

ACCOMPANYING MEASURES IN THE CONTEXT OF ROMANIA'S ACCESSION TO EU

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New Consensus on Enlargement

In May 2006 the Commission considered that “Bulgaria and Romania should be prepared for EU membership on 1 January 2007, provided that they address a number of outstanding issues.” Since then both countries have made far reaching efforts and addressed many of the challenges. This has sufficiently brought them into line with prevailing standards and practices within the Union. As for the limited number of outstanding issues the Commission’s report demonstrates that the EU disposes sufficient remedies to ensure that the interests of the Union and its citizens are protected.

On september 26, Commission confirms Bulgaria’s and Romania’s EU accession on 1 January 2007, but completed by a rigorous package of accompanying measures the Commission adopted its final monitoring report on the preparedness of Bulgaria and Romania for EU membership. In fact, since May, the two countries have successfully addressed about half of the identified open areas. Commissioner for enlargement, Olli Rehn underlined: “Our approach is fair and rigorous. It is fair because we recognized the progress that has been achieved and we gave credit where it is due. It is rigorous because we established the necessary mechanism to accompany Bulgaria and Romania on their reform path, in the interest of the two countries and of the EU as a whole.” Subject to the outstanding ratification processes in 4 EU Member States^[3], on 1 January 2007, Bulgaria’s and Romania’s accession will bring 30 million people into the EU, thus completing the EU’s historic fifth round of enlargement and creating a Union of almost half a billion citizens.

Based on the solid progress achieved, the Commission considers that both countries will be in a position to take on the rights and obligations of EU membership on 1 January 2007. To address the limited number of areas where further work will be necessary, the Commission proposes a package of rigorous accompanying measures. It was with great satisfactions to take note about the evaluation of European Commission that “Throughout the one and half decade of preparations for EU accession Bulgaria and Romania have carried out an extraordinary reform process and they have gone through a remarkable transformation. Their accession does not compromise the functioning of the EU. However, we have not to forget that there are still a number of area (limited) where further progress is needed in the months leading to accession and beyond. Therefore, upon accession, the Commission will take, if necessary, accompanying measures to prevent or remedy any persisting shortcomings to ensure the smooth accession of both countries.” As such as: safeguard measures, transitional measures, financial corrections on EU funds, and a cooperation and verification mechanism for the judiciary and the fight against corruption.

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It is understandable that the Commission must perform its role as guardian of the Treaties and to ensure the correct application of EU policies in all Member States. These include measures complement, infringement procedures, competition policy measures, and [traditional] measures for the management of EU funds, and monitoring mechanisms, for example in the areas of Internal Market and Justice, Liberty and Security. In fact it is in their advantage that the Commission will make full use of these instruments wherever necessary to ensure the smooth accession of Bulgaria and Romania.

In the May 2006 monitoring report the Commission concluded: “Romania needs to continue its efforts and demonstrate further results in the fight against corruption. It also needs to consolidate the implementation of the ongoing justice reform and further enhance the transparency, efficiency and impartiality of the judiciary.” In the fight against high-level corruption, Romania has made significant progress since May both in completing its legislative framework to fight corruption and in establishing a solid track record of serious non-partisan investigations of high-level cases that have led to indictments and judicial proceedings. The National Anti-Corruption Directorate (DNA) now regularly launches investigations on the basis of information from public control bodies, which shows that the institutional framework has become more effective. Furthermore, two national campaigns have been started to raise awareness among the public, and civil servants in particular, of the negative consequences of corruption.

The main challenges as regards fighting corruption are firstly in ensuring the sustainability and irreversibility of the recent progress in serious non-partisan investigations into high-level corruption. Secondly, all political actors need to demonstrate their commitment to fight corruption, ensuring that no one is perceived to be above the law. Results in the ongoing reform of the justice system are tangible: the interpretation and application of the law is being further harmonized and staffing levels are increasing. The legislative framework underpinning the ongoing reform was consolidated in May through the adoption of the Law on Mediation. A Fundamental review of Civil Code, Criminal Code, Civil Procedure Code and Criminal Procedure Code has been started. Overall working conditions have improved and a study has been launched to manage staff resources more efficiently. In addition, the number of cases pending before the civil section of High Court has decreased by approximately 15%. All courts and prosecutor's offices have been given online access to legislation and case law.

Safeguard clauses

In order to prevent or to remedy particular problems or threats to the functioning of the Union the existing rules provide safeguard mechanisms. Any measures taken should be proportional to the corresponding shortcomings. The EU legal order, which applies to all Member States, provides many safeguard measures in the various EU policies. In addition to this, the Accession Treaty for Bulgaria and Romania provides for further safety nets to address potential accession related difficulties. The following three safeguards can be invoked up to 3 years after accession: a general economic safeguard clause; a specific internal market safeguard clause; a specific justice and home affairs safeguard clause. We must take in to considerations that these safeguards are the same as the ones included in the Accession Treaty of the Member States who joined on 1 May 2004.

One of very frequent questions stirring people was “what is the general economic safeguard clause?” The general economic safeguard clause is a traditional trade policy measure. It aims to deal with adjustment difficulties which an economic sector or area in either old or new Member States may experience as a result of accession. Member States (new and old) may apply, during a period of three years after accession, for authorization to take protective measures in order to remedy such economic difficulties. Of course the European Commission may then decide such measures. That could be decided only after accession and shall not entail frontier controls. Another question waiting an answer is regarding the internal market safeguard clause. In fact, if Bulgaria or Romania fails to implement internal market legislation with a cross border effect and this risks a serious breach in the functioning of the internal market, the European Commission may take safeguard measures. It may do so either upon its own initiative or on the request of a Member State. Such safeguard measures may be taken until 3 years after accession, but they may be applicable beyond that date until the situation is remedied. The European Commission may modify, shorten or terminate the measures in response to progress. If necessary, the measures may be decided prior to accession and become applicable upon accession. The internal market safeguard clause covers the four freedoms and other sectoral policies such as competition, energy, transport, telecommunication, agriculture and consumer and health protection (e.g. food safety).

The decisions with the Commission will be taken upon the measures on a case-by-case basis. The measures may limit the application of the internal market or cross-border EU policy in the given sector only as much as necessary to remedy the situation. Priority will be given to measures which least disturb the functioning of the internal market and, where appropriate, to the application of the existing safeguards in the EU laws and standards. The internal market safeguard measure applies exclusively to Bulgaria and Romania and not to the other Member States.

One of the most known question is what is the justice and home affairs safeguard clause. If there are serious, or imminent risks of serious shortcomings in Bulgaria or Romania in the transposition or implementation of EU rules relating to mutual recognition of judgments in criminal or civil law, the Commission may, after consulting the Member States, take safeguard measures. It may do so either upon its own initiative or on the request of a Member State. Safeguard measures in this area may be taken also until 3 years after accession, but they may be applicable beyond that date until the situation is remedied. Measures decided before accession would be applicable as from accession. If necessary, the measures may be decided prior to accession and become applicable upon accession.

The justice and home affairs safeguards are closely linked to the functioning of the justice system. Examples of areas covered are insolvency proceedings, proceedings on matrimonial matters and the matters of parental responsibility, uncontested claims, or the European Arrest Warrant. The main risk is, concretely, that the Commission could temporarily suspend specific rights of Bulgaria and Romania under the EU laws and standards. For instance, it could enable current Member States to refuse automatic recognition and enforcement of certain civil and criminal judgment and arrest warrants in either Romania or Bulgaria.

Regarding the transitional measures the Commission may, for three years after accession, prevent the export of Romanian products which do not comply with EU

veterinary, phytosanitary and food safety rules, to the rest of the EU. To take a concrete example, the export of live pigs and pig meat products of Romania to the rest of the EU will remain banned as long as the animal disease classical swine fever has not been eradicated. For instance, food safety in Europe can be guaranteed by the possibility to prevent the sale of unsafe products in the internal market. The Commission may add further food establishments to the list of those banned for three years after accession from exporting to the rest of the EU after accession. Those establishments which do not comply with EU standards can only sell their products on the domestic markets. By the end of this period, these establishments either have to be upgraded or close down. In addition, there are also transitional measures which have been agreed during the accession negotiations, laid down in the Accession Treaty. They concern specific areas where either Bulgaria and Romania or the current Member States are allowed to not fully apply the EU laws and standards during a limited period after accession. These areas cover for example the free movement of workers, acquisition of land, road transport and some aspects of the environmental and agricultural EU laws and standards.

For the Romanians a very important issue is financial correction of EU funds. Upon accession, Romania will benefit from substantial EU funds, in particular structural and agricultural funds. The Commission will ensure that these funds are properly managed. Any improper use of EU funds will lead to financial corrections. These may consist of delayed disbursements, reduction on future payments or recovery of funds. For structural funds, the EU laws and standards provide four types of control that may lead to financial corrections. Firstly, every Member State needs to submit operational programs which have to be approved by the Commission before any payments can be made. Secondly, if Romania do not have adequate management, certification and audit authorities, no interim payments will be made. Thirdly, the disbursement of funds for the programs can be interrupted, suspended or cancelled if the Commission suspects or detects cases of irregularities or fraud including corrupt practices. Finally, financial corrections can take place in case irregularities are found during the regular ex-post controls.

For agricultural funds, Member States are obliged to have accredited and efficient paying agencies to ensure the sound management and control of agricultural expenditure. Secondly, Member States are also required to operate an integrated administrative and Control system (IACS), for the direct payments to farmers and parts of rural development expenditures, in order to avoid for example fraudulent practices and irregular payments. Thirdly, if Member States fail to operate such control systems properly, the Commission decides ex-post on financial corrections through the annual financial controls. Finally, if the Commission concludes that the funds are not spent according to the rules, the Commission may suspend or temporarily reduce the payment of advances, on a case-by-case basis. In addition to these mechanisms for agricultural funds applicable to any Member State, the Commission has introduced specific rules for Bulgaria and Romania to address the risk that their IACS will not function properly as from accession. The funds covered by IACS present around 80% of the agricultural funds and concern direct payments to farmers and rural development expenditure. This additional mechanism gives the to Romania time to complete the necessary work on a properly functioning IACS. The Commission will closely monitor the situation in 2007. In case of systemic problems with the management of EU funds, the Commission will later in 2007 decide whether to

withdraw provisionally 25% of the payments covered by IACS. During the annual ex-post controls, the Commission decides whether to maintain the reduction.

The cooperation and verification mechanism for the judiciary and the fight against corruption it is the Commission commitment to establish a mechanism to cooperate and verify progress within the reform of the judiciary and in the fight against corruption and organized crime after accession. This will be based on the Accession Treaty. Concretely, Romania shall report regularly on progress in addressing specific benchmarks. The first report should be submitted by 31 March 2007. The Commission will provide internal and external expertise to cooperate and provide guidance in the reform process and to verify progress. The Commission will then report to the European Parliament and the Council by June on the progress made by both countries in addressing the benchmarks. The Commission's reports will assess whether the benchmarks have been met, need to be adjusted and may request further reports on progress if necessary. The mechanism will continue until the benchmarks have been met.

Finally, the Commission will adopt a Decision implementing and defining the modalities of this mechanism after consulting the Member States. It will enter into force on 1 January 2007. The Commission reported on the progress in all these areas in its 16 May monitoring report. On this basis, it concluded that Romania should be prepared for EU membership on 1 January 2007, provided that it addresses a number of outstanding issues. The present report reviews the progress in these outstanding areas. It highlights the main achievements and pinpoints the remaining shortcomings and the accompanying measures necessary for the country's smooth integration into the EU. Romania now needs to ensure a more consistent interpretation and application of the law.

To address the outstanding issues the Commission identified, specific benchmarks that have to be fulfilled. Romania will have to report regularly to the Commission on the progress. The first such report is due by 31 March 2007. Should Romania fail to address the benchmarks adequately, the Commission will apply the safeguard measures of the Accession Treaty.

Economic criteria

Romania continues to be a functioning market economy though fiscal policy should be reinforced to increase the tax collection rate. Romania is now on track to meet the criterion on the ability to cope with market pressures within the Union. Transposition and implementation of EU laws and standards. In its May report, the Commission identified a number of areas where progress was needed in Romania's preparation for EU membership. Since May, progress has been achieved in most of these areas. However, a limited number of areas remain where the Commission needs to see further progress in the months leading up to accession and beyond.

Agriculture - Fully operational paying agencies, accredited for managing direct payments to farmers and operators under the common agricultural policy and the establishment of functioning integrated administration and control systems (IACS) for the use of EU agricultural funds. Despite the progress achieved, the Commission does not yet consider Romania fully prepared to ensure the management and distribution of the majority of EU agricultural funds. While the institutional structure of the two paying agencies is in place, they are not yet operational. To be fully operational, the paying

agencies still need to hire and train additional staff, acquire the relevant IT equipment and establish internal control and inspection structures. There remains a real risk that the IACS will not be functioning properly in Romania by the time of accession. Sustained and, in certain areas, reinforced efforts will need to be deployed in order to ensure the quality of the IACS.

It is well known that any member state must guarantee the correct allocation of agricultural funds. Any shortcoming in this respect may delay the disbursement of funds or give rise to correction or recovery of the EU taxpayers' money. In addition, a special mechanism is adopted to address the remaining systemic deficiencies in the management of EU agricultural funds covered under IACS. This allows the Commission to provisionally reduce by 25% the agriculture payments covered by IACS.

Food safety - Building-up of rendering collection and treatment facilities in line with the EU laws and standards on TSE and animal by-products. Since May, Romania has signed tendering contracts for the collection and treatment of dead animals and animal products. This is a clear step forward. However, the planned deadlines of late November 2006 for the modernization and construction of the required rendering plants are very tight, as this requires the approval by the Romanian veterinary authorities and notification to the Commission. Restrictions on the use of certain animal by-products will be imposed, if, prior to accession, Romania fails to set up an adequate collection system and treatment of dead animals and animal by-products throughout the country and to complete the upgrading of the rendering establishments,

Tax administration - IT systems must be ready for inter-operability with those of the rest of the Union, to enable a correct collection of VAT throughout the EU internal market. Since May, Romania has successfully passed the required conformance tests to operate intra-community exchanges of VAT and information on excise duties. This means that Romania's IT systems are now reliable and can interoperate with those of the current Member States. Consequently, there will not be fiscal frontiers with Romania.

Motor vehicle insurance. Progress has been made in this area. The institutions required by EU laws and standards for Motor Insurance are in place but not yet operational. The financial independence of Romania's Green Card Bureau has to be ensured. This situation leads to persistent concerns for the signing by Romania of the Multilateral Agreement of the UN Council of Bureaux prior to accession. In case the agreement is not signed. Border checks of insurance certificates would automatically be maintained for Romanian vehicles leaving Romania and entering into the EU. Practical arrangements would have to be found with the neighboring countries (Hungary) concerning the organization of these border checks.

It is the enlargement not entirely accepted or at the end?

At every enlargement, there have been in European countries doubts, but each time the Union has shown it has the institutional, financial and political capacity to absorb new members.

However, while a majority of Europeans continue to regard enlargement as positive – 55% according to the latest Eurobarometer – many citizens question its pace and scope. While the Union must honor existing commitments, there is a need for an informed, responsible debate on the future enlargements and what they mean for the Union as a

whole. Recently, many politicians have called for a definition of the 'borders of Europe'. The EU Treaty indicates that any European country which respects the values of democracy and the rule of law may apply for EU membership. The Union defines itself through its members' shared values, rather than by geography. But this does not mean that all European countries must apply for membership, or that the EU has to accept all applications. It is not an automatic process, but one where each key decision requires unanimity and where conditionality is the key.

At the Commission debates was taken the concerns on the pace of enlargement seriously. To avoid an overstretch of commitments and ensure the capacity of absorption, EU enlargement policy today is based on consolidation. This means that the member countries are cautious about taking any new commitments, but stick to our existing commitments to the countries already in the process.

The consolidated enlargement agenda covers now Southeast Europe: the EU has committed itself to completing the fifth enlargement with the accession of Bulgaria and Romania, conducting accession negotiations with Croatia and Turkey, and maintaining a European perspective to the other countries of the Western Balkans – which means that the EU is committed to their eventual membership, once each of them succeeds in meeting all the conditions. While the 2004 enlargement sealed the peaceful reunification between Western and Eastern Europe, now we focus our energy on the peaceful unification in Southeast Europe.

Can we absorb these countries into the EU? In fact, the absorption capacity is determined by two major factors: the transformation of the applicants into worthy member-states, and the development of the Union's policies and institutions. The capacity of would-be members to integrate smoothly into the EU is measured and rigorously assessed by the Commission on the basis of well-established conditionality.

Rigorous conditionality is applied to all candidate and potential candidate countries. New steps in the process depend on each country's own progress with political and economic reforms. Bulgaria and Romania need to redress the remaining shortcomings before accession. Fulfillment of the accession criteria is the key for progress in the negotiations with Croatia and Turkey. Before entering the accession process proper, the Western Balkans countries have to fulfill the conditions of the Stabilization and Association Process, including full cooperation with the International Criminal Tribunal for the former Yugoslavia.

Absorption capacity is about whether the EU can take in new members while continuing to function effectively. It is a functional concept, not a geographical one. The Copenhagen European Council of 1993 stated as follows: "The Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries". Absorption capacity was dealt with for the 2004 enlargement by the Commission's Agenda 2000 document (produced in 1997), which proposed reforms of institutions, policies and the budget of the EU.