

# MICHAEL LEIGH'S LETTER TO NAO DIMITAR IVANOVSKI

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*Brussels, 08 May 2008.*

*Enlargement Directorate-General*

*The Director-General*

*Michael Leigh.*

Dear Mr Ivanovski,

Thank you for your letter of 31 March 2008. We have carefully assessed the information you provided in response to the 25 corrective actions listed in my letter of 28 February.

We recognise that you have started to take a number of actions in response to the concerns raised. Moreover, we welcome the appointment of the new Deputy Prime Minister, Ms Plugchieva, responsible for the coordination and control of EU funds. I had a constructive meeting with Ms Plugchieva yesterday and had the opportunity to explain to her the Commission's concerns.

The steps taken to date do not fully address the points raised in my letter of 28 February. They do not provide the Commission with a sufficient basis to determine that the PHARE and Transition Facility contracts concluded by the CFCU and Ministry of Regional Development and Public Works (MRDPW) are legal, regular and in conformity with the applicable rules.

There are four main areas of concern. First, the National Authorising Officer (NAO) must have full authority to manage the implementation of the Phare programme and the Transition Facility in Bulgaria and to make any changes to the systems that are necessary to ensure sound financial management. Secondly, the NAO needs to strengthen the functioning of the systems designed to detect and respond to irregularities. It is essential that the NAO ensure that adequate follow-up action is rapidly taken in any cases where irregularities are detected. For each case, he must put in place an action plan of remedial measures, including a clear timetable. Thirdly, the NAO needs to increase the number and quality of staff responsible for controlling and monitoring the programmes in the Implementing Agencies. Lastly, the NAO must improve the quality and frequency of reporting to the Commission. In annex, we have provided a detailed list of measures on which further action is required in each of these four areas.

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The Commission will maintain the suspension of payments to the two implementing agencies concerned until its concerns have been adequately addressed. Nonetheless, in the absence of any indication of irregularities with respect to the twinning contracts, these are not subject to this suspension. We recall that the continuing suspension of payments from the Commission does not give a justification for the Bulgarian authorities to breach their own contractual obligations on payments related to existing contracts they have concluded with contractors or beneficiaries. However, I would suggest that you take stringent measures to ensure the legality and regularity of any further contracts concluded by these two agencies before they are signed.

In my letter of 28 February 2008, I indicated that if the corrective actions stipulated in the annex to my letter had not been taken by 31 March, I would be obliged to consider whether to reverse the decision to confer management of aid on the two implementing agencies concerned and to regard as ineligible for EC support the contracts concluded since the Commission Decision of 29 June 2007 in order to protect the financial interests of the Community. The corrective measures taken to date are insufficient. I am, therefore, preparing a recommendation that the Decision of 29 June 2007 on conferral of management under the extended decentralised implementation system (EDIS) be repealed. Repealing the Decision would mean that henceforth any transactions by the two agencies concerned (CFCU and Ministry of Regional Development and Public Works) would not be considered eligible for financial assistance under the PHARE programme or the Transition Facility. Moreover, contracts already concluded under EDIS, whose legality or regularity are in doubt, would require financial corrections.

In light of the political will expressed by Ms Plugchieva in my meeting with her yesterday, I would invite the Bulgarian authorities to take the necessary corrective actions set out in the annex to this letter. I should be grateful if, by 16 June, you would provide me with a report containing evidence that all these areas of concern are being addressed. This report will provide a basis for determining whether to proceed with a recommendation to repeal the EDIS Decision for these two agencies.

Yours sincerely,  
Michael Leigh

***Encl.: Appendix: Required additional corrective actions***

C.c.: Mrs. Meglena Plugchieva, Deputy Prime Minister  
Mr. Plamen Oresharski, Minister of Finance  
Mr. Lyubomir Datzov, National Aid Coordinator;  
Mr. Boyko Vassilev Kotzev, Permanent Representative of Bulgaria to European Union;

B.c.c.: Ms C. Day, Secretary General, (SG)  
Mr J. Faull, (JLS)  
Mr D. Ahner, (REGIO)  
Mr J-L. Demarty, (AGRI)  
Mr K. Van der Pas (EMPL)  
Mr. F-H Bruener (OLAF)

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Mr. D. Meganck, Mr. G. Schumann-Hitzler (DG Enlargement)  
Ms. Z. Zlatanova (EC Representation to Bulgaria)

## **Annex: Required corrective actions**

This annex sets out further corrective actions which need to be taken by the Bulgarian authorities if the Commission is to have a sufficient basis to determine that the PHARE and Transition Facility contracts concluded by the CFCU and Ministry of Regional Development and Public Works (MRDPW) are legal, regular and in conformity with the applicable rules.

The list includes a number of the 25 corrective actions requested in Mr Leigh's letter to Mr Ivanovski of 28 February 2008 on which action still needs to be taken (where appropriate, a reference is included to the number of the measure). The list also includes measures for which the need has become apparent as a result of initial findings from recent monitoring and audits in Bulgaria or from technical discussions between DG Enlargement and the Bulgarian authorities. These actions are without prejudice to further findings and recommendations, which may arise from the upcoming reports of the audits and monitoring.

### 1. NAO supervision

» The NAO should provide further information on the additional audits and controls on payments and evaluation committees referred to in his letter of 31 March 2008. The scope and frequency of the audits should be specified and a summary provided of those audits already completed in March and April 2008. (follow up of NAO letter of 31 March 2008)

» The NAO should take, where necessary, disciplinary measures. In that context, the NAO should provide information on the steps taken with respect to the PAO at MRDPW and the Director of the CFCU further to the action he proposed in this regard in his letter of 31 March 2008. The NAO should provide a list of all transactions authorised by these persons since 31 March 2008. He should indicate the steps taken to eliminate the risk of further irregularities in relation to these transactions. (corrective action number 2 of 28 February 2008)

» The NAO should appoint PAOs for the CFCU and MRDPW at the level of head of the Implementing Agency in line with the provisions of the Memorandum of Understanding for the establishment of the National Fund for PHARE and the Memorandum of Understanding for the Transition Facility, which both provide that the Programme Authorising Officer (PAO) is a representative of the national administration at the head of the CFCU or an Implementing Agency. The PAO should be appointed by the NAO in consultation with the NAC and is responsible to the NAO for the operations of the CFCU/IA and for the sound financial management of the projects to be implemented. Related internal procedures should be changed accordingly and notified to the EC. (corrective action 2 of 28 February 2008)

» The NAO should provide evidence to the EC that separate Senior Programme Officers (SPOs) have

been appointed for all projects where currently no SPO exists. These SPOs should not be hierarchically subordinate to the PAO. The existence of a PIU must not exclude the presence of a SPO. (general improvement of NAO control architecture)

» The NAO should demonstrate that improvements and corrective measures discussed with the EC are applied throughout the system and not limited to the two Implementing Agencies currently under suspension. (general improvement of NAO control architecture)

## 2. Follow up to irregularities

» The NAO should issue without delay official irregularity reports to OLAF and DG ELARG on all detected cases of confirmed or suspected fraud or irregularities. These reports should be supplemented with an updated overview table with the status of all suspected or confirmed irregularities. For all cases, a description of the current status and planned further steps with a timetable must be provided as well as an indication of ongoing investigations by Bulgarian authorities and their status. (corrective action number 1 and 21 of 28 February 2008)

» The NAO should issue clear instructions setting out the definition and procedures for reporting irregularities and for whistle blowing procedures. The NAO should indicate what steps have been taken to ensure all staff have been made aware of reporting rights and obligations. (corrective action number 1 and 2 of 28 February 2008)

» As part of the irregularity reporting, the NAO should provide a detailed analysis on the main irregularities highlighted in the Commission's letter of 28 February 2008 such as the discrepancies and changes in financial offers and supplies delivered. The NAO should interview staff and inform the Commission of the reasons, explain why they have not rejected such dossiers, nor notified them as irregularities or request supervisors why reports have not been followed up; he should further analyse the correspondence with contractors in order to identify the origin of such occurrences and indicate what has been done to ensure that this cannot be repeated. The EC should be provided with a report on these matters. (corrective action number 1 and 2 of 28 February 2008)

» The NAO should provide evidence that a policy is now in place, which will ensure that no supplies are accepted from contractors/ manufacturers / brands or items different from those in the contract, and that no payments are made without full verification of contract deliverables and results. (corrective action number 10, 12 and 16 of 28 February 2008)

» The NAO needs to provide a comprehensive report concerning the allegations of fraud and conflict of interest in the National Road Infrastructure Foundation (NRIF) (c.f. corrective action number 1 of 28 February 2008). The report should cover:

- » Results of investigations into these allegations;
- » An assessment of the impact of this alleged misconduct on Phare contracts;
- » Corrective measures taken to avoid any such problems in the future.

» The replies of the Ministry of Regional Development and Public Works (MRDPW) are incomplete and unsatisfactory. The NAO should indicate what corrective actions the Bulgarian authorities are taking to address points 1, 9, 12 & 24 of Mr Leigh's letter of 28 February 2008\*.

» The NAO should provide a summary paper with the results of his review of project fiches and identified deviations. Subsequently, a notification of all previously non-notified/submitted changes of project fiches, including budgets, should be sent formally to the EC for case by case assessment/approval of eligibility. (corrective action number 4 and 5 of 28 February 2008)

» The NAO should ensure that contractors involved in irregularities with the CFCU and MRDPW (incl. NRIF) are excluded from ongoing and future contracts. He should provide a list of any contractors that in his view the Commission should flag under the Early Warning System. (follow up of NAO letter of 31 March 2008)

### 3. Staffing, capacity and policies in Implementing Agencies for procurement and monitoring

» NAO should provide a summary of the action taken to increase the number and quality of staff in CFCU and MRDPW. Updated organisation charts should be provided. (corrective action number 11 of 28 February 2008)

» The NAO should present the EC with an analysis of the reasons for staff turnover and of the new policy put in place to maintain/attract qualified staff, in particular in CFCU. He should clarify CFCU rotation policy between heads of units, maintaining competence and segregation of duties. (corrective action number 11 of 28 February 2008)

» The NAO provide the EC with a thorough assessment of any personal, commercial and other contractual links that may constitute a conflict of interest for all management staff under EDIS (NAO, NAC PAO, SPOs and deputies). (corrective action number 1 and 7 of 28 February 2008)

» The NAO should clarify and report to the EC on the frequency, role, recruitment and origin (company) of external experts used under EDIS in current tender evaluations. (corrective action number 7 of 28 February 2008)

» NAO should provide a list of all changes made by legal experts or other external actors on procurement dossiers. (corrective action number 7 of 28 February 2008)

» The NAO should evaluate the risk of interference by external actors in the preparation and conduct of procurements and notify the EC of risk areas and mitigating measures taken. (corrective action number 8 of 28 February 2008)

» The NAO should ensure that in future tender evaluations the obligatory legal expert participating in the committee is provided from an independent institution other than the Implementing Agency and beneficiary of the contract. If feasible this measure should be taken so that this expert could also provide an independent report to the NAO. (corrective action number 8 of 28 February 2008)

» The NAO should inform the Commission on the results of the review of the Procurement Law by a working group, which was created according to his letter of 31 March 2008. (follow up of NAO letter of 31 March 2008)

» The NAO should ensure that for each supply or works handover a representative of the Implementing Agency is present and that service and grant contract deliverables are confirmed on the spot. The monitoring plans of the CFCU and provisions for payments should be revised accordingly. (corrective action number 17 of 28 February 2008)

#### 4. Communication, provision of information and reporting to the EC

» The NAO should introduce a new monthly reporting based on a template agreed with the EC. This should include updated procurement plans, irregularity overview tables, lists of contracts/contractors awarded in the previous month, a summary of results from payment controls and observer role by NAO in evaluation committees, results of IA/NAC monitoring and any staffing/organisation chart changes in the Implementing Agencies. (corrective action number 22 of 28 February 2008)

» The NAO should establish a new policy to improve working level contacts with EC services and provide working level contact persons in each Implementing Agency. More open communication to improve transparency and reduce room for misunderstandings is to be encouraged. (corrective action number 22 of 28 February 2008)

\* *MRDPW indicated that no contracts with changes in the legal duration during tendering exist although this was the case for example for project 2005/017-586.04.01*

\* *MRDPW indicated that no projects exist where EC funds were fully released before completion of works/supplies and acceptance although this is the case for example in the project 0106.01*

\* *MRDPW provided reports to the EC, which confirmed the misuse of operational costs under CBC by financing activities unrelated to the programme and non-respect of sound financial management*

\* *MRDPW confirmed that numerous projects were implemented in non-compliance with project fiches*

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*\* MRDPW provided inadequate explanation on increase of financial offers via special negotiations for the project "TA for Industrial Zones Development";*