Preparation for EU Accession

Summer Seminar
for Young Bulgarian and Romanian Public Servants

Organised by the Economic Policy Institute, Sofia
within the joint project of the Bertelsmann Foundation and the World Bank
”Towards European Integration - Network for Integration of Central and Eastern European Countries into the European Union”
in cooperation with Eurisc Foundation, Bucharest

30 September - 1 October, 2000
Bulgaria, Holiday Club "Riviera"

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Introduction

On 30 September - 1 October in Holiday Club "Riviera" Bulgaria the Economic Policy Institute organized a summer seminar for young Bulgarian and Romanian public servants "Preparation for EU accession". The event was carried out within the joint project of the Bertelsmann Foundation and the World Bank *"Towards European Integration - Network for Integration of Central and Eastern European Countries into the European Union"* in cooperation with the EURISC Foundation, Bucharest. Within the broad context of the project and its approach of promoting networking among NGOs, the organizers of this summer seminar brought together young public servants working in the respective European integration departments of ministries in Bulgaria and Romania.

The aim of the initiative was:

- To create a cross border network among the young public administrators;
- To discuss and exchange experience on common problems faced during the negotiation process;
- To acquire knowledge on specific topics related to the preparation for EU membership in a broader context of US and World Bank's views.

Preparing for EU Accession: Effective use of Support from International Partners

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Mr. Thomas O'Brien's presentation was mainly focused on the importance and impact of effective donor coordination. Many of the themes highlighted have been recently analyzed in a World Bank flagship publication World Development Report 2000/2001, with special emphasis on Reforming Development Cooperation to Attack Poverty.

Donors have used many means to influence recipient country policies. Old forms of policy have often had disappointing results, depending on country circumstances and how the conditionality was used. Policy review processes also have had limited success. Public expenditure reviews, for example, have evaluated the level and composition of countries' expenditures and identified ways to improve expenditure policy and use donor funds more efficiently. But several studies have found this type of intervention to be ineffective in many cases, largely because recipient countries have not been closely involved in the reviews - and so have felt little inclination to comply with the findings.

Donors are searching for new mechanisms for strengthening policy environments that encourage country ownership rather than undermine it. One new instrument that has received much attention is the sectorwide approach: the government designs an overall sector strategy, and donors sign on to fund the sector, not individual projects. All activity in the sector is conducted by the recipient country, using its own funds in addition to those of donors.

Some proponents have suggested applying the principles of sectorwide approach to all development cooperation. Donors would cede complete control to the recipient country government - advancing their own perspective on development strategy through dialogue with the country and with one another rather than through specific programs and projects. Rather tab fund their own projects, donors would give central budget support to countries with good development strategies (and the capacity to implement them). A country would first develop its own strategy, programs, and projects in consultation with its people and with donors. It would then present its plans to donors, which would put unrestricted financing into a common pool of development assistance, to be used along with the government's own resources to finance the development strategy. Earmarking would disappear. Donor monitoring and control of specific projects and programs would not be permitted. And no conditions would be placed on donor aid.

The common pool approach would be a more rigorous form of conditionality, because donors would need to evaluate the overall policy environment, direction, and capacity of countries. These assessments would be made known to the country and to other donors during the dialogue leading up to the financing decision.

Like the sectorwide approach, the common pool approach would ensure full ownership by the country and eliminate donor coordination problems. It would also preserve two important benefits of the current development cooperation approach:

- The knowledge transferred in donor-implemented projects, an important side effect of aid. A road building projects, for example, might transfer knowledge of engineering or even project accounting to local workers. This transfer would not be lost in a common pool arrangement. Recipient countries could still ensure knowledge transfer through their choice of companies and the terms of contacts.

- The support that conditionality gives to reform factions in governments. Support for reform elements in a country is perhaps the only effective part of the present system of conditionality. Donor-imposed conditions can strengthen the position of reformers in national debates or serve as a "self-imposed" constraint on government officials. The approach to conditionality in a common pool arrangement would be far different, but it would not sacrifice its benefits. Donors could strengthen the hand of reformers by publicizing the criteria used to assess country strategies and adjusting the volume of their assistance. This would form the basis for a more open and honest relationship between donors and recipients and preserve the benefits of the currents conditionality while eliminating its problems.

The choice of instrument will depend on the policy and institutional conditions of particular countries (or sectors within countries) and the preferences of individual donors. But a premium should be placed on putting the country in charge and ensuring that the mechanisms of aid delivery do not compromise its ownership.

Regional policy and the management of EU structural funds

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Introduction

In my presentation I shall try to link three issue areas that will become increasingly important for policy-makers and policy planners in the accession countries who want to create an institutional framework for the economic catch-up process. These issues are, firstly, the assistance provided by the EU in the pre-accession constellation and after

accession; secondly, the political and policy logics of the EU cohesion policy; and, thirdly, the role of regional and local administration in supporting economic development. I would like to invite you to share your opinions and experiences on two crucial policy problems: How the trade-off between equality and efficiency in designing regional development policies is addressed in Bulgaria and Romania, and how the utility/appropriateness of fiscal and legal decentralisation is assessed in both countries.

1. EU assistance and enlargement

The cohesion policy of the EU is gaining increasing relevance for the accession countries since, after the enlargement, it will be the most important instrument to foster the economic catch-up process of the new member states. The management principles of the Phare programme and the pre-accession Structural Instrument (ISPA) are pre-empting some of the rules and procedures of cohesion policy management. The scope and structure of EU assistance can be seen from the financial framework the EU member states have agreed for the Eastern enlargement.

FINANCIAL FRAMEWORK EU-21

EUR million - 1999 prices - Appropriations for commitments	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**
1. AGRICULTURE	**40920**	**42800**	**43900**	**43770**	**42760**	**41930**	**41660**
CAP expenditure (excluding rural development)	36620	38480	39570	39430	38410	37570	37290
Rural development and accompanying measures	4300	4320	4330	4340	4350	4360	4370
2. STRUCTURAL OPERATIONS	**32045**	**31455**	**30865**	**30285**	**29595**	**29595**	**29170**
Structural Funds	29430	28840	28250	27670	27080	27080	26660
Cohesion Fund	2615	2615	2615	2615	2515	2515	2510
3. INTERNAL POLICIES	**5900**	**5950**	**6000**	**6050**	**6100**	**6150**	**6200**
4. EXTERNAL ACTION	**4550**	**4560**	**4570**	**4580**	**4590**	**4600**	**4610**
5. ADMINISTRATION	**4560**	**4600**	**4700**	**4800**	**4900**	**5000**	**5100**
6. RESERVES	**900**	**900**	**650**	**400**	**400**	**400**	**400**
7. PRE-ACCESSION AID	**3.120**	**3.120**	**3.120**	**3.120**	**3.120**	**3.120**	**3.120**
Agriculture	520	520	520	520	520	520	520
Pre-accession structural instrument	1.040	1.040	1.040	1.040	1.040	1.040	1.040
PHARE (applicant countries)	1.560	1.560	1.560	1.560	1.560	1.560	1.560
8. ENLARGEMENT			**6.450**	**9.030**	**11.610**	**14.200**	**16.780**
Agriculture			1.600	2.030	2.450	2.930	3.400
Structural operations			3.750	5.830	7.920	10.000	12.080
Internal policies			730	760	790	820	850
Administration			370	410	450	450	450
TOTAL APPROPRIATIONS FOR COMMITMENTS	**91995**	**93385**	**100255**	**102035**	**103075**	**104995**	**107040**

TOTAL APPROPRIATIONS FOR PAYMENTS	**89590**	**91070**	**98270**	**101450**	**100610**	**101350**	**103530**
of which: enlargement			***4.140***	***6.710***	***8.890***	***11.440***	***14.210***
Appropriations for payments as % of GNP	1,13%	1,12%	1,14%	1,15%	1,11%	1,09%	1,09%
Margin	0,14%	0,15%	0,13%	0,12%	0,16%	0,18%	0,18%
Own resources ceiling	**1,27%**	**1,27%**	**1,27%**	**1,27%**	**1,27%**	**1,27%**	**1,27%**

This financial framework was adopted by the European Council in Berlin in March 1999. It constitutes a binding commitment to provide a total financial assistance of approximately 70 bn Euro to the accession countries. The pre-accession assistance has an annual volume of 3.1 bn Euro, comprised of the structural instrument (ISPA), the agricultural assistance (SAPARD) and the Phare programme.

For the period after the accession, the financial framework envisages 6.45 bn Euro for new member states in 2002, increasing to 16.78 bn Euro in 2006.

- This constitutes a multiple of the current financial support, albeit less than 4 per cent of GDP, the ceiling reflecting the absorption capacity of national economies;
- No decision has been made with respect to the distribution of the resources provided for the new member states in the framework of the structural operations. Thus it is not clear whether the money is spent through the structural funds, the cohesion funds, through both instruments or by introducing a new instrument.
- If the EU accepts the introduction of direct payments to agricultural producers in the accession countries, as demanded by those accession countries which are already negotiating the Common Agricultural Policy, and as a consequence of the principle of full application of the acquis communautaire from the moment of accession – then additional costs of approximately 7 bn Euro (for all ten accession countries) will emerge which cannot be covered by the title for agriculture under the enlargement heading.[1]
- It is unclear whether a later time of accession will allow the transfer of the initially envisaged resources to the following year or whether the year-1 (2002) commitments will be provided only.

The preparation for structural funds implies the involvement of the regional administrative level and of the social and economic partners. Therefore the EU has put increasing emphasis on building administrative capacities for the management of the structural funds. In the accession partnerships and in its annual progress reports, the Commission has demanded the introduction of regional units compatible with NUTS-2, the second level of the Nomenclature of Territorial Statistics used in the EU. The progress reports also show a clear preference of the Commission for regional self-governments with a substantial financial and legal autonomy and for a dialogue between government, business associations and trade unions. This reflects the belief that economic

[1] FAZ 16.8.00

development is a result of combining and optimising the endogenous capacities of regions, a notion that is embodied in the „partnership“ principle underlying the structural funds approach.

Now let us take a closer look at the financial assistance the EU provides for the countries of Central and Eastern Europe.

Pre-accession Assistance: Breakdown by Countries, m Euro

	Phare, 90-98	SAPARD p.a.	ISPA, mean, p.a.
Bulgaria	746.94	52.12	104
Czech Republic	389.73	22.06	70.2
Estonia	162.83	12.14	28.6
Poland	1731.51	168.68	348.4
Latvia	206.57	21.85	46.8
Lithuania	272.03	29.83	52
Hungary	864.04	38.05	88.4
Romania	971.85	150.64	239.2
Slovak Republic	253.23	18.30	46.8
Slovenia	131.29	6.30	15.6
TOTAL	5730.02	520.0	1040

Source: Commission data, annual report on the Phare programme, communication on ISPA/SAPARD allocations, published on 21 July 1999; own calculations. SAPARD commitments are annual averages for the period 2000-2006 at 1999 prices, Phare commitments comprise national programmes only, excluding Phare support to Czechoslovakia 1990-92.

Until 1999 the Phare programme was the dominating instrument of EU assistance to the region. The focus of Phare was shifted from technical assistance for the economic transition to the support of the accession preparation. From the beginning of 2000, the annual volume of Phare has been enlarged by roughly 50 per cent, now amounting to 1.56 bn Euro per year. In addition, two new assistance instruments shall support the accession countries in meeting the obligations of EU legislation. While the SAPARD programme aims at structural improvements in agriculture and food safety, ISPA is focused on large projects in the areas of transport and environmental infrastructure. ISPA is designed according to the model of the cohesion fund. Project priorities are drinking water quality, sewage, waste disposal, air quality; selection criteria are the scope of affected population, project size and the expected effects on per-capita GDP. As shown by the table, the distribution of ISPA and SAPARD corresponds to the different population sizes of the accession countries. The national co-financing rate must be at least 15 per cent, it may be covered by loans or by state guaranties.

Once the first countries become EU members, they will lose eligibility for these pre-accession instruments and be supported in the framework of the EU cohesion policy. This implies that, with the first accessions, the available resources for the so-called pre-ins will

increase. However, the distance between advanced transition countries that will join the EU in a first round and those that join later will increase. If the countries that started accession negotiations in April 1998 join in 2002, they will receive an annual structural and agricultural assistance of 85 Euro per capita, rising to 247 Euros per capita in 2006. Those countries not belonging to this group will then receive 73 Euro per capita as pre-accession assistance which will only rise if further candidates join before 2006 (Brusis 2000).

These different levels of support may be justified with the experience that a country's absorption capacity for external aid increases with its economic development – and the difference serves as a strong financial incentive to join the EU as soon as possible. On the other hand, it remains somewhat contradictory that the EU expects the accession countries to apply the full acquis communautaire including the costly environmental and social directives from the moment of their accession and to take the necessary preparations already now. More substantial financial support, however, is provided only after the accession.

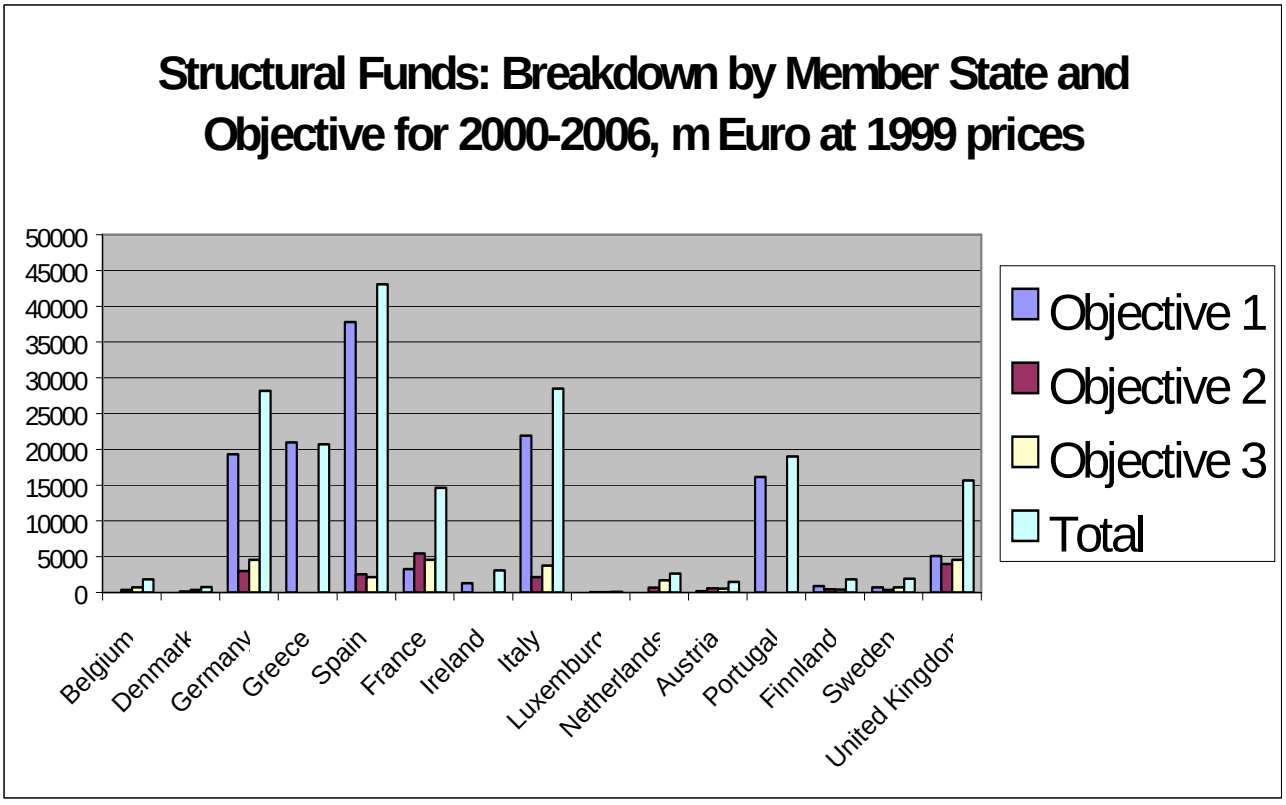
Even after the accession of the first applicant states, the assistance levels will not reach the level of the poorer member states of the current EU-15 which amounts to 400 Euro per capita per year in the cases of Greece and Portugal. These persisting high levels of support can be justified with the higher absorption capacity the economies of the cohesion countries have, and they are due to the strong negotiating position of the cohesion countries since the financial framework and the cohesion/structural funds regulations have to be adopted unanimously, as well as the prospective accession treaties with the applicant countries.

2. The cohesion policy of the EU

This consideration leads us to the second part of my presentation, that is a brief introduction into the political and policy logics of the cohesion policy – which is actually a set of policies aimed to „achieve greater equality in economic and social disparities between member states, regions and social groups" (CEC 1996). The financial significance of the cohesion policy has considerably increased since the end of the eighties, and today it amounts to approximately one third of the EU budget. The cohesion policy can be characterised as a feature of „regulated capitalism" since it has two major aims (Hooghe 1998): First, member state governments are encouraged to build partnerships with local self-governments and economic actors in order to formulate and implement development programmes and projects. This represents an element of consensual economic policy-making that has traditionally been more a feature of continental European and Skandinavian state-economy relations than of the liberal Anglo-american model.

Second, richer member states of the EU, in expressing their solidarity with the poorer member states, provide net contributions to a complex redistributive scheme that aims at reducing economic disparities between the different regions of Europe. At this point, one may raise the question why there is a focus on regions and regional development. The political reason is that, contrary to a horizontal redistribution mechanism between the member states, the support of regions cuts across the potential or actual cleavages between nation states and creates recipient constituencies in less developed regions of richer member states, too (Axt 2000; Marks 1996). This can be seen from the following diagram.

Source: Axt 2000



The figure shows that the overwhelming majority of member states profits from support under one of the objectives or from support that is only gradually being phased out, as in the case of Ireland. Furthermore, committing resources to a country generates demand for goods and services other EU countries can produce, rendering cohesion policy investments a mutually beneficial venture. According to Commission estimates, 30-40 per cent of the assistance devoted to the poorest member states are, as increases of imports, returned to the richer member states (CEC 1996: 10).

The reforms proposed by the Agenda 2000 engendered a reduction of policy objectives from seven to three, as depicted in the diagram. Objective-1 supports the catch-up process of less prosperous regions, i.e. regions whose per capita GDP is lower than 75 per cent of the EU average. Objective-2 is designed for various areas affected by socio-

economic changes, in particular declining industries and services, declining rural areas, urban problem areas and crisis areas depending on fishery. Objective 3 shall support the adjustment and modernisation of education, training and employment policies and systems. The first objective is by far the most important since 70 per cent of the structural funds budget is allocated to Objective-1 areas. In determining the eligible Objective-1 areas, the Commission refers to regions at the level of NUTS-2, with an average size of 15700 square kilometers and 1.8 m inhabitants. These regions are, for example, the Italian regioni, the communidades autonomas in Spain or the Regierungsbezirke in Deutschland. After the enlargement, the vojvodships in Poland and the eight new oblasti in Bulgaria will qualify as NUTS-2 units participating in the management of the structural funds.

The second rationale for the regional focus of the structural funds policy is that it coincides with various new approaches of economics that highlight the importance of regions as relevant units for economic development processes (cf. eg. Piore/Sabel 1984; Sabel 1994). These approaches argue that the global integration of markets for capital, commodities and services have increased the competition for profitable and efficient forms of production. Since many companies in the West European countries cannot produce standardised mass products at competitive wage costs, they have chosen strategies of a “flexible specialisation“ or a “diversified quality production“. The prospects of such specialisation strategies are decisively influenced by the extent to which companies are embedded in regional networks of suppliers, buyers, production-related services and a human capital infrastructure. By “relational contracting“, i.e. by developing trust-based stable but flexible forms of cooperation in a network, companies may reduce transaction costs compared to market or hierarchic (intra-company) cooperation (Williamson 1995). Regions have greater importance for the emergence of such a relational contracting than the central level or the framework of the nation state.

It is possible to conceive the cohesion policy as a compensation the richer and more developed member states offer to the poorer member states in order to get access to their markets. The expansion of the structural funds achieved by the Delors-I package of 1988 was combined with the completion of the Internal Market. According to the same political logic, the cohesion fund was established to ensure the support of poorer member states for the project of the Economic and Monetary Union in 1992 (Axt 2000; Marks 1996).

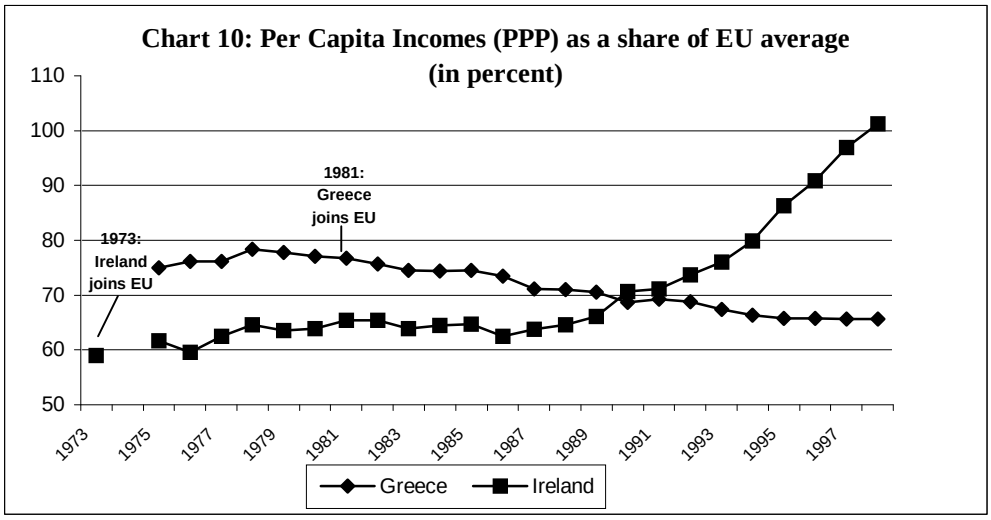
Contrary to the structural funds, the cohesion fund is confined to the so-called cohesion countries with a per capita GDP of less than 90 per cent of the average GDP per capita of the EU, that are Greece, Ireland, Portugal and Spain. The fund comprises only a tenth of the volume of the structural funds, it is managed by the national Governments and is focused on environmental and transport infrastructure projects. Although many richer member states argued that the fund had fulfilled its purpose with the accession of Ireland, Portugal and Spain to the EMU, the Agenda 2000 agreement at the Berlin European Council in 1999 maintained the fund.

The impact of the cohesion policy has so far been moderate. According to the latest Commission report on the social and economic situation and development of the EU regions, GDP per capita in Objective-1 regions increased from 63.5 per cent of the EU average to 69 per cent between 1989 and 1996 (CEC 1999). Unemployment rates,

however, continued to be high in most Objective-1 regions and also in some Objective-2 regions. The Commission estimates that the Structural Funds have increased GDP growth in Greece, Ireland, Portugal and Spain by 0.1-1.0 percentage points per year (ibid.; CEC 1996).

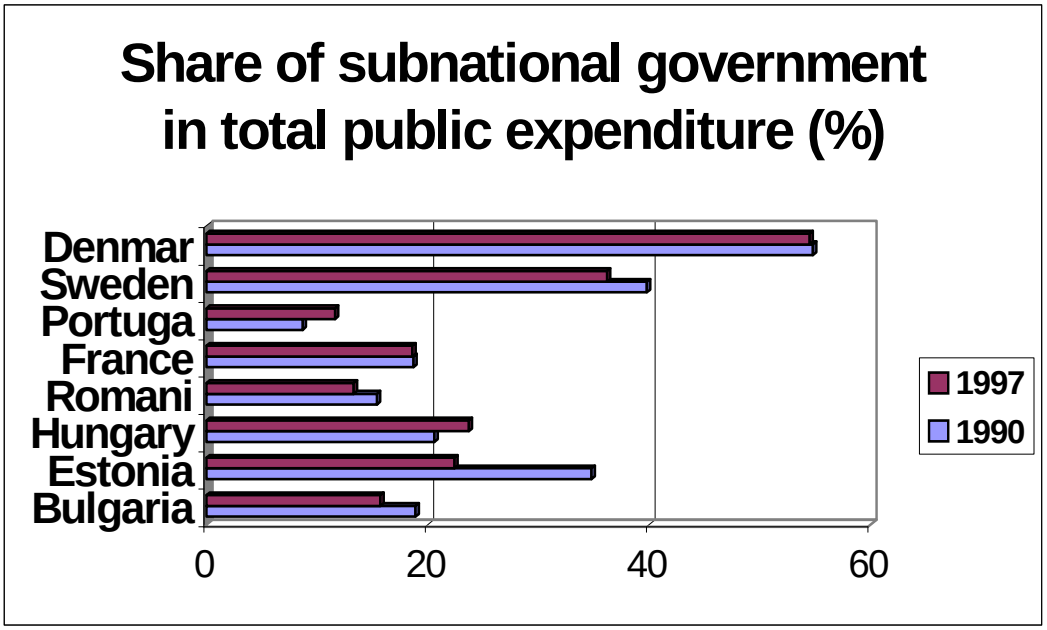
The different paths of Ireland and Greece that can be seen from the diagram indicate that the national institutional and policy framework matters for economic convergence.

Source: Tang 2000, World Bank data



3. Regional administration and cohesion policy

While ample evidence can be found to substantiate the relevance of the national policy mix, it is more difficult to determine ex ante how an institutional arrangement should be composed that fits the domestic traditions, preferences, needs and opportunities. The administrative-territorial organisation of the EU member states varies considerably: Austria, Belgium and Germany consider themselves federal states; Great Britain, France, Italy, Spain may be classified as regionalised states, although they have transferred central state powers to regions in rather different form and extent; Denmark, Sweden and Finland are unitary EU member states with particularly autonomous local self-governments; Greece, Ireland and Portugal are the most centralist member states. The varying degree of fiscal decentralisation is shown by the following figure:



Source: World Bank, World Development Report 1999-2000, 261-262

Most EU accession countries have recently re-arranged their regional levels of Government in order to streamline inter-governmental relations between local self-governments, central government and its deconcentrated sectoral units. For example, Poland has reduced its number of vojvodships and re-introduced a district level of administration (powiaty) in 1999. Directly elected self-government bodies are envisaged for both levels. The Czech Republic has adopted a package of laws re-establishing regional administrative bodies and transferring powers from deconcentrated administrations to the new regions. A similar reform is under way in the Slovak Republic.

Conclusion

As a conclusion, I would like to focus on the two policy problems I mentioned in the beginning. Firstly, we have seen from the brief sketch of the EU cohesion policy that the structural funds scheme provides incentives to implement an administrative and financial decentralisation. The increased importance of regions as frameworks for economic dynamics in a globalising economy seems to support such a shift of governance. However, weak regional civil societies particularly in South-Eastern Europe raise doubts as to whether regional / local public responsibility and accountability mechanisms can replace the loss of central control associated with decentralisation. Decentralisation of spending decisions runs the risk of local and regional governments becoming insolvent. Regional ethnic communities and their leadership may be perceived as abusing the increased autonomy their region is granted in the course of decentralisation. This perception alone, irrespective of an abusal being performed, will complicate reforms and create mistrust in the weakly consolidated states of South-Eastern Europe. Thus, the

extent of administrative and financial decentralisation should be well considered, taking into account the local conditions and the preparedness of the administration.

Secondly, the fact that poorer countries of the EU assist their lagging regions with budgetary resources may be questioned on the grounds of developmental economics since these resources could facilitate the country's catch-up process more if they were used to remove bottlenecks in its growth poles. If (since) reducing the huge welfare gap between EU member states and the accession countries is considered a priority, the catch-up process of the CEEC would be more accelerated by the removal of bottlenecks in the growth poles of a country. Backward areas could then profit from spill-over effects of rapid development in growth areas. In contrast, assisting backward regions would imply a redistribution of resources from prosperous regions and thus impede their development, slowing down the national economy's growth.

This has provided one motive for the EU to decouple the Cohesion Fund, which is confined to the poorer member states only, from the member states' regional policies. The Cohesion Fund is administered only by the national governments and finances infrastructure projects with national relevance. In the case of the applicant countries, a transfer of the structural funds regulations would have the undesirable effect of prioritising regional at the expense of national development.

On the other hand, the structural funds system stimulates coordination between those actors determining the economic prospects of a region and facilitates horizontal integration among different policy fields and sectors of government. It reduces the risk of building cathedrals in the desert, large-scale investments that remain disembedded and do not have a sustained effect on the business environment of a region. Different management approaches need to be reconciled with different policy priorities, taking into account the "absorption capacity" in a broader sense, including also the admnistrative and political conditions of a country.

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Harmonization of the Bulgarian Legislation with the EU law in the Area of the Company Law

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In the whole process of integration of the Republic of Bulgaria in the EU, a substantial aspect is the approximation of the Bulgarian legislation with the achievements of the EU law, the so called, acquis communautaire. Bulgaria has to reach the necessary level in reference to our EU membership to comply its national legislation with the achievements of the EC law. The process of approximation will continue after our acceptance into the EU, but it will be a process of harmonization of our legislation as one of an EU member - state with a permanently developing EU law.

Special actuality has acquired the process of approximation of legislation after the EU invitation to Bulgaria to starting negotiations for accession and intensifying of this respect, the whole integration process, including the process of harmonization of our legislation with the acquis.

The issues, subject to examining within the frames of Chapter *Company Law* are as follow:

1. Company law;
2. Rome, Brussels and Lugano Conventions;
3. Accountancy;
4. Copy Right;
5. Industrial Property;

The present expose presents the state of approximation only in a limited sense of the company law.

In compliance with Art. 69 of the European Agreement for Association between the EC and their member-states on one hand, and the Republic of Bulgaria - on the other, come into force from 1.02.1995, the obligation of approximation is an international legal obligation for our country.

Referring to Art. 70 of the same commercial legislation it is a priority area for approximation.

Company Law and Right to Establishment

The legal provision of the companies is directly connected with the right to establishment.

The right to establishment gives the companies of a member-state the right to found companies, branches, or representations in all the rest of the EU member-states. According to Art. 77, ref. Appendix XXII of the Agreement for the European economic space, the states in this system - Norway, Island and Liechtenstein are also obliged to adopt company law rules of the EU, i.e. practically the harmonization of the European company law includes non member states of the EU. The integration of the states of the central and East Europe will expand the application field in this area.

In reference with the right to establishment, and more concretely with the opportunity for establishing companies on the territory of our country, there must be noted the relevant rules in the European Agreement for Association.

Referring to Art.45, Par.2 of the Agreement, Bulgaria has been committed to its coming into force to provide for establishment of companies and citizens of the EC, as well as for performing activities by companies and citizens of EC, a treatment, not less favourable than this, provided for its own companies and citizens, with exception of the sectors and areas, pointed out in Appendix XVb (financial services), and XV (limiting the majority participation in companies of the military industry complex, the bank, insurance sectors, studying, developing, or obtaining of natural resources; representation in front of the court; organization of gambling games, lotteries, etc. In these areas a relevant treatment will be provided, according to the clauses of the agreement, till the end of the transition period, pointed out in Art. 7, 10 years latest.

Accomplishing its commitments on the European Agreement for Association (EAA), Bulgaria presented general non discrimination regime of national treatment of the foreign companies, performing trade activity on the territory of our country. The regime for registration of a trader and correspondingly for performing trade activity refers generally to the foreign physical and juridical persons. It is provided by: the Trade Law, the Law on Foreign Investments, the Law on Foreigners in Bulgaria. There are no limitations for the number of the foreign persons which participate in one company, as well as for the dimension of investments.

To the present moment, Bulgaria has not provided national regime of establishment of citizens and companies of the Community in the areas, connected with the acquiring majority participation in the enterprises of the military industrial complex, representation in front of the court and organization of gambling games and lotteries

According to the EAA, Bulgaria will provide national treatment on the right to establishment in these areas of citizens and companies of the community latest till the end of the transition period, pointed out in Art. 7 of the Agreement.

Acquis Communautaire in the area of the Company Law

The harmonization of the company law is done with the aim of managing the differences in the national legislation of the EU member -states, stopping the economy activity of the companies. the other goal of approximation in this area is to provide an equal stage of legal defense of the interests of the owners, or the company shareholders, of the creditors and the third persons within the frames of the Community.

The European law in this area includes:

- *First Directive 68/151 European Economic Community (EEC),* establishing the requirement of publicity of the relevant information on the companies, supplemented with
- *XI Directive 84/253 EEC* in reference to the requirements for publicity of the relevant information at opening in EU member-states of branches of companies, provided by the law of another state.
- *II Directive 77/91 EEC* aiming to defend the shareholders' interests and of the third persons at gathering, supporting or at altering the capital of the share holding companies; and *Directive 92/101 EEC* for amendment and supplement of *Directive 77/191/EEC;*
- *Third Directive 78/855 EEC* referring to the rules, which must be observed at combining and joining the companies.
- *VI Directive 82/891 EEC* concerning the rules, which must be observed at division of companies. The Directive does not oblige the EU member-states to admit separation of companies, but if the national legislation provide such a separation, it must comply with the regime, provided by the directive.
- *XII Directive 89/667 EEC* concerning the one person companies and
- *Regulation* for the European unification on economic interests 2137/85

The First and Second Directives are measures of the first stage for introduction in the Bulgarian legislation, and the rest of the norm acts are measures of the second stage

Reference to the issues connected with the company law have three other Directives. These are: *Fourth Directive* on company law 78/660 EEC, in reference to the *Treaty on the annual accounts of certain types of companies; Seventh Directive* on company law 83/349 EEC, in reference to the *Treaty on consolidated accounts* and *Eight Directive* on company law 84/253 EEC, in reference to the *Treaty on the approval of persons, responsible for carrying out the statutory audits of accounting documents.* The Directives mentioned provide the trade legal accountancy audit and report of the companies. The requirements of these directives have been basically introduced into the Law on accountancy and are not subject to the present statement.

The Bulgarian Legislation

The Bulgarian legislation has had provisions for the companies matter for comparatively short time. the legal provision of the Bulgarian company low is contained basically in the Trade Law, and in professional aspect - in the Civil Procedure Code (CPC). Significance

in reference to the registration of the companies by foreign physical, or juridical persons has the law on Foreign Investments.

The Commercial Law of the Republic of Bulgaria (RB) has come into force since July 1, 1991, and then it has been many times amended and supplemented.

The current provision in action of the Bulgarian Company Law is basically provided in the Commercial Law and has to a great extant been coordinated with the EC normative acts, which are in force in this area. The regulations of the Commercial Law on the whole are close to the spirit of the European normative regulation, as well as, to its different legal definitions.

Evaluation and result of the high level of approximation of our Company Law with the EU law proves the fact the negotiations of RB in the Chapter *Company Law* have been open.

Up to now, it is only the European unification on economic interests has not been introduced into the Bulgarian legislation. As the members of the EUEE may only be physical persons, or companies of EU member-states, the rules of the unification will be introduced in the Bulgarian legislation by the period of accession.

The Commercial Law provided establishment of the following kinds of traders:

- **Single person trader;**

Acc. Art. 56 of the Commercial Law (CL) as a single person trader may be registered any physically capable person, resident of this country.

Companies

- **Partnership Company;**
- **Limited Partnership;**
- **Limited Liability Company;**
- **Share - holding Company;**
- **Ltd. Company with shares;**
- **Trade branch;**

Each trader may open **a branch** as the branch is registered in the Trade Register of the court of the region, where the branch is based. Foreign companies may register branches in Bulgaria only if the companies have been registered abroad and have the right to perform trade activity according to their own laws.

Trade Representations

Foreign persons, or companies, which may perform business activity, according to their national legislation may register in Bulgaria Trade Representations. The Trade

Representations are to be registered in the Bulgarian Chamber of Commerce and Industry. The Representations are not juridical persons and may not perform industrial activity. Only companies, provided for in the Commercial Law may be registered. All traders, with exception of the one- person companies, are juridical persons (Art. 63, par.3 of the CL).

The Company shall be considered established from the date of registration in the Trade Register of the corresponding District court. Founders of the company may be Bulgarian, as well as foreign active physical, or juridical persons.

Each person may participate in more than one company, as far as the law provides it.

Correspondence of the Bulgarian Commercial Law with the EU Law

In compliance with the requirements of the EU *First Directive* the basic information on the companies is contained in a special trade register in the District Courts. The Trade Register is a public legal institution. Each person interested, may have an access to the Trade Register in reference to any information. At the moment, 28 District courts are in function in this country, which contain Trade Registers.

Based on an analysis of the Commercial Law on its compliance with the *EU Directives* requirements, the MJ developed a Draft Law for Amendment and Supplement of the Commercial Law, (DLASCL) through which adoption, all the requirements of the I, II, XI and XII EU Directives have been introduced, having in mind also the legislation and the practices of the EU member-states in this area. (The LASCL) was published in St. G. N84/13.10.2000).

In the Draft Law amendments were proposed in the area of insolvency of the commercial companies with the aim of its state of case movement, and improvement.

With the first group amendments, supplementary requirements for publicity and transparency of information for the companies are introduced, in compliance with the *First Directive.*

It is provided that copies of the checked out and signed annual accountancy audits, of the evaluation, made by professionals on the non cash flows, the lists of persons, who declared shares at the company registration and at the growth of the capital of the share holding company, of signed texts of updated company contracts and statutes of the share holding companies in case of amendments are introduced in the court for registration of the company.

Breaking the obligation for updating the trade correspondence will lead to administrative penalty responsibility.

In reference to Art.3, Par, 4 and 6, of First Directive in the Civil Procedure Code a rule is introduced for the cases where there is difference between registered and published case, as it is provided the third persons to be able to quote the publishing.

The provision of the breaking the company registration has been thoroughly harmonized with the Directive requirements. The reasons for declaring non existence are formulated in details, the violations that can be omitted have been described in details.

As the **Second Directive** provides a very detailed provision, directed to keeping and maintaining the capital of the share-holders, LAS of CL provides many amendments in reference with its recommendations.

In compliance with the European requirements for measures for keeping the capital, special rules have been implemented for paying the share profit and interests in favour of partners and shareholders, so that it is prevented de-capitalization of the companies. It is especially forbidden for the shareholders to sign shares of their capital at registering and growing the capital.

Especially important supplement is the special provision for the principle of equal treatment of shareholders with equal situation - imperative provision of Art. 42 of the Second Directive. This principle is not new to the Bulgarian Commercial law, but now it is contained sporadically in different Regulations. Its introduction as a general principle creates better defense of shareholders' interests.

The Eleventh Directive

is a continuation of the First Directive as the requirements for data publishing on the companies have been introduced in reference to their branches as well. In reference to its provisions LAS of the CL provides obligations for publishing the branch data in its trade correspondence.

The Twelfth Directive

The 12th Directive aims at admitting one-person registering EU member-states capital companies, as abolishing the existing differences in their national legislation in this area. In case that all the shares are acquired by one person, (i.e. the company becomes one-person), this situation, together with the personality of the one person partner must be published. So that transparency is provided in the work of the one-person company, it was introduced a **written form** of the decisions of the one-person owner and of the contracts, signed between one person owner and the company, when the latter is presented by him/her.

Before LAS of CL the one-person share holders were created only exceptionally - by the state and the municipalities. This provoked doubts about the legal constitutional right of such a limitation, as the Constitution of the RB proclaims equal treatment of the business people.

That is why , with the amendments it is provided a possibility for registering a share holder company by one person, which corresponds to the practice and achievements of the European developed states.

The Third and the Sixth Directives

The Third Directive - on the mergers is an obligatory measure for implementation by the EU member-states and the candidate member states. As for the Sixth Directive, as it was already noted, it does not have an obligatory character.

However, when the member-states permit the companies to perform operations on split up, they obligatory submit these operation to the Sixth Directive provisions.

The Commercial Law in force contains principle regulation on the merging and split up of companies, which corresponds to the principles of the European Directives (for example, the provided possibility for reorganization of share holders, including through merging).

The Republic of Bulgaria provides complete implementation of the regulations of the Third and Sixth Directives to be accomplished by 2002. In this way the Bulgarian legislation will correspond fully to the EU law in this area.

The complete implementation of the legal provisions of the EU Company law in the Republic of Bulgaria will assist for making its territory a part of a geographical and economical European territory with no trade limitations, and, will include our national legislation in the most advanced harmonization of law provisions in the world, and in this way - in the trans- border economic cooperation, as well.

Approximation of the Bulgarian Legislation on Acquisition of Enterprises with European Directives

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Bulgarian legislation knows the two main types of acquisition of company's enterprise - the direct one through merger, and the indirect one through a takeover bid. The legal basis of both is the Law on Public Offer of Securities which came into force at the end of January 2000, together with some general provisions about the transformation of commercial entities contained in the Commercial Act 1991. The main conclusion which can be drawn is that as a whole the legal rules are in conformity with aqui communitaire or European practice, as far as there are still no Council Directive concerning takeover bids while the Third Council Directive on merger of limited liability companies was enacted 22 years ago.

A. Merger

Now I would like to focus my attention on the two types of merger as specified in the Third Directive - merger by acquisition, and merger by a formation of a new company. And although there is no explicit definition of merger either in the Commercial Act or in the Law on Public Offer of Securities, both may be implicitly defined as follows: (a) merger by acquisition shall mean the operation whereby one or more companies are wound up without going into liquidation and transfer to another all their assets and liabilities in exchange for the issue to the shareholders of the company or companies being acquired of shares in the acquiring company and a cash payment, if any, not exceeding 10 per cent of the nominal value of the shares so issued; and (b) merger by a formation of a new company shall mean the operation whereby several companies are wound up without going into liquidation and transfer to a company that they set up all their assets and liabilities in exchange for the issue to their shareholders of shares in the new company and a cash payment, if any, not exceeding 10 per cent of the nominal value of the shares so issued. Those definitions of the Directive fit perfectly the spirit of Bulgarian merger legislation.

The merger procedure includes several stages which are in conformity with the principles of objective and adequate information of all shareholders of merging companies whose rights should be suitably protected, and of protection of companies' creditors whose interests should not be affected by the merger.

On the first place the administrative or management bodies of the merging companies shall draw up draft terms of merger in writing which shall specify at least:

- (a) the type, name and registered office of which of the merging companies;
- (b) the share exchange ratio and the amount of any cash payment;
- (c) the date from which the holding of such shares entitles the holders to participate in profits and any special conditions affecting the entitlement;

- (d) the date from which the transactions of the company being acquired shall be treated for accounting purposes as being those of the acquiring company;
- (e) the rights conferred by the acquiring company on the holders of shares to which special rights are attached and the holders of securities other than shares, or the measures proposed concerning them;
- (f) any special advantage granted by the experts and members of the merging companies' administrative, management, supervisory or controlling bodies. Draft terms of merger must be published in a central daily newspaper for each of the merging companies, at least one month before the date fixed for the general meeting which is to decide thereon.

Secondly, the administrative or management bodies of each of the merging companies shall draw up a detailed written report explaining the draft terms of merger and setting out the legal and economic grounds for them, in particular the share exchange ratio.

On the third place, up to three experts, appointed by the court, shall examine the draft terms of merger and draw up a written report to the shareholders. In the report the experts must in any case state whether in their opinion the share exchange ratio is fair and reasonable. Each expert shall be entitled to obtain from the merging companies all relevant information and documents and to carry on all necessary investigations.

And finally the merger shall require the approval of the general meetings of each of the merging companies. All shareholders shall be entitled to inspect the following documents at the registered office at least one month before the date fixed for the general meeting which is to decide on the draft terms of merger:

- (a) the draft terms of merger;
- (b) the annual accounts and annual reports of the merging companies for the preceeding three financial years;
- (c) an accounting statement;
- (d) the reports of the administrative or management bodies of the merging companies;
- (e) the reports of the experts;
- (f) the draft memorandum of the new company where a new company is formed.

In addition the Commercial Act contains an adequate system of protection of the interests of the creditors of the merging companies. Such creditors shall be entitled to obtain adequate safeguards where the financial situation of the merging companies makes such protection necessary and where those creditors do not already have such safeguards.

And after fulfilling of all conditions of the merger, it takes effect on the date of the registration of the exchange of the shares of the merging companies by the Central Depository.

Nevertheless that the legal rules of merger are in accordance with those of the Third Directive, there can be mentioned some defects, due to the lack of conformity with the Directive:

(a) First, the merger procedure of the Law on Public Offer of Securities is applied only to public joint stock companies - companies which shares are listed on the stock exchange, and not to all public limited liability companies. The others are under the general provisions on transformation of commercial entities subject to the Commercial Act 1991.
(b) Second, no special attention is drawn to the protection of the interests of the debenture holders of the merging companies - see Art. 14 of the Directive.
(c) Third, there is no rule stating that no shares of the acquiring company shall be exchanged for shares in the company being acquired held either: (a) by the acquiring company itself or through a person acting in his own name but on its behalf; or (b) by the company being acquired itself or through a person acting in his own name but on its behalf - see Art. 19, para 2 of the Directive.
(d) Fourth, there are no special rules governing the civil liability towards the shareholders of the company being acquired of the members of the administrative or management bodies of that company in respect of misconduct on the part of members of those bodies in preparing and implementing the merger - see Art. 20 of the Directive.
(e) Fifth, there are no special rules governing the civil liability towards the shareholders of the company being acquired of the experts responsible of the drawing up on behalf of the company the report in respect of misconduct on the part of those experts in the performance of their duties - see Art. 21 of the Directive.
(f) Sixth, there are no special nullity rules for mergers under which the nullity may be ordered in a court judgement - see Art. 22 of the Directive.
(g) Seventh, no special attention is drawn to the consequences of the merger - see Art. 19, para 1 of the Directive.
(h) And eighth, there are no provisions concerning the special procedure of acquisition of one company by another which holds 90 per cent or more of its shares - Chapter IV of the Directive.

B. Takeover

The legal rules of the second type of acquisition of company's enterprise - the indirect acquisition through a takeover bid - are included only in the Law on Public Offer of Securities, and thus are applied to the public limited liability companies which shares are listed on the stock exchange. The approach of the Bulgarian legislation is quite close to that of the proposal for a Thirteenth Council Directive on Company Law concerning takeover and other general bids. But because of the fact that the draft directive is still not in force, I will emphasize only on the general principles of the regulation.

The takeover procedure is based on the necessity to protect the interests of the holders of securities of companies when the securities of these companies, admitted to trading on a regulated market, are subject to a takeover bid. The general rule is that any person who as a result of acquisition by himself or by a connected person holds securities which added to any existing holdings give him more than 50 per cent of the voting rights of a company shall be obliged to make a bid to acquire all the securities of that company. After reaching another threshold of 90 per cent the acquirer may also make a takeover bid which is not mandatory, and at the same time the minority shareholders have the right to dissent by selling their shares to the acquirer. The offer document containing the takeover

bid shall be approved by the State Securities Commission and shall be presented to the board of the offered company.
The Commission shall seek to ensure that:

- (a) all holders of securities of the offered company who are in the same position are treated equally;
- (b) the addressees of a bid have sufficient time and information to enable them to reach a properly informed decision on the bid
- (c) the board of an offered company acts in the interests of all the shareholders, and cannot frustrate the bid;
- (d) false markets are not created in the securities of the offered company, of the offered company, or of any other company concerned by the bid;
- (e) Offered companies are not hindered in the conduct of their affairs beyond a reasonable time by a bid for their securities. The offer document together with the opinion of the board of the offered company has to be disclosed by publication in two central daily newspapers. The period for acceptance of the bid shall be specified by the offer in the offer document and may not be less than 28 days or more than 70 days from the date on which the document is made public. And finally on the expiry of the period for acceptance the result of the bid shall be made public immediately.

Energy Policy of the European Union

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1. Energy policy objectives

The Amsterdam Treaty establishes the requirement for Community policy to *contribute to sustainable development*. Achieving sustainable development in its different dimensions - economic, environmental, social and geopolitical - is a complex and long-term process. Energy policy contributes to it by adapting its three core objectives to reflect the requirements of sustainable development:

- *security of supply* - which aims to minimize risks and impacts of possible supply disruptions on the EU economy and society;

- *competitive energy systems* - to ensure low cost energy for producers and consumers to contribute to industrial competitiveness and wider social policy objectives;

- *environmental protection* - which is integrated in both energy production and energy use to maintain ecological and geophysical balances in nature.

2. Energy market trends

The energy system of the Community has developed positively in the 1990s as regards both the energy policy objectives and the goal of more sustainable development. In particular:

- EU's energy import dependence has remained slightly below 50% due to technological progress in oil and gas production;
- Supply diversity has increased due to larger oil and gas imports from CIS and Norway, growing coal imports from other countries, and increased use of nuclear and renewable energies in the Community;
- Energy use per capita has stagnated at 3.8 toe/cap, despite declining real energy prices since the mid-1980s and economic growth of 25% during this period. This "decoupling" of energy use and economic development was mainly due to improved energy efficiency and to structural changes towards services and less energy-intensive production in manufacturing.
- Finally, energy-related emissions of sulphur dioxide, hydro-carbons and nitrogen oxides have been substantially reduced, while energy-related CO_2 emissions have been kept almost constant at their 1990 level.

Thus, history may consider the past decade as the *"Golden 1990s" of the EU energy system* for two reasons: a successful outcome of energy policy, in particular with regard to the internal market and the liberalization of electricity and natural gas (NG) supply, and the coincidence of other factors such as the closer co-operation with the countries in economic transition as well as major technological advances in energy production, conversion and end-use efficiency.

2.1 Challenges

However, the analysis of the present situation and past developments suggests a possible turnaround in many of these favorable trends leading to a new set of significant challenges. World total primary energy consumption is likely to increase by around 2% per year in the period 2000-2010 and by slightly more thereafter. *World dependence on fossil fuels is expected to remain high* - close to 90% by 2020 with the following major trends for resource use and availability:

- Global crude oil production is likely to be re-concentrated upon the Middle East, rising from 32% at present to over 42% by 2010 and thereafter.

- In the North Sea, crude oil production is likely to decline progressively, leading to a higher dependence of around 85% on oil imports in 2020.

- The rapid projected growth of NG demand in the EU (+28% between 2000 and 2020) also increases import dependence, from some 40% at present to more than two thirds by 2020.

- Although solid fuel use may fluctuate at around present levels over the next two decades, coal imports could well increase by some 50 Mtoe due to declining domestic hard coal production in a few Member States (MS).

- The additional contribution of renewables to overall EU primary energy supply is likely to be small (around +30 Mtoe in 2020 compared to 1995).

- The nuclear contribution in 2020 is expected to be somewhat lower than today as result of the progressive decommissioning of the older power plants.

2.2 Competitive energy prices

Global energy markets are likely to remain well supplied at relatively modest costs throughout the projection period and thus to convey the impression of a world of low energy prices. Crude oil prices (at the EU border) by 2020 are projected to be around 20-25 $\$_{90}$/barrel. NG prices in Europe are estimated to rise somewhat faster. The price of hard coal imported into the EU is projected to remain relatively stable at around 45 $\$_{90}$/tone These projected relatively low prices of fossil fuels will strengthen their competitive position in global energy markets over the next 10-20 years and also that of the related fossil fuel conversion technologies.

The impacts of liberalization of electricity supply are now becoming clear and some issues may need further attention:

- Productivity of the electricity generation, transmission and distribution systems has been increasing, in particular in all early or fast liberalizing MS.
- Electricity prices have been declining, increasing the competitiveness of the energy-intensive firms and reducing energy bills of households. Observed price reductions indicate, however, that (large) industrial companies are more likely to reap the advantages of liberalization.
- Price differentials among the MS have been decreasing;
- Specific emissions from electricity generation are likely to decrease faster due to improved fuel conversion efficiency in new and refurbished power plants. This is particularly supported by the huge observed and expected investment in combined cycle gas turbines (CCGT).
- Lower electricity prices may, however, reduce the economic incentives for greater end-use energy efficiency. But efficiency increases at the plant level through energy service contracting by utilities (as part of their efforts to hold on to important customers) or by other players may offset some of the efficiency losses caused by lower electricity prices in industry.
- The larger use of NG in power generation, whether in CCGT or not, substituting for coal, has a positive effect on climate change policy.

Similar impacts can be expected from the *liberalization of the NG market* in the Community, although this will differ among MSs. This is because the extent of the NG provisions varies across the EU-15 (accounting for 49% of primary energy use in the Netherlands, but still close to zero in Portugal, with an EU average of 22%). During the

implementation period of the EU Gas Directive over the next few years, it is very likely that most large gas consumers will benefit from the liberalized EU gas markets and the fierce competition between large gas producers/suppliers.

Traditional trade of gas via the transmission pipeline networks may decline and be substituted by swap deals and other "paper trade", thereby reducing the transmission costs for consumers, as these and other auxiliary costs (storage, quality) become relatively more important in a fully competitive market.

For consumer services in electricity and gas markets, one can expect increasing "product differentiation" towards *energy service companies* offering service packages consisting of heating, cooling, compressed air, steam heat, water, gas and cable services to consumers. Different electricity, gas tariffs and maybe district heating tariffs will be offered, depending on energy inputs (e.g. "green tariffs"), the quality of electricity or gas delivered, the time of use and other aspects.

2.3 Environmental trends

Conventional emissions of sulfur dioxide (SO_2), nitrogen oxides and hydro-carbons from EU energy use (and from power generation in particular) are expected to decline quite rapidly until 2020, due to the continuing impact of environmental legislation in road transport, power generation and other stationary sources, but also due to improved energy efficiency in all end-use and conversion sectors.

Global emissions of CO_2, however, are projected to grow quite rapidly (on average by 2.1%/a). For the period 1995-2020, China and India - with high economic growth and populations of 1 billion each - account for almost 40% of the increase of CO_2 emissions. The commitment made by the EU and its MSs in the Kyoto Protocol, to reduce total greenhouse gas emissions by 8% in 2008-2012 relative to the level in 1990, is a specific challenge for energy policy as some 80% of the EU's total greenhouse gas emissions originate from energy production and use.

Much of the increase in the Community's energy-related greenhouse gas emissions is expected to arise from *road and air transportation*. Thus improving the efficiency of the European transport system is a major challenge given the growing demand for mobility and consumer preferences for more powerful cars. To avoid increasing CO_2 emissions from power generation, *more efficient production and use of electricity* will also be a major challenge, given decreasing electricity prices due to the liberalization of electricity supply.

As regards the commitments of the *Kyoto Protocol*, the analysis of the current initiatives and policy actions of MSs concludes that the emissions of the two major non-energy-related greenhouse gases, methane and N_20, could be reduced by about 18% by 2010. This expected decline would decrease the necessary reduction target for *energy-related CO_2 emissions* from the –8% of the greenhouse gas basket to approximately –5% relative to their 1990 level. As energy-related CO_2 emissions almost stagnated during the 1990s,

the Community may have a good chance to meet the present Kyoto targets by realizing the potentials for methane and N_2O reductions, and by intensified energy policies at the EU and national level. Purchases of emission permits would have a supplementary role.

These challenges of the next 10 years are also very likely to prevail over the period between 2010 and 2020, when major strategic decisions have to be made particularly in *power generation and transportation* to support further sustainable development in the Community. A high degree of preparedness of the EU energy system and the Community's energy policy may be essential to meet these future challenges.

3. The energy policy agenda

Due to expected substantial changes in global energy markets as well as within the Community and related challenges within the next decade, the energy policy in the EU and its MSs is likely to have to undergo a further period of learning and searching to be able to react adequately. The uncertainties remaining great, it is judged essential to maintain enough flexibility to respond to them.

- As regards *short term measures* within the next 2-3 years, energy policy has to bear in mind the long-term re-investment cycles, slowly changing consumer behavior and the time necessary for policy debate and decisions, which inevitably limit the speed of change of the EU energy system.

- As regards *medium- and long-term measures* for next decade and beyond, next few years are needed for further research, discussions with stakeholders and preparation of further necessary policy changes.

Given the challenges and related policy issues, the following key conclusions for the future policy agenda can be drawn.

3.1 External dimension

EU may have to fulfill an important role in international diplomacy in the energy field with regard to:

- *energy exporters* – to secure crude oil and natural gas supplies for the EU by economic and political cooperation, reducing the potential for political instabilities. Negotiations under the auspices of the Energy Charter are about to conclude for a multilateral Transit Framework to reduce the risk of physical disruptions to pipeline supplies;

- *the integration of the applicant CEECs* – this may call for specific efforts to harmonize regulations and taxation, support for faster technological development through joint ventures and other means of technology and know-how transfer;

- *global environmental negotiations* – in particular, further negotiations will be needed to ensure that emerging MSs' experience with emissions trading is compatible both with wider EU and global emissions trading regimes.

3.2 Integration

Least-cost solutions to policy conflicts and trade-offs are unlikely to be found in the energy sector alone, but rather in the wider energy system including energy end-uses, related energy services and the underlying driving factors in the final demand sectors. This means that the energy policy of the Community should pursue a *broader political approach in the next decade* than in the past by:

- ensuring that the transport sector is placed much more fully at the hart of EU energy policy, as road and air transports are likely to be the major single contributors (35% to 55%) to incremental growth in overall EU final energy demand (particularly dependent on oil supply) and CO_2 emissions until 2020;
- *co-ordinating and harmonizing national approaches to utility regulation* to ensure the success of liberalized energy markets by securing non-discriminatory access to the entire network and its auxiliary functions as well as the protection of consumers;
- ensuring that in future energy policy gives *due weight to energy efficiency*, by harmonizing energy efficiency regulation (e.g. technical standards, labeling and voluntary agreements for mass produced and traded appliances, such as vehicles, boilers, burners and electric motors);
- harmonizing national energy taxes to ensure level playing fields;
- undertaking effective measures to ensure greater contribution of renewables to energy supply;
- broadening and intensifying the dialogue and co-operation among MSs, institutions, stakeholders and media

3.3 Climate change policy

Climate change may require a *more* vigorous policy stance. In this regard:

- Policy should seek to identify and to implement the *least cost reduction potentials of other greenhouse gases*, e.g. methane in coal mining and landfills, or for N_2O from adipic acid production in the Community.
- There may also be a need for new initiatives, as the cost of CO_2 emissions reduction differs substantially across EU MSs.
- To achieve the objectives of the Climate Convention, substantial developing country participation should start as soon as possible, the high income OECD countries not having been included yet amongst the group of Annex B countries.

The dynamics of climate change policy deserve major attention. Long-term re-investment cycles of some basic industrial processes and of buildings, infrastructure like railways, power plants and transmission lines or district heat networks suggest inflexibility of climate change policy, the need for careful policy analysis and intensive dialogue with all stakeholders to avoid stranded costs, and the need for purchasing emission certificates. *Power and steam generation* seem to be technological areas that can adjust in the most cost-effective way to meet initial emission constrains given their fuel switching options, increased cogeneration and further efficiency improvements. As the emission constraints are expected to tighten beyond 2010, much improved energy efficiency in all end-use sectors is also required.

3.4 Nuclear energy and safety

Given the contribution of nuclear energy to all the Communities' energy objectives, this option has to be kept open but its future depends to a large extent on its acceptability by society and political leaders. This acceptability derives particularly from concerns on nuclear safety, transport and disposal of nuclear waste/spent fuel and nuclear non-proliferation. The imperative of diversification, the external competitiveness of the nuclear industry and the integration of the electricity markets underline the role nuclear energy plays in power generation. The European institutions have responsibilities under the Euratom Treaty which permit the development of nuclear energy in conformity with the rules and policies at national level. The choice between energy technologies or fuels is always a matter where policy appreciation intervenes but nuclear should remain part of this choice. The EU has to use its own instruments in order to respond to these concerns by:

- ensuring that standards and procedures are applied in MSs which give adequate guarantees;
- linking external relations to the accession of third countries to the implementation of the International Convention on Nuclear Safety;
- conducting R&D programmes for concepts of reactors with enhanced safety and establishing Scientific/Technical (S/T) basis for the safe disposal of nuclear waste;
- supporting the development of nuclear fusion, particularly through international cooperation;
- pursuing the improvement of nuclear safety in CEEC and CIS through technical assistance and S/T cooperation;
- promoting progress in safe management of RAW and SF, including R&D to support harmonization of regulatory requirements and standards;
- improving the safety of the transport of radioactive materials;
- preventing the illegal traffic of nuclear materials;
- pursuing its statutory activities in the field of safeguards and supplies;
- best management of existing Nuclear trade Agreements and concluding of new trade agreements as well as Nuclear R&D agreements etc.

3.5 Co-ordination of energy policies at the EU and Member State level

The principle of subsidiarity remains of great importance in EU. However, its application to energy policy issues may now give rise to different prospects in view of the requirements of the Single Market, liberalization of EU electricity and gas markets, the growing cross border ownership and merging of energy companies, which imply the agreed EU response.

- Much nationally-funded R&D loses its rationale in the context of the Single Market and of global players in appliance and equipment markets. Super-national R&D funding becomes increasingly important regarding energy production and conversion technologies, but also for energy efficiency of mass-produced and traded appliances, products and equipment where technical standards and labeling at EU level increasingly play a major role;

- Growing import dependence reinforces the need to re-assess the steps importing countries might consider to strengthen security of supply.

3.6 Energy technology, R&D and innovation policies

Falling electricity and gas prices in the next decade due to liberalization and technical progress and related implications may lead to a conflict of objectives, i.e. NG dependence may further increase and CO_2 emission reduction targets may have to be achieved with more and costly efforts. Therefore, technical progress in the energy system with regard to efficient energy use, renewables and other cleaner technical options are of major importance to minimize such conflicting objectives.

- *High economic potentials for improved energy efficiency* are available in power generation (around 10 percentage points up to 2020) and in almost all end-use sectors (mostly 20 to 30% in relation to today's average specific energy use).
- Technological analyses show that *additional energy efficiency potentials* can be economically realized if R&D is sufficiently directed to new promising technologies in end-use sectors (e.g. low energy buildings, more efficient cars, wide application of inexpensive sensors and control techniques including remote control, biotechnology, membrane and absorption technology).
- More efficient technologies in energy conversion and end-use sectors not only strengthen the *competitiveness of energy intensive industries*, but also represent growing world-wide markets for export by European technology producers and, hence, contribute to additional employment in EU.
- The option of "*clean" fossil fuels* by converting them into hydrogen and CO_2 is potentially a very promising technological option in the longer term. The CO_2 produced could be sequestered in depleted gas fields or used for tertiary recovery methods in oil production. All components of this technological option are well known and the system as a whole has a huge potential for technical improvements and cost reductions.
- The long-term scope for increasing conversion efficiencies of *renewables* and - more importantly - of reducing their production costs by learning effects and economies of scale is underestimated by some stakeholders at present. However, the necessary R&D

and energy policy instruments need much more specific assessment of the different types of renewables, their different applications and possible market niches.

3.7 Monitoring and analysis

Policy analysis and sharing of analyses of economic, market, political, social and technological trends should be continued to develop consistent energy policies. Priorities include analysis which seek to overcome possible inconsistencies and conflicts in different policy trusts, e.g.:

- liberalization and competitive energy prices versus environmental protection and climate change policy;
- competitive energy prices versus diversity and security of supply, including nuclear energy, cogeneration and renewables

This analytical process should continue to involve, and to draw upon work undertaken by, technical experts of the MSs and a wide range of stakeholders.

4 Main EU energy policy initiatives

4.1 The European Energy Charter

In December 1991 the Community and 49 countries signed in Hague the European Energy Charter. It has the following two main objectives:

- liberalization of international trade in the energy sector;

- promotion and protection of energy investments.

The European Energy Charter is a statement of the political will of the 50 signatories to pursue these objectives. It is generally intended to lay down the ground for establishing at the East a cycle of large scale economic actions, starting from the energy sector and based upon the mutually complementary huge energy resources of the East on the one hand and the highly developed industries, technologies and capital markets of the West on the other.

Further to the EEC, two legally binding document were negotiated and signed in December 1994:

- the Energy Charter Treaty (ECT);

- the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects.

An Energy Charter Protocol on Transit is being negotiate at present as a multilateral framework on transit of energy materials, based upon provisions of the ECT. The Protocol is intended to regulate more in detail such key issues as obligations to comply

strictly with agreed terms of energy transit, to guarantee reliable, effective and un-interruptible transit, necessity of transparent, objective and non-discriminatory criteria for granting of access to existing transit/transmission facilities as well as the construction of new transit facilities, the establishment of an effective dispute settlement procedure.

4.2 Trans-European Energy Networks

The development of trans-European networks for gas and electricity is vital for the smooth operation of the internal energy market. A number of projects were approved by the Council and EP in 1995 for completion till the end of the century including interconnections of the electricity systems of France and Spain and France and Italy as well as the NG pipeline from Yamal to Germany through Poland and NG transmission networks of Portugal and Greece - the latter with connection with Russia through Romania and Bulgaria. Guidelines on the development of trans-European networks were published in 1996 as Decision of the Council and EP.

4.3 Development of research and technologies in energy

EU supports programmes for the achievement of a steady technological progress, necessary for the efficient production, conversion, supply and use of different forms of energy, e.g.:

- **JOULE** and **THERMIE** - development of clean and efficient energy technologies;
- **SAVE** and **ALTENER** - rational use of energy and development of renewable energies;
- **SURE** and **JET** - actions in the nuclear sector and construction of a safe and environmentally sound thermonuclear reactor.

5 Conclusion

Given the long-term trends towards increasing energy import dependence, the dynamics of the internal market and of liberalization of the energy markets, the enlargement of the EU, concern about climate change, and the globalization of major industries, the analysis suggests that *the responsibility of the Community in energy policy matters will gain importance.*

EU LEGISLATION RELATED TO ENERGY SECTOR

1 Introduction

Energy policy could only have real impact on the energy sector development if it is translated into practice through adequate legislative acts. The EC Treaty rules are generally applicable to energy supply. Nevertheless, the general rules on free movement and competition are subject to exceptions in the Treaty which may be construed in a way that specific cases in the energy sector would not be subject to such rules. Art. 90(2) of the Treaty stipulates that

> *undertakings entrusted with services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the Treaty rules on competition, insofar as the application of such rules does not obstruct the performance of the particular tasks assigned to them.*

More clarity in this regard was brought by the Directives 96/92/EC and 98/30/EC introducing common rules for the internal market in electricity and natural gas.

2 Directive 96/92/EC concerning common rules for the internal market in electricity

The objective of the Directive is to establish gradually an internal market in electricity, in order to enable the industry to adjust in a flexible and ordered manner to its new environment and to take account of the different ways in which electricity systems are organized in different Member States (MS). It establishes common rules for the generation, transmission and distribution of electricity and overall organization and functioning of the electricity sector. Essential to the Directive is the organization of open access to the electricity systems in the Community. The access should lead to an equivalent economic results in the MS and, by consequence, to a directly comparable level of opening up of markets and degree of access to electricity markets in MS.

The Directive leaves to MSs the possibility to impose public service obligations, necessary to ensure security of supply and consumer and environmental protection, which in their view free competition, left to itself, can not guarantee.

3 Directive 98/30/EC concerning common rules for the internal market in natural gas

The objective of the Directive is to establish gradually an internal market in natural gas (NG), defining common rules for the transmission, distribution, supply and storage of NG. It lays down the rules relating to the organization and functioning of the NG sector, including liquefied natural gas (LNG), access to the market, the operation of systems and the criteria and procedures applicable to the granting of authorizations for transmission,

distribution, supply and storage of NG. Essential to the Directive is the organization of open access to the NG systems in the Community. The access should lead to an equivalent economic results in the MS and, by consequence, to a directly comparable level of opening up of markets and degree of access to NG markets in MS.

4 Transit Directives for electricity and natural gas

The Transit Directives for electricity (90/547/EEC) and natural gas (91/296/EEC) refer to high voltage/pressure transmission grids. They define transit to cover transactions in which
(1) the grid of origin or final destination is situated in the Community,
and
(2) at least one intra-community border is crossed.

The Directives require MS to take the measures necessary for:

- facilitating transit of electricity/natural gas;
- contracts for transit to be negotiated in good faith between the entities responsible for the grids concerned, and where appropriate with the entities responsible for importing and exporting electricity/natural gas;
- ensuring that conditions of transit are non-discriminatory and fair;
- establishment of a national reporting system to help the Commission monitor the negotiation and conclusion (or lack thereof) of contracts for transit.

5 Price Transparency Directive for electricity and natural gas

The Price Transparency Directive (90/337/EEC) requires MS to take the necessary steps to ensure that undertakings that supply electricity and NG to industrial end-users communicate periodically to the Statistical Office of the European Community (SEOC) information of the following three categories:

- prices and terms of sale of electricity and NG to industrial end-users
- the price systems in use
- a breakdown of consumers and corresponding volume by category of consumption

The SOEC publishes some of the information reported in an aggregated form, which does not enable individual commercial transactions to be identified.

The Europe Agreement

The agreement for association of Bulgaria to the EU (Europe Agreement) was signed in March 1993 and entered into force in February 1995. It provides for a process of gradual deepening of cooperation in the economic, political, social, cultural, S/T and other fields

as well as the establishment of a free trade area with EU, with final objective the integration of Bulgaria into the European structures and accession to the EU.

Article 79 of the Agreement defines the main directions for cooperation in **Energy** as follows:

1. In line with the principles of market economy, the Parties will cooperate for the development of a progressive integration into the European energy markets.
2. The cooperation will include, among others, technical assistance in the following areas:

- energy policy formulation and planning
- energy sector management training
- promotion of energy efficiency and conservation
- development of energy resources
- diversification of energy supply
- mitigation of the environmental impact of energy production and use
- nuclear energy
- further opening of energy markets, including facilitation of transit of electricity and NG
- electricity and gas sectors, including systems' interconnection
- modernization of energy infrastructures
- formulation of the framework terms for cooperation between enterprises in the sector
- transfer of technologies and know-how

Article 80 of the Agreement defines the main directions for cooperation in **Nuclear safety** as follows:

1. The objective of the cooperation is to ensure safer use of nuclear energy

2. The cooperation will cover mainly the following areas:

- improvement of the operational safety of Bulgarian NPPs

- assessment of the feasibility of upgrading the existing NPPs with WWER 440 reactors
- training of the managing and expert staff of nuclear facilities
- improvement of Bulgarian legislation concerning nuclear safety and strengthening of regulatory authorities
- radiation protection, including environmental radiation monitoring
- problems related to fuel cycle and safeguarding of nuclear materials
- management of radioactive waste and spent fuel
- decommissioning and dismantling of nuclear facilities
- deactivation

1. The cooperation will also include exchange of information and experience and activities in the field of R&D in line with Article 7

The Energy Regulation in the Bulgarian Energy Policy [1]

Slavcho Neykov
Member of the State Energy Regulatory Commission

I. INTRODUCTION

The economic development of every country is primarily dependent on its energy sector. That is the reason why this sector provokes such a great interest. During the last years and especially after the initiation of the irreversible changes in Central and Eastern Europe this interest has been continually growing and requesting relative legislative and political steps. It was in 1990 when the European Council elaborated the concept for an European Energy Charter which was implemented by signing in 1994 the Energy Charter Treaty[2] as a first international legally binding treaty, dealing with all substantial issues, concerning the energy sector – investments, trade, transit, dispute settlement. At the meeting of G-8 in Moscow on the 1st of April 1998 the representatives of the seven most developed countries and the Russian federation confirmed the major role of the energy

[1] The aim of this paper is to briefly outline the existing situation related to the establishment of the Bulgarian energy regulator and its status. Thus, the paper will aim mostly at describing in short the reasons for its establishment as well as its main characteristics. The references to any legislation reflect the situation up to 31st December 2000.
All views in the paper are personal regardless previous or current positions of the author.
[2] Ratified by Bulgaria in 1996.

sector in enhancing the cooperation worldwide. The constant interest towards the energy sector within the European Union is also a fact, which needs no specific justification.

The restructuring and development of the Bulgarian energy sector adequately reflects the international political and economic events. The starting position in this respect during the recent years is the social commitment, made by the Bulgarian Government in its Program 2001 for helping the country overcome the economic burdens of the past by applying the market economy principles. The energy sector has a significant role to play in this process. An energy policy that meets the modern requirements will determine to a great extent the future economic stability of the country, the national sovereignty and the living standard of the people as well. It is one of the main factors during the preparation of Bulgaria for its accession to the European Union. This is the reason why the energy sector has been identified as an important priority of the country's development.

The creation of favorable pre-requisites for the development of the energy sector in the country in accordance with the existing tendencies in its political and economic development as well as with those worldwide is related to the implementation of the following main tasks:

- Adoption of a relevant legislation, in compliance with that of the European Union, but properly reflecting the national characteristics of the development of the sector;

- Implementation of the structural reform towards market orientation of the energy sector, by promoting competition and step-by-step privatization;

- Implementation of a market pricing policy related to the energy products with guaranteed protection of the public and the consumers' interests.

It is for the first time since the beginning of the changes in the Republic of Bulgaria in 1989, when a concrete and clear regulatory framework for the Bulgarian energy sector has been defined for achieving those tasks. The major elements of this framework include:

- The Three-year Action Plan for Restructuring, Subsidies Phase-out and Financial Recovery of Commercial Companies in the Energy Sector for the period 1998-2001,
- The National Strategy for Development of the Energy Sector and Energy Efficiency until 2010 and
- The Energy and Energy Efficiency Law (EEEL).

While developing the National Strategy for Development of Energy and Energy Efficiency until 2010, the most important goal which was kept in mind was to provide fuels and energy for the country at the least costs of generation, transmission, and distribution following, at the same time, the direction of reforms in that industry towards establishment of market principles.

It is the Action Plan, which contains a specific and detailed three-year action program of the electric power, coal mining and heat supply sectors and envisages an adequate price and tariff policy. This Plan - as an interim set of rulings - lays the foundations of restructuring and establishment of independent commercial entities in the sector.

A key element in the new framework for the development of the Bulgarian energy sector is the establishment of an energy regulatory institution – the State Energy Regulatory Commission (SERC). Its establishment is a logical follow-up of the start of the reforms. However, SERC's coming into life is no exception – this would have happened in any country, which is at a similar level of development of its energy sector, because any energy regulator has a specific role to play. A brief description of the latter would be a logical introduction to the way the Bulgarian regulator functions.

II. AN ENERGY REGULATOR AND ITS ROLE

As it is not a major goal of this article to define the regulation itself, I would just shortly outline its basic characteristics.

The economics of regulation has two corresponding aspects. On the one hand, there are the guiding principles, which define the goal of economic efficiency and give major rules for achieving this goal. On the other hand, there are major institutional issues in the field of regulation.

One of the leading characteristics of regulation is that it is normally and logically associated with monopolistic structures. These could be legal or natural monopolies. The energy sector is no exception – especially in the area of transmission and distribution and regardless whether it refers to heat, gas or electricity. This means that regulation is related to restrictions on competition. However, any time when competition has been restricted, it is the customer who will most probably bare the negatives of the monopoly existence. Therefore, he should be protected from the abuse of dominant position – either by mistreating the consumers as a whole or by mistreating some of the consumers. Meanwhile, the monopolistic company should have enough and adequate space for its development – should the latter be hindered, this will negatively influence practically all the consumers in the area, where the company functions. Thus a balance between the interests of the company and the consumers is required – and it is achieved by means of regulation.

In other words, the main objectives of an energy regulator, might be summarized as follows:

-to provide a balance between the interests of the energy enterprises and the consumers;

-to provide equal treatment and non-discrimination terms to all players in the energy sector;

- **indirectly – to protect the company from ad hoc political decisions.**

The basic means of the Regulator to fulfil its role are on economic and administrative grounds. It is the Regulator who regulates the prices and follows about the quality of service. In case of disturbances, the Regulator has a set of administrative tools, provided by law or via his acts (e.g. licenses) to influence the behavior of the market players. And this inevitably promotes the competition. Thus as the Law stipulates, protection of citizens' life and health, of consumers' property, environment, and interests, as well as the national interests, shall be guaranteed in the process of generation, import, export, transmission, distribution, and sales of energy and fuel[3].

III. THE BULGARIAN ENERGY REGULATOR - STATUS AND MAJOR TASKS

The State Energy Regulatory Commission (SERC) was established under the Energy and Energy Efficiency Law adopted in July 1999 as an independent body with competence under this act. Under the law, it is authorized to exercise state regulation in electricity, natural gas and district heating.

The Commission has seven members and is a permanently operating joint governmental body. Its decisions shall be made with a majority of two thirds of the total number of Commission member votes. SERC has at present established the main part of its general and specialized administration staff.

Under the Energy and Energy Efficiency Law, the Commission is included in the system of the executive power – it is under the Council of Ministers. However, in its decision making it is an independent institution – an issue, to which we shall come later in this paper.

The major goals of the activity of SERC do not substantially differ from the goal of any energy regulator as described above. Protection of the consumers and promotion of higher efficiency and competition via set of rules and pricing mechanisms, established and applied in compliance with the legislation – this is what SERC aims at.

When executing its functions, SERC operates in conformity with the Energy and Energy Efficiency Law and the relevant secondary legislation.

Under the law, the most important functions of the Commission are the following:

- develop instruments and take the steps required to issue permits and licenses;
- issue, amend, supplement, suspend, terminate and revoke permits for construction of generation capacities, heat transmission systems, gas transmission systems, natural gas storage facilities, direct power lines and gas pipelines, and for decommissioning of energy facilities;
- issue, amend, supplement, suspend, terminate and revoke licenses for electric power and/or heat generation, transmission of electric power, heat, and natural

[3] Article 2 (3) of the Energy and Energy Efficiency Law.

gas, distribution of electric power and natural gas, and for storage of natural gas for the purposes of activities in the energy sector;
- issue permits for construction of transit gas or oil pipelines across the territory of the country and licenses for business related to transit transmission of natural gas or oil;
- define general terms and conditions in the contracts for sale of electric power, heat and natural gas;
- review claims for default under granted licenses;
- oversee compliance with the provisions of permits and licenses, and with the principles of price setting;
- approbate the prices set by energy companies.

The above mentioned tasks in fact reveal three main areas of activity of SERC – licensing as a process, price regulation and control functions (these concern the control over the licensees' activities and their conformity with the rules in the legislation and the relevant license). Fulfilling those requests additional competencies, which have been granted to SERC by the Law. Thus, under Article 19, the Commission has the right to demand from energy-sector enterprises the information required in connection with performance of its functions. Further to this, state authorities, energy-sector enterprises and officials are obliged to co-operate with the Commission in the performance of its functions.

Actually, the Commission has been functioning since the beginning of October 1999. However, after a short organizational phase, the Commission is now in a crucial period when it has to actively fulfil some of its duties – mostly related to the process of granting licenses. It is important to note that, although not all pieces of secondary legislation, envisaged in the EEEL are ready yet, the major sublaws are in place. Thus SERC can successfully operate under the time schedule, indicated in the law. Currently the activities of the SERC are focused upon the main scope of its functions according to the law: granting permits and licenses to the enterprises in the energy sector. More than 140 applications for granting licenses have been submitted.

These sublaws[4] establish not only procedural rulings, but also concrete, non-discriminatory and clear criteria for granting permits and licenses.
The most important of them are related to:
- compliance of the proposal submitted by the applicant with the regulations in force concerning: labor safety conditions; technical operation of plants, networks and facilities; quality of electric and heat power and natural gas; environment protection, including soils, waters and ambient air; energy efficiency;
- compliance of the nature of the primary energy sources with the development plans of the total energy balance of the country;

[4] The most important are the Ordinance on the terms and procedures for granting permits and licenses for performance of activities in the energy sector and the Statute of SERC. Both acts came into force in year 2000.

- existence of real rights in favor of the licensee over the land and/or energy facilities.

Further to this, in the course of the investigation, related to issuing a license, the engineering, economic, financial and organisational capabilities of the applicant to perform the respective activity should be also assessed.

As indicated above, a particular task of SERC is to follow a wide range of the interests of the consumers. Therefore, any applicant to get a license is also requested to provide specific information, related to issues like assessment of the environmental impact, its investment program with economical and financial analyses of the investment projects, rules for the work with customers, rules in cases of failures etc.

Besides, inclusion and overall adoption and implementation of rules of regulation, which gradually introduce an economic regulation environment for the Bulgarian energy sector, also take place. I already mentioned that SERC is also authorized to approbate the prices set by energy companies**.** However, the law postpones this activity until the beginning of 2002. Meanwhile, it is the Council of Ministers, which has the power to determine the prices, which are subject to regulation. The EEEL requires that SERC prepare a set of secondary legislation, concerning prices, to be approved by the Council of Ministers**.** Some pieces of this secondary legislation on price regulation, although already approved, will come into force at the beginning of year 2002. Concrete ordinances were prepared and one of them is already published in the State Gazette[5] with the idea to give a hint to the enterprises about the procedures, which they will have to follow in the future. In parallel, this is an extra opportunity to test the approach before it comes into force.

In 2001 the licensing of the companies in the energy field, operating before the coming into force of the Energy and Energy Efficiency Law, will be completed. After that, the real performance of one of the main Commission's functions – control of the licensed energy companies in terms of their compliance with the license conditions, will start. The Commission has been granted special rights in this respect. Whenever a breach of license conditions is established as a result of the control, it can issue mandatory instructions for its remedy within time limits to be set by it. In the event that these instructions are not complied with, the Commission might impose the penalties provided by the Law, including revocation of the license.

An extra question, which arises, is to what extent SERC could participate in resolving disputes between licensees. This question might have concrete practical application e.g. when there is a dispute between two gas distribution companies on the territory i.e. which licensee should have the right to work on a particular area.

The answer to this question is twofold.

[5] Ordinance on formation and application of electricity prices (State Gazette 37 of 5th May 2000). Similar ordinances for the gas and district heating prices have been drafted.

On the one hand, SERC does not have the right to settle disputes related to actions of the participants in the energy. The Constitution of Bulgaria does not allow the establishment of special jurisdictions out of the judicial system[6]. On the other hand, SERC could influence the behavior of the participants in the market, by imposing administrative sanctions to the persons violating the provisions of the granted permits or licenses or by issuing compulsory instructions for elimination of the violations made. However, it should be noted that the decisions of the SERC concerning the imposing of administrative sanctions do not impede the concerned party to defend its rights through due legal process.

As seen above, the Regulator has wide and extremely important tasks to fulfil, which to a very big extent determine the development of the energy sector. Should these tasks be preformed properly, the Regulator must be an independent institution. And this is an issue I want to explicitly elaborate on.

IV. SERC – THE NEWLY BORN INDEPENDENT INSTITUTION

Towards the late 1990s, the institutional setting for the energy industries became more and more market oriented. This takes different forms – reduction of subsidies and cross-subsidies, unbundling, mass and equity privatization, etc. However, one should certainly start this line with restructuring, as it is the one, which enables regulation; and at a certain level regulation enables restructuring. Thus, gradually, the policy–driven regulation is being replaced by market-oriented regulation. To a very big extent this is directly related to the investors' interests – one cannot expect the latter to risk their capital in case when e.g. tariffs will remain subjected to unpredictable ad hoc policy interventions.

These events are in fact the cradle of SERC. Unlike the other two state institutions in the energy sector – the State Agency on Energy and Energy Resources and the State Agency on Energy Efficiency – SERC is a newcomer in the framework of Bulgarian state administration. And this newcomer is an object of a special treatment by the law, which turns it into an independent institution.

Independence is a tricky issue – one can certainly easily find examples of regulators using their powers under the law to make decisions which are in conflict with the short-term political objectives of the government of the day; it turns to be more important that these decisions are in harmony with their overall role to protect the consumer and develop competition. In practical terms, there is no tradition of independent regulation in Bulgaria; formally this brings uncertainty about how any conflict between SERC and the government of the day would be resolved. However, in the concrete case there is little space for such an uncertainty, as the guarantees for the independence are to be found in the EEEL. There are several facts, which guide to such a conclusion.

One of the conditions for independence is the professionalism of SERC's members. The Law has formally guaranteed the latter. Article 13 (1) stipulates that members of SERC

[6] Article 119.

might be only Bulgarian citizens with higher education, with minimum 10 years length of service, out of which 3 years minimum service in the field of energy and who have not been convicted to imprisonment for premeditated criminal offence.

The conditions for dismissal before expiration of the mandate of SERC's members are another guarantee, which is also developed at a law level. Under the EEEL (Article 13 para 3), Commission members may be dismissed before expiration of their mandate only

- at their own request,
- in the event of gross violation under the Law,
- in the event of gross and/or repeated breach of their official duties,
- in the event of commitment of a common deliberate crime and
- in the event of unability to dispatch their duties for a time exceeding six months.

A substantial contribution to the independence of SERC is the complete transparency in its work. It has been provided by means of concrete obligations for the Commission in this respect as well as by special rules, established by EEEL, concerning the judicial control over its decisions.

Thus the Law stipulates that the sessions of the Commission shall be open[7]. Further[8], the Commission is obliged to keep a special register where all licensees and licenses granted, as well as the circumstances related to license amendment, supplement, termination, renewal, and revocation, shall be recorded. A separate register for permits is also required. Both registers are available for the public. The Commission is also obliged to publish licenses and permits in a licensing bulletin of the Commission and in a central daily[9].

The decisions of the Commission are subject to appeals before the Supreme Administrative Court, which may be lodged within 30 days after the decision is issued[10].

In addition, SERC has already established a public relations department, and, same as the other state institutions and many other regulatory authorities internationally, has already developed its own web site[11].

Thus the law itself, by concretely describing the statute of SERC and its members, and by outlining concrete, definite and clear rulings about its activity, turns to be the best guarantee for SERC's independence.

V. CONCLUSION

[7] Article 14 (2) of the Energy and Energy Efficiency Law. The rest of the footnotes refer to the same law..
[8] Article 33.
[9] Ibid.
[10] Article 14 (3).
[11] www.dker.bg.

The energy sector represents a significant part of the economy of each country. This is also valid for the Republic of Bulgaria. Therefore, the restructuring and privatization of this sector are processes, which are not only time-consuming, but will also encounter a number of difficulties. This, however, is well known but there should be no doubt that these processes will be successfully completed. One of the major reasons for such a confidence is the established regulatory framework for the sector as well as the experience gained in the process of performance.

The energy regulator plays and will play substantial role in the current and future development of the energy sector. The licensing process, the price regulation and post licensing control functions are the means, which the EEEL has granted to SERC, in order to provide a balance between the interests of the energy enterprises and the consumers and equal treatment and non-discrimination terms to all participants in the energy market. And there could be hardly any doubt that this will benefit the society as a whole.

Cross Border Cooperation Between Bulgaria's and Romania's Customs Administrations

Latchezar Apostolov

Regional Customs Director, Rousse

The customs are a good example of cooperation all over the world. It is true because the customs is a part of trade, which is one of the most popular forms of cooperation all over the world and since the beginning of days. And it is due to the fact that the black marketers make a big world-wide family and the customs administrations are doomed in case they do not become a big world-wide family.

Bulgarian and Romanian customs are no exception to this global striving for cooperation. That is why we are not only dreaming but also making efforts to adapt Bulgaria and Romania to the global standards following the influence of the European practices. The trade and human rights are an imperative for customs control nowadays.
I will try to elaborate the principles and goals of the cooperation between these two customs administrations. I will try to analyze the current status and future perspectives for customs control in Bulgaria and Romania.

- The first ruling principle of our joint efforts is that foreign trade should not be limited.

- The second principle is the aim to guarantee respect to regulations and their requirements. The possibility for ill-minded and dishonest persons to profit illegally from these new freedoms should be waived.
- The third principle, which, to me, reflects the current organization of customs, is that customs bodies control should be efficient, but in no way absolute and systematic. This control should stick to keeping human rights and freedom. In this respect we follow European legislature.
- And, of course, last but not least are the common principles of human rights and freedom, envisaged by a number of regulations enforced in the ELJ member states. Without respecting these principles, one cannot see the steps to be undertaken in order to assist a country in its transition to market economy. I am not focusing by chance on human rights and freedom, because the transition to market economy is impossible without the commitment of the people.

Based on these principles of present customs control, the two customs administrations are aimed at:

- approximation of customs procedures:
- common customs control, or common customs;
- replacement of customs control; This process of cooperation and bringing the two customs administrations closer, started in 1997, and now, three years later the cooperation has set the basics for the next step — establishing a common customs for Bulgaria and Romania;
- The two administrations were approximated, adopted new Act on Customs, responding to the EU principles and guidance. By means of this Act the two countries adopted the modern new culture of trading characteristic of the global world;
- A common structure of customs administration organization has been established, in compliance with the structure of EU customs. For example the customs offices in Bulgaria have been associated into five big regional customs offices based in Sofia, Plovdiv, Bourgas, Varna, and Rousse. In this way the customs offices along the Danube in Bulgaria have been associated with their regional administration in Rousse. On the Romanian side, the regional administration is centered in Giurgievo, which is very beneficial for the cooperation of the Danube administrations;
- Equivalent documentation has been introduced;
- The two administrations initiated exchange of customs officers;
- Sharing of information;
- Common training;
- Common procedure regulating transit will be introduced soon;
- Common training takes place in the Rousse training center;
- A common center for fighting cross-border crime will be established in Bucharest;

- New means of control have been introduced, i.e. control through delicate means, in place of systematic, tough control at the border.

In January 1999, the heads of two administrations signed an agreement for exchange of customs officers from Rousse and Giurgievo, and since then two Bulgarian customs officers are employed in Giurgievo, and two Romanians — in Bulgaria. A preparatory meeting was held in January 2000 in Bucharest, within the framework of the PHARE project "Cross-border Cooperation Bulgaria — Romania 2000" and the program " Facilitating Border Crossing Over the Danube".

At the end of July 2000 in Giurgievo, during a workshop with the participation of representatives of the European Commission, a decision was made to start the establishment of common customs Rousse — Giurgievo.

But I will not get into the professional details of this cooperation. I just mentioned these point, in order to prove that the at professional level the cooperation between the two administrations is very intensive, and the goal is common customs and removal of customs control between Bulgaria and Romania. It is a question of great public and strategic significance and that is why a clear attitude of policy-makers and public is required. We reckon that the goal: removal of customs control between Bulgaria and Romania, is shared by everybody. The big issue is WHEN.

There are two opinions. One of the opinions is rooted in historical prejudices, and supposing that removal of customs control will disfavour security and lad to economic chaos, opposes to the removal of customs control. The other opinion advocates for opening the border as soon as possible.

There is no doubt that Bulgaria and Romania have the future of EU member states. It is good news for Rousse and Giurgievo, but also for Europe. There is no doubt that with the two countries' accession to the European Union, this border will become an internal border, and the significance of customs control will diminish, as well as that the Black Sea and Bulgaria's south border shall be the external borders. There is no doubt that transport nowadays has become very important for employment, trade, and tourism. People shall travel more, and thus — think more of Europe.

The customs offices are part of the infrastructure, and it could add to economic prosperity. A modern customs office will lead to economic prosperity, because it will facilitate the free movement of people, goods, and capital, and make it more efficient at the-same time, due to removing the clumsy and primitive customs control with new delicate means of control. This is typical for customs activities nowadays. The share of physical controls gives way to increase of intellectual control based on documentation processing.

- The competition regulates the market operation.

- The cleansing of market should get in depth.
- All the efforts should be more focused.
- Public control guarantees efficiency.

Presently the accent is placed on state control. Thus, the question of removing customs control between Bulgaria and Romania is of significant importance to the public. That is why this kind of discussions that help analyse the current and future status of customs control, searching for the answer of the question "WHEN the customs control shall be removed" are very helpful. If we push things too quickly, the risk exists that we end up with a chaos, but if we delay it too long, we shall place unnecessary burdens to economic development. We believe that in 2003 Rousse — Giurgievo and Vidin — Kalafat shall have a common customs, and by 2010 the customs control shall be replaced.

Combating Organised Crime and Fostering Regional Cooperation in South-East Europe

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"Organised crime is present whenever two or more persons are involved in a common criminal project, for a prolonged or unspecified period of time, in order to obtain power and profits and where the single associates are assigned tasks to carry out within the organisation: 1) through business or connected business activities; 2) using violence or intimidation; 3) influencing politics, media, economy, government or the judiciary, through the control of a determined territory, if necessary, in order to commit the planned crimes that, from a collective or individual point of view, must be considered serious crimes."

(Ad Hoc Group on Organised Crime, *Report on the situation of organised crime in EU,* 1993)

1. A Romanian Perspective

Costin Georgescu, the Director of the Romanian Intelligence Service, presented IN THE Parliament the Report on the security environment of the country.

Among the transborder threats to the national security, he mentioned first the organised crime phenomena. Thus, only in the field of cigarette smuggling, for instance, the state budget makes yearly losses of more than 250 million USD. he real market of this illicit traffic has several command structures at country level, situated in the main cities: Bucharest, Constantza, Timisoara, and Giurgiu.

The source countries for the cigarette supply of the Romanian illegal market are Cyprus, Greece, Bulgaria, the Republic of Moldova, the Ukraine, Belgium and Hungary, as well as the free trade areas organised on the territory of Romania. The smugglers have good contacts with these sources and have developed several "trade techniques', such as the use of false stamps, cigarette packages without stamps, declaring smaller quantities at the customs.

Another market, that of illegal trade with alcohol, is controlled by Mafia-type networks in various areas in the country in Moldova (i.e. the north-eastern part of the country: Iasi, Suceava, Vaslui, Galati), in southern Romania (Oltenia) and in Transilvania (Bihor, Covasna).

The illegal market for coffee is controlled by Arabs starting from Bucharest, by creating false companies and without paying any taxes, using corruption among some of the civil servants, mainly in the financial sector and the customs auuthorities.

Some conclusions on this kind of activities:

- Smuggling is a clear example of tax evasion, using "black money" in networks of companies, making fictitious transfers of goods, thus avoiding the amount of taxable money;

- The markets of organised criminality are not typical for Romania but such an experience in other countries has influenced unwanted developments in Romania as well. The danger is that money produced through illegal activities might then be directed towards influencing decision structures, control focused activities such as finance, customs, the banking system, etc. the prevention of all this meaning extra work for the bodies countering money laundering;

- The markets of illegal goods in Romania are controlled by criminal groups which intend to contact the transnational organised crime structures;

- In the last period, it has become obvious that "integration" phenomena are under way, manifest through organising activities on Mafia-type principles, as well as a concentration of initiatives on ethnic bases. The Report emphasises that the most active and dangerous among these appear to be the Arab, the Chinese and the Russian networks.

2. A Western Perspective

Tom a western perspective, e.g. Alessandro Politi, a well-known Italian analyst, there are two major threats at the moment in South-East Europe:

- Transborder organised crime and drug trafficking. The argument to put together tie two phenomena is that drug production and smuggling require criminal structures. The drugs are crime multipliers for gangs, guerilla and terrorists. At tie same time, organised crime can exist also without drug trafficking. Some reasons while organised crime represents a real threat in the region include:

- In the beginning, these countries were mainly used as transit countries, but soon they also became consumer countries with all the dramatic and dangerous consequences this involves;

- The money thus made available is used for destabilizing the society, the political system, the administration and the economy;
- Criminal networks, both at national and international level, aim at reducing state authority and intervention capacity, thus influencing state sovereignty and integrity in the targeted territory;
- Organised crime uses and misuses the still weak state administration in these countries *('weak"*because there is a general lack of financial means in these countries, with an evolving legal system, as well as insufficient experience of working in a state of democracy and free market economy); there is thus a spreading of the virus of corruption, which contributes to the development and fostering of illegal activities;
- Transnational organised crime benefits from huge financial resources and from the flexibility and dynamics of its criminal structures, taking advantage of the still shy co-operation among institutions/agencies in charge with countering organised crime and the quite modest financial means at the disposal of the law enforcement authorities.

Some voices consider that organised crime undermines the chances of South-East European countries to become reliable partners of NATO and the European Union, whereas other opinions emphasise the chance for western countries to have a more secure environment due to the fact that countries in Eastern Europe will eventually become members of both NATO and EU, and will thus improve the control at the Eastern and South-Eastern borders of the Union.

3. New Markets

3.1 The drug market

In recent years, Romanians have become more and more involved in international drug trafficking networks, which are operating on their own territory mainly as go-betweens or couriers. A part of the dirty money resulting From drug trafficking is directed towards investments in the Romanian economy, in the intention of achieving money laundering.

From a transit country in the beginning., Romania became then a storage territory, mainly for the drugs coming from the South, from Iran over Turkey and Bulgaria. The storage is conceived so as to use the favourable illegal drug market conditions in South-Eastern Europe. Various methods are used for the transport of drugs to Romania, starting with dissimulation on the human body or n the hand luggage, to car transportation (e.g. personal cars, lorries, containers), either as such or mixed with other products. A growing role in the transport of drugs starts to be assumed by leisure companies transporting tourists to, from or over Romania.

A new development consists in the country's becoming more and more also a consumer market, esp. for teenagers, students, prostitutes. More than half of the consumers do not

have a job and usually benefit from free samples of drugs, part of "advertising campaigns" encouraging their use on emerging markets.

The most frequently used drugs are heroin, cannabis, marijuana and cocaine. Alongside with these, also synthetic drugs have been introduced from western Europe (e.g. Amfetamina dragees, LSD and MDM).

The source of hashish is Africa, that of cocaine is South-America, whereas the heroine comes mainly from Afghanistan, Iran, Pakistan a.o. The laboratories or the final preparation of the drugs are situated mainly in Turkey and Lebanon.

Cannabis has been reported as already being locally produced in some private gardens; whose owners have been arrested as soon as identified. Other drug-addicted persons resort to misusing drugs designed for medical purposes, either s such or in combination with alcohol.

So far, no laboratory for the production of drugs has been discovered in Romania. But the police are currently following up information regarding the interest of some foreign citizens in the privatisation of chemical plants, apparently in view of starting the production of synthetic drugs.
Over the last eight years the Romanian police has reported a total seizure of 21 tons of drugs, and only during the last year 19 tons of anhydride, out of which 4 TONS in Istanbul on the basis of a controlled delivery.

Following official estimations, 10-20% of the drugs entering Romania are used for local consumption, but in the future an increase in this percentage is expected, as a result of the development of the local drug market. At the same me, Romania is expected to remain an important "corridor" for the transit of rugs, esp. for those coming from Iran - Turkey - Bulgaria, on their way to Hungary Slovakia - the Czech Republic - Germany - the Netherlands.

3. 2 *Trafficking of human beings: women and children*

High officials of the Romanian police are deeply concerned about the explosive development of the trafficking of human beings in the area, supported through the involvement of international networks, which became more and more aggressive in the region

Till last year, prostitution was practiced mainly in the vicinity of hotels and on parking places for foreign lorries, whereas now this activity has started to include more and more also other domains. For instance, ads announcing the need for models, baby-sitters, persons to accompany disabled people often dually aim at attracting young women who

then become victims of criminal structures. These persons often end up being kidnapped and sent - against their will - to other countries, mainly Germany, Italy, Greece, Turkey, more recently also Arab and African states, as well as far as Japan. Once at the destination they are forced into being used as prostitutes and / or for drug smuggling purposes.

More and more young women from Romania and the Republic of Moldova, attracted into this trap, have left the country without knowing exactly where to icy were heading, in order to be then re-sold like "objects' of the "sex-industry" with very limited chances of saving their life and for returning home.

Between 1997-1999 a special branch of the Romanian Police have solved 239 cases with 700 prostitutes, out of which 101 where under 18 years old, and 234 proxenets.

Trans-border organised crime has focused lately more and more also on children traffic, often with the support of local criminal gangs. Some of these cchildren have the chance to be in the end adopted by foreign families, but most f them are sexually abused for child pornography on the Internet, to the benefits of pedophiles, or - more dramatically - for banks of organs in the West.

3.3 Car smuggling

More criminals have been reported lately to have become more active in this area, due to improved facilities for stealing cars and smuggling them over the order, in order to re-sell them, either as such or as spare parts. There is a rowing tendency of operation in organised, international gangs, each member having a specific task. Romanian and foreign criminals are making use of state-f-the-art techniques, covering wide areas, including big cities and resorts, with n-going communication among international counterparts for cross-border car smuggling. Over the last months, the General Inspectorate of the National police has strengthened the co-operation with the border police, customs administration, as well as with the Romanian car registration office, in order to ensure a more effective exchange of information and for working on a joint data base.

Intentional co-operation in this field has succeeded to disintegrate over 20 international networks, consisting of approx. 530 criminals.

Last year (1999) 147 cars stolen from other countries have been found by the police. For one third of these, the owners have been identified and the cars turned to them. In Romania, 45% of the stolen cars are registered in Bucharest.

Official estimates show that the phenomenon of car stealing is growing, due [so to the fact that more car owners accept to reach an agreement with the smugglers against a

considerable amount of money and, in addition, in order to get compensation from the insurance companies.

4. Organised Crime and Terrorism

Over time, terrorism has lost its traditional sponsors and, thus, has turned to organised crime for funding. On the Romanian territory, the Police have identified members of disident Palestinian terrorist organisations (the Popular Front for the Liberation of Palestine, the Democratic Front for the Liberation of Palestine, the "Abu Nidal" Organisation), Islamic-fundamentalist terrorist organisations (Hamas, Hezbollah, the Islamic Liberation Party, the Islamic Salvation Front), as well as other ethnic-separatist, terrorist organisations (e.g. PKK).

PKK and Hezbollah are mainly active in drug trafficking, ammunition and explosive smuggling, as well as illegal migration. Members of the PKK are currently making use of violence and threatening with violence against their own co-nationals, on the territory of Romania.

Over the last months. Mafia-structures from Italy have established close cooperation with the Romanian criminal structures, in order to attract professionals from the former USSR-space, with a view to organising arms and explosive smuggling in the area.

Some of the Italian Mafia-families have also started commercial operations in Romania, using them for illegal fund raising. They are active in various fields, taking advantage of the privatisation process, investing dirty money in companies, in order to create an image of legal activities, that would then facilitate money laundering. Thus, a member of the Camera Napoletane tried to set up a Mafia-type of organisation in Romania, with the support of some locals, but was fortunately caught by the Police and extradited. He was immediately arrested by the Italian authorities under accusation of arms and drugs smuggling, kidnapping a.s.o.

Some of these terrorist activities already represent a threat to national security, and Romanian authorities are, therefore, on the alert to identify the leaders of such complex criminal networks, in order to prevent further damages and crimes.
The inter-connection between terrorism and organised crime is perceived as a major threat also for the future, since:

- The financial means made by terrorist groups out of organised crime activities allow them to develop logistics and operational capabilities in Romania and other countries;

- The interference between terrorism and organised crime leads to the increasing action capability of the latter due to the fact that it has access to the experience and infrastructure specific to terrorism;

- The involvement of terrorism in organised crime often generates conflicts of interest, which make criminals resort to extremely violent measures.

5. New Initiatives for Countering Organised Crime

Within the framework of cooperation in South-East Europe in the field of preventing and countering cross-border crime phenomena, it was decided to establish a **Regional Centre for Combating Transborder Organised Crime,** set up in Bucharest, Romania.

Background

The project background is provided by the Stability Pact Agenda (Working Table III - Security Issues), which stipulates co-operation by establishing and adopting cooperative programmes among the countries in the region, as well as between the region and other Stability Pact participants, fighting cross-border organised crime, drugs trafficking, corruption and illegal migration (Human Beings Traffic - Letter C) and aims at extending to include also the South-East European countries in EUROPOL activities (Letter D).

As a result of a series of meetings over the last two years, the *Agreement on Cooperation to Prevent and Combat Transborder Crime* was signed in Bucharest on May 26, 1999. The signatory states are: Albania, Bosnia-Hertzegovina, Bulgaria, Greece, Hungary, FYR of Macedonia, Moldova, Romania and Turkey, joined also by Croatia, who signed the Agreement in November 1999.

The Agreement entered into force on February 1, 2000, providing the legal basis for setting up the Regional Centre. The parties to the Agreement have already appointed their liaison officers to the Regional Centre in Bucharest, to be rained in early March in ILEA Training Centre in Budapest, Hungary. Italy and the United States have nominated their liaison officers as observers to the Regional Centre, while France, Germany, Switzerland and the United Kingdom lave also asked for observer status.

The Romanian Government has provided the Centre headquarters, located in Bucharest in the Palace of the Parliament (the 10^{th} floor - 2000sqm) and has financed the initial infrastructure, various facilities, including IT and communication systems (USD 1.8m).

Objectives and Sphere of Activity

The Centre's activity is based on the co-operation between the ministries of interior and the customs administrations in exchanging operational data, carrying out joint actions, ensuring technical assistance, organising joint raining events. The Centre has the potential to strengthen the internal security of the states in the region, in order to achieve regional stability. To this end, projects will be developed with the support of interested

states, international and regional institutions and initiatives (the European Commission, the Stability ^act, UN Agencies, OSCE, Council of Europe, SEECP, SECI).

Tie Regional Centre has the potential to be the leading institution in the area and to be instrumental to the activities developed by Task Forces. At the same time, it will maintain permanent relations with the INTERPOL, WCO and other intenational structures.

Tie Regional Centre has already hosted several meetings of the Joint Co-operation Committee (its highest body), and was visited by numerous personalities (Mr. Bodo Hombach, Special Coordinator of the Stability Pact, the rime Ministers of the SEECP states. Ambassadors). At the same time, it hosted training courses and meetings for liaison officers. On October 2nd, the Centre is becoming operational.

Combating Organised Crime and the Regional Cooperation in Southeast Europe

The *Area of Freedom, Security and Justice,* defined by the Treaty of Amsterdam, is based on the idea of the European Union as a common area. The 15 October 1999 extraordinary meeting of the European Council in Tampere, devoted entirely to the issue of consolidation of the Area of Freedom, Security and Justice, transmitted a message to the criminal world, that the full potential of law enforcement agencies and the judicial system will be mobilized to prevent them abusing the freedom we cherish or threatening the conditions in which law-abiding citizens can enjoy it.

Southeast has been recently marked by events that influenced the economical development of the states in the area. The Western countries have shown, up to now, their preoccupation for the future of the region.

On 26 May 1999, Romania, together with Bulgaria, Hungary, Greece, FYROM, Turkey, Albania, Moldavia, Bosnia-Herzegovina, has signed the South-European Co-operation Initiative (SECI) on preventing and combating trans-border crime. In November 1999, Croatia also signed the document. By this agreement the Regional Centre of SECI on preventing and combating trans-border crime was set up in Bucharest. The center will become operational in 2001.

The Southeast European Co-operation Initiative-SECI- is a regional structure, launched at the United States initiative, which supports the co-operation between member states, co-ordinates the regional development plans, supports know-how transfer and the investment achievements in private sector in projects concerning the preserving of energy, as well as

the co-operation in organized cross-border crime fighting field. The initiative is assisted by EC, UNO, OSCE, BIRD, and BEI and collaborates with others regional initiatives such as Black Sea Economical Co-operation and Central-European Initiative.

In (January 1998, Romania proposed a SECl Regional Centre setting up for combating organized crime and corruption and on the 23th of May 1998 the multinational agreement was concluded on this centre creation in the capital of Romania.

In Romania, the project is co-ordinated by the Ministry of Interior that co-operates with tlie Ministry of Finance and with the General Directorate of the Customs. The Ministry of Foreign Affairs carried out diplomatic efforts as well.

The future Centre shall have the location at the 9th and 10th floors of the principal building of the House of Parliament. It is intended this Centre to become the convergent point of the main projects of the South-eastern Europe and also to enhance the Strategic Partnership with tile USA.

The objectives of the Centre are:

- Development of an effective joint inter-agency working relationship at the SECI Centre and between and within participating states;
- The parties, through their liaison officers, will co-operatively seek to identify, prevent, investigate and combat the cross-border criminality by the exchange of information;
- Assistance to pending customs and criminal investigation of cross-border crime;
- Co-ordination of liaisons with ICPO-INTERPOL and the World Customs Organisation;
- Identification, study and proposals on issues which have a bearing on the quality of law enforcement co-operation in the region;

THE project on setting up the Regional Centre SECI is in accordance with the projects promoted by the EU in candidate states, adding a practical clement to the preoccupation for legislative harmonization and to meet the EU standards.

The State Department of USA announced the otter for financing the training in Budapest, within ILEA, for a period of 2 weeks, for 5 national appointed representatives-2 liaison officers within SECI Centre and 3 representatives winch shall work within the national points of contact. Equally, USA expressed its availability to make dispose for the (centre the amount of USD 400,000 with the view to acquire equipment.

The World Customs Organization expressed its availability to assist this Centre, especially by RILO network, at this moment existing an "intelligent" system for the exchange of information, which is already operational, that may assist the activity of the Centre.

The activity of SECI Centre shall be in accordance with the terms of SFCI Agreement, the Centre being to use the standard procedures and the technical systems of OPIC-INTERPOL for transmitting, storing, searching, recovering and analyzing the categories of information agreed upon, connected to the cross-border crime.

The SECI Centre shall organize ad-hoc working meetings and support the operative-meetings in the interior of the participating states, upon their request. By its activity, the SECI Centre shall contribute to the creation of a stable (clean) business area, taking into account the impact of the criminality upon the economic issue. It shall represent a model of co-operation in the region, being to be promoted as a goal of the Stability Pact as well. The estimated budget for the start and the first year of functioning is about USD 6.8 million.

Recently, the partners of the Stability Pact for South-eastern Europe launched an Initiative named *"Stability Pact against Organized Crime"* (SPOC) who aims to support the countries of the region in this effort through technical co-operation programmes as well as through measures promoting operational co-operation.

The proposal for a Stability Pact Initiative against organized crime in Southeastern Europe can be defined as an integrated approach strategy of the organized crime at a regional level, including the implementation of The Stability Pact Anti-corruption Initiative adopted in Sarajevo on 15-16 February 2000, starting and being oriented to the principles and relevant standards of the European Union. The initiative is thus aimed at inducing structural change and the achievement of its targets would be a clear reflection of the political will of the Governments in the region and the international community to prevent and suppress organized crime in South-eastern Europe.

Expected results of this four-years initial duration initiative are: the adoption and the implementation by the interested governments of national polices and strategies against organized crime, the establishment of multi-disciplinary national co-ordinating mechanisms, the adoption of a national legislation harmonized with the European one in the field of fight against organized crime, money laundering and corruption, improvement of domestic inter-institution co-operation systems, the setting up of specialized structures and strengthening of the investigative capacities with a view to

obtain real results, as well as the consolidation of the regional and international co-operation.

Agreements, understandings or bi- or multilateral protocols regulate the cooperation with the neighboring countries, including the rights and obligations of the parties involved. The institution of c criminal actions, brought into force by the Schengen Convention does not function ;ind is not used on the Romanian territory. Assistance is possible on the basis of bilateral juridical instruments drawn up at governmental or department level by the Romanian authorities with the majority of European states. Co-operation is made on the basis of assistance application or rogatory committees.

The existing provisions regarding the cross-border co-operation are stipulating that the enforcement is to be made directly by local police departments. The co-operation is done through the assistance application addressed to the nominated institutions directly, in the juridical assistance documents, either by fax, INTERPOL or liaison officers, as in the case of Germany, France, Ukraine, Italy, United Kingdom and Belgium.

In order to underline the limited feature of this co-operation, referring to the judicial co-operation, we add that the response of the Romanian party to the requests of other states are only for the internal use of police departments. For the second part of the matter, there have to be respected the conditions provided in criminal matters, ratified by Romania through Law No. 236/199S.

Organized crime is a particular problem, which is substantial, and particularly prevalent in the economic and financial spheres. Implementing mechanisms and instruments to address it are still at an early stage. The Romanian police has since 1993 a specialized structure for fighting organized crime: the Squad for Fighting Organized Crime and Corruption (BCCOC) which has obtained outstanding results. Beginning with March 2000, the Squad for Fighting Organized Crime and Corruption was reorganized under the name of the Directorate of Countering Organized Crime.

There are significant links between Romanian criminals and foreign groups. Special efforts must lie made in order to improve the endowment of police forces. Drug trafficking is a serious problem that is not effectively under the control of the authorities. Romania is a transit country in the Northern Balkan transit route for drugs and can become an open market for them.

Drugs, mainly from Asia but also Africa, enter Romania largely through the Danube ports and tourist buses. Local consumption, including of synthetic drugs, is growing.

Romania's drugs prevention and supply reduction policies are still at an early stage of development.

In tins respect, the Ministry of Interior has drawn up both proposals to modify the Penal Code and Penal Procedure Code and a comprehensive package of special draft laws that incriminate well defined crimes. The project offers premises for a real protection of witnesses, eliminates their harassment during trial, and increases their trust in personal safety. A national office for analyzing relevant information has been set up after endorsement of Law No 21/1999 on prevention and sanction money laundering.

Relying on the co-operation and exchange of information with the police bodies from the countries having experience in fighting this type of criminality and after studying relevant legislation, the Ministry of Interior elaborated and submitted for immediate endorsement a draft-law to prevent and sanction money laundering which has already come into force (Law no. 21/1999 on prevention and sanction money laundering).

Romania continued the approximation of the legislation by promoting the Draft Law on amending and supplementing the Criminal Code (including provisions related to witness protection measures) that is on the debating lists of the special parliamentary commissions and the Draft Law on Combating Organized Crime which is now under debates at the Chamber of Deputies and with the Legal and Defence Commission of the Senate.

Regarding the adjustment of provisions aiming at preventing the financial system from being, used for laundering of proceeds from criminal activities in general and drug offenses in particular, the envisaged measures aim the modification of the penal procedure code with provisions for the protection of the witness, special ways for interrogation, verifying the evidence, cross-examination.

Due to the setting up of the Inter-Ministry Committee of Fight against Drugs, in 1999, with a leading role of activities of all institutions with tasks in the field, at national level there were confiscated 119,3 kilos drugs (43,53 kilos hashish and cannabis, 2,47 kilos opium, 63,63 kilos heroine, 9,67 kilos cocaine and 10,546 amphetamines and derivatives), out of which the Squad confiscated 32 kilos drugs.

Taking into account that the narcotics trafficking is especially an internationally organized crime, drugs being transported with the help of multi-national criminal channels, anti-drug officers took action in order to co-operate with national police in other states. Therefore, in co-operation with agencies from Great Britain, Bulgaria and Turkey, there was organized the first supervised delivery of precursors from Romania,

via Turkey. This action, that required over two months of preparing and the involvement of a great amount of officers, led to controlled taken out of the country of four tones of acetic anhydride by a Turkish channel thus stopping the entire criminal activity in Istanbul. All the same, by the co operation with other structures in the GP1, in October, there have been identified 3 warehouses with acetic anhydride (over 15 tones) that was to be transformed in drugs.

In tlie field of harmonization, Romania has to:

- Ratify the European .Agreement on illicit trafficking by sea, implementing Art. 17 of UN Convention against illicit trafficking in narcotic drugs and pshychotropic substances;
- Draw up and adopt relevant regulations in order to implement the Community Acquis;
- Initiate of formalities for accession to me European Convention on personal data protection;
- Set up of 2 territorial laboratories for drugs control in Oradea and Iasi;
- Specialize the personnel from the Financial Information Analysis Centre and achievement of necessary infrastructure;
- Set up and developing tlie infrastructure of C.l.R. and the regional SECI Centre.

Review of the Current Situation Concerning the Fight Against Organized Crime in Romania

Romania made sustained efforts in order to fulfill the obligations assumed, by participating in the approval of the Prere-Accession Pact on Organized Crime, on the 28th May 1998, opened for all candidate states from Central and Eastern Europe and Cyprus.

With respect to the fulfillment of the tasks in the legislative field, the current situation is:

- The European Convention on Extradition (Paris 1957) and the second Protocol of the European Convention on Extradition (Paris 1978) were signed and ratified by Romania by Law 80/1997.
- The Protocol on mutual assistance in criminal law field (Strasbourg-1978) -The European Convention on criminal law field (29.04.1954), as well as the second Protocol of the Convention, were signed and ratified by Law 236/1998.
- The Convention on laundering, detection, seizure and forfeiting illegal proceeds, which was drawn up by the European Council in Strasbourg, on 8th November 1990, was signed and is pending ratification by the Parliament. Following the spirit of this Convention, the Romanian Parliament passed the Law no 21/1999, on preventing and sanctioning money laundering, which entered into force on 21.04.1999.

- The Convention on mutual assistance among customs administration and the Protocol to it - this Convention is not open to be signed by the candidate countries.
- The Agreement on illicit sea trafficking for the implementation of 17 article of the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Strasbourg 1995) was signed by Romania but not yet ratified;
- the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988. (O.J. No. 341 of30.12.1992) was ratified by Romania by Law no 118/1992.
- The European Convention on terrorism (Strasbourg, 1977) was ratified by Romania with Law no. 21/1997.

With respect to the efficient development and functioning of the central bodies for law enforcement, responsible with the fight against organized crime, it is worth mentioning:

- the setting up and functioning of the Central Operative Group for lighting Against Organized Crime and Corruption, pursuant to the Protocol no. 821/1998 signed by the Ministry of Justice, Romanian Intelligence Service, External Intelligence Service, Ministry of Interior and the Ministry of finance. In the same context, the protocols signed between the Ministry of Interior, namely the General Inspectorate of Police, and the oilier state institutions with attributions in the field, are relevant.
- the establishment of the hirer-ministerial Committee for Fight against Drugs pursuant to the Government Decision no. 534/1999.
- The creation of a national structure (I-'.LROPOL division) within the General Inspectorate of Police (beginning 2000).

As regard the data protection, Romania has signed the Convention for the protection of individuals on the automatic processing of personal data, dated 28th of October 1981, which is still pending ratification. Certain provisions of the Convention were taken into account at the drawing up of the law concerning population records and at the conclusion of some bilateral and multilateral agreements for co-operation on organized crime between Romania and other states.

For example, the bilateral agreements with Germany, Hungary and the trilateral ones among Romania-Bulgaria-Greece, Romania-Bulgaria-Turkey, as well as the Agreement between the Economic Co-operation of the Black Sea Countries (CEMN) and the Co-operation Agreement on South East Europe preventing and combating tile cross border criminality (SECI).

The 1990's Convention on money laundering, search, seizure and confication of crime proceeds was signed, and is pending ratification. In 1999 the Law no.21 lias been adopted, which came into force starting with 2F' of .April 1999 and lias provisions in line with the 1991's Directive as well as the 1990's Convention.

Efforts are made in organizational plan for the finalization of the institutional framework necessary for the application of the aforementioned law.

Co-operation with certain EU Member States (Trance, Germany, Italy, United Kingdom) is achieved through liaison officers posted in Bucharest.

To date, Romania has liaison officers abroad only temporarily sent to Ireland and Czech Republic, due to the scarcity of financial resources. Nevertheless, a vast amount of work has been vested in designing the legal framework for such activities, and appropriate provisions have been included in the co-operation agreements signed with EU Member States (Belgium) and Candidate Countries (Turkey). Temporary assignments have been arranged with the Czech Republic and Germany in this respect and arrangements for police co-operation during EURO 2000 Football Championship have been made with Belgium and the Netherlands.

With respect to the oilier obligations to be met in terms of harmonization with the IT procedures for fighting against organized crime and illegal trafficking in drugs, the following issues are to be stressed:

a) the continuous development of international co-operation in the field of fighting against cross-border crime, especially its organized forms:

b) the delay in adopting the required legal framework.

In this respect, more than 60 co-operation documents were concluded (agreements, understandings, protocols) with more than 30 states, aiming at countering crime - with most of the EU Member States, with almost all the CEECs, as well as with some countries in the space of the former Soviet Union, Latin America, Asia and Africa. Other agreements, understandings, protocols are at various stages of negotiation.

Completing the existing legal framework with the- instruments which, at present, are in draft stage, will certainly facilitate and add dynamism to flu' fight against organized crime and will allow for a more efficient co-operation in this field with the oilier countries committed in countering tins phenomenon. Therefore, the draft laws on fighting against organized crime, on fighting against illegal traffic of drugs, on fighting against corruption deeds, the amendments to the Criminal Procedure Code, with a view to provide for witness protection and setting up the institution of under cover investigators, are just some of the legal instruments which, once enforced, will represent concrete steps of making efficient the actions of countering the above.

As regards the data collection and processing in the field of fighting against organized crime, there are some things to be mentioned. The Ministry of Interior,

respectively the General Inspectorate of Police, are experiencing great difficulties in this regard, due to budgetary constraints. Thus:

- the core unit, the Directorate for Combating Organized Crime, has at present no software for the data collection and processing in the field of organized crime suspects. The existing one could no longer be used as of the 1th January 2000. A draft programme was under elaboration, but it could not lie put into operation due to lack of funds.
- there is no IT system to ensure the operative exchange of data and information with the related territorial units. The Ministry of Interior and the General Inspectorate of Police are focusing on tins issue for 3 years, under a task included in the National Plan for Romania's Accession to the EU, which has not been achieved yet due to lack of funds.
- The General Inspectorate of Police and its Directorate for Combating Organized Crime don't have direct online access (within an informatic system) to the other databases within the Ministry of Interior (border police, passports, etc.) There are also no interfaces for data exchange with the oilier bodies having attributions in this field all over the country (Public Prosecutor's Office, General Directorate of Customs, Ministry of justice, etc.)

Within the General Inspectorate of Police - Directorate for Combating Organized Crime the first structure of information analysis will lie set up, dealing directly with the field of fighting against illegal traffic of drugs.

Its setting up is possible due to the funding received through the joint programme Phare - UN DCP for the strengthening of institutional capacity of fighting against drugs in South Eastern Europe (Romania, Bulgaria and FYRO Macedonia).

Up to now, study visits and training have been carried out with foreign experts, and in the next quarter some IT equipment will he delivered.Starting with March 2000, a twinning programme involving United Kingdom, Spain and France has become operational and it will focus on several issues pertaining to PAPEG, including international police co-operation, undercover and special investigation techniques, networking and inter-agency co-operation etc.

FIGHT Against Drugs

The Law No. 143/2000 on combating drug traffic and illicit drug consume came into force once published in the Official Journal on 3 August 2000. The Law comprises provisions concerning:

- eradication of production and illegal traffic of restricted substances, as well as incrimination and punishment of offenses relate to these substances;
- special standards on procedures applied to accused persons, probation means, procedural activities related to such offenses;

- measures against the abuse of drugs (disintoxication cure and surveillance measures) and juridical consequences of obedience to disintoxication treatment.

When drafting the law. UN international conventions (Single Convention on Drugs of 1961, as amended by the Protocol of 1972: Convention on psychotropic substances of 1971 and (convention on illegal traffic of drugs and psychotropic substances of 1988), UN and EU recommendations, legal pattern elaborated by UN Programme for International Control of Drugs and the experience were taken under consideration.

FIGHT AGAINST CORRIPTION

The measures for preventing corruption taken up to the present by the Romanian authorities have been completed through the adoption of the Law No. 78/2000 on prevention, detection and punishment of corruption crimes, published in the Official Journal No. 219/18.05.2000.

This law enlarges the categories of persons acting as active subjects in corruption crimes, including the persons who are in positions involving prerogatives of decision-making or supervision in various areas of activity.

Therefore, the provisions of tile law will lie applied to the following individuals:

- persons holding a public position:
- persons holding a permanent or temporary position in any legal entity (public or private):
- persons with supervision prerogatives:
- experts providing specialized assistance;
- persons participating in the decision making procedure or who may influence the decisions regarding domestic or foreign commercial transactions:
- persons holding a leading position in a political party or body. trade union, management body. non-profit association or foundation.

In order to accomplish the effect of prevention of the law, special regulations of conduct are established for these persons. They have the obligation to declare, within thirty days from the date of reception, any donation received in connection to their prerogatives. Failure to submit the declaration of donation should have as a result the ex-officio control procedure over their ownership.

If corruption offenses arc committed for the benefit of an organization, association or criminal group or one of their members, or in order to influence the negotiation of foreign

commercial transactions, or international exchanges or investments, the maximum of the penalty can be increased with 5 years.

Punishments arc also extended to certain offenses assimilated to corruption crimes. Thus, corruption offenses that cause or may cause economical damages to others, within the framework of performing commercial or financial operations, including those of persons having the task of supervision or control of a private economic agent, are punished with up to 15 years of imprisonment.

There are also punished the offenses of laundering money resulted from corruption ofences.In case of committing, the crimes stipulated by the law, the money, securities or any other goods are confiscated and, in case these goods cannot lie found, the perpetrator will be forced to pay their equivalent in cash. The seizure of the products and instruments used in the corruption offenses is mandatory.

In the law. there are stipulated a series of modem means of investigation, winch are going to facilitate the investigation and judgment of crimes: supervision of bank accounts, access to information systems, communication of banking, financial or accountant documents. The banking and professional secret are not opposable to the organs of criminal investigation in and courts.

A Special Unit for Anti-corruption and Organized Crime, functioning as a specialized structure at national level, within the General Prosecutor's Office attached to the Supreme Court of Justice was established. Services on anti-corruption acts and organized crime were also organized within the Prosecutor's Offices attached to the courts of second degree. These are specialized territorial structures and the Special Unit for Anti-corruption and Organized Crime within the General Prosecutor's Office supervises their activity. These new structures are empowered to conduct criminal investigations where crimes of corruption or organized crimes prohibited by law were committed.

According to the provisions of tins law, members of the bodies dealing exclusively with corruption and organized crime may lie detached to the Special Unit within tile General Prosecutor's Office, following the demand of the General Prosecutor, in order to speed up the specific activities of detection and investigation of the acts of corruption or the ones assimilated to them. The law provides that persons trained on banking, financial and customs fields, with an useful experience in solving technical issues, may be employed within tlie Special Unit on Anti-corruption and Organized Crime attached to the General Prosecutor's Office.

Special panels of judges dealing with corruption crimes or oilier similar offenses may lie established, accordingly. Other two important laws have been adopted:

- Law No. 115/28.06.1999 on Governmental accountability, amended by the Government Ordinance No. 130 /16.09.1999;
- Law No. 188/08.12.1999 on the Public Servant Statute, completing the legal framework in force.

Terrorism

Although Romania has not been facing with terrorism phenomenon, tlie relevant authorities have taken actions to combat and prevent any related activities, as well as the funding by Romania-located persons of terrorist organizations and groups acting abroad.

Romania does not have a specific legislation against the financing of terrorism, but there is a series of laws, which allow the criminal sanctioning of those
who commit such acts.

The financing of any offense (including those of terrorist type and any other offense such as: murder, theft, etc. represents a complicity act is sanctioned by articles 26, 27 of the Criminal Code, the accomplice getting the same punishment as the author of the main offense

Thus, in accordance with article 26 from the Criminal Code, "accomplice is the person who, intentionally, favors or helps in any way the committing of an act provided for by the criminal law. There is also accomplice the person who promises, before or during the committing of the act, that lie will conceal the goods resulted from this or that lie will favor file perpetrator, even if he dues not keep his promise after the perpetration of the act" and in accordance with article 27 of the same Code "the instigator and the accomplice to an act provided for In' the criminal law committed intentionally are sanctioned with the punishment provided for the perpetrator by law. The contribution of each to the perpetration of the crime and the provisions of article 72 are taken into 'account when establishing the punishment."

Within the Criminal Code there is a series of offenses of whose terrorist purpose is included in their constitutive content: art. 160 (criminal attempt jeopardizing the state's security), art. 161 (criminal attempt against a community), art. 166' (actions against the constitutional order), art. 189 (illegal deprivation of liberty for terrorist purposes). Such offenses also exist in special laws: The Aerial Code of Romania (Law no. 130/2000 enforcing the Ordinance of the Government no. 29/1997) and the Decree no. 443 of23.11.1972 regarding the civil navigation.

Organized crime in South-eastern Europe is if increasing concern. It threatens democracy, the rule of law, human rights, security and stability, social and economic progress within this region and with an impact beyond South-eastern Europe. The factors contributing to organized crime in South-eastern Europe are numerous As in other former socialist countries, criminal groups exploit opportunities in connection with political, social and economic transformation. Reports from several countries also explain the nature and scope of organized crime as a fall-out of the conflicts in Bosnia and Herzegovina and the Kosovo.

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Romania

GOVERNMENT OF ROMANIA
Civil Servants National Agency

- **Enhancing administrative and institutional capacity**
- **Law no.188/1999 regarding the Statute of Civil Servants**

The institutional short-term objective (2000-2001), which was included in the National Programme for Romania's Adherence to the European Union regarding the setting up of the central unit in order to create and develop the Civil Servants Body in local and central administration, was accomplished by passing Law no.188/1999 regarding the Statute of Civil Servants and the setting up of the Civil Servants National Agency.

This law regulates the organising of civil service and the Statute of Civil Servants. Civil service is the hole of the prerogatives and responsibilities set down by the public organisation or institution, with respect to the law, in order to achieve its competencies. Leaders of those organisations or institutions set these down, with the approval of the hierarchically superior organisations and with the notification from the Civil Servants National Agency.

The principles underlying the elaboration of Law no.188/1999 and the occupation of civil service position in Romania were based upon are:

- The necessity of reducing the costs of public administrator through implementing the principles of competence and efficiency in occupying civil service positions.
- Ensuring the activities of civil servants are efficient, free o prejudice, corruption, abuse of power and political pressure.
- Selecting civil servants on competence criteria alone.
- Establishing equal opportunities for entry and promotion within the civil service body.
- Stability of civil servants' tenure

Emergency ordinance no.82/2000 regarding the modifications and completion of Law no.188/1999 regarding the Statute of Civil Servants was published in Romania's Official Journal no. 293 on June 28th, 2000.

The need for issuing a normative act to modify and complete the provisions f Law no.188/1999 within only 6 months from its being approved, is explained y the difficulty of implementing the initial normative act and by the need to improve regulations on three aspects:

- Improving the structure of civil service career.
- Establishing a postponement term (until 31 July 2000) in order for the provisions of Law no.188/1999 regarding the appointment of civil servants, to be implemented.
- Finding equivalent positions for the civil service positions given in the annex to Law no.188/1999.

Law no.188/1999 established the structure of civil servants' career in ranks, lasses and levels (each rank being divided into three classes and each class divided into three levels, promotion of civil servants being determined by level, grade and class).

Emergency Ordinance no.82/2000 increases civil servants' access to promotion in shorter period of time, by eliminating ranks and by establishing civil service career on the bases of categories, classes and levels.

Promotion in level is accomplished if the civil servant has occupied a position for a period of time of at least 2 years at the level from which he is promoted on condition that he has obtained in the annual evaluation, the assessment "good", or, for the last year, an "exceptional" assessment.

Government decision no. 109/2000 approved the organising and functioning regulations of the Civil Servants National Agency, that in exercising its prerogatives has the following functions:

- Through its **strategic function,** CSNA establishes the system of recruitment and training for civil servants and the evaluation system for their individual professional performances; each civil servant has the opportunity to develop a stable carrier.
- Through its **regulating function,** CSNA ensures the legislative and institutional framework in order for the strategic objectives and policies relating to the civil service to be accomplished.
- Through its **administrative functions,** CSNA pursues the establishment of a register to include personal and professional data of civil servants. Appointment and release from the position of civil servants is to be made upon professional criteria alone, defined according to the Statute of Civil Servants.
- Through its **representing function,** CSNA has the ability to represent the Romanian State in relations with Romanian and foreign juridical and physical persons. CSNA maintains the dialogue with the unions and professional associations of civil servants.
- Through its **function as state authority,** CSNA monitors and verifies the normative acts, regarding the civil service and civil servants, to be put into operation as well as compliance with the principles that civil service prerogatives are based upon.

The Government Decision no. 452/2000 regarding the organising and conducting terms of confirmation exams for civil servants in leading positions within public authorities and

institutions creates a legal framework for the confirmation of the positions of the civil servants in leading positions within public authorities and institutions.

The confirmation of the positions comprises an examining procedure in order to control and confirm the professional competence and the managerial skills of civil servants that were in leading positions when Law 188/1999 was first applied. The confirmation of the positions is the task of confirmation commissions, composed of a president and 2-4 members, nominated by the director of the institution, with the participation of a person representing Civil Servants National Agency and a representative of the Ministry of Civil Service. The confirmation exam should be passed by all civil servants occupying a leading civil position within a public institution. The exam includes 2 stages:

- a paper about a topic set by the confirmation commission, followed by
- An interview with the same commission.

The Decision stipulates compulsory deadlines for implementing these procedures, as follows:

- 10 days before the exam, the candidate draws the topic for the written paper from a set of topics. The candidate should submit the paper five days before the exam. Members of the confirmation commission can give grades from 1 to 10.

The necessary and compulsory condition for passing the exam is that the candidate obtains at least an average grade of *7,* which represents the arithmetic mean between the marks for the paper and for the interview. The candidate is informed about the result of the exam three days after the exam. The candidate up to five days can dispute the result after the exam. The confirmation commission should solve the appeal five days after its registration. In the cases when the commission formulates a solution that is not in favour of the candidate, the latter can make appeal in court (disputed claims). Civil servants that do not pass the exam for the confirmation of the leading position will occupy the appropriate executive civil position. In these circumstances, the leading position becomes vacant, and another exam will be organised in order to occupy it.

Civil Servants National Agency (CSNA) was created in February 2000, as specialised organisation of Central Public Administration, subordinated to the Government and under the co-ordination of the Ministry of the Civil Service. Th role of Civil Servants National Agency is to elaborate and to implement the Government strategy and policies in the field of the management of civil service and civil servants.

The Agency's headquarters is on Magheru Blvd., no.6-8, Bucharest. Currently, the Agency has 90 employees from which 77 are civil servants are dignitaries and 10 are employees of the dignitary cabinets, or administrative personal.

The Agency's assets are: 10 computers, 1 Alcatel telephone switchboard, 2 printers, 2 copy-machines and 3 fax-machines.
According to Lawl88/1999, article 21(1), the Civil Servants National Agency has the following prerogatives:

1. Elaborates policies and strategies regarding the management of civil service positions and civil servants.
2. Elaborates and notifies propositions for normative acts regarding civil service positions and civil servants.
3. Monitors the normative acts regarding civil service positions and civil servants being put into operation, within public administration organisations and institutions.
4. Elaborates regulations common to all public administration organisations and institutions regarding job classification and levels.
5. Elaborates propositions for creating unified remuneration system to be applied to all civil servants. Establishes the evaluation criteria for civil servants' performance.
6. Organises the system of professional formation of civil servants.
7. Elaborates and monitors the setting into operation of training programs for civil servants.
8. Sets up and administers the data- base comprising the register of civil service positions and civil servants.
9. Sets up annual reports regarding the management of civil service positions and civil servants, which the Government sends to the parliament for debate.
10. Elaborates and monitors the setting into operation legal and organisational conditions for contests for entering the Civil Servants Body.
11. Co-ordinates and monitors the implementation of the provisions of this law.
12. Grants specialised assistance and methodologically co-ordinates the Human Resources departments within central and local public administration organisations and institutions.
13. Collaborates with international organisations and institutions in the field of Human Resources management.
14. The Civil Servants National Agency carries out any other prerogatives set down by the Government, concerning Human Resources policies and the Human Resources management.
15. Civil Servant National Agency keeps the registry of all civil service positions and civil servants.

The Direction for Policies and Programs for Personnel Recruitment, raining and Developing has the mission to prepare departmental strategies slating to the permanent training of civil servants. Therefore, those centers and universities having competence in training specialists in the field of public administration were identified.

Other training centers and institutions from local and central public administration have also been contacted. Consequent to these contacts, the Civil Servants National Agency organised informative sessions on the topic:

- "The Goal and Prerogatives of the Civil Servants National Agency in the Application of the Statute of Civil Servants". The participants in these sessions were: officials from central public administration (ministries, agencies, governmental offices); Officials from local public administration (county councils, local councils and prefectures).

CSNA organised these sessions with help provided by the Center for Permanent Training in local public administration - Bucharest, and the Training Center in central public administration within the National School for Political and Administrative Studies.

The Direction for Policies and Programs for the Personnel Recruitment, Training and Developing has also organised a meeting with the secretaries of county councils to clarify ambiguous legislative aspects concerning civil servants and civil service.

The next phase will include the analysis of these training institutions' curricula, as well as the registration of the number of the persons who have graduated from the training sessions conducted so far. Regarding the beneficiaries of these training sessions, a study was initiated called "Training needs of civil servants". This will put the emphasis upon:

- structuring the civil servants that will benefit from training sessions according to criteria such as: age, area, training level, years of activity in the public administration;
- training needs of civil servants structured on following areas: local public administration (prefectures, city halls, county councils, local councils; decentralized institutions), central public administration (Government's working apparatus, ministries, governmental agencies and offices);
- fields of training;
- the optimal period of instruction for future training sessions
- variants of training programs
- the level of application of the knowledge acquired by the training
- identification of the topics for future training sessions
- Identification of the training needs of the managers from the public administration.

On the basis of the results of this study and the curricula of each training institution will be elaborated the principles, the strategies and the policies regarding the system of recruiting, training and developing civil servants.

According to Law no. 188/1999, article 22-(2) public organisations and institutions must transmit to the Civil Servants National Agency the personal data f their civil servants as well as the vacant positions they have. The management f human resources and of civil service positions is organised and accomplished within each public organisation and institution by a specialised department that collaborates with the Civil Servants National Agency. The data must be renewed very month of the year.

In order to carry out the mandate given by Law no. 188/1999 and Government decision no. 109/2000, regarding the register and the confirmation and the position of civil servants, CSNA developed the following activities:

- Notification of their appointments was given for the existing civil serving positions in central and local administration - accomplished 40%;
- Co-ordinating examination terms for confirming civil servants in leading positions within public sector organisations and institutions - accomplished 25%;

- The data base containing the register of civil serving positions and civil servants was established - accomplished 15% from an estimate total of 400.000 public service positions and civil servants;
- Communications contacts were established with persons within Human Resources Department within public sector organisations and institutions - in order to pursue the completion of the database and to update and monitor it in the future;
- The principles and the co-ordinating mechanisms of public sector organisations and institutions' activity were set down by CSNA in order to establish civil service positions and other equivalent positions, as well as setting up the career concept in the domain of the Civil Servants Body. The normative activity of the Civil Servants National Agency is co-ordinated by the Minister of Civil Service who notifies;
- propositions for normative acts elaborated by the Agency and sustained by legislative initiative within Government working sessions;
- norms and regulations issued by the president of the Civil Servants National Agency.

Civil Servants National Agency: A Brief Presentation

Who we are ?

The Civil Servants National Agency - CSNA - was founded in February 2000 according to the stipulations of Law no. 188/1999 regarding the status of civil servants as a specialized body of central public administration subordinated to the Government of Romania and co-ordinated by the Ministry of Civil Service. The Agency was founded to create and develop a professional body of civil servants as an important level in public administration reform that is a necessary condition for Romania's way to the European Union further enlargement.

Whom we are addressing to ?

Unlike the ministry of Civil Service, the Agency addresses to civil servants only. Civil servants are persons who as a result of a contest hold civil serving position s in institutions such as:

- The Government machinery;
- The Parliament structures;
- The staff of ministries and other specialized structures in central public administration and their territorial units;
- The Perfects' office;
- The local public administrative authorities: city halls, district committees, local committees and so on.

The hole of civil servants within public organisms of authority and institutions make up the civil servants body. Civil service is the hole of attributions and responsibilities set down by public institution with regard to the law in order to put it into operation.

How we Work?

- Through its strategic function, CSNA sets down the civil servants' recruitment training and embettelment sister and the evaluation criteria for their individual professional accomplishments; each civil servant has the opportunity to pursue a stable carrier;
- Through its regulating function, CSNA provides the institutional and legislative frame work in order to achieve strategic objectives and policies the civil serving field. CSNA regulates the contest terms for civil servants well as organizing the probation terms. The Agency sets down a unitary remuneration system which is to by applied for all civil servants;
- Through its state authority function, CSNA aims monitoring and verifying t law to be put into operation for the civil service and civil servants with regard to the principles that civil service is based upon. Through its administrative function, CSNA is aimed to set up a register include personal and professional information on civil servants. Appointment and release from position of civil servants is to be made with regard professional criteria alone stipulated as in the civil servants status;
- Through its representing function, CSNA has the ability to represent the State of Romania in relation to Romanian or foreign juridical and individual persons. CSNA maintains dialogue with professional associations and unions of civil servants.

Main Rights of Civil Servants:

- The right to an opinion;
- The right to join a professional association or union;
- The right to strike;
- The right to vacation bonus;
- The right to be provided protection against threats, while performing the civil service or about this issue, and the right to receive compensation for certain damages suffered by the public organism of authority or institution's guilt

Main Duties of Civil Servants:

- Performing of a professional attributions with loyalty and integrity;
- Respecting confidentiality of information;
- Avoiding to accept material or other benefits while performing a civil service;
- Refraining from expressing political believes

The Legal Ground of CSNA:

Government Decision no. 109/2000 stipulates the founding of CSNA according to the civil servants status. By this document the functioning and organizational regulations of the Agency is approved as well as its organisatoric structure. The civil servants status (Law no. 188/1999), regulates the structure of the service and civil servants. By definition, the principles that civil cervices performance is based upon and the terms that a person is to fulfil in order to hold a civil serving position are also stipulated.

Public Administration in Bulgaria and Romania: A European History

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For too many Western observers, the most relevant historical background for public administration in Bulgaria and Romania comes from the early modern period of Ottoman rule. The long Ottoman subordination of the Bulgarian lands and the Phanariot corruption of eighteenth century Wallachia and Moldavia are mistaken as patterns that continue to cut the two countries off from the standards to which they now aspire in order to qualify for membership in the European Union.

This paper argues instead that the relevant historical legacy for both countries is a modern era that began in the 1830s. It began at the local level for still Ottoman Bulgaria, in the *meclis* councils, and at the provincial level for the two Romanian Principalities. This provincial leverage over local authority was the more significant because it started the transfer of the emerging European tradition of public administration to all of Southeastern Europe - centralized state ministries on the Napoleonic pattern that controlled as much of local government as possible from the capital. city. This was a pattern that would only grow stronger and become more comprehensive during the Communist period after World War II.

More specifically, the Franco-Russian pattern of prestigious ministries responsible only to themselves, the ruler and to his Council of Ministries arrived in Bucharest in 1829. The new Russian governor set about ruling the two Principalities jointly through a set of Organic Statutes that Napoleon himself would have welcomed. They constructively ended the venal appointments of the Phanariot era and established six ministries through which all public administration was to proceed. These original ministries continued and grew in number as an independent Romanian state formally uniting Wallachia and Moldavia emerged between 1860 and 1878.

The same framework would arrive in a newly autonomous Bulgaria in 1879. Tsarist Russian generals and officials were not eager to share much power with the young, non-Russian Prince, Aleksandar Battenberg, or with the new legislative assembly, or *Subranie*. The Russians had originally promoted powers for that assembly in the liberal Constitution of 1879 but quickly turned to the equally new ministries as a better way to assert their authority. Bulgarians were however able to draw on their own experience with local administration from the 1839 forward under the Ottoman Tanzimat reforms and then from the fiscal reforms of their own Midhat Pasha in what amounted to the large provincial administration of the Danubian villayet in the 1860s. They were therefore able to proceed with controlling the ministries themselves as soon as the Russians had been forced out after the Bulgarians had won a war (against Serbia) and expanded their territory (at Ottoman expense) in 1885-86. But all such ministries had an innate tendency to focus on responsibility upward to the head of state rather than downward to elected

legislators. Thus the Bulgarian ministries unsurprisingly came to represent loyalty to the new, again German Prince, Ferdinand of Coburg, rather than responsiveness to a *Subranie* of parties whose desire for individual access to ministerial positions kept them artfully divided by Ferdinand.

For Romania, the full modern framework for public administration proceeded from the County Councils for their local district, or *judet*. They were created in 1864, and authority soon established over them by the Interior Ministry in Bucharest. Council members were indeed locally elected and empowered to elect their own chair, or municipalities to elect their own mayor, or *primar*. But each Council could be overruled or suspended by the district Prefect appointed directly by the Minister of Interior. Mayoral authority was limited by the requirement that they become state employees if they wished to assume office after election.

The enlarged Romania of the interwar period only continued the same framework. After a brief experiment with four large regions, including one for newly acquired Transylvania, the ruling National Liberals quickly replaced them with fully 76 districts with 76 Prefects responsible to the Interior Ministry in Bucharest. The brief National Peasant government of 1928-30 shifted some powers, including fiscal ones, away from the Prefects and back to the Councils. Then the royal regime of the 1930s simply disbanded the Councils and bound local administration first to 10 regional governors and finally, under General Antonescu in 1940, directly to the Interior Ministry.

Romania's postwar period began with a Communist decision in 1944 to restore a system of 58 districts. But decision had only the temporary purpose of reducing the power of other political parties not organized to seize local power. In 1950 and again in 1952, the Soviet pattern of regional consolidation had prompted the now all-powerful Communist regime to shift to a smaller number of districts, first 28 and then only 18. The special status of districts within the Magyar Autonomous Region were already under pressure before suffering extinction along with the Region after 1956. That year the Hungarian Revolution had raised the prospect, false as it was, of the revolt spreading into Transylvania's Hungarian-populated border and center.

The problems of the Soviet pattern come clearer if we turn to the Bulgarian experience. Its pre-Soviet pattern built on an earlier Russian framework of provinces and smaller districts. Under the guidance of Tsarist officials, seven *gubernii* and 21 *okolini* were created in 1879 and expanded to 21 and 53 in 1880, all subordinate to new ministries in Sofia. Four further adjustments in the numbers brought the totals down to 13 provinces and 44 districts in 1913. After two more redrawings of the borders and numbers in the 1920s, the brief Zveno regime of 1934 eliminated both subdivisions in favor of only seven *oblasti*. But all remained under the central control of the Sofia ministries.

The Communist period of public administration began with the Dimitrov Constitution of 1947. Back came 15 *okruzi* and 95 *okolini*, plus seven municipalities. Their individual sets of councils and departments were all supervised from Sofia. The responsibilities of these new provinces and districts were soon expanded to include management of the

newly nationalized industrial enterprises, the new collective and state farms and the provision of various social services.

This new set of economic and political responsibilities quickly proved to be too much for the dual system of provinces and districts, or for the desired controls from the new Ministry of Planning in particular. By 1956, the Bulgarian Academy of Sciences was studying Soviet reforms designed to address the same problems. The result for the Soviet Union was a single set of *sovnakhozii* put in place by 1957, followed for Bulgaria by a single set of 30 Administrative Regions by 1959. The idea was for a single local authority to secure the fitting of all functions into the authority's geographic area. The town chosen as the Region's capital could then coordinate its fulfillment of the centrally prescribed Five-Year Plan. Each Region's industry and services not surprisingly concentrated in that capital, replicating the national tendency for concentration in Sofia itself. The Regions' political apparatus also grew accordingly, with Communist-nominated party members in all key positions as *nomenklatura* on the Soviet pattern.

The failings of this attempted decentralization of a greatly centralized system in a country with no tradition of regional let alone federal autonomy were soon apparent. Each Region sought to pursue central planning's emphasis on heavy industry within arbitrarily drawn borders that rarely contained the necessary resources. By the 1960s, the Zhivkov regime was facing the combination of poor economic performance within Regions and insufficient coordination and exchange between them. With any recourse to the market mechanism out of political bounds, the regime turned back to formal recentralization. A central inspection service was the first step, followed by further retightenings after 1968. The Soviet intervention in Czechoslovakia had made it clear that the liberalizing reforms that Bulgaria had also toyed with earlier in the decade were now to be avoided.

The last 20 years of Communist rule in Bulgaria witnessed the repeated failure of politically appointed managers and administrators to make large industrial enterprises profitable or to coordinate their activities for the foreign trade that was crucial to the advance of a small economy such as Bulgaria's. The large Agro-Industrial Complexes (APKs) did like their counterparts in Czechoslovakia show more capacity for market-like adjustment, particularly after their members were allowed to lease farm land for production by what amounted to small family firms. But the regime's Economic Associations efforts to connect industry across regional borders could only point to the empty notion of managing Bulgarian industry from several ministries in Sofia like "one large corporation".

The modern but burdensome tradition of overcentralized public administration from the capital city or its regional surrogates is not however the only tradition on which post-Communist Romania and Bulgaria can draw. Their efforts to come up to the standards of the European Union will be encouraged rather than discouraged by reference to the interwar history of municipal administration in Bucharest and Sofia. I have detailed that promise in two previous articles in *The Journal of Urban History*, "Interwar Bucharest and the Promises of Urbanism", vol. 9, no. 3 (May, 1983), pp. 267-90, and "Interwar

Sofia versus the Nazi-style Garden City, The Struggle over the Muesmann Plan", vol. 11, no. 1 (Nov. 1984), pp. 39-62. My exemplars are two mayors from the 1930s, Dimitre Dobrescu of Bucharest and Ivan Ivanov of Sofia. Both of them wrested enough tax revenue away from the state budget to provide much needed municipal enterprise, in particular road construction and hygienic services for Bucharest and public housing for Sofia. Both defied alternate plans put forward by the powerful ministries.

And in conclusion, let me emphasize that both dew on a growing cadre of able young engineers and urban planners, trained to the highest European standards at least in part in the Bucharest or Sofia Universities. Without such a staff, the two mayors would never have succeeded. With young administrators ready to follow these interwar examples, both Romania and Bulgaria can move toward membership in the European Union with more confidence than their current struggles over political leadership might suggest.

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