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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

On Progress in Bulgaria under the Co-operation and Verification Mechanism

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1. INTRODUCTION

The Co-operation and Verification Mechanism¹ (CVM) was established on the accession of Bulgaria to the EU to help Bulgaria put in place an impartial, independent and effective judicial and administrative system. Changing the legal and judicial system to further align it with other Member States is a national task. It requires the government to prepare and propose the key framework laws, the Parliament to adopt them and the judiciary to change its procedures and practise to implement them as intended. Since 2007 the CVM has played a supportive role in helping Bulgaria put in place the structures of a modern judicial system. At times the CVM has been contested and criticised by one or other element of this necessary national consensus but today it is widely acknowledged that it has helped promote change in a positive direction. The Bulgarian Government has shown determination and commitment in driving the reform process. In five years the emphasis has shifted from the preparation and adoption of laws to their implementation. The elements of the legal framework needed for the reform are now largely in place, even if not complete. As will be seen from this report the next necessary steps in this process should focus on implementation by the judiciary and the police of the new laws.

This report is the fifth annual report since the CVM was set up.² In summer 2012, five years after the inception of the CVM, the Commission will make an overall assessment of Bulgaria's progress under the CVM since accession, and will make appropriate proposals in the light of this assessment. The present report includes a number of specific recommendations to help Bulgaria to prepare for this overall assessment.

¹ Commission Decision 2006/929/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform, the fight against corruption and the fight against organised crime (OJ L 354, 14.12.2006, p. 58).

² The report is based on regular input received from the Bulgarian authorities notably in response to detailed questionnaires from the Commission. The Commission has been assisted in its work by independent experts and has drawn on documentation and input provided by a variety of sources. The accompanying supporting document sets out the Commission's detailed assessment of progress in each of the benchmarks set by the decision on the CVM.

2. STATE OF THE REFORM PROCESS IN BULGARIA

Achievements and Challenges

Since the Commission's last report in July 2010, Bulgaria strengthened the Supreme Judicial Council and improved rules for the appointment, professional training, appraisals and promotions of judges. Bulgaria took steps to improve protection against conflict of interest. Reform of police investigations was started and a decision to establish a special court for organised crime cases was taken. A new law on asset forfeiture was presented to Parliament but was rejected by it on 8 July. Amendments to the Act on Public Procurement have been prepared. First results of amendments to the Penal Procedure Code became available in spring 2011 and the effects of monitoring of high level cases by the Supreme Judicial Council are visible. Several organised crime and corruption cases have reached verdicts in court. At the same time, an increased number of indictments in cases related to organised crime and fraud with EU funds have been achieved.

However, the Commission's assessment also points to important challenges. Since last summer, a number of acquittals in cases involving high-level corruption, fraud and organised crime have exposed serious deficiencies in judicial practice in Bulgaria. These deficiencies have not been properly analysed or followed up by the leadership of the judiciary, the Supreme Judicial Council, the General Prosecutor and the President of the Supreme Court of Cassation. Although the revised Judicial System Act adopted in December strengthens the judiciary's accountability, the law has not yet been implemented as intended. The quality and transparency of several important appointments within the judiciary since the beginning of this year have been questioned, leading to unprecedented public protests and a debate on possible constitutional amendments. In addition, allegations of corruption within the judiciary are still not pursued in a systematic way as recommended by the Commission.

Overall, the Commission finds that the Bulgarian Government has shown sustained political will and commitment to pursue its reform strategy. This commitment will have to be sustained in all areas where laws have been improved and new structures have been created. A stronger engagement by professional associations of magistrates and civil society is also supported by increased public demand for an irreversible reform process. But the leadership of the judiciary has yet to show a real commitment to thorough judicial reform as slow progress is not just the result of shortcomings in judicial practice and in the Penal Code.

Reform of the Judiciary

With amendments to the *Judicial System Act* in December, Bulgaria created the legal basis for important structural improvements within the judicial system. The amendments improve procedures for appointments, training and appraisal and strengthen integrity. These improvements must be considered an important step to deliver on two of the long-term objectives of Bulgaria's justice reform strategy: improving accountability and increasing professionalism within the judiciary. Considerable efforts will be required in the following period to implement these new legal provisions. More specialised training is needed. It should focus in particular on improving the investigative capacity needed to effectively tackle corruption and

organised crime, notably as regards complex economic and financial investigations. Overall, the Supreme Judicial Council will need to show a strong commitment to reform by translating the new law into practice in order to effectively strengthen the management of judicial bodies, notably in terms of allocation of workload, in close cooperation with the Ministry of Justice, professional association and civil society.

Judicial appointments still lack the necessary level of transparency and credibility. An important senior appointment by the Supreme Judicial Council in November 2010 raised concerns as regards the lack of transparency and competitive character. The entry into force of the newly amended provisions of the Judicial Systems Act in January 2011, has unfortunately not yet improved the situation as regards senior appointments, which have been still carried out under the old rules and lacked real assessment of the professional qualifications, managerial skills and personal integrity of candidates. Furthermore, a recent nomination was followed by allegations of conflict of interest and procedural irregularities in an ongoing trial handled by the successful candidate. As a protest, two members of the Supreme Judicial Council resigned and criticised the appointment decisions as pre-determined. The subsequent mobilisation of professional associations of magistrates and civil society calling for reform of the Supreme Judicial Council sends an important signal of support for judicial reform. Recommendations by civil society to hold public debates and announce the names of candidates at an earlier stage are laudable. The appointment of highly competent and motivated magistrates of unquestionable integrity via transparent procedures, in particular for the new specialised court for organised crime, is indispensable to successfully implement judicial reform.

The accountability of the judiciary remains an area of serious concern. Since the Commission's last annual assessment, several new disciplinary cases have been opened and two magistrates have been excluded from the judiciary. At the same time, allegations against magistrates are not always systematically investigated by the judicial inspectorate and some disciplinary sanctions appear lenient. Criminal investigations against magistrates are still not systematically launched by the prosecution upon allegations of corruption. The decision of the Supreme Judicial Council in June to involve a magistrate with a disciplinary record in the recruitment panel for the new specialised criminal court raises serious concerns. Overall, there is a lack of consistent disciplinary practice. These problems remain a major factor undermining public trust in the judiciary.

Improving *judicial practice* remains the main challenge for the Bulgarian judiciary. Amendments to the Penal Procedure Code in spring 2010 and a strict monitoring of high-level cases by the Supreme Judicial Council has shown positive results in some cases. In the last reporting period, 9 of the cases monitored by the Commission have been decided by court, including four with final decisions.

However, despite some individual actions, the judiciary did not engage in a serious effort to address the Commission's recommendations in this area. Shortcomings in judicial practice have not been systematically analysed and addressed, comprehensive training programmes and coaching schemes have not been launched. The generally passive attitude of the judiciary's leadership, the Supreme Judicial Council, the General Prosecutor and the President of the Supreme Cassation Court towards considerable shortcomings in judicial practice raise serious concerns. There is a need to improve judicial practice and reform the management, structures and

cooperation between the judiciary and other investigative bodies, including the police. The judiciary and the Government, in association with civil society, should cooperate to identify and overcome the existing shortcomings and bottlenecks, while fully respecting the independence of the judiciary.

Fight against Organised Crime

Since the last annual report of the Commission, Bulgaria has pursued *police reform*. A reorganisation of the competent police directorates led to an integration of operative and investigative police work and to a substantial increase in the number of police investigators. Bulgaria should continue its efforts for police reform and link it to a wider reform of pre-trial investigations. This will require establishing effective operational cooperation with the prosecution and other authorities, the application of the principle of joint teams in all serious crime cases and investment in equipment and specialised training.

In spite of persevering police actions to tackle organised crime, the overall *results* need to be significantly improved. Although the joint team on organised crime achieved several indictments related to important organised crime-groups and some convictions have been rendered, other important cases have been concluded with acquittals since the Commission's last annual report. In appeal, severe detention sentences have been pronounced but not yet enforced in one emblematic organised crime case. Weaknesses exist in the collection of evidence, the protection of witnesses as well as in investigative strategies, comprehensive financial investigations and the securing of assets. The General Prosecutor should systematically analyse the reasons for acquittals in high level cases, make recommendations for the handling of future cases when shortcomings in the procedure have been identified and appeal the acquittal decisions when it appears that the Courts did not properly assess the evidence provided.

Since the Commission's last annual report, Bulgaria decided to reform the judicial structures that deal with organised crime cases. A *specialised criminal court and prosecution office* will be established by January 2012. In the preparation for the setting up of the specialised structure, it will be important to secure its effectiveness and independence. In particular, the court's attribution of cases must be balanced with its staff capacity in order to allow for swift and effective investigations, prosecution and sentencing of organised crime cases. The court must receive experienced staff with undisputable integrity and professional record. The concept of joint teams should be preserved at the level of the prosecution.

Since the Commission's last annual report, the Bulgarian authorities pursued plans to strengthen *asset forfeiture* following recommendations by the Commission: A new legislative act was prepared in cooperation with the Council of Europe, but was rejected by Parliament. The proposal foresees the forfeiture of assets independent of a criminal conviction. It also foresees ex-officio asset verification of senior officials and politicians. Bulgaria needs to pursue urgently the adoption of this asset forfeiture legislation, despite recent setbacks in Parliament. Other weaknesses of asset forfeiture must still be addressed: Assets must be identified and secured at early stages of investigations before they can be hidden or moved. For this purpose, efficient cooperation must be established between the asset forfeiture commission,

financial institutions, administrative authorities and the prosecution including the joint teams.

Fight against Corruption

The *fight against high-level corruption* has not yet led to convincing results. There have been very few final and enforced verdicts in this area and there are no indications of active targeting of high-level corruption.

Since last summer, two suspended sentences were pronounced in cases of high-level fraud and corruption. Two cases against former ministers finished with an acquittal. Two other cases involving a former minister and a high public official have met difficulties and delays in court.³ Appeals in two cases involving fraud of EU funds and money laundering, reported last year, remain pending in court with little movement. A number of cases involving EU funds were terminated by the prosecution despite indications of fraud provided by OLAF and the judicial authorities of another Member State. Since the Commission's last annual report, Bulgaria registered acquittals in a number of important fraud and corruption cases. A Member of Parliament has been acquitted of conflict of interest charges and a former director of a Paying Agency for EU funds has been acquitted of abuse in office and concluding unfavourable contracts in three separate cases. The reasons for such acquittals should be carefully analysed by the General Prosecutor and corrective measures should be taken where appropriate. This should include recommendations for the handling of future cases when shortcomings in the procedure have been identified or appeal when it appears that the Courts did not properly assess the evidence provided by the prosecution.

The analysis of some of these cases by the Commission and independent experts demonstrated serious weaknesses in *judicial and investigative practice*. These weaknesses mainly concern the collection of evidence, the protection of witnesses and the general lack of investigative strategies, comprehensive financial investigations and securing of assets. Coordination within the prosecution and between the prosecution and the police should be improved. These weaknesses are compounded by an out-dated Penal Code. Court practice is permissive and excessively cautious, overly attentive to procedures at the expense of delivering justice. While the revision of the *Penal Code* is advancing, immediate corrective measures, such as the use of interpretative rulings by the Supreme Court of Cassation or legislative amendments should be considered, since the new Penal Code cannot be expected to enter into force before late 2013.

In November 2010, Bulgaria adopted a strengthened law on *conflict of interest*. Delays in the nomination of the members of the dedicated commission created by the law and in the set-up of its administration have led to an interruption in the follow-up of signals of conflict of interest since the first quarter of 2011. As a consequence, allegations of conflict of interest were not followed up in an important case involving a senior magistrate in June. The commission in charge of conflict of interest was established in June 2011 although premises and staff still need to be found and rules

³ One case involving a previous director of a state agency was returned to the Prosecution in June 2010 and retried after a new judge was appointed to the case, witness statements were withdrawn in another case involving a previous minister.

of procedure need to be developed. In this context, concerns must be raised regarding weaknesses in *asset declarations and verifications* of politicians, magistrates and senior civil servants. Currently, false declarations are not effectively sanctioned and discrepancies are not followed-up. Following the recent amendments to the law on the trade register, which aim to strengthen data protection, the new procedures should be implemented to preserve transparency of information on companies.

Bulgaria continues to implement an *integrated strategy* to prevent and sanction corruption and organised crime and took a number of measures in this framework. At the same time, the 2010 action plan focusing on tackling organised crime has not been fully implemented and has not been updated in 2011. This makes implementation and coordination more difficult. A comprehensive project to analyse and design anti-corruption measures in all areas of the administration launched in early 2010, has not yet delivered tangible results or a timetable for implementation. Bulgaria should consider establishing a set of concrete targets for the fight against corruption and organised crime for the different institutions involved in the implementation of the Integrated Strategy. Bulgaria should also involve external experts and civil society in the evaluation of the results of the Integrated Strategy.

Responding to the Council of Europe's Group of States against Corruption (GRECO) recommendations on transparency in political party funding, Bulgaria included 11 out of 16 recommendations in the new Electoral Code adopted in January 2011. The first test case of implementation of the Electoral Code will be in the forthcoming Presidential and local elections.

Since the Commission's last annual report, Bulgaria has prepared a number of changes to the *Public Procurement Law* which *inter alia* aims at simplifying and speeding-up public procurement procedures. Bulgaria also intends to amend the law on the Public Financial Inspections Agency in order to allow for ex-officio checks of public tenders and develop checks based on risk assessment. These legal improvements are welcome. However, the main challenge in the field of public procurement remains a substantial improvement in administrative capacity and in the quality of administrative action.

3. CONCLUSIONS

Since the Commission's last assessment in July 2010, the Bulgarian Government has shown determination and commitment in driving the reform process. It continued to reform the judicial system, strengthened legislation on conflict of interest and started a structural reform within the police and the criminal court system. Continuous commitment over the next period will be necessary to implement these reforms and to achieve factual improvements regarding appointments, appraisals and skills within the judiciary and to set up efficient structures to deal with organised crime cases. The adoption of the new law on asset forfeiture will be an important deliverable to improve the protection against organised crime and corruption.

There is an urgent need for considerable improvements in accountability and professional practice within the judiciary and the investigative authorities in order to achieve convincing results in the fight against corruption and organised crime. As a

matter of national priority, Bulgaria should urgently pursue its judicial reform strategy and take further steps towards a fundamental reform of the judicial system.

4. RECOMMENDATIONS

The Commission invites Bulgaria to take action in the following areas in the light of its assessment of progress achieved in Bulgaria since July 2010. These recommendations should help Bulgaria to focus its efforts in preparing for the Commission's overall assessment of progress in Bulgaria under the CVM in summer 2012.

1. Reform of the judicial system

- (a) Establish proposals for a reform of the Supreme Judicial Council, the Supreme Cassation Prosecution Office and the Prosecution in general regarding structures, legal attributions, composition, appointments and internal organisation;
- (b) Implement these proposals through administrative measures and legislative amendments.

2. Transparency and accountability of the judiciary

- (c) Demonstrate a track record in judicial appointments and appraisals, including appointments to the Supreme Judicial Council, which fully respect the principles of transparency, independence, integrity and professional merit;
- (d) Demonstrate a track record of disciplinary and criminal follow-up to corruption and malpractice within the judiciary;
- (e) Ensure complete electronic access to court verdicts and motivations and a strict application of the principle of random allocation of court cases.

3. Judicial practice in criminal cases

- (f) Analyse in cooperation with international experts the organisational structures and practice of investigative authorities, the prosecution (including the joint teams) and courts to enhance the effectiveness of the investigation and trial of high level cases; improve the cooperation among judicial authorities and with the relevant administrative bodies;
- (g) Adopt and implement a detailed action plan to correct shortcomings in structures, management, staffing, training, cooperation and professional practice in cooperation with international experts and civil society and create a joint monitoring group for its implementation;
- (h) Systematically request interpretative rulings by the Supreme Court of Cassation in areas of inconsistent jurisprudence and improve the track record of the court in this area.

4. Fight against organised crime

- (i) Allocate appropriate resources and staff and properly define the scope and internal organisation of the specialised court and prosecution office for organised crime in order to assure an effective judicial treatment of the most important cases;
- (j) Continue the reform of the police, by improving capacity, skills and equipment of police investigators and addressing shortcomings regarding the integrity and independence of police action, evidence gathering and witness protection;
- (k) Improve the overall coordination of activities to fight organised crime and corruption through the implementation of detailed action plans and monitoring mechanism in both areas in cooperation with civil society.

5. Asset forfeiture

- (l) Adopt legislation providing for non-conviction based confiscation and ex-officio verification of assets of senior officials, magistrates and politicians and demonstrate a track record in this area;
- (m) Establish efficient cooperation between the asset forfeiture commission, financial institutions, administrative authorities and the prosecution including the joint teams and develop a track record in securing assets upon the launch of investigations;

6. Fight against corruption

- (n) Establish and train networks of specialised prosecutors and investigators in economic and financial crime in cooperation with foreign experts, involve them systematically in all cases related to economic and financial crime, corruption, fraud and money laundering and ensure through common trainings and seminars that these prosecutors have the same understanding of the standard of proof regarding these cases as the judges;
- (o) Assure the application of comprehensive and pro-active investigative strategies by the prosecution, the linking of related cases and systematic financial investigation;
- (p) Amend the Penal Code in order to facilitate the legal follow-up to economic and financial crime and abuse of office;
- (q) Demonstrate a convincing track record of sanctions under the revised law on conflict of interest.

7. Preventing corruption

- (r) Demonstrate concrete results in the implementation of a comprehensive project ("Borkor") to analyse and design anti-corruption measures;

- (s) Revise the asset declaration and verification system turning it into an effective tool to detect illicit enrichment;
- (t) Implement all GRECO recommendations with regard to transparency of financing for political parties
- (u) Strengthen the administrative capacity of competent authorities in the area of public procurement to advise contracting authorities and verify public tenders ex-ante and ex-post following risk assessments;
- (v) Apply equal rules for conflicts of interest and incompatibility to public employees whether they are permanent officials or recruited under individual service contracts.