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COVER NOTE

from: Mr Jordi AYET PUIGARNAU, Director of the Commission's Registry
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to: Mr Javier SOLANA, Secretary-General/High Representative
Subject: Annex to the Communication from the Commission
Comprehensive monitoring report on the state of preparedness for EU
membership of Bulgaria and Romania
Impact Assessment

Delegations will find attached Commission document SEC(2005) 1353.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.10.2005
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COMMISSION STAFF WORKING DOCUMENT

Annex to the

Communication from the Commission

**Comprehensive monitoring report
on the state of preparedness for EU membership of
Bulgaria and Romania**

IMPACT ASSESSMENT

{COM(2005)534 final}

**Comprehensive monitoring report
on the state of preparedness for EU membership of
Bulgaria and Romania**

IMPACT ASSESSMENT

I. The enlargement process and impact assessments

Enlargement policy is outside the realm of the Commission's right of initiative and therefore not a policy which the Commission can, strictly speaking, propose on the basis of policy options and impact assessments. The Treaty on European Union and the Copenhagen criteria set the framework for the entire enlargement process and narrow down the assessment criteria that can be used to assess present or future impacts of the implementation of this policy. The Copenhagen criteria laid down in 1993 define the requirements for accession in the political and economic spheres and in relation to the adoption and implementation of the EU *acquis*, i.e. the body of EU law.

On the other hand, important impact assessment elements have been built into the enlargement process since its inception. In particular, the Commission Opinion on a country's application explores, within the framework of the applicable criteria, the likely and foreseeable impacts for the country and the Union. The Opinion is then followed up by progress reports which are normally published by the Commission on an annual basis.

Therefore, the accession process is underpinned by a permanent impact assessment loop, whereby the Commission identifies gaps, and evaluates commitments and measures taken by the country to fill them. In the period preceding the signing of an Accession Treaty this process culminates in the final Commission opinion, European Parliament assent, and Council decision, on the country's readiness for accession, including a date for accession and any transitional measures and safeguard clauses.

II. Problem definition

The Accession Treaty with Bulgaria and Romania was signed on 25 April 2005 and is currently under ratification by all signatories (current Member States and the two prospective Member States). The Union's and the Commission's action at this stage is based on the expected entry into force of the Accession Treaty.

The Accession Treaty envisages the accession of Bulgaria and Romania on 1 January 2007. It includes a number of provisions under which the Union may take action to prevent (the imminent risk of) a serious breach of the functioning of the internal market or to deal with (the imminent risk of) shortcomings in the field of cooperation in civil and criminal matters caused by shortcomings in Bulgaria or Romania (Articles 37-38 of the Accession Protocol and of the Act of Accession). If there is clear evidence that the state of preparations for adoption and implementation of the *acquis* in Bulgaria or Romania is such that there is a serious risk of those states being manifestly unprepared to meet the requirements of membership, then accession of that state may be postponed by one year (Article 39). Other safeguard mechanisms exist in the *acquis communautaire*.

Points 7-8 (in respect of Bulgaria) and 11-12 (in respect of Romania) of the European Council conclusions of 16/17 December 2004 refer to those provisions and state that the Union will monitor closely these countries' preparations and achievements. To this end, the European Council adds that the Commission will continue to submit annual reports on their progress towards accession, together with recommendations if appropriate.

III. Policy objectives

The Commission's policy objectives are twofold, in line with the Union's objectives as laid down by the European Council.

On the one hand, as expressed through the Accession Treaty's envisaged date of entry into force of 1 January 2007, the Union looks forward to welcoming Bulgaria and Romania as new Member States from that date.

On the other hand, the Commission must ensure the continued good functioning of the Union, in the interest of both the existing and new Member States. It is essential for the good functioning of the Union that Bulgaria and Romania are able to assume all the obligations and requirements of membership at the time of accession. If and where this cannot be achieved, appropriate measures need to be taken to prevent or remedy damage.

IV. Policy options

The Commission's policy options are circumscribed by the detailed guidance on EU policy towards the candidate countries which is regularly laid down by Council, notably by the European Council. One aspect of established EU policy is that the Commission needs to continue to monitor progress by Bulgaria and Romania in order to provide the Commission and the Union as a whole with the necessary knowledge of the current situation and outlook in Bulgaria and Romania. The Commission publishes its findings and recommendations in a Communication to Council and European Parliament.

In the case of Bulgaria and Romania, the Union's and the Commission's action at this stage is based on the expected entry into force of the Accession Treaty. The main decisions relating to Bulgaria and Romania have thus already been taken. Within the established EU policy, the Commission can and should make proposals and recommendations based on its expert analysis. These may cover the following two types of actions:

Firstly, based on its findings, the Commission is able to advise and assist Bulgaria and Romania to achieve their aim of being ready for membership by 1 January 2007. In order to achieve its policy objectives, the Commission will need to act by targeting its advice and assistance on addressing its findings. These may include the dispatch of substantiated early warning letters to the authorities, the organisation of further peer reviews, the implementation of support measures, or other instruments and initiatives.

Secondly, based on the findings of its continuous monitoring, the Commission will if necessary and at the appropriate time consider whether specific safeguard measures should be envisaged or whether accession should be postponed for either country. Depending on the precise procedure prescribed by law, the Commission can take or recommend such measures. In most cases, a specific legislative act would need to be adopted. The Commission could take or announce certain decisions already in the context of the Communication to be adopted on

25 October or it could indicate how it intends to proceed in the future. The approach to be followed will depend on the precise monitoring findings.

V. Assessment of the impact

The conclusions and recommendations of the Comprehensive Monitoring Report will have a considerable political impact.

They will determine the content and focus of the Commission's and the EU's dialogue with Bulgaria and Romania over the coming months and can be expected to have a considerable mobilising effect on political, legislative and administrative activity in those countries in areas relevant to EU accession. The Report will also determine the focus of the Commission's further monitoring of progress in the two countries and guide the implementation of advice and assistance programmes.

The Comprehensive Monitoring Report may have an indirect economic impact. Indeed, if the Commission concludes that Bulgaria or Romania must increase their preparation efforts, those countries may be expected to speed up alignment with the acquis and strengthen administrative capacity, which in turn should have a positive impact on the economic environment.

VI. Consultation

The Comprehensive Monitoring Report draws on expertise available within the Commission services as a whole but also on information and opinions gathered from a range of external official and non-official sources.

The Commission has contacted and has received contributions from the governments of the countries concerned, from the major international organisations and a number of NGOs which are active in the countries concerned and in the fields covered by the monitoring (such as rule of law and public administration; fundamental rights; economic policy). The sources used also include Council deliberations and European Parliament reports and resolutions.

VII. Monitoring and evaluation

The precise follow-up depends on the conclusions and recommendations of the Comprehensive Monitoring Report.

However, the Commission is in any case committed to continuing close monitoring of the situation and outlook in Bulgaria and Romania and of its possible impact on the Union up to their accession, including if necessary through further reports.

This further monitoring will also evaluate the impact of the Communication of 25 October 2005 as part of the permanent impact assessment loop referred to under point I above.