

EUROPEAN COMMISSION
DIRECTORATE-GENERAL HOME AFFAIRS
Directorate C: Migration and Protection

Brussels,

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Council of Ministers
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Deputy Minister of Interior
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Bulgaria

Subject: Measures for improvement of the Bulgarian asylum system

Dear Ms Parvanova,
Dear Mr Tsipov,

Let me thank you for the reply and the information you provided in your letter of 19 May 2017 as well as for the frank and useful discussion during your meeting with Simon Mordue on 27 June. It is important for Bulgaria and the Commission to continue their constructive dialogue on the challenges facing the Bulgarian asylum system.

We take positive note of the description of the Bulgarian legal framework, and commend the considerable efforts made by the Bulgarian authorities on the different issues including in the implementation of the emergency assistance granted under the Asylum, Migration and Integration Fund. I encourage the Bulgarian authorities to maintain the efforts already made to improve their asylum system.

I would however like to underline again the amplitude and the urgency of the improvements needed, including especially in the practical implementation of the legal framework, which needs to be coupled with a long term strategy and a sense of ownership by the Bulgarian authorities.

As mentioned during the meeting on 27 June, I would like to raise the following issues and ask for complementary information, especially on the implementation in practice of the different legal provisions described and on the timing of some of the measures foreseen.

1. Protection of unaccompanied minors

It is appreciated that steps have been taken to improve the coordination between the different actors via the establishment of the working group at the National Council for Child Protection. I hope that the results will be available and implemented as soon as possible. I also take positive note of your description of the Bulgarian legislation regarding the guardianship system and of the mechanism for the appointment of a representative for unaccompanied minors.

However, important concerns remain regarding the current situation, in particular as regards the insufficient number of representatives and social workers, and the fact that staff are reportedly often insufficiently prepared (with inadequate training or experience). As underlined in the AIDA report on Bulgaria¹, it is only since December last year that a representative has been appointed in reception centres and these persons have apparently not been adequately trained; nor are there enough such representatives (only one per reception centre).

I take note of the information foreseen to be provided in the framework of the EASO Special Support Plan but such information remains to be completed by the number of persons covered by such training and the dates foreseen for such training.

In terms of accommodation of unaccompanied minors, I welcome the fact that a separate centre for unaccompanied minors is foreseen in cooperation with IOM and with funding from Norway. However, even if the planned centre is up and running from mid-2018 as you indicate your letter, this will be too late to address the already high number of unaccompanied minors present in Bulgaria and the capacity of the centre is insufficient to meet the current pressing needs, as the centre is foreseen to have a capacity of only 50 minors.

This is in addition to the fact that the current situation of the unaccompanied minors in the "separate areas" in the existing centres is, in the Commission's view, not appropriate due to a reported lack of adequate supervision, of adequate security and of staff to support the unaccompanied minors².

I also consider that your reply regarding the allocation of unaccompanied minors with adult applicants who are not their family members seems to underestimate the issue at stake for the safety and the protection of unaccompanied minors. Such a practice, as described by stakeholders and highlighted in the AIDA report³, does not seem to be consistent with the best interests of the child.

Regarding unaccompanied minors, the measures foreseen therefore seem to fall far short what is needed and not to respond to the urgency of the situation. I would underline the

¹ AIDA report, 2016 update, page 36 "*the municipalities lacked not only qualified staff, but also any basic experience and expertise in child protection. Finally, the respective municipalities responsible for unaccompanied children accommodated in reception centres situated on their territory not only failed to appoint any representative(s), but indeed refused explicitly to implement this obligation at all until the very end of 2016. It was not before December 2016 that this practice was reverted in all reception centres with the appointment of one legal representative for each reception centre by the respective municipalities. The representatives, however, are selected among the present municipality staff and lack any training, knowledge or skills to deal with unaccompanied asylum-seeking and refugee children*".

² AIDA report, 2016 update, page 12 "*Safe and appropriate accommodation for unaccompanied asylum seeking children is not secured in practice. Although the law provides for availability of special conditions unaccompanied children are accommodated at reception centres mixed with other adult population and without guarantees for their safety*".

³ AIDA report, 2016 update, page 55.

need for Bulgaria to invest more in these issues and, in terms of the resources needed, not to rely mainly on funding from outside of the national budget.

In light of the above, I would be grateful if the Bulgarian authorities could provide the following detailed information:

- Description of the planned measures to urgently increase the reception capacity suitable for unaccompanied minors, including and in addition to the foreseen centre for temporary accommodation and care for unaccompanied and separated minors;
- The timeframe foreseen for the results of the working group at the National Council for Child protection;
- The timeframe foreseen for the amendment of the Family Code;
- The plan for the increase in the number of representatives (indicating numbers and clear time-lines), and data concerning the number of unaccompanied minors of whom each representative is currently in charge⁴;
- The detailed timing of the training to be provided to each representative and the number of persons to be covered by such training;
- The ratio of unaccompanied minors to social workers currently working in reception and detention centres for asylum applicants;
- The planned numbers and timing for the hiring of additional social workers;
- Description of the measures planned or being taken for the improvement of the safety of unaccompanied minors and for the renovation of their separate areas (together with a detailed timing).

2. Reception and detention of asylum applicants

We take positive note of the different measures being taken to improve the centres which accommodate asylum applicants via the implementation of the emergency assistance, including the establishment of a monitoring system and the deployment of mobile maintenance teams. This is essential to the maintenance of a sustainable reception system providing accommodation and other services of an adequate standard. It is a worrying sign that several courts in other EU Member States have over the past year cited the poor conditions in Bulgaria, especially for vulnerable persons, as precluding Dublin transfers to Bulgaria⁵.

I would like therefore to underline the need for the speedy implementation of the emergency assistance and the need for sustainable improvements in all reception centres in Bulgaria.

There is also a need, as a best practice, to engage on an ongoing basis with the communities being accommodated in the Bulgarian asylum reception system, to be able to address their main concerns about shortcomings and to better understand and more effectively meet their most urgent needs. EASO could provide advice on best practice in the organisation of reception for asylum seekers generally, and we would encourage you to seek their assistance in that regard. Such an approach might be useful in reducing the

⁴ AIDA report, 2016 update, page 36: "*As of November 2016, out of 1,816 unaccompanied asylum-seeking children, representatives were appointed to only 90 children (4%): UNHCR/UNICEF, Child Protection Gaps analysis, November 2016*".

⁵ Cf. court cases from four Member States and Switzerland, as per the list in the AIDA report, 2016 update, page 30.

tension between asylum applicants and staff which you mentioned, especially regarding Afghan nationals.

Regarding the vulnerability assessment for applicants for international protection, the Bulgarian law foresees indeed such an assessment, but in practice, such an assessment does not seem to be sufficiently thorough or to be applied systematically for each asylum applicant throughout the territory. As stakeholders have indicated, and as highlighted in the AIDA report⁶, the law does not envisage any specific identification mechanisms for vulnerable asylum applicants (except for children), special trainings of caseworkers are rarely provided and some vulnerability assessment is conducted by means of group inquiries prior to the applicants' registration, which cannot be considered as an effective practice.

Detailed information on the date for the different trainings and the number of staff trained out of the total staff working on these issues (for example, case workers and officers of reception centres) should be provided.

In addition, access to suitably adapted reception conditions for vulnerable persons; in particular to health care, seems in practice to be difficult in light of the obstacles to access a general practitioner. The Assistance Centre for Torture Survivors (ACET)⁷ has underlined, for example, that the identification of persons with psychiatric illnesses does not take place in Busmantsi and, in case such an identification would take place, that it is not possible to release these persons from detention before the court reviews the detention (after 6 months).

As regards detention, concerns remain regarding the practice of detaining asylum applicants. Stakeholders have consistently reported concerns and these are well-summarised in the AIDA report which points to several problematic aspects, notably: delays in serving detention orders; prolonged detention for specific nationalities (several months compared to less than 10 days in general)⁸, and; shortcomings in access to legal assistance (cf. section 4 on legal assistance of this letter). It should also be underlined, as explained in my previous letter, that detention should only be resorted to when necessary and when based on one of the permissible grounds under the Reception Conditions Directive⁹.

Regarding detention conditions, I encourage you to speed up the implementation of the emergency assistance regarding the conditions in the detention centres for irregular migrants where asylum applicants are often detained.

In addition, the presence of a doctor only once or twice per week in the detention centre for asylum applicants in Busmantsi is problematic in view of ensuring a proper access to health care for the asylum seekers detained there. This limited presence, coupled with the ineffectiveness of the vulnerability assessment, can lead to seriously difficult situations for applicants.

In light of the above, we would like to request:

- further details concerning how exactly you intend to organise the ongoing maintenance of all reception centres, and the system for their constant inspection/monitoring;

⁶ AIDA report, 2016 update, page 33-34. Cf. as well 2016 Annual Report on Status Determination Procedure in Bulgaria, page 6 for more detailed information.

⁷ Cordelia Foundation et al., *From Torture to Detention*, January 2016, page 18.

⁸ AIDA report, 2016 update, page 62.

⁹ It is to be underlined that the Court of Justice of the EU has interpreted restrictively the notion of public order in the court case J.N.

- detailed information regarding the staff being made available for the carrying out vulnerability assessment and the measures being taken to ensure they are properly trained, and;
- detailed information concerning the availability of adequate reception facilities for vulnerable persons.

3. Integration

I welcome the fact that the Bulgarian authorities consider integration as a priority. This priority needs now, after several years of very limited actions, to be effectively implemented. As indicated in my previous letter, this is essential not just for the well-being of the persons concerned and for Bulgarian society, but also to alter the current dynamic of onward movement of asylum-seekers and beneficiaries of international protection to other Member States.¹⁰

I also take note of the willingness of Bulgaria to improve coordination in the field of integration and the efforts being made to adopt swiftly a new ordinance governing measures for the integration of beneficiaries of international protection. However, the changes proposed will have little impact if not accompanied with real investment in the integration process, towards firstly the applicants and the beneficiaries of international protection (via, inter alia, housing support, language classes, service provision and better financial support) and towards, secondly, the local authorities and relevant non-governmental organisations to ensure that they have the means to implement integration measures.

As mentioned in my previous letter, the Commission stands ready to assist Bulgaria with regard to the priority actions to be defined and the use of its AMIF national programme. It should also be noted that the Commission is currently revising the national programmes to include an extra allocation for integration (an increase by 33%), as part of the 2017 'top-up' procedure. In addition, the mid-term review of the AMIF provides an opportunity for assessing the needs and adjusting the allocations between the specific objectives in the national programme, notably by taking into account the funding granted to asylum under Emergency assistance.

In light of the above, I would be grateful if the Bulgarian authorities could provide detailed information on how exactly, and in what timeframe, integration measures are being and will be implemented.

4. Legal assistance and interpretation

Although the legal framework foresees access to legal aid, its implementation clearly needs to be improved due to several factors, despite the action foreseen under the emergency assistance regarding the provision of legal advice for vulnerable persons.

¹⁰ Issues related to the shortcomings in the integration system in Bulgaria were also highlighted in the views of the UN Human Rights Committee, adopted on 28 October 2016, which concluded that a Syrian family present in Denmark would risk inhuman and degrading treatment if sent back to Bulgaria where they were granted international protection.

Stakeholders have underlined, firstly, that the National Legal Aid Bureau (NLAB) does not provide legal assistance due to budgetary constraints¹¹. In addition, the effectiveness of the legal assistance provided to asylum seekers in detention is also hindered by the lack of interpretation. The AIDA report cites the example of the 400 Afghan asylum applicants detained after the riots in November 2016 for whom state-funded legal assistance was not available.

According to the same report¹², legal assistance regarding the appeal of the first instance decision is only implemented after a court case has been initiated, which limits its effectiveness¹³, while provision of legal and procedural information free of charge in procedures at first instance is also limited.

As noted in our previous letter, the provision of legal and procedural information free of charge, or of legal assistance for those detained or those wishing to make an appeal, including in circumstances where the provision of assistance in these circumstances is a legal obligation, appears to rely heavily on NGOs or international organisations which do not benefit from national funding.

Regarding interpretation, I take note of the system put in place but would like however to insist on the need for further investment in light of the weaknesses consistently reported by stakeholders and highlighted in the AIDA report¹⁴ regarding the availability of interpretation in some parts of the territory¹⁵ or in several languages and the quality of the interpretation provided, which underlines the need for more training of the interpreters.

On both legal assistance and interpretation, I would like to ask again for details regarding the measures foreseen to ensure financial sustainability of the provision of those essential services.

In light of the above, I would be grateful if the Bulgarian authorities could provide detailed information on the concrete measures being taken or planned to ensure the necessary resources in terms of providing or funding the provision of legal assistance (National Legal Aid Bureau or other organisations involved in providing legal assistance) and interpretation.

I would also appreciate to receive detailed information concerning the amount of funding allocated respectively to the National Legal Aid Bureau and to other external organisations for the provision of legal assistance over the past two years.

5. Treatment of Afghan asylum-seekers

The Commission has some concerns regarding the treatment of Afghan asylum-seekers for whom the recognition rate is strikingly low compared to the rate of recognition (granting of international protection status) for the same nationality in other EU countries (only 2,5 % in 2016, compared to an EU average of 56%). Particular concerns have also been expressed by stakeholders about the fact that Afghan nationals are apparently often detained for lengthy periods and to a considerably greater extent than occurs for other nationalities. During the meeting with Simon Mordue on 27 June, you explained that one of the main reasons for the relatively low recognition rate was the fact that Afghan

¹¹ AIDA report, 2016 update, page 61.

¹² AIDA report, 2016 update, page 24.

¹³ AIDA report, 2016 update, page 25.

¹⁴ AIDA report, 2016 update, page 22.

¹⁵ AIDA report, 2016 update, page 41.

asylum-seekers sometimes indicate that they are applying for asylum in order to be released from detention or to avoid being detained, and that they do not wish to remain in Bulgaria but rather to move on and seek asylum in another EU Member State.

Let me however underline that it is important that asylum decisions are taken on an individual basis and based on up-to-date and reliable country-of-origin information. It is not appropriate for asylum determination to be based on 'category' decisions taken for certain nationalities. Moreover, asylum decisions should be taken based on an objective assessment of the person's protection needs, and where it is clear, based on reliable and up-to-date information concerning the situation in their country-of-origin, that they would face a real risk of suffering persecution or serious harm if returned there, they should be granted protection. Likewise, as regards detention, this must always be shown to be necessary in an individual case, based on one of the permitted grounds for detention in the Reception Conditions Directive, and should not be based on, for example, the person's nationality.

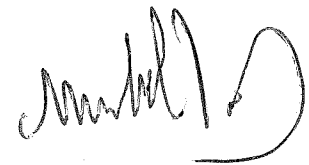
I would therefore like to request some further explanation from the Bulgarian authorities for the very striking discrepancy between the Bulgarian and EU average recognition rate for Afghans, and regarding the phenomenon of widespread detention of Afghan asylum-seekers.

It is of the utmost importance that Bulgaria continues to engage in the speedy improvement of the central aspects of its asylum system as outlined in this and in my previous letter, including in terms of the practical implementation of the existing legal and institutional framework.

I would encourage the Bulgarian authorities to explain, within 8 weeks of the receipt of the present letter, the information requested above, including details of the different measures foreseen and the timeframe for their implementation.

I would like to express again the readiness of the Commission to support further Bulgaria in managing the challenges related to the migration flows while underlining the need for Bulgaria to organise its response within a comprehensive, structured and sustainable strategy.

Yours faithfully,



Laurent Muschel
Director