



USAID/Bulgaria Commercial Law Reform Program



Modernizing business registration in Bulgaria: Options for change

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Executive Summary

Bulgarian company registration should be modernized to support a growing and dynamic market economy, and to prepare Bulgaria for accession into the European Union. There is no single model for good business registration. Driven by European directives and competitiveness goals, however, business registration in Europe is moving toward electronic and administrative registration.

Consensus has been reached in Bulgaria that reform is desirable. The three key decisions now facing Bulgaria are: 1) the role of business registration in the new corporate governance regime; 2) the services that business registration should offer in a competitive market economy; and 3) the most appropriate organization and institutions to fulfill that role and offer those services. Current efforts in Bulgaria to create a unified registration point for companies, statistics, and tax purposes, and to carry out judicial reform, provide a unique window of opportunity to establish a world-class registration system in Bulgaria over the next 2 years.

This report, the first to systematically assess the benefits and costs of various alternatives for reforming business registration in Bulgaria, examines 5 options for reform:

- Option 1: Judges in district courts continue to register businesses, but use standardized forms across 28 courts.
- Option 2: Judges in district courts continue to register businesses with standardized forms (as Option 1), but a central electronic register is separately established in the Ministry of Justice to consolidate the data.
- Option 3: The Courts create a separate registration unit staffed by trained clerks, rather than judges, who work for a centralized, electronic court registry.
- Option 4: The business registry is placed in a Ministry. Options include (1) the Ministry of Economy, which has responsibility for promoting business start-ups and growth; or (2) the Ministry of Justice, where the business registry could be placed in the new Enlistment Agency or combined with the existing pledge registry. In either Ministry, the office should be a one-stop shop for tax, statistics, social security, and business registrations, and financial accounts.

- Option 5: Registration is contracted out to the private Bulgarian Chamber of Commerce and Industry, which already has a network and database of 60,000 companies.

Whatever institutional solution is chosen, the minimum goals that Bulgaria should adopt for this reform are:

- Speeding up registration processes and reducing uncertainty;
- Complying with European directives for paperless registration and fees that cover costs, but produce no profits;
- Creating a national electronic registry with standardized procedures nation-wide;
- Freeing up the time of judges so that they focus on more important justice tasks to improve legal security for shareholders and creditors;
- Improving public access to the information in the database.

Other desirable goals are:

- Creating a one-stop shop where businesses can register for business, tax, statistics, and pledges, and submit annual financial accounts;
- Creating a unique business identifier to be used across all government organs.

Marginal changes to standardize forms and speed up court action, while low-cost and quick, will not correct problems such as high costs, uncertainties, lack of easy access to data, poor use of judicial resources, and low transparency and accountability. More comprehensive reform of procedures, institutions, and laws, with parallel reforms to other registration requirements, should be adopted, as seen throughout Europe. This might best be done by drafting a new law on registration of commercial entities through an inter-ministerial process, with input from the Council for Economic Growth.¹

This analysis looks at reform options and assesses each option's expected performance against ten criteria, seven relevant to the functions of business registration and three to addressing reform implementation. These criteria are:

Functional criteria

1. Does the option reduce costs and delays for businesses?
2. Does the option offer legal security against corporate fraud?
3. Does the option improve public access by creating a unified electronic registry?
4. Does the option comply with European Directives?
5. Does the option improve court efficiency and free up judges for case work?
6. Does this option unify the registration number for company law, tax, statistical, and social security purposes?
7. Does registration also protect the name of a company?

Implementing criteria

8. What institutional changes are needed to implement this reform?

¹ A March 11, 2004, Decision by the Council of Ministers to approve a Plan for Implementation of the E-Government Strategy anticipated broad reform to move over 18 months to an electronic register, and this process will produce a report later in 2004.

9. What investment is required to implement the option?
10. How much time is needed to implement?

Using this analysis, each option has advantages and disadvantages. The approach identified in this report as most consistent with modern corporate governance and as best meeting European targets for low-cost, legally secure, and business-friendly approaches is Option 4, which would consolidate a central electronic registry outside the courts, within the Ministry of Justice or other suitable location, to operate as a one-stop shop for business registrations of all types, while speeding up judicial review of cases when problems arise. Transition costs would be high, but because of consolidation, operation costs going forward would be lower than maintaining the current system.

Consideration may also be given to Option 3 – setting up registration units within the courts, but staffed by trained clerks, not judges, who would input data into a centralized court registry. But this option is less desirable. It would be simpler to set up, but would likely make unification of registration numbers (one stop shopping) administratively difficult or impossible. Moreover, this option would require significant investments in judicial electronic registration, reorganization, new staffing, and database management.

There is no cheap option that will comply with evolving modern registration practices. If the best performing option is chosen, Bulgaria could build a modern, central electronic registry with full internet database access, a national network of registration offices, faster service, and one-stop business services for roughly the same yearly cost as the fees collected by the commercial courts under the current system (about €2.6 to €3 million per year). In other words, Bulgaria can upgrade to a self-financing, higher-performance, Europe-compatible model without charging businesses more. Start-up costs are estimated to be in the range of €2 million to €2.5 million to set up the new system, and 18 months to 2 years would be needed for full implementation.

I. A CONSENSUS FOR REFORM IN BULGARIA AND EUROPE

1. There is growing consensus that better business registration is a necessary part of economic reform in Bulgaria to support business start-ups and investment, and to integrate with Europe. But what is the best form of registration for Bulgaria, in light of existing Bulgarian institutions, European practices, and the goals of reform, including economic growth and legal security? This paper assesses reform options against criteria of benefits, costs, legal requirements, and risks.

2. Registration is changing quickly in Europe as corporate governance develops. The European vision of business registration adopted since 1997 is that societies are best served by fast, low-cost, and reliable business registration aimed at market transparency. That is why many European countries are moving to administrative, electronic, and accessible registries rather than legalistic and paper-driven forms of registration. Almost all European countries now use the expert registration agency rather than judges. In Germany, court registration is done by a unit separate from the judges. In only one European country -- Austria -- does the Commercial Court actually approve the documents as a legal matter, as is done in Bulgaria, and in Austria, this takes 7 days, not 21.

3. The European Charter for Small Enterprises, adopted in 2000 and reaffirmed by the Lisbon Agenda in 2001, requires that the costs of starting up companies in Europe should become the most competitive

in the world. Countries with the longest delays and most burdensome procedures for approving new companies are encouraged to catch up with the fastest. All over Europe, online access for registration is increasing.

II. CURRENT REGISTRATION PRACTICES IN BULGARIA

4. Bulgarian registration is now carried out by 28 separate district courts and the Sofia City Court, a sensible design in 1989 when the registration system was reinstated, due to its similarity with practices earlier in the century. These courts are registering a fast growing private sector. While the total numbers are not precise, about 870,000

The role of modern business registration

Business registration is the most common means used around the world to comply with the legal framework under company law for establishment of a legal entity (juridical person). In some countries, business registration is simply a standard means of entering information into a legal database. In other countries, like Bulgaria, registration is accompanied by substantive judicial review and quality control of the underlying documents.

Business registration serves two purposes in a market economy: 1) it provides essential public information on who is legally conducting business, and 2) it provides certain legal protections to businesses (such as limited liability) to stimulate investment.

Unlike licenses and permits, modern business registration is not a means to control or regulate business entry or to enforce company law. In developed countries, shareholders and creditors rely on public information and corporate governance, backed up by independent auditors and effective court action when problems occur, to protect their interests.

companies and sole proprietors are registered in Bulgaria, a high number that is largely explained by the fact that, due to tax advantages, a large percentage of sole proprietors are registered (around 80 percent of the total number). This number is growing by about ten percent per year, signs of an active entrepreneurial class. Over 40,000 new companies, partnerships and sole proprietors are registered annually, and about 26,000 revisions are made to current registrations.²

5. Paper registries are separately kept in almost all of the courts. Each business must register in the district court where it is headquartered. Each application is assigned to a judge. *A significant percentage* of the time of the 107 commercial judges is spent reviewing and approving the documents filed by companies. A state-owned for-profit company, Information Services (IS), has been contracted to provide processing services to the courts, and has 56 clerks working in the courts for that purpose. Registration formally occurs when a judge has approved the documents, and the entity is entered into the paper register. The registrations for limited liability companies and joint stock companies are then published in the State Gazette. Some private services – IS and the Bulgarian Chamber of Commerce and Industry (BCCI) – maintain databases of companies that, while of no legal security and perhaps incomplete, are valuable sources of market information. They parallel similar commercial services available throughout the EU.

6. Under Article 5 of the Commerce Act, the public has legal access to the paper documents, but they must travel to the district court holding the documents to request them. It is reported that the courts actually require persons to show cause for why he or she wants certain documents. The courts charge a fee for making certified copies, a universal practice.

7. Registration has become a highly profitable, although nontransparent, tax on businesses. This violates EU Directives that require that the fees for business registration be set no higher than registration costs. The financing of the Bulgarian registration system is opaque, and it is not possible to determine with assurance how much money is collected nor where it is spent. By combining figures from courts, Bulstat, and tax registries, we estimate that the courts collect about 2.7 million lev annually from registering new companies and sole proprietors. Total court revenue from all transactions, including revisions and providing certified documents, probably substantially exceeds 4.5 million lev annually. This does not include revenues collected by IS for selling its data, 20 percent of which is paid to the court system (see below).

8. Fees paid by businesses are credited to the bank accounts of the courts. IS is not paid for its processing services to the courts, but is allowed to take the registration data instead. It enters these data into its commercial database, and recovers its costs by selling information. IS takes in annual revenues of 3,200,000 levs for selling this information (the market for selling such information is artificially elevated by the difficulty of getting such information from the courts, another hidden cost on the Bulgarian

² Businesses register with the courts, with Bulstat for statistical reasons, and with the tax authorities. These figures are taken from Bulstat and tax authorities, as they provide greater detail than statistics presently available from the courts. The statistics that are available are inconsistent. For example, in 2002, the courts report that they processed over 81,000 registration transactions, while Bulstat reports that it processed less than 70,000.

economy). IS pays to the Supreme Judicial Council 20 percent of its revenues related to selling these data, and any profits to its owners (primarily the Ministry of Finance). The Supreme Judicial Council spends these revenues on activities other than business registration (for example, buying equipment). A transparent accounting of these revenues and expenditures should be the first step in the registration reform.

III. PERFORMANCE OF THE BULGARIAN REGISTRATION SYSTEM

9. Bulgaria now has a registration system that functions reasonably well compared to other judicial-based registrations. Many court transactions are handled efficiently and predictably, and official fees charged for registration in Bulgaria are low. The World Bank's *Doing Business in 2004* report finds that, in terms of the fees charged for registration and registration-related services, Bulgaria looks very good (see Table 1).

10. However, the Bulgarian registration is increasingly out of step with good European practices, and the move to paperless registration and full electronic access. Bulgarian registration has been repeatedly described as time consuming, uncertain, and inconsistent, not only in initial registration but also in registering amendments.³ Some courts are better than others, but procedures are not standardized across the country, and judges have much discretion to ask for additional information of uncertain relevance. In the course of their substantive reviews of the quality of documents, judges sometimes intervene inappropriately and unpredictably into company decisions. Current law permits aggrieved parties to intervene in registration decisions. There is no secure national database on Bulgarian. This introduces legal uncertainty that reduces the effective operation of the Bulgarian national market and raises risks for investors.

11. According to the World Bank's *Doing Business Report*, Bulgarian registration takes an average of 30 days, of which 21 days are spent in the court. This is almost double the benchmark adopted by the European Commission in 2002 (18 days) as a target for Europe,⁴ and 10 times greater than the time needed by the fastest country in Europe. The same report finds that countries often cited in Bulgaria as models for its reform perform no better or even worse than Bulgaria: registration in Germany takes 45 days; Austria, 29 days; and France, 53 days. The countries recommended here as models for Bulgaria do better: Italy, 23 days, and Ireland, 12.

³ The Bulgarian International Business Association states that, "The company registration cases long since has become a nightmare for the firms." (BIBA (2002) "White Paper on Business Climate in Bulgaria," Sofia). The Foreign Investment Advisory Service of the World Bank/IFC states, "In some cases, judges are using the company registry as a means of assessing the economic or financial feasibility of the company's projects, in essence allowing the court to micromanage the conduct of companies' business." The Center for the Study of Democracy concluded in 2003, "In their capacity of users, the business community, non-profit organizations, the citizenry and foreign investors tend to view the currently used registration system as ineffective, unreliable and short of transparency; they often even regard it as an area in which non-regulated pressure and corruption practices thrive."

⁴ European Commission, Enterprise Directorate General (January 2002) *Benchmarking the Administration of Business Start-ups*, Final Report. Prepared by the Centre for Strategy and Evaluation Services (CSES), Brussels.

Table 1: Comparing Bulgaria with other European countries

	Procedures needed to start up a limited liability company	Days needed to start a limited liability company	Costs of starting up a limited liability company (US\$)
Poland*	12	31	\$925
Germany*	9	45	\$1,342
Bulgaria*	10	30	\$148
Ireland*	3	12	\$2,473
Italy*	9	23	\$4,565
Accepted European Benchmarks**	9	18	€213
Best European practice**	8	3	€213

* Source: World Bank, Doing Business in 2004, Washington, DC.

** Source: European Commission (January 2002) Benchmarking the Administration of Business Start-ups, Final Report.

12. These benchmarks do not capture the more important non-quantified costs of the Bulgarian registration system, such as non-standardized approaches across the various registries throughout the country, lack of market transparency due to the absence of a national electronic registry, and high costs of delays and judicial intervention into registration decisions. These costs hinder economic growth and investment in Bulgaria, and will be more costly as Bulgaria increasingly falls behind in good registration practices in the region.

13. The core issue is the institutional basis for registration. Substantive judicial review and control typically increases the time needed for business registration. The European benchmarking study found:

a link between the time and cost needed to register a business and the extent to which Member States use business registration as a mechanism for managing the perceived risks to investors, creditors, and customers from entrepreneurship. There is, therefore, a direct conflict between the Lisbon Summit's political objective of creating an entrepreneurial Europe and existing public policy practices designed to control the process of entrepreneurship.⁵

14. These comparisons are consistent with the World Bank's findings that registrations involving courts take almost 50 percent longer than do administrative registration.⁶ One reason is that courts are not well-suited to managing the open, public databases required for modern business registration services. Other parts of the Bulgarian state are much more advanced than the courts in using IT as the interface between citizens and states. For example, Bulgarians will be able to pay their taxes online from 2005, but will still travel through Bulgaria to visit the local district court to register a business. The Center for the Study of Democracy described the painful process of accessing the registry like this:

⁵ European Commission (January 2002) Benchmarking the Administration of Business Start-ups, Final Report.

⁶ Doing Business, p. 27.

A regular inquiry about the representation of a certain legal person preceding contract conclusion might require a distance of a few hundred kilometers to be covered to hand over a written application, followed by a week's interval and a further delay for information delivery; ultimately, the result is likely to be imprecise and unreliable. As information accumulates, it becomes increasingly hard to access and its usage – progressively slower and even impracticable.⁷

Box 1: European examples of business registration reform

- **Slovakia** was criticized before its accession by the European Commission for its poor company register, which, like Bulgaria, is still maintained by district courts in the regional court seat where the company's place of business is located. Improvements praised by the Commission included the on-line availability of some data. However, the Commission said, "The absence of set deadlines leads to uncertainty for business and fosters corrupt practices in the process, as dealing with applications can become arbitrary.... Improvements to the operation of the Commercial Register are necessary, especially with regard to the speeding up the average time needed to company registration. Furthermore, it should be ensured that court fees for copies from the register are cost-covering only."⁸ Slovakia launched in 2002 a project to centralize and improve the operation of the Commercial Register.
- The new **Serbian** parliament recently adopted a law establishing an Agency for Business Registers as an independent agency for pledge, leasing, and business registration. The Agency replaces business registration by 16 commercial courts, 131 municipalities, and the Republican Statistical Office. The new registry will be financially self-supporting, have around 16 offices around Serbia, and will reduce the days needed for registration from 71 to 5, the legal time-limit under the bill. The central database will be available to the public by Internet. The Agency for Business Registers will employ around 90 people, compared to the 250 people now employed in business registration in Serbia.⁹
- **Poland** is still seen as stifled with red tape, but reforms have helped. Poland's National Court Registry, operating since 2001, replaced former local court registers kept in traditional form-paper files. It consists of a central database with 26 regional offices. A centralized institution (the Information Centre of the National Court Register, constituted as an organizational unit of the Ministry of Justice) provides access to registered data. Registration applications are accepted by divisions of the National Court Register in 20 provincial courts. As part of its e-government initiative, Poland is building an "e-platform" as the basis for an e-based one-stop shop for business start-ups offering the full spectrum of information and registration/reporting requirements. In early 2004, amendments to the National Court Register Act were proposed to simplify and shorten the procedures of setting up a business, including registration times. To relieve judges of administrative duties, make judicial proceedings more efficient and reduce costs, Poland introduced a new function, called *Rechtspfleger*, or senior court clerk. Polish *Rechtspflegers* have a quasi-judicial function which allows for entries in The National Court Register. The number of *Rechtspfleger* is about 600. They have a degree of Master of Law and receive special legal training. Where *Rechtspflegers* are employed, court proceedings have accelerated considerably.
- One of Europe's most comprehensive reforms of business registration took place in **Italy**, where the registration was taken out of the commercial courts in 1999, and is now administrative, paperless and online. All businesses must be registered in the Trade Registry (*Registro delle imprese*), managed by the *Ufficio del Registro imprese*, an office of the provincial Chamber of Commerce. By 2001, Italy had seen dramatic reductions in the costs of setting up new corporations. Italian officials attributed much of this cost reduction to the move out of the courts, whose registration procedures had been particularly costly.

⁷ Center for the Study of Democracy (2003) Opportunities for Establishment of Central Register of Legal Persons and Electronic Registries Center in Bulgaria, Sofia.

⁸ European Commission Report 2002 (Slovakia), Chapter 5.

⁹ Figures are taken from calculations prepared by the Ministry of Economy and Privatization, Republic of Serbia, with the assistance of Jacobs and Associates, to prepare its procurement plan for the new registration system.

- **Ireland** has adopted a completely administrative system of registration. The Irish Companies Office is responsible for registration of companies, which is an automatic process if the forms and documents are complete. Judges have no role in registration, but handle any formal appeals that occur after registration. The public database is accessible by internet.

IV. GOALS OF BUSINESS REGISTRATION REFORM

15. This review of options uses ten criteria to briefly assess options, and concludes with a general assessment of each option:

The Ten Criteria for Assessment

Functional criteria

1. Does the option reduce costs and delays for businesses?
2. Does the option offer legal security against corporate fraud?
3. Does the option improve public access by creating a unified electronic registry?
4. Does the option comply with European Directives?
5. Does the option improve court efficiency and free up judges for case work?
6. Does this option unify the registration number for company law, tax, statistical, and social security purposes?
7. Does registration also protect the name of a company?

Implementing criteria

8. What institutional changes are needed to implement this reform?
9. What investment is required to implement the option?
10. How much time is needed to implement?

Overall Assessment

16. The assessments are not detailed, but the main benefits and costs of each option are identified, with preliminary estimates of monetary impacts, where possible. They are meant to provide a sufficient basis for identification of priority options for further analysis.

Does the option reduce costs and delays for businesses?

17. Reform of business registration should support investment and competitiveness in Bulgaria by providing necessary business services at lowest cost. Bulgaria performs much worse than European benchmarks, not to mention best practices. Costs on businesses can be reduced by:

- Reducing the fees charged for services, which can be achieved by consolidating resources, boosting productivity through better organization, training, management, and use of IT. For example, consolidation from 29 courts into a central unit supported by regional offices will reduce costs substantially. Consolidated use of IT will boost productivity. Efficient organization might mean that the business registry is combined with other functions. A likely candidate in Bulgaria is the Central Pledges Register, established in the Ministry of Justice in 1997. By way of example, the decision in the Republic of Serbia to combine the pledge registry with the business registry will reduce annual costs for business

- registration by over €350,000 per year (27 per cent) due to efficiencies in sharing office space, and staff.¹⁰
- Reducing the time needed for decisions;
 - Reducing discretion and uncertainty in information requested and timing of response;
 - Reducing costs and delays in accessing information in the registry;
 - Reducing corruption.

18. The 2002 European Commission report found that the main factors driving improvement in the efficiency of company registration are advanced information systems - in particular “single access” registration - simplification of administrative and legal processes, better public sector management, and improved availability of information. Other key factors are the reduction of costs, including taxes and fees, and the reduction in the level of minimum share capital. On-line access to forms and documents, and progress towards on-line registration, also make a large contribution.

Does the option offer legal security against corporate fraud?

19. Bulgaria needs a modern business registration system that not only reduces burdens on businesses, but that provides the government and the market with the tools to enforce company law, control criminality and corporate abuses, and protect shareholders and creditors. The question that arises is: Within the overall context of company law and corporate governance, what is the role of business registration in enforcing company law? Any reform that substantially increases corporate fraud in Bulgaria is a failed reform.

20. The Bulgarian approach is to use judicial review in business registration to detect criminal behavior and fraud in the documents. The purpose of judicial review of company documents is described in the law as “to detect invalidity and impermissibility of the entry and to register nonexistent circumstances”. Unfortunately, the Courts are unable to provide any information on the number of cases where judges discover fraud, or even where they find important errors, so it is impossible to judge the frequency of any problems.

21. The usual explanation heard is that judicial review provides legal security for shareholders by enabling the judge to determine if the documents comply with applicable law. Prior judge review of every registration filing is of doubtful value in relation to the burden (delay, uncertainty, diverse practice) that it places on the registration process. It is hard to understand how judges are expected to find documents filed which are “fraudulent” simply by reviewing the documents themselves. The only reliable value of judicial review is to confirm that the documents are complete and that the identity of the filer is correct. In most of Europe, these tasks are done by trained clerks or even by notaries, although notaries are typically more expensive without adding extra value.

22. Corporate governance backed up by efficient courts is the more effective option for enforcing company law. Bulgaria has moved to strengthen its corporate governance

¹⁰ Ibid.

system, most notably by adopting international accounting standards from January 2005 and strengthening independent financial audits of companies' annual financial statements. *These measures greatly reduce the need for judicial oversight of business registration documents.* Under a modern approach, shareholders and creditors are responsible for due diligence to protect their interest, the courts are responsible for acting swiftly when problems arise, and the business registration system must easily disclose information to the market (not to guarantee its correctness). This vision of the role of business registration illustrates how far short the current Bulgarian registration system is from a modern approach: it attempts to control, but does not disclose easily.

23. Business registration reform that discloses information more easily to the public, and that strengthens judicial capacities to act on cases, will reduce corporate fraud in Bulgaria, compared to the current system. The market transparency afforded by a central electronic registry will itself reduce corporate crime by giving shareholders and creditors quick access to the information they need to protect themselves. In the context of building market confidence, the new business registry must be, from the very beginning, a trusted and reliable source of information, far from suspicions of corruption or political manipulation.

24. Procedurally, the simplification and harmonization of registration procedures will reduce the need for judicial oversight, because judges will lose the discretion to ask for additional information, further reducing their value-added in detecting fraud.

25. Current aspects of the Bulgarian registration law could actually increase abuse and economic losses by corporations. Article 430 of the Civil Procedure Code permits aggrieved parties to block registration of capital changes and other routine corporate actions simply by filing with the responsible judge. Such filings can delay registration for weeks or months. Delays in registering changes such as new stock can have extremely costly impacts on companies. The opportunity for aggrieved parties to threaten such action should be minimized. The German Corporate Governance Commission recognized the potential abuse of such a procedure, and recommended that an express procedure be used to avoid delays:

Numerous decisions from annual general meetings, particularly those concerning structural measures subject to registration, are contested on the grounds of alleged violation by administrative bodies of their duty to supply information. The delay in recording information in the Commercial Register, which regularly results from investigations into such actions...can have severe economic repercussions for the companies concerned. In future, therefore, an express procedure that has already proved its effectiveness for mergers is to be extended to cover other cases of rescission... Enterprises will thus receive planning security fast.¹¹

Does the option improve public access by creating a unified electronic registry?

26. Bulgaria does not have a unified nor an electronic registry, instead relying on 29 separate registries, most of which are still on paper. A recent decision by the Council of

¹¹ Federal Government of Germany (2001) Corporate Governance - Corporate Management - Corporate Monitoring - Reform of the Stock Corporation Law, 3 August. See <http://www.bundesregierung.de/en/news-by-subject/labour-economy-and-welfare-st-,11375/corporate-governance.htm>

Ministers anticipates that Bulgaria will move to create a national electronic registry (Box 2). A unified national registry is consistent with recommended European practices, although a few EU members still use decentralized registries. In Germany, for example, firms notify the Local Business Notification Unit in the municipality for entry into the Business Registry (*Gewerberegister*), and legal persons and trade companies must also register in the Trade Register (*Handelsregister*) in the local court (*Amtsgericht*).¹²

27. However, a 2002 report for the European Commission stated that "countries with a plurality of different Registers (Germany) are considered not to represent best practices or not even to fully reflect the indications of the First European Directive."¹³ This is because a unified registry is the most transparent and accessible form, and reduces risks of corruption and corporate abuses that can occur when multiple registries are in effect in one country. Unified national registries will assist in the linking of registries across the EU that is anticipated in the coming years – such a linkage will greatly assist foreign investors enter Bulgaria. It is difficult to imagine that Bulgaria could significantly improve the transparency, efficiency, and quality of its registration information without moving to a unified national information system.

Does the option comply with European Directives?

28. Compliance with European regulations is a priority for the Bulgarian government. Indeed, Bulgaria has made good progress in all areas relating to company law, according to the European Commission, and negotiations on this chapter were provisionally closed in 2003. Bulgaria did not request any transitional arrangements for Company Law.¹⁴ Therefore, full compliance with the relevant Company Directives is anticipated. Annex 1 to this report explains the evolution of European views on the key directives and the future of registration practices.

29. The European Commission has noted that more work is needed to bring Bulgaria's registration into compliance. In 2002, its progress report found that "there are problems due to the fact that the original commercial register is kept on paper. Sometimes there are delays in registering factual changes even though a case has been dealt with in court." The 2003 progress report stated

Transposition needs to be completed, however, especially with regard to the 1st, 2nd and 11th Directive where some inconsistencies with the acquis still remain. Companies are registered in the commercial register, which is kept within the 28 regional courts ... a further improvement of the work of the judicial system can be expected, including towards the work of the courts on enforcement of commercial law.

30. This criterion assesses compliance with four European requirements:

¹² Local levels of German administration are moving forward with reforms, however. In the Land of Schleswig-Holstein, processes for company registration are being prepared for inclusion in an electronic exchange that will allow on-line registration. Microsoft Biztalk (2001) State of Schleswig-Holstein, Germany: Cross-Authority Teamwork Provides Innovative Services, 29 March. See www.microsoft.com/resources/casestudies/ShowFile.asp?FileResourceID=1381

¹³ European Commission (January 2002) Benchmarking the Administration of Business Start-ups, Final Report.

¹⁴ European Commission (2003) 2003 Regular Report on Bulgaria's Progress towards Accession, p. 53.

- Paperless registration by 2007 (for new members)
- Electronic register with on-line public availability
- European obligatory data recorded in the register
- Fees should be set to cover registration costs, but no higher.

31. Some in Bulgaria have argued that Article 10 of the First Directive of the EC (dealing with the review process prior to registration) specifically requires prior review of registrations. Actually, Article 10 requires that in systems where there is no judicial or administrative prior review, then the filer of the document must be required to certify its contents. This means that the filer of the document should be responsible and legally accountable for the accuracy of the document in such a system. This is the case in EU countries. A self-certification system would greatly benefit Bulgarian registration. Indeed, the EU benchmarking study (p. 49) identifies self-certification as one of the most important recent changes in legal requirements among in EU members. In a self-certification system, the burden on the government to review every registration application for legality is replaced with legal responsibility of the filer of the document. In such a system, the person certifying the filing may be civilly liable for inaccuracies and non-compliance and even criminally liable for wilful misrepresentations. The Bulgarian penal code already provides for criminal penalties of up to 5 years imprisonment for false declarations, which seems sufficient to deter abuse.

32. Bulgaria's substantial progress in adopting European norms for corporate governance regime is relevant to business registration reform, as noted, because judicial review has less relative value when information is better and shareholders have more power. Bulgaria's new Law on accounting entered into force in January 2002. Through the Law, the provisions of the Fourth and the Seventh Directives on accountancy were transposed into Bulgarian national legislation. The Law on independent financial audit that entered into force in January 2002 introduced the requirements of the Eighth Directive. Each of these makes it easier for shareholders and creditors to assess risks and bring potential problems to the courts for resolution.

Does the option improve court efficiency and free up judges for case work?

33. It is a high priority in Bulgaria to free up scarce commercial judicial resources and focus trained judges on corporate governance. Every investment assessment of Eastern Europe and the Balkans – and Bulgaria specifically -- pinpoints the failure of courts to enforce claims efficiently as a key impediment to investment. The European Commission repeatedly cites this weakness in its progress reports. For example, in 2002, it found that “problems existed for the implementation of company law, due to insufficient knowledge and experience in the judiciary of company and commercial law issues, in particular company insolvency proceedings.”

34. Clearly, Bulgaria pays a high cost for expending a significant percentage of its judicial resources on registration amid a growing demand for judicial services in a market economy. Bulgaria needs more judicial resources to deal with bankruptcy, commercial disputes, and labor law. Shifting registration out of the Courts would release important judicial resources vital for the emerging market economy, and contribute to

modernization of the court. Of course, the courts would adjudicate any appeals against registration, no matter where it was conducted.

35. This would also improve legal security. The best way to protect investors, creditors and the public is to speed up court action on claims when disputes are actually raised. Business registration reform that permits commercial courts to focus on their most important role – deciding commercial law cases – will strengthen law controls in Bulgaria. Enforcing market rules against corporate crime is an important test of confidence for investors and consumers.

Does this option unify the registration number for company law, tax, statistical, and social security purposes?

36. As far back as 1997, the European Commission recommended that its members establish single contact points for start-up formalities and a single identification number to be used by businesses when dealing with any part of the public administration. This good idea is on its way to becoming law. DG Enterprise of the Commission drafted a directive (Document No: COM (2002) 279 final) that would require no duplication of documents and would provide for paperless registration. This requirement is likely to be imposed with a compliance deadline not later than 2007 for the new European members.

37. Filing annual financial accounts is a European requirement, but in Bulgaria this simple task has become costly and duplicative for public and private sectors (Box 3). Good practice in the European countries that are most business-friendly, such as Ireland, places financial accounts in the business registry to further expand the one-stop shop. This is also the cheapest approach to making financial accounts public, since they can be accessed on the same database system. The financial accounts can also be used by the business registry to update its contact information. Of course, the financial accounts are needed by other parts of the administration, such as finance and statistics, and tasks such as entering the data into an electronic database should be done on a cost-sharing basis.

Box 2. Filing annual company accounts in Bulgaria

Annual reports must be filed annually and made accessible to the public, under European law. In most countries, annual accounts are filed in the business register itself to reduce costs and provide a one-stop location for company files. In Bulgaria, companies must file, not once, but twice, while three different authorities maintain the records:

- Companies with single-entry accounting file annual reports with the tax authorities, who keep them on paper and only in case of revision enter the data into a computer.
- Companies with double-entry accounting file annual reports with the NSI, which share them with the tax authorities. The NSI takes single accounting reports from the tax administration. NSI says that it enters all annual reports into its computer system, where they are processed for statistical purposes.
- Companies also have to file annual reports with the trade register, where they become part of the company paper files. The annual reports are available at the court upon request if the case number is known or the year in which the case/file was opened. If the case number is not known, the IS will sell this information.

Does registration also protect the name of a company?

38. In Bulgaria, company names are assigned by each district court, and protection of unique names is not assured. A national database is the only means of ensuring that names are protected.

What institutional changes are needed to implement this reform?

39. It is critical to the success of the new registration system that an appropriate implementing institution be designed with credibility, technical capacity, and the right incentives to maintain an efficient registry. There is no European directive on the institutional organization of registration, because European countries have chosen very different solutions. Some countries use decentralized systems such as municipalities (Germany), others use commercial courts or, more commonly, administrative units of courts (Germany, France), while others use administrative offices in the public administration (Ireland, Denmark) or in trade associations (Italy). As long as the functional elements of the registration system satisfy European requirements, Bulgaria has full legal flexibility to choose its institutions.

40. The options considered below include several kinds of institutions, including the courts, technical units in the courts, administrative agencies, trade associations, and even contracting out to for-profit companies.

What investment is required to implement the option?

41. This report is the first attempt to assess the potential costs of implementing each option. Costs of the reform are divided into two parts: the set-up and transition costs, which should be financed as a one-time investment, and ongoing operational costs of the new system.

42. The cost estimates presented below are preliminary, and should be verified through more extensive research. The one-time costs of transition from the current system to the new system can be substantial for items such as hardware, software, re-registration in a new registry, and orderly transfer of dossiers to a new system. But any reform that makes real gains and complies with EU laws will require investment for infrastructure and for training for managers, clerks and administrative personnel. Unfortunately, the present state of court accounting makes it impossible to determine just how much the Bulgarian system now costs or how much revenue it brings in, and hence the marginal costs of reform are very difficult to assess with certainty.

43. Once it is fully operational, the new system should be self-financing, and preliminary cost and revenue estimates suggest that it can be self-financing. Indeed, every business registry in Europe is self-financing.

How much time is needed to implement?

44. This criterion assesses the months needed for full implementation, beginning from the moment the Parliament adopts the new system and financing is available.

V. OPTIONS FOR REFORM

45. Reform proposals are now under discussion. Proposals range from streamlining court procedures and reducing delays, to greater use of IT strategies, to moving registration to new institutions outside of the commercial courts. As yet, no comparative analysis of various options has been presented to the Government of Bulgaria. This section attempts to fill that gap by defining and assessing five options. These options, identified through discussions with many interested parties in the Bulgarian public sector, the private sector, and European experts outside of Bulgaria, are:

- Option 1: Judges continue to register businesses, but use standardized forms across 29 courts
- Option 2: Judges in district courts continue to register businesses with standardized forms (as Option 1), but a central electronic register is established in the Ministry of Justice (or IS) to consolidate the data
- Option 3: The Commercial Courts create a separate registration unit staffed by trained clerks rather than judges (as in Poland) who work for a centralized court registry.
- Option 4: The business registry is placed in a Ministry. Options include (1) the Ministry of Economy, which has responsibility for promoting business start-ups and growth; or (2) the Ministry of Justice, where the business registry could be combined with the existing pledge registry. In either Ministry, the office should be a one-stop shop for tax, statistics, social security, and business registrations, and financial accounts.
- Option 5: Registration is contracted out to the private Bulgarian Chamber of Commerce and Industry, which already has a network and database of 60,000 companies.

46. Obviously, there are many possible variations on these options, and it is likely that the final decision will be a refinement or a merger of some of them.

47. For ease of comparison, in the following tables the benefits and costs for each criterion are gauged along four dimensions that are color coded as follows:

Very effective in addressing the problem

Moderately effective in addressing the problem

No change or not effective in addressing the problem

Reduces performance compared to current situation

Option 1: Judges continue to register businesses, but use standardized forms across 29 courts.	
1. Does the option reduce costs and delays for businesses?	Yes, to some extent, if the Ministry of Justice has the statutory authority to issue a regulation containing the complete set of such forms and attachments. The Courts should not be entitled to request any other information or documentation from an applicant. This reform will reduce the risk of paying bribes, and probably will speed up decisions. Courts are not business-oriented, so this process risks reverting to judicial controls and habits.
2. Does the option offer legal security against corporate fraud?	Unchanged from the current situation. If judicial review actually reduces the risk of fraud, this option leaves that safeguard in place. But due to continued misallocation of judicial resources, delays in court processes will continue to elevate risks for investors and creditors.
3. Does the option improve public access by creating a unified electronic registry?	No. The public will still have to find paper documents in each of the commercial courts, or use a private service.
4. Does the option comply with European Directives?	No. Bulgaria will continue to have 29 paper registries without electronic access. Fees will violate European requirements that they be cost-based.
5. Does the option improve court efficiency and free up judges for case work?	Not much. Courts will operate as usual in collecting, processing, reviewing, and approving each application. Standard forms might reduce the number of incomplete or otherwise faulty registry filings. But significant judicial resources will continue to be used as judges are required to review every filing.
6. Does this option unify the registration number for company law, tax, statistical, and social security purposes?	No. Businesses will register outside of the court system for other administrative purposes.
7. Does registration also protect the name of a company?	No, it will be possible to have identical names registered in different courts.
Implementation criteria	
8. What institutional changes are needed to implement this reform?	None.
9. What investment is required to implement the option?	Low cost. No legal changes needed. Bulgaria must design the full set of forms needed for all possible applications (Poland has 69 standard forms. The new Serbian procedure has 35). Software must be redesigned to accommodate the new forms. These tasks will require about 8-10 person-months. Clerks and judges must be trained in the new forms, about 1 week of training for each person.
10. How much time is needed to implement?	If a team of 2-3 people design the new forms and software is revised in parallel, this reform could be in place in 5-6 months.
Overall Assessment	Not recommended. This option could be implemented fairly quickly at low cost, but the benefits would be small, and many problems of the current Bulgarian registration would not be corrected. Further reforms would be required almost immediately, increasing the overall costs of fragmented reforms.

Option 2: Judges in district courts continue to register businesses with standardized forms (as Option 1), but a central electronic register is established in the Ministry of Justice to consolidate the data.	
1. Does the option reduce costs and delays for businesses?	The standardized forms will reduce costs, as described in Option 1 above, but this option could increase costs to businesses since they will have to pay for the new electronic registry without much cost-savings in Court procedures. Costs of transferring data to the electronic registry should not be different from the current system, since the IS already obtains the information. Courts are not business-oriented, so this process risks reverting to judicial controls and habits.
2. Does the option offer legal security against corporate fraud?	Probably not. The existence of two official registries – the paper registry in the courts and an electronic registry – will likely increase legal uncertainty and disputes. Also, commercial courts will be unable to refocus their resources on deciding cases. The net effect is probably a higher risk of fraud.
3. Does the option improve public access by creating a unified electronic registry?	To some extent, but the legal status of the electronic registry is uncertain due to the existence of registries in each district court. This uncertainty, and the potential for conflicting information will render the electronic registry useless for any legal purpose. Lack of familiarity with IT in the courts might result in problems.
4. Does the option comply with European Directives?	In part. The electronic registry will improve access to information, but it will not provide paperless registration in the courts. Also the IS is a profit-making body, and violates the cost-based requirement.
5. Does the option improve court efficiency and free up judges for case work?	No.
6. Does this option unify the registration number for company law, tax, statistical, and social security purposes?	No, this option might make it more difficult to create a one-stop shop, because transferring more administrative registrations to the courts is unlikely and undesirable.
7. Does registration also protect the name of a company?	Yes, it could if the electronic registry holds the legal list of company names for verification, and if this is readily accessible by courts during the registration process.
Implementation criteria	
8. What institutional changes are needed to implement this reform?	Ministry of Justice will create a new registration database. No institutional changes are needed in the courts. This reform uses experienced people in the courts and IS, so transition risks minimal disruption.
9. What investment is required to implement the option?	The Ministry of Justice will contract with the IS to set up a central server to hold the database, design software for the data, and ensure public access. The setup cost will run to about €800,000, and operating costs at about €300,000 annually for maintenance and a central staff of about 6 persons. Data currently collected by IS will go to the official central database instead.
10. How much time is needed to implement?	About 1 year.
Overall Assessment	Not recommended. This scheme is fundamentally flawed due to legal uncertainties created by multiple registries held by two different types of legal entities. Data transfer and reliability will be very hard to maintain over time, particularly if data is collected by 29 courts, and any difficulties will cause legal disputes. The value of the central database will be greatly reduced by the uncertainty.

Option 3: The Courts create a separate registration unit staffed by trained clerks rather than judges (as in Poland) who work for a centralized court registry.	
1. Does the option reduce costs and delays for businesses?	It could, as Poland has discovered, because trained clerks are cheaper than judges. The impact will be greater if this option is combined with option 1, standardized forms, and if a central registry is created as part of the new unit.
2. Does the option offer legal security against corporate fraud?	Yes, this option frees up judges for more important legal tasks. Trained clerks can detect problems with incomplete information and can verify identities at lower cost than court staff or notaries.
3. Does the option improve public access by creating a unified electronic registry?	Maybe. It could lead to a unified electronic registry if the courts create a central registry unit and database as part of the reform. If the clerks simply replace judges in the district courts, the registry could remain as 29 paper registries.
4. Does the option comply with European Directives?	No, it does not address any of the violations of European law without changes to setting tariffs, and to moving to electronic registration, not just different forms of review inside the courts.
5. Does the option improve court efficiency and free up judges for case work?	Yes. Similar to Italy, Spain, United Kingdom, etc., the clerks will not review the substance of a filing's contents, as currently done by judges, but only check the completeness of the forms and verify that the submitted documents correspond to the filing's contents
6. Does this option unify the registration number for company law, tax, statistical, and social security purposes?	No, this option might make it more difficult to create a one-stop shop, because transferring more administrative registrations to the courts is not desirable, while more data sharing connections between court and ministerial computer systems could reduce the independence of the courts.
7. Does registration also protect the name of a company?	Yes, it could if the electronic registry holds the legal list of company names for verification, and if this is readily accessible by courts during the registration process.
Implementation criteria	
8. What institutional changes are needed to implement this reform?	The Courts will create a new registration unit staffed by trained clerks. The new registration unit should be created as a vertical, unified office reporting to the central office, rather than as decentralized offices in each court, which will simply propagate the current problems.
9. What investment is required to implement the option?	The clerks must be hired and trained. Poland has 600 such clerks; Bulgaria would need, proportionately, 150, if it follows the Polish model. But this staffing seems very high (an administrative register would require no more than 70-90 persons). A new electronic system must be installed, and software written, to connect the clerks with a central registry in Sofia. Start-up investment is moderate – €1.5 - €2 million for hardware, software, and training -- but operating costs will be high – at least €3 million annually – due to the need for large numbers of trained clerks.
10. How much time is needed to implement?	This option could be implemented in 15-20 months, since it will be done inside an existing institution.
Overall Assessment	If Bulgaria decides to maintain registration in the courts, some variation on this option should be considered. Its continued court oversight will satisfy those who believe that legal reviews are needed in Bulgaria, while its use of clerks rather than judges will strengthen legal security for corporate governance. It is compatible with more extensive reforms such as the move to a centralized electronic registry.

<p>Option 4: The business registry is placed in a Ministry. Options include (1) the Ministry of Economy, which has responsibility for promoting business start-ups and growth; or (2) the Ministry of Justice, where the business registry could be placed in the new Enlistment Agency or combined with the existing pledge registry. In either Ministry, the office should be a one-stop shop for tax, statistics, social security, and business registrations, and financial accounts.</p>	
<p>1. Does the option reduce costs and delays for businesses?</p>	<p>This option has the lowest operating cost, particularly if the business registry can share costs with other registries. It goes the furthest reducing data duplication and setting up a one-stop shop. This option will release judicial resources for the primary task of the commercial courts – adjudicating commercial disputes. This option should use self-certification to further reduce costs and converge with European practices.</p>
<p>2. Does the option offer legal security against corporate fraud?</p>	<p>Probably yes. It will free up judge time to focus on cases, while reducing judicial review, which is of doubtful value in protecting against fraud. It will greatly increase market transparency of registration data. On net, it will increase legal security in Bulgaria. This option could include limited legal reviews. For example, judges could review only the most complex cases, such as company transformation.</p>
<p>3. Does the option improve public access by creating a unified electronic registry?</p>	<p>Yes.</p>
<p>4. Does the option comply with European Directives?</p>	<p>Will comply most easily with EU Directives because it provides the most flexibility in combining registries and in setting fees.</p>
<p>5. Does the option improve court efficiency and free up judges for case work?</p>	<p>Yes.</p>
<p>6. Does this option unify the registration number for company law, tax, statistical, and social security purposes?</p>	<p>Yes. Because it is based in another ministry, this option will ease coordination with Finance Ministry, NSI, and other administrative units of the government.</p>
<p>7. Does registration also protect the name of a company?</p>	<p>Yes.</p>
<p>Implementation criteria</p>	
<p>8. What institutional changes are needed to implement this reform?</p>	<p>A new Registry Office would be set up in the Ministry of Economy or the Ministry of Justice. This option could implement the current Government proposals to unify Bulstat, tax, and social security registration in the Enlistment Agency. The Registry Office would set up a national network of registry offices.</p>
<p>9. What investment is required to implement the option?</p>	<p>This is a more costly option for start-ups, since it would require construction of a new office and registry. New hardware and software would be needed. Estimated start-up costs are in the range of €2 million to €2.5 million. Operating costs, on the other hand, would be about €2.6 million per year, probably less than the current system.</p>
<p>10. How much time is needed to implement?</p>	<p>18 months to 2 years would be needed for full implementation.</p>

Overall Assessment	This approach is more costly in the start-up phase, but would place Bulgarian registration on a firmer basis to meet European practices for paperless registration, one-stop shops, and links with EU registries.
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Option 5: Registration is contracted out to the private Bulgarian Chamber of Commerce and Industry, which already has a network and database of 60,000 companies,	
1. Does the option reduce costs and delays for businesses?	Probably, but depends on procedures and incentives that are established. BCCI is experienced in running a register and already registers companies in 3 hours to 3 days with a national network. Financial incentives should be included in the contract for speedier registration and better service.
2. Does the option offer legal security against corporate fraud?	Maybe. This option will free up judges for more important tasks. But registration by private interests could raise suspicion of bias and introduce new problems. Also, the BCCI database does not yet offer the reliability needed for full legal security. Oversight by a public authority, such as a fast-track court procedure, would be needed to rapidly resolve appeals.
3. Does the option improve public access by creating a unified electronic registry?	Probably. The trade register of BCCI is accessible through the BCCI webpage, with free access in Bulgarian and English.
4. Does the option comply with European Directives?	Partially. The BCCI must offer electronic, paperless registration. However, a profit-making incentive violates EU directives, and the contract would have to be carefully constructed.
5. Does the option improve court efficiency and free up judges for case work?	Yes. Registration at BCCI is done by qualified jurists who are informed about Bulgarian and international law.
6. Does this option unify the registration number for company law, tax, statistical, and social security purposes?	If BCCI registers, a one-stop shop could be more difficult because of the difficulty of giving a private body the power to issue tax numbers and other sensitive public identifiers. It will also be more difficult to arrange data-sharing between confidential ministerial databases and the business registry. However, BCCI already enters into its register the Bulstat number, the tax number, and the VAT number. Companies file annual reports with the BCCI.
7. Does registration also protect the name of a company?	Yes, the central database could easily check company names.
Implementation criteria	
8. What institutional changes are needed to implement this reform?	The BCCI already has a country-wide network. Files will be transferred out of the courts to its custody. A contract with the Government is needed to define the performance and financial incentives for better services.
9. What investment is required to implement the option?	It is hard to estimate without a fuller assessment of the assets and capacities of BCCI. Software will need to be redesigned, offices set up, 70-90 staff hired and trained. Transition costs will be lower, but operating costs would probably be higher than Option 4 because the database is not combined with other registries. BCCI states that it already has the resources to keep and maintain the archives and to begin scanning.
10. How much time is needed to implement?	The transition could be faster and smoother if BCCI registers because it is familiar with registration. Perhaps 12 months.
Overall Assessment	Contracting out to a trade association such as BCCI has little precedent in Europe (Italy is not a precedent because the Italian Chambers of Commerce are public bodies). BCCI can bring its skills and existing databases to the reform, and reduce costs and transition time. The disadvantages of BCCI are a possible lack of credibility, lack of accountability for performance, lack of responsiveness to public sector needs, and possible abuses due to private interests.

VI. CONCLUSIONS

48. This brief look at 5 basic options for registration reform shows a pattern of strengths and weaknesses, as Table 1 shows. Marginal changes such as streamlining court procedures are unlikely to produce much in terms of reducing costs or converging with good European practices. Option 1 is a poor option for that reason. Costs of the various options are rough estimates, but it is clear that if the new system simply adds components (a new electronic database) without finding substantial efficiencies through better organization and coordination, costs to businesses will increase rather than decrease, and the quality of services will not improve much. Option 2 is a poor option for that reason.

Table 1: Summary of assessments

Very effective in addressing the problem

Moderately effective in addressing the problem

No change or not effective in addressing the problem

Could reduce performance compared to current situation

	Does the option reduce costs and delays for businesses?	Does the option offer legal security against corporate fraud?	Does the option improve public access by creating a unified electronic registry?	Does the option comply with European Directives?	Does the option improve court efficiency and free up judges for case work?	Does this option unify the registration number for company law, tax, statistical, and social security purposes?	Does registration also protect the name of a company?	What institutional changes are needed to implement this reform?	What investment is required to implement the option?	How much time is needed to implement?
Option 1:	Very effective	No change	No change	No change	No change	No change	No change	None	Low	6 m
Option 2:	Very effective	Could reduce performance	No change	Very effective	No change	Could reduce performance	Very effective	New database	Medium	12 m
Option 3:	Very effective	Could reduce performance	Very effective	No change	Very effective	Could reduce performance	Very effective	New court unit	High	15-20 m
Option 4:	Very effective	Very effective	Very effective	Very effective	Very effective	Very effective	Very effective	New registry office	High	18-20 m
Option 5:	No change	No change	No change	No change	No change	No change	Very effective	Expand private registry	Medium to High	12-24 m

49. Options 3, 4, and 5 seem more likely to make real progress. Option 3 offers fewer benefits, will cost more, and is more limited in flexibility in meeting evolving European needs, but is a feasible option that has precedent in the European Union and could improve the situation in Bulgaria. This option seems to preclude the one stop shop, however, and might be seen as a violation of European rules.

50. The two options that would provide the best results for businesses and flexibility in moving to one-stop services are Options 4 and 5. Option 4 is the preferred option from the point of view of flexibility, consistency with EU directives, and business friendliness, although the transition will be more difficult because a new institution is needed. The new Enlistment Agency might do a good job in registering companies. Option 4 is the easiest option from the point of view of the one-stop shop.

51. Option 4 is very similar to the approach already adopted by the Serbian government, which has been fully costed. If we use the costs of the proposed Serbian system as a benchmark (inflating labor costs to Bulgaria by using relative PPP GDP per

capita), Bulgaria could build a centralized, electronic registry with full internet access, a national network of registration offices, faster service, and a wider range of services for roughly the same yearly cost as the tariffs collected by the commercial courts under the current system (about € 2.6 million per year). In other words, Bulgaria could buy a much better model for the same economic price. An illustrative action plan for implementing Option 4 is presented below.

**Box 3: Illustrative action plan to implement for Option 4:
Registration Agency in Ministry of Justice**

1. Council of Ministers considers the options and adopts a Decision laying out the key principles to guide the reform, and directing the Ministry to develop an action plan, a legal strategy, a time-table, and a financing plan
2. An inter-ministerial steering group is created to coordinate reforms needed for a one-stop shop.
3. Donors are consulted to identify start-up financing options.
4. A detailed implementation and financing plan is prepared.
5. Consultation is carried out with business groups on the plan.
6. Work begins on definition of data elements, fees, and processes for new registration system.
7. Legal instruments are drafted setting up mandates and responsibilities for the new structure.
8. Law is submitted to the Parliament.
9. In parallel, procurement of hardware and software begins, contingent on adoption of law
10. Once hardware and software are in place, process of integrating databases begins. Data access agreements and information strategies are concluded.
11. New staff are hired and trained.
12. Transfer of files and dossiers from the Commercial Courts begins, and is concluded over a 16 week period.
13. Launch publicity and information program for entrepreneurs and investors.
14. Begin registration of new companies and other registrations in new system. The electronic business registry holds only basic identifying information. All company documents are held in paper dossiers at central registry for access by mail, fax, or in person.
15. Simple re-registration of all existing companies is required over 6 months, without charge, to create new, verified electronic database at lowest risk of error. Paper court registries are used to verify dates of original registration.
16. Minimal re-registration of all existing sole proprietors is required over one year period, without charge. Bulstat registry can be used as the basis for data on sole proprietors.
17. Multiyear process begins of scanning company documents for electronic reference.

Annex 1:

European directives and reforms relevant to business registration

One of the objectives of reform is to open the Bulgarian economy to closer integration with Europe by converging with evolving European registration practices, which now focus as much on easy access to registration data as on collecting registration data.

At the national level, EU countries have endorsed a wide range of measures to promote entrepreneurship and reduce administrative burdens. In 1997, the European Commission adopted the Commission Recommendation of 22 April 1997 on improving and simplifying the business environment for business start-ups.¹⁵ The Recommendation sets out specific measures relating to the start-up phase of a business and how Member States could improve their procedures. For example:

- Administrations should establish single contact points for start-up formalities;
- They should require enterprises to fill in only a single form which will be sent to the relevant parts of the administration;
- They should establish a single identification number to be used by businesses when dealing with any part of the public administration;
- Methods should be developed to speed up authorisation procedures, such as an automatic approval to start a business if the administration does not respond by a fixed date;
- Improvements should be introduced in the tax treatment of newly established enterprises and VAT procedures for SMEs should be simplified;
- Social security contributions should be reduced for new employees;
- There should be more co-ordination between social security and taxation offices to improve the way they interact with businesses, for example in reducing the burden of different forms and different reporting periods.

The European Charter for Small Enterprises, endorsed at the Feira European Council in June 2000, attempted to make progress toward the objective adopted at the Lisbon summit of making Europe the world's most competitive and dynamic economy by 2010. The Charter requires that the costs of starting up companies should become the most competitive in the world. Countries with the longest delays and most burdensome procedures for approving new companies are encouraged to catch up with the fastest. Online access for registration should be increased.

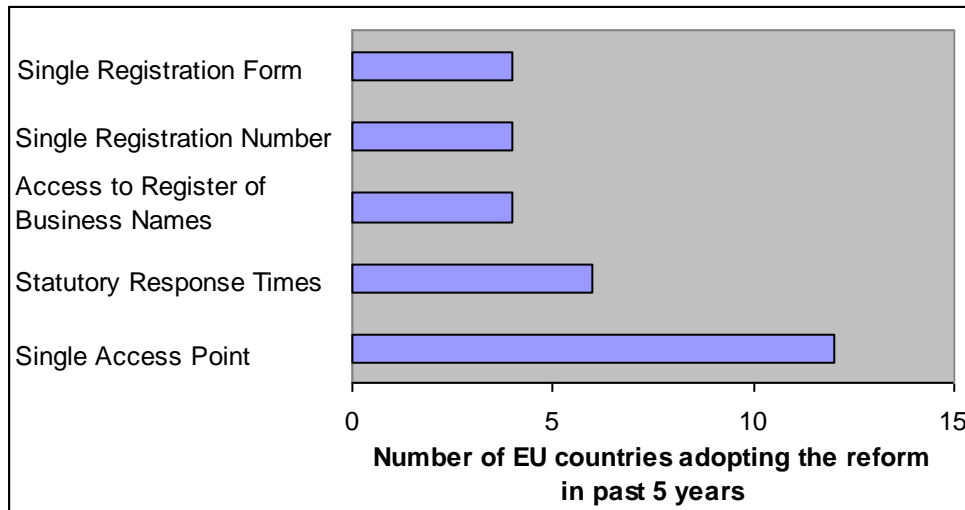
Historic approaches to business registration are specific to the national institutions in place, but European countries are in general moving to more efficient administrative, electronic, and accessible registries rather than legalistic and paper-driven forms of registration (see Figure 1A). Major reform has taken place in the last few years in the registration processes of many countries, including Finland, Greece, Italy, Netherlands, and Portugal. In all cases, these reforms have lowered the current and expected time

¹⁵ http://europa.eu.int/comm/enterprise/entrepreneurship/support_measures/start-ups/rec_start-ups/rec_start-ups_97en.pdf

needed to register new businesses.¹⁶ This trend is demonstrated in registration practices in Italy and Germany. A 2002 study for the European Commission found that “Considerable progress has been made in improving the process of administering business start-ups.” In particular, many Member States have:

- Improved the administrative efficiency of current procedures by introducing Single Access Points and statutory response times (“silence is consent” rules);
- Switched from a system based on authorization to a system based on self-certification; reduced the number of licenses or approvals; and reduced the number of procedures;
- Enhanced the involvement of users through the use of the Internet to provide information, improvements in the availability of information for entrepreneurs; the mapping of all procedures and licenses; the provision of information electronically; and consolidation of information into a single source;
- Reduced the scale and complexity of the documents required to establish new businesses by reducing the number of procedures, using single registration numbers, using “off-the-shelf” companies as default options, using notification and self-certification rather than authorization, removing and reducing mandatory qualifications for all entrepreneurs; simplifying requirements for announcing the formation of new entities; simplifying Business Names legislation;
- Reduced the level of mandatory costs reductions in the level of mandatory costs through removing and reducing taxes; cutting fees; providing financial support; and reducing the level of minimum capital, especially for private limited companies.¹⁷

Figure 1A: Simplification of business registration procedures in EU Members



Source: European Commission (January 2002) *Benchmarking the Administration of Business Start-ups, Final Report*, p. 47.

¹⁶ European Commission, Enterprise Directorate General (January 2002) *Benchmarking the Administration of Business Start-ups, Final Report*. Prepared by the Centre for Strategy and Evaluation Services (CSES), Brussels, p. 25.

¹⁷ European Commission, *Benchmarking the Administration of Business Start-ups, Final Report*. p. 9.

Of particular relevance to Bulgaria, where business registration has been used as a regulatory control rather than as an information base, this study found:

a link between the time and cost needed to register a business and the extent to which Member States use business registration as a mechanism for managing the perceived risks to investors, creditors, and customers from entrepreneurship. In some Member States, a complex network of ex ante controls has been established to enable the state to select entrepreneurs and to limit their freedom of action. There is, therefore, a direct conflict between the Lisbon Summit's political objective of creating an entrepreneurial Europe and existing public policy practices designed to control the process of entrepreneurship.

At the European level, the harmonization of Business Registers is foreseen by EU Council Regulation 2186/93 of 22 July 1993 on Community coordination in drawing business registers for statistical purposes.¹⁸ This regulation states that “business registers for statistical purposes are a necessary tool in keeping track of the structural changes in the economy brought about by such operations as joint ventures, partnerships, buy-outs, mergers and takeovers” and requires that Member States “set up for statistical purposes one or more harmonized registers.” The Regulation sets out minimum data elements for legal and local units.

Business registries play a major role in corporate disclosure in Europe. The 1st, 2nd, and 12th Company Law Directives on corporate governance provide respectively for disclosure and filing in registration offices of certain company data and capital maintenance requirements. The First Company Directive requires compulsory disclosure by limited liability companies of several documents and particulars (referencing the European Accounting Directives), and requires that these documents and particulars be filed and kept in a register, and subsequently published in a national gazette. A copy of these documents and particulars must be obtainable from the register.¹⁹ The First Directive does not prevent Member States from requiring or allowing the disclosure of other documents and particulars than those listed, and consequently there is a broad range of information requirements across the EU for business registration. Member States are also free to decide 1) by which persons the disclosure formalities are to be carried out, 2) which controls (on the form and/or content of the disclosures) should be performed, 3) which technical standards should be followed (e.g. use of specific software), and 4) which fees should be charged to companies for paper and/or electronic filing.

The rather laborious form of corporate disclosure (registration and publication) required in the Company Law Directives is now being streamlined by the EU, after a conference in 1997 found that the compulsory disclosure system in the First Directive could benefit from the introduction of modern technology to make company information more easily

¹⁸ Council Regulation (EEC) No 2186/93 of 22 July 1993 on Community co-ordination in drawing up business registers for statistical purposes

¹⁹ First Council Directive 68/151/EEC of 9 March 1968: Disclosure and the validity of obligations entered into by, and the nullity of, companies with limited liability. The Directive includes in para 4. “The means of disclosure are threefold: firstly, the opening of a file on every company in an official register; secondly, publication in a national official gazette; and thirdly, an indication, on all business documents, of the legal form and registered place of business of the company and the register in which the file on the company is kept, together with the number of the company in that register.”

and rapidly accessible.²⁰ On 6 March 2002, the Commission published proposals to modernize the First Directive to make company information more accessible to interested parties and to simplify the disclosure formalities for companies.²¹ These changes are relevant to Bulgaria in planning the evolution of its registration system,²² and are reflected in the recommendations below. Under the Commission's proposal:

- **Electronic filing:** Member States are required to make the filing of company documents and particulars by electronic means²³ possible from 1 January 2005. From that date, companies must be able to choose between filing by paper means and filing by electronic means. Where filing takes place by paper after 1 January 2005, Member States will have to ensure that documents and particulars filed are systematically converted by the register to electronic form in order to be kept in the file or entered in the register.
- **Electronic retrieval:** Applicants can choose between paper means and electronic means, with regard to the application submitted and the delivery of copies of documents and particulars. Member States may decide for practical reasons that documents and particulars filed up to 31 December 2004 will not be obtainable by electronic means if they have been filed by paper means more than 10 years before the date of the application.
- **Fees for copies:** Electronic and paper copies must be obtainable at a price not exceeding the administrative cost.
- **Certification:** Paper copies are normally certified as "true copies", but the proposal does not require electronic copies to be systematically certified because such a provision might lead to high costs whereas electronic copies are requested most of the time for information purposes only. Electronic copies supplied shall not be certified as "true copies". However, if the applicant explicitly requests such a certification, certification of electronic copies will be based on use of an advanced electronic signature, as defined in Article 2 (2) of Directive 1999/93/EC5, to guarantee the authenticity of their origin and the integrity of their contents.
- **Electronic publication:** The national gazette can be kept in electronic form, although the reference to a publication in the national gazette has not been

²⁰ Acts of the Conference on Company Law and the Single Market, 15 and 16 December 1997, Brussels, European Commission, published by the Office for Official Publications in April 1998. In the context of the fourth phase of the Simplification of the Legislation on the Internal Market process (SLIM) launched by the Commission in October 1998, a Company Law Working Group issued in September 1999 a Report on the simplification of the First and Second Company Law Directives. This report contained detailed recommendations on the areas in which a simplification could be achieved. The main recommendations relating to the First Directive consisted on the one hand of the need to accelerate the filing and disclosure of company documents and particulars by the use of modern technology, and on the other hand of the need to improve the cross-border access to company information by allowing voluntary registration of company documents and particulars in additional languages.

²¹ Commission of the European Communities (3.6.2002) Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies Brussels, COM (2002) 279 final

²² Another issue that the Bulgarian government (through the new registration body) should monitor is the current discussion between registers in Europe that aim to agree on a common system of number identification for companies and registers.

²³ "By electronic means" is defined to imply the use of a computer at both ends of the communication channel, and therefore does not include means like voice telephony, ordinary faxes and telexes. Member States are not prevented from allowing the use of such means, by companies when they file their documents and particulars and/or by interested parties when they seek to obtain a copy, in addition to electronic means.

removed from the Directive. Member States can replace publication in the national gazette with equally effective means, subject to the provision of a central and chronological access to company information, which is the main function performed by a national gazette. This can be done through access to an electronic database.

- Third languages: To improve cross-border access to company information and make sure that translations can be relied on by third parties, companies can disclose documents and particulars, in addition to the mandatory disclosure made in the languages permitted in their Member State, in any official language(s) of the Community on a voluntary basis. In cases of discrepancy, third parties acting in good faith are duly protected.
- Penalties: Member States shall provide for appropriate penalties in case of failure to disclose the accounting documents required.