On the other hand, the pre-trial reform has stalled. One explanation for this discrepancy is found in the fact that the role of judges within the judicial system has never been questioned. They have always, and universally so, been seen as pivotal to the judicial process, the rule of law and its reform.

By contrast, the role and place of the prosecution and the investigation have been put under intense scrutiny and it is there that the legislator has sought to introduce the greatest change in the status quo. The investigation has changed

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[58] K. Nielsen, B. Jessop & J. Hausner, *Institutional Change in Post-Socialism*, *in* J. Hausner, B. Jessop & K. Nielsen (Eds.), Strategic Choice and Path-Dependency in Post-Socialism/ Institutional Dynamics in the Transformation Process, at 4 (1995).

[59] H. Baldersheim, *et al.*, *New Institutions of Local Government: A Comparison*, *in* H. Baldersheim, *et al.* (Eds.) Local Democracy and the Processes of Transformation in East-Central Europe, at 23 (1996).

places within the national institutional framework on a number of occasions. Every time that it has been removed from the judiciary, the investigation has lost its absolute, then functional immunity and say, as its staff were stripped off their prior status as magistrates within the judicial system. Questions raised about the place of the prosecution in the system of justice have a similar effect on the moral of the prosecutors. In the past, it has been argued at length that the prosecution should be established separately from the judiciary and, thus, finally made accountable to the legislature and the executive. The status and immunity of prosecutors has in consequence also been put up for public debate. However, reforms, which introduce a fundamental change in the power symmetry within the state, are likely to encounter severe resistance from traditionally empowered actors.

Thus, the patterns of judicial reforms in Bulgaria uphold the idea that the outcomes of Europeanization depend on the policy brief and the affected institutional actors at national and EU level, a rational often floated by studies of the effects of Europeanization in public policy. Areas governed by acquis are likely to see change introduced much more rapidly than those areas governed essentially by conditionality, whether political or functional. In the area of Justice, in particular, we see incremental change most predominantly because of the 'thinness' of the acquis and subsequent use of external political pressure in place of deficient regulation. On reflection, the overall outcome of this approach is more negative than positive because it is rooted in weak foundation, while its effect is non-binding for the candidate state. A further downside is that the cost of reform becomes overbearing, as a result of which national veto players come to question its efficiency, especially where it threatens the security of the institutional power symmetry that they have already become accustomed to.

Bearing in mind the evidence that this article examines and the various framework conditions against which it is assessed, I contend that progress in judicial reform in Bulgaria has been achieved in a number of significant areas. However, in a substantial number of important others, reform is coming by incrementally, and levels of implementation and compliance are still low. It is, therefore, impossible to state categorically at this stage whether democratic governance and the rule of law are deeply rooted in the Bulgarian legal system of practice and conduct. Only their future implementation and practice will provide us with testimony to that effect.

Appendix 1: Legislative Measures to Fight Corruption

MEASURE	TYPE
1. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions	International convention and OECD working group
2. GRECO	Notification of intent to participate
3. Council of Europe Criminal Law Convention on Corruption (adopted with reservations, withdrawn with a National Assembly Act on 04/02/2004)	COE Convention
4. Council of Europe Civil Law Convention on Corruption	COE Convention
5. Law on Amendments to the Criminal Code	National law
6. Law on publicity of the property of persons who occupy superior state positions	National law
7. Amendments to the Criminal Code	National law
8. National Strategy on Combating Corruption 2002-2003	Government paper
9. Action Plan on the Implementation of the National strategy on Combating Corruption 2002-2003	Council of Ministers Act
10. Commission on Coordination of the Activities in the fight against Corruption	Council of Ministers decision
11. Report on the Implementation of the National Strategy on combating corruption 2002-2003	Commission report
12. National Strategy on Combating Corruption 2004-2005	Government paper
13. Action Plan on the Implementation of the National strategy on Combating Corruption 2004-2005	Council of Ministers Act
14. Criminal Code amendment	National legal act
15. Law on Judiciary amendment	National law
16. First GRECO report on Bulgaria	EU report
17. Introduction of differentiated court statistics on corruption cases	National measure
18. Code of Ethics for Court Clerks	National law
19. UN Convention against corruption	International convention
20. Law on Civil Service amendment	National law
21. Constitutional amendments	Constitutional act
22. Draft law amending the Law on the Judiciary	Government proposal
23. Rules of Ethics of Prosecutors	Supreme Judicial Council Act
24. Rules of Ethics of Judges	General Assembly Act
25. National Institute of Justice establishment	General Assembly Act
26. Additional Protocol to the Council of Europe Criminal Law Convention on Corruption	
27. GRECO First Evaluation Round Compliance Report on Bulgaria	GRECO/EU report

Table 16:Measures implemented by Bulgaria in the fight against corruption 1997-2005 Source: Ministry of Justice of Bulgaria

LEVEL OF EF-FECTIVENESS	DATE PROPOSED	DATE RATIFIED	OTHER
	17/12/1997	22/12/1998	2nd phase began in 2002 and was completed in 2003
	26/01/1999	01/05/1999	
	27/01/1999	07/11/2001	in force from 01/07/2002
	04/11/1999	08/06/2000	in force from 01/11/2003
		15/01/1999	
		26/04/2006	
		08/06/2000	
		01/10/2001	
		13/02/2002	
		11/02/2002	
		09/2003	
		09/2003	
		12/2003	
		13/09/2002	
		17/07/2002	
		05/2002	14 EC recommendations
		01/01/2003	
		02/2003	
	9-11/12/2003		
	15/10/2003	28/10/2005	
	24/09/2003	26/09/2003	
	17/12/2002	25/03/2004	
		26/11/2003	
		12/12/2003	
		01/01/2004	
	15/05/2003	04/02/2004	
		13/05/2004	12 EC recommendations were partly or fully implemented, and 2 are not yet

Appendix 2: Administrative Implementation of the Acquis

The administrative implementation is measured with the Transition Framework of the European Bank for Reconstruction and Development (EBRD) for the accessibility of laws:

Table 17: EBRD index for the accessibility of laws

Criteria[1]	*Result*
Number of delayed/incomplete publications of laws and regulations	No database
Coverage of cases	Scarce (in media and think tanks)
Sources of law provided by the constitution	3 sources – administrative, civil, and criminal/penal
Whether there is a practice of secret legislation	Occasional (as well as retrospective)
Whether the judiciary is experienced in complex legal matters	No (communist legacy, especially concerning private litigation, out of court settlement, upholding civil rights and liberties, penalising new crimes such as corruption)
Whether the judiciary is independent	Yes on paper; Some executive influence in practice, as well as some evidence of capture through private interest groups
Whether the law interpretation is transparent, clear, appropriate, open, and predictable	No (double standards exist; practice of undisclosed judgements; non-transparent pre-trial and trial phase; conflicting laws; unregulated by law areas, e.g. privatization of the banking sector)

The EBRD accumulated index for Bulgaria was 3.03 in 1997 and 3.59 in 2005, which is a change of +0.56 on 1997 (scores range from 1 to 4+, where 1 represents little or no change from a rigid planned economy society and 4+ represents the standard of a liberal market economy society). The score suggests that Bulgaria is still some way off the level of a standard EU Member State society, albeit not as far as 1997.

Note: practical implementation is measured with the Giuliani index as in main text.

[1] D. Peel, *Legal Opinions in Transition countries*, *in* EBRD, Office of the General Counsel of the EBRD, Law in Transition, Issue 20/08/96, Ref: 2189, at 17-18 (1996).

Appendix 3: Acquis in Justice – Key Acts

Table 18: Acquis communautaire in Justice and Home Affairs – key acts

ID	TITLE	ENACTED	APPLIED	IMPLEMENTED
2002/946/JHA	Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorized entry, transit and residence	Yes	Yes	Yes
31994Y1214	Council Resolution of 6 December 1994 on the legal protection of the financial interests of the Communities			
31995F1127(03)	Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests	Yes	Yes	Yes
31995Y1207(04)	Resolution of the Council of 23 November 1995 on the protection of witnesses in the fight against international organized crime	Yes	Yes	Yes
31996F1023(01)	Council Act of 27 September 1996 drawing up a Protocol to the Convention on the protection of the European Communities' financial interests			
31996F1023(01)	Council Act of 27 September 1996 drawing up a Protocol to the Convention on the protection of the European Communities' financial interests			
31997F0625(01)	Council Act of 26 May 1997 drawing up, on the basis of Article K.3 (2) (c) of the Treaty on European Union, the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union	Yes	Yes	No (transition period)

31997F0783	97/783/JHA: Second Joint Position of 13 November 1997 defined by the Council on the basis of Article K.3 of the Treaty on European Union on negotiations held in the Council of Europe and the OECD on the fight against corruption	Yes	Yes	Partially
31997G0111	Council Resolution of 20 December 1996 on individuals who cooperate with the judicial process in the fight against international organized crime	Yes	Yes	Yes
31998F0427 98/427/JHA	Joint Action of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on good practice in mutual legal assistance in criminal matters	Yes	Yes	Partially
31998Y0722(02)	Special Report No 8/98 on the Commission's services specifically involved in the fight against fraud, notably the 'unité de coordination de la lutte anti- fra'de' (UCLAF) together with the Commission's replies (pursuant to Article 188c(4), second subparagraph, of the EC Treaty)	Yes	Yes	Yes
31998Y1229(01)	Council Resolution of 21 December 1998 on the prevention of organized crime with reference to the establishment of a comprehensive strategy for combating it	Yes	Yes	Partially
2002/630/JHA	Council Decision of 22 July 2002 establishing a framework programme on police and judicial cooperation in criminal matters (AGIS)	Yes	Yes	Partially

32003F0568	Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector	Yes	Yes	Largely no
41997A0625(01)	Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union	Yes	Yes	Partially
98/699/JHA	Joint Action of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime	Yes	Yes	Partially
2001/413/JHA	Council Framework Decision of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment	Yes	Yes	Partially
2002/187/JHA	Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime	Yes	Yes	Yes
2004/C 86/01	Act of the Joint Supervisory Body of Eurojust of 2 March 2004 laying down its rules of procedure			
97/661/JHA	Common Position of 6 October 1997 defined by the Council on the basis of Article K.3 of the Treaty on European Union on negotiations in the Council of Europe and the OECD relating to corruption	Yes	Yes	Partially

98/429/JHA	Joint Action of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for collective evaluation of the enactment, application and effective implementation by the applicant countries of the acquis of the European Union in the field of Justice and Home Affairs			

Appendix 4: European Commission Roadmap for Bulgaria 2002, Selected Excerpts Relevant to the Reform of the Judiciary

Chapter 24: Co-operation in the field of justice and home affairs

Bulgaria should focus further efforts on substantially strengthening the capacity of its judiciary and law enforcement agencies and improving co-operation between the different agencies. Particular attention should be given to the bodies in charge of the fight against fraud, corruption, money laundering, Schengen, co-ordination of police activities and anti-drugs policy. Work on legislative alignment (visa policy, migration, money laundering) should continue. Negotiations on this chapter are underway. Attention will need to be given to ensuring commitments made in that process are respected. Key steps include:

Short term

Adopt and implement the new Border Security Act and the secondary legislation as well as an integrated border management strategy covering all borders of Bulgaria, with particular attention for the gradual modernisation of the border infrastructure and equipment, the necessary training for professional border guards and customs officers and for the coordination and practical co-operation between authorities. Update on a regular basis the Schengen Action Plan. Adopt new legislation on migration. Develop a comprehensive migration policy including on the establishment of a national body for its implementation.

Continue to implement the National Anti-Corruption Strategy. Fully align with the EU acquis in the field of criminal law protection of the Communities' financial interests. Implement the strategy on the fight against crime, with special attention for various forms of trans-border and organised crime such as trafficking in drugs, human beings, etc…, and for the co-ordination and practical co-operation between law enforcement bodies. Adopt an action plan to implement the National

Drugs Strategy. Strengthen the administrative capacity of the National Drugs Council. Improve the capacity of the Bureau of Financial Intelligence to enforce the existing legislation and improve its co-operation with other law enforcement agencies active in the area of combating money laundering.

Medium term

Fully align visa policy with EU lists of countries whose nationals are under visa obligations and of those whose nationals are exempt from that requirement. Continue equipping all diplomatic and consular missions with devices to detect forged or falsified documents. Continue major efforts to establish a Schengen-type border security system based on the full implementation of the Schengen Action Plan. Increase the capacity of the reception centres for refugees and asylum seekers, improve the conditions for integration of refugees, accelerate screening procedures and strengthen the administrative capacity of the State Agency for Refugees. Ensure full compliance with the *acquis* and other international standards on the fight against the misuse of the financial system and the financing of terrorism. Take further measures to ensure implementation of the Community instruments in the area of judicial co-operation in civil matters, notably as regards mutual recognition and enforcement of judicial decisions. Make legislative amendments necessary in order to accede to and implement the EU Convention on Mutual Assistance in Criminal Matters. Take steps to remedy the complexity of the penal procedure by making the investigation phase shorter, more efficient and in line with EU practices. Take the necessary steps to prepare for full implementation upon accession of the instrument applying the principle of mutual recognition and in particular the Framework Decision on the European arrest warrant and the Framework Decision on the execution of orders freezing property or evidence.