

# Status of Implementation of EU Funds in Bulgaria on 31 July 2009

## A. Pre-accession Programmes: PHARE and TF, ISPA, SAPARD (Budget 2004-2006)

### 1. Programme Description

The PHARE, Transition Facility (TF), ISPA and SAPARD programmes are pre-accession instruments financed by the European Union to assist applicant countries of Central and Eastern Europe in their preparations for joining the European Union.

- The objectives of the PHARE programme and Transition Facility are: institution-building, convergence with the acquis and socio-economic cohesion. PHARE is managed by four Implementing Agencies under the Extended Decentralised Implementation System (EDIS).
- SAPARD supports the structural adjustment in the agricultural sector and in rural areas and convergence to the relevant acquis. SAPARD is managed by a Paying Agency which is accredited by Bulgaria. In addition, conferral of management has to be granted by the Commission for each specific measure before it can be funded.<sup>1</sup>
- ISPA supports infrastructure projects in the areas of transport and environment and is managed under shared management between the Commission and Bulgaria, similar to the Cohesion Fund.<sup>2</sup>

### 2. Financial Data: Budget 2004-2006

Instrument	Amount of Original allocation of EU funds over the period (in EUR million)	Amount of payment requests by Bulgaria (in EUR million)	Amount paid by the Commission (in EUR million)	Amount not used <sup>3</sup> (in EUR million)	Payments under suspension <sup>4</sup> (in EUR million) (at 31 July, 2009)
PHARE	658,328	382,123	315,208	260,557	82,563 <sup>5</sup>
Transition Facility	31,488	6,133	3,500 <sup>6</sup>	none <sup>7</sup>	7,585
SAPARD	225,932	80,936	61,671	73,339	19,070
Ex-ISPA Pre-accession assistance	451,911	107,993	107,993	none <sup>8</sup>	none <sup>9</sup>
<b>TOTAL:</b>	<b>1.367,659</b>	<b>577,185</b>	<b>488,372</b>	<b>333,896</b>	<b>109,218</b>

<sup>1</sup> SAPARD was established by Council Regulation 1268/1999 in June 1999.

<sup>2</sup> ISPA was established by Council Regulation No. 1267/1999 in June 1999 and is managed since accession of Bulgaria to the EU under the Cohesion Fund Regulation 1164/1994.

<sup>3</sup> Amounts not used due to:

- expiry of the contracting deadline including amounts not used as a result of withdrawal of accreditation and subsequent expiry of contracting or payment deadline (PHARE)

- expiry of the deadline for the receipt of payment applications (SAPARD).

<sup>4</sup> Decisions for interruption of payments taken by the Authorising Officer by Delegation due to insufficient reasonable assurance for authorising payments to Bulgaria in order to prevent a financial loss to the Community Budget.

### **- Explanatory Notes –**

- PHARE: The contracting deadline for PHARE was set at 31/11/2008. EUR 260,557 million can be considered as not used and have been partially de-committed or will soon be.
- SAPARD: The contracting deadline was set at 31/10/2007 and the deadline for submission of payment applications to the Commission is 31/12/2009. Available committed amount for which no expenditure has been declared as of this date will be subjected to de-commitment by the Commission (automatic rule "n+2"). So far, EUR 73,339 million has been de-committed.
- ISPA: There is no contracting deadline as such. The final date of eligibility in terms of real payments expenditures is 31/12/2010. So far, no funds have been de-committed. EUR 343,918 million has not yet been submitted for payments. Any amounts not submitted until the final date will be de-committed.

### **3. Status of Implementation**

#### **- Summary -**

In order to protect the financial interests of the EU, the Commission suspended payments under the three pre-accession programmes, PHARE / Transition Facility, ISPA and SAPARD in 2008 as weaknesses and irregularities in the management of these funds had been identified by its services. In July 2008, the Commission also withdrew the accreditation of two implementing agencies.<sup>10</sup> As a consequence, the Commission services in charge introduced reservations in its annual activity report<sup>11</sup> and intensified its monitoring activities and its assistance to Bulgaria.

To remedy the existing shortcomings, the Commission established an intensive dialogue with Bulgaria and recommended a number of corrective actions including an analysis of systematic weaknesses in the administration and control of funds, the application of corrective actions and the establishment of stricter supervision. As a consequence, Bulgaria reinforced its administrative capacity and its monitoring activities and applied corrective measures to improve the management and control of EU funds. Bulgaria also adopted and implemented a law on the prevention of conflict of interest. As Bulgaria had reacted positively to all recommendations, the Commission withdrew its payment suspensions for ISPA on 13 May 2009 and for SAPARD on 9 September 2009. The suspension of payments under PHARE remains in force pending a detailed assessment of system weaknesses and a proposal for financial corrections by Bulgaria.

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<sup>5</sup> Payments under suspension represent the amount contracted by the Bulgarian authorities (EUR 397,771 million) less the amount paid by the Commission.

<sup>6</sup> Amounts paid by the Commission under the TF are advance payments and subject to change.

<sup>7</sup> EUR 20,403 million is considered at risk due to the approaching expiry of the contracting deadline (15 December 2009).

<sup>8</sup> A financial correction of EUR 0,652 million was applied as a result of audits by the Commission and accepted by Bulgaria.

<sup>9</sup> EUR 115,4 million were suspended on 23 July 2008 by Commission Decision C(2008)3990 and lifted on 13 May 2009 by Commission Decision C(2009)3836. This suspension concerned two projects implemented by the Bulgarian National Roads Infrastructure Agency. In addition, the Commission recommended Bulgaria that the National Roads Infrastructure Agency should also refrain from concluding contracts under the European Regional Development Fund (ERDF) and the Cohesion Fund (CF). This informal agreement between the Commission and the Bulgarian authorities was in force until May 2009 and concerned EUR 1,09 billion of the ERDF and CF.

<sup>10</sup> The withdrawal of the accreditation of the Central Contracting and Financing Unit (CFCU) at the Ministry of Finance and the implementing agency at the Ministry of Regional Development and Public Works on 23 July 2008 meant that these agencies were no longer entitled to tender and contract PHARE and Transition Facility funds until they are re-accredited by the Commission. The withdrawal of accreditation was taken by a Commission decision.

<sup>11</sup> These reservations were communicated to the Parliament as part of the Synthesis Report of the Commission's Management Achievements 2008 (COM(2009)256 final)

## **- Specific Comments -**

- PHARE / TF

### Shortcomings identified and recommendations issued by the Commission:

The Commission identified irregularities and deficiencies with the ex-ante control of tenders and payments, frequent cases of conflict of interest and of undue interference in the award and implementation of contracts. In addition the Commission identified a risk of low absorption concerning the Transition Facility.

The Commission recommended that Bulgaria addresses conflict of interest at a legislative level and in the management of funds; it suggested a stronger supervisory role by the National Aid Coordinator and a rigorous analysis of system weaknesses and the implementation of corrective actions by the National Authorizing Officer. The Commission also recommended the pro-active detection, reporting and follow-up of irregularities and the re-organisation of two implementing agencies so as to assure the respect of the principles of sound financial management and control.

### Corrective actions implemented by Bulgaria:

Bulgaria adopted and implemented legislation to prevent conflict of interest; it improved monitoring and control over the management of funds, reinforced administrative capacity and improved the reporting of irregularities.

- SAPARD

### Shortcomings identified and recommendations issued by the Commission:

The Commission identified general weaknesses in the financial control systems for investment aid measures. These weaknesses lead in particular to the failure to identify irregular support applications and to an insufficient follow-up of irregularities. In this context, OLAF launched several fraud investigations.

The Commission recommended to Bulgaria the establishment of a detailed action plan in close cooperation with the Commission and under close supervision by an independent auditor.

### Corrective actions implemented by Bulgaria:

The action plan set up and implemented by the Bulgarian authorities has addressed these deficiencies. In particular, it led to changes in audit procedures and in the implementation of additional ex-post checks. The implementation of the action plan was certified by an independent audit report.

- ISPA

### Shortcomings identified and recommendations issued by the Commission:

The Commission identified a general lack of protection against conflict of interest and a weakness in financial management and control procedures with the Bulgarian National Road Infrastructure Fund (NRIF) which had led to irregularities in the award of two road construction contracts. In addition, the Commission identified delays in programme implementation and an excessive use of negotiated procedures.

The Commission recommended that Bulgaria improves the protection against conflict of interest at a legislative level and in the management of funds. It also recommended Bulgaria to strengthen financial management and control procedures at the NRIF and to demonstrate the application of corrective measures by an independent audit report. In addition, the Commission recommended Bulgaria to perform audits on contracts concluded by negotiated procedure in the environmental area, to intensify the monitoring of delayed projects, to improve the rules and procedures of contract management and to increase administrative resources.

### Corrective actions implemented by Bulgaria:

Bulgaria implemented all recommendations in relation to the structure and financial management and control procedures at the NRIF. In addition, Bulgaria adopted and implemented legislation to prevent conflict of interest and intensified the monitoring of delayed projects.

## ***B. Structural Funds (ERDF, ESF), Cohesion Fund, EAFRD and EFF (Budget 2007 to 2009)***

### **1. Description of Funds**

**The European Regional Development Fund (ERDF)** operates in all Member States and co-finances infrastructure and productive investment together with other measures supporting regional and local development.

**The European Social Fund (ESF)** supports measures to improve employment opportunities for workers to increase their mobility and to facilitate their adaptation to industrial change throughout the Union. Moreover, the ESF provides assistance for education system reform and better access to high-quality education and life-long learning, enhancing social inclusion and the implementation of the administrative and judicial reform.

**The Cohesion Fund** co-finances trans-European networks (TEN) in the area of transport infrastructure (including energy efficiency, renewable energy and sustainable transport modes) and environment projects (water transport, sewage...) in Member States in which the Gross National Income (GNI) per capita is less than 90 % of the EU-25 average.

**The European Agricultural Fund for Rural Development (EAFRD)** implements through co-financed programmes proposed by Member States the Rural development policy of the Union. The rural development policy for 2007-2013 focuses on three major axes:

- Improving competitiveness for farming and forestry;
- Enhancing the environment and the countryside through support for land management;
- Improving the quality of life in rural areas while diversifying the rural economy.

**The European Fishery Fund (EFF)** contributes to the economic diversification of regions affected by a reduction in fishing activity, to the adjustment of fleet capacity and to fleet renewal that does not involve an increase in fishing.

All these funds include advance payments paid to Member States at the beginning of the period 2007-2013. These advance payments are paid automatically by the Commission without any specific request by the Member State.

Interim payments are paid throughout the programming period, based on payments made to the final beneficiary by the Member State and claims submitted by the latter to the Commission for reimbursement. However, for ERDF, ESF, Cohesion fund and EFF, interim payments can only be made after the approval of the Management and Control System (MCS) (EAFRD uses the same institutional set-up as EAGF (see next section) and do require specific preliminary system approval). The implementation of the funds is based on the principle of shared management between the Commission and the Member States.

## 2. Financial Data : Budget 2007-2009

Instrument	Commitments (2007-2009) (in EUR million)	Amount of advance payment paid by the Commission (2007-2009) (in EUR million)	Amount of interim payment requested by Bulgaria (2007- 31/7/2009) (in EUR million)	Amount of interim payment made by the Commission (2007- 31/7/2009) (in EUR million)	Number of operational programmes with MCS <sup>12</sup> submitted by Bulgaria / approved by the Commission (in EUR million)
ERDF	1.038,931	288,462	1,305	0	5 / 0 <sup>13</sup>
ESF	384,262	106,691	19,102	0	2 / 0
Cohesion Fund	747,716	239,719	0,019	0	2 / 0 <sup>14</sup>
EAFRD	1.018,544	182,637	159,238	121,545 <sup>15</sup>	N.A.
EFF	25,935	11,201	0	0	1 / 0

## 3. Status of Implementation

### - Summary -

Operational programmes (OP) in Bulgaria have been effectively launched and projects already contracted are at satisfactory level of implementation. At this stage one Cohesion Fund project has been adopted by the Commission.

The compliance assessments of the Management and Control System submitted by Bulgaria in 2008 and 2009 for all OPs were rejected twice by the Commission due to shortcomings in the Unified Management and Information System (UMIS) and for a lack of consistency between audit findings and the overall audit opinion. The Commission has established a permanent and close contact with Bulgaria to further advise and monitor the compliance assessment procedure and to ensure that management and control systems are properly set-up.

The JASPERS facility assists national authorities in preparing major projects and Bulgaria has so far presented three major projects for financing to the Commission.

The Rural Development Programme (EAFRD) has been launched and projects are ongoing.

The Commission services established a close cooperation with the Bulgarian government and with the competent implementing authorities to assure that lessons are learnt in the transition from pre-accession funds to Structural Funds and to assist Bulgaria in the compliance assessment procedure. In this context, the Commission stressed the importance of sufficient administrative capacity, of strong central coordination and monitoring, of effective protection against conflict of interest and strict application of public procurement rules. To support Bulgaria in this respect, the Commission provided detailed advice on the law on prevention of conflicts of interest and made available a substantial budget allocation under two specifically dedicated OPs for technical assistance and for improving the administrative capacity. The Commission services, including OLAF, have continuously been advising Bulgaria on best practices and on lessons learnt in order to further

<sup>12</sup> MCS: The Member State submits a description of its Management and Control System for each Operational Programme together with an independent audit report and an audit opinion for approval to the Commission as part of the compliance assessment procedure foreseen under the respective regulations and in line with the principle of shared management. MCS have been submitted for all programmes by Bulgaria.

<sup>13</sup> Including 2 Operational Programmes co-funded by ERDF and CF.

<sup>14</sup> Operational Programmes co-funded by ERDF and CF.

<sup>15</sup> The figure does not include payments requested by 31 July 2009 but only made in September 2009.

improve sound financial management and control procedures and on the correct application of public procurement rules.

**- Specific Comments -**

- ERDF/CF and ESF

Shortcomings identified and recommendations issued by the Commission:

The Commission identified a need to increase administrative capacity and to introduce effective central oversight and coordination. The Commission further identified a weakness in the legal protection against conflicts of interest which may lead to irregularities in some cases. It also identified the need to improve the effectiveness and cost-efficiency of certain projects. In the compliance assessments submitted by Bulgaria, shortcomings were identified in the set-up of the Unified Management Information System (UMIS) and a lack of consistency between the audit opinion and audit findings.

The Commission recommended strong central funds coordination by the government and called upon Bulgaria to make use of the technical assistance facility to improve the management capacity of implementing structures. The Commission established a close cooperation with Bulgaria in the implementation of administrative procedures to protect against conflict of interest and provided specific advice concerning the law against conflicts of interest. The Commission forwarded several cases for investigation by OLAF. The Commission further advised Bulgaria to cancel the launch of a number of inadequately designed grant schemes and advised the Bulgarian authorities to measure and ensure the cost-efficiency of projects through targeted audit and monitoring.

To assist Bulgaria in the re-submission of its compliance assessments, the Commission provided detailed comments on the previously submitted compliance assessments, in particular regarding the Unified Management Information System (UMIS) and regarding consistency between audit opinion and audit findings. Furthermore, checks on the ground will be performed by the Commission services before the first payment claims are processed to verify that these actions have been completed. The Commission also requested that Bulgaria resolves all inconsistencies between the audit opinion and the audit findings.

Corrective actions implemented by Bulgaria:

Bulgaria established central coordination for the management of EU funds, implemented a law to protect against conflicts of interest and took corrective measures in relation to projects under risk. Bulgaria also implemented measures to ensure the cost-efficiency of projects. Bulgaria indicated that it would re-submit a revised compliance assessment in the last quarter of 2009.

- EAFRD

Shortcomings identified and recommendations issued by the Commission:

The Commission identified a need to apply lessons learnt from the management of SAPARD to the EAFRD, which is managed by the same implementing institution. The Commission has established a continuous cooperation with the competent authorities to further improve administrative checks and the supervision of procurement in order to avoid irregularities.

Corrective actions implemented by Bulgaria:

Bulgaria has revised administrative procedures and improved its supervision of procurement. The implementing agency has been restructured and management staff has been changed.

- EFF

Shortcomings identified and recommendations issued by the Commission:

In the documents submitted for the compliance assessment, the Commission received insufficient information on management verifications, project selection and approval, IT Systems, irregularities, the separation of functions and the monitoring of delegated tasks. In addition, the Commission identified frequent staff changes.

The Commission provided detailed comments on each shortcoming identified and invited Bulgaria to re-submit a revised version of its compliance assessment.

***C. Agricultural Guarantee Fund (EAGF) (Budget 2007-2009)***

**1. Fund Description**

The Agricultural Guarantee Fund (EAGF) implements the Common Agriculture Policy (CAP). The objectives of the CAP derive directly from the European Community Treaty. The CAP should, in particular, ensure a fair standard of living in the farming community, stabilise markets and guarantee security of supplies.

**2. Financial Data**

<b>Relevant Budgetary Year of Commitments</b>	<b>Amount paid by the Commission (in EUR million)</b>
2007	0,180
2008	178,257
2009	215,400

**3. Status of Implementation**

Concerning EAGF, weaknesses have been identified in the Integrated Administration and Control System (IACS) for the implementation of direct payments. The Commission noted deficiencies in particular as regards the Land parcel identification system (LPIS) and regarding on-the-spot checks, which are the subject of ongoing conformity clearance procedures and may result in financial corrections as of claim year 2007. To remedy the existing shortcomings and improve the implementation system for agricultural funds, the Commission proposed an action plan in July 2009 which Bulgaria agreed to implement over the next three years. Within this action plan, Bulgaria has committed itself to improve the quality and timing of on-the-spot checks and to correct the error level in the lodging of claims by farmers with the help of specific guidance in particular as regards the determination of eligible area.

There are no frozen payments for Bulgaria.

## ***D. Cash Flow and Schengen Facility (Budget 2007-2009)***

### **1. Description**

The Cash Flow and Schengen Facility is a temporary instrument (1 January 2007 to 31 December 2009) designed to help Bulgaria finance actions at the new external borders of the Union for the implementation of the Schengen acquis and external border control and to help improve cash-flow in national budgets. The instrument is therefore divided in two parts: the Schengen part (to finance the implementation of the Schengen acquis) and the Cash-flow facility, where the Schengen part has to represent at least 50% of the total funds. Payments are made by the Commission monthly in advance based on annual amounts defined in article 32 of the Accession Treaty. A Clearance of accounts procedure will take place at the end of the period which allows the Commission to recover appropriations spent irregularly. The deadline for contracting of the Schengen Facility is 31 December 2009.

### **2. Financial Data**

<b>Relevant Budgetary Year of Commitments</b>	<b>Commitments (2007-2009) (in EUR million)</b>	<b>Amount paid by the Commission (in EUR million)</b>
2007	129,255	129,255
2008	63,972	63,972
2009	64,699	37,741
Total	257,926	230,968

### **3. Status of Implementation**

The Schengen Facility has experienced delays in implementation due to administrative delays and legal challenges to contract award procedures.

The Commission established a close cooperation with the competent Bulgarian authorities and recommended several corrective measures on administrative level, the improvement of administrative capacity and a limit to staff turn-over.

As a reaction, Bulgaria simplified administrative procedures and asked the judiciary to treat procurement complaints filed within the Schengen Facility with priority. The application of these corrective actions contributed to an improvement in funds absorption. Efforts are undertaken by Bulgaria towards full utilisation of the allocated budget under the Schengen part by the contracting deadline.