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

On Progress in Bulgaria under the Cooperation and Verification Mechanism

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I. The Cooperation and Verification Mechanism: Supporting Bulgaria in Justice Reform, the Fight against Corruption and the Fight against Organised Crime

In the run-up to the accession of Bulgaria to the EU in 2007, it was agreed that further work was needed in key areas to address shortcomings in judicial reform, the fight against corruption, and tackling organised crime. This led to the establishment of a framework to support Bulgaria and to monitor progress in these areas, the Cooperation and Verification Mechanism (CVM).¹ Six benchmarks were established, covering the independence and accountability of the judicial system, its transparency and efficiency; the pursuit of high-level corruption, as well as corruption throughout the public sector; and the fight against organised crime. The Decision set up regular reporting from the Commission, and provided that the mechanism will continue until the objectives of the CVM are met and all six benchmarks are satisfactorily fulfilled.²

Five years on, this report assesses whether the objectives of the CVM have been fulfilled. This assessment is the fruit of analysis as set out in the technical report accompanying this report, taking stock of what has been achieved so far and what remains to be accomplished. It looks at the work of the past five years, the legislation and the instruments which have been put in place and the results which have followed. Over this period, there have been times when progress has accelerated; others when there have been setbacks. Cooperation has been active at some stages, whereas at other times the CVM has been resented and resisted. Overall, the Commission is convinced that the CVM has made a major contribution to reform in Bulgaria. This report considers in particular the sustainability and irreversibility of the reform process, including whether ownership is sufficiently embedded to maintain the direction of reform.

Today's European Union is highly interdependent. The rule of law is one of the fundamental values of the EU and there is a strong common interest in it which mirrors the interest of Bulgarian public opinion in these issues.³ Eurobarometer polling has shown that 96% of Bulgarians consider corruption and organised crime to be an important issue for their country, and 92% have the same response over shortcomings in the judicial system. The same poll also

¹ Conclusions of the Council of Ministers, 17 October 2006 (13339/06); Commission Decision of 13/XII/2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime, 13 December 2006 (C (2006) 6570 final)

² It also provided for the possibility of a safeguard mechanism, which has not had to be invoked.

³ The Conclusions of the European Council of 28 and 29 June include a commitment by the EU within the Compact for Growth and Jobs to tackle delays in judicial systems as part of the modernisation of public administrations (European Council Conclusions 29 June 2012, page 8).

concluded that 76% of Bulgarians considered that the EU should have a role in tackling these issues.⁴

The CVM does not ask Bulgaria to achieve higher standards than exist in other Member States. Its target is to help Bulgaria achieve standards comparable to other Member States, an objective supported by 78% of Bulgarians.⁵ For the purpose of assessing what has been achieved by Bulgaria since accession, the situation in other Member States is an important factor. The Commission uses in this report points of reference and comparative indicators where they are available.⁶ To compare progress in Bulgaria with the situation in other Member States, the Commission also drew upon senior experts from key professions dealing with these issues.⁷

Since 2007, the EU budget has made some €41m available to support judicial reform in Bulgaria through the Structural Funds. By mid-2012, 25 projects for a budget of €13.6m have been agreed in the areas of training, human resource development, capacity building and technical assistance. At the same time, several Member States have supported Bulgaria with bilateral projects in all areas of judicial reform including police reform, the fight against corruption and the fight against organised crime.⁸

II. Analysis of progress under the CVM 2007-2012

The Commission's overall assessment of progress under the CVM since Bulgaria's accession shows important progress in the basic legislative framework. At key moments, the Bulgarian government has shown strong political will to achieve deep and lasting reform. The challenge now is to fill some key strategic gaps, and to ensure effective implementation. The resolve in Bulgarian society to deliver the reforms overseen by the CVM has been variable: a more consistent implementation is needed to join together disparate actions. This more consistent direction of reforms would be the best indicator of the sustainability and irreversibility of the process.

Since 2007, Bulgaria has put in place a series of important legal and Constitutional reforms. Though incomplete, these have set up important and sometimes innovative structures, in particular to encourage specialisation in tackling the problems faced. Key institutions like the Supreme Judicial Council (SJC) and its inspectorate have taken up their functions. There has been an important investment in the structures to fight organised crime leading to the creation of specialised bodies at the level of the judiciary and police, as well as major steps to improve the legal framework for asset forfeiture and successful cooperation with other Member States.

However, the potential of this framework has not yet been used to the full. The Supreme Judicial Council has been given wide-ranging powers to manage and lead the judiciary. These powers have not been used to govern the judicial profession effectively, on the basis of merit and integrity, or to drive the consistency and independence of justice on which public confidence depends.

⁴ Flash Eurobarometer poll conducted by the Commission in Bulgaria in May 2012 (Flash Eurobarometer 351 "The Cooperation and Verification Mechanism for Bulgaria and Romania" at: http://ec.europa.eu/public_opinion/index_en.htm).

⁵ Flash Eurobarometer 351

⁶ Points of reference include the work of the Council of Europe, the OECD and UN agencies.

⁷ Experts used in 2012 included senior practitioners from France, Germany, Ireland, Poland, Spain, Slovenia and the United Kingdom.

⁸ Technical report, page 36.

There remains a lack of direction in policy which has held back progress. Many institutions have taken useful steps. But the limited scale of these measures inside such institutions, and the lack of a coordinated approach, suggests that questions remain about the direction of reform. Over the five years of the CVM, different governments and Parliaments have given different emphasis to these issues, and variable levels of commitment to results. An action plan for the reform of the judiciary was adopted in 2010. Fundamental principles such as the independence of the judiciary have not always been respected to the full. The lack of a consistent trend means that the reform process has not built the momentum needed to become an accepted part of Bulgaria's development.

This conclusion is reinforced by the fact that many important steps seem to have been taken primarily as the result of external pressure. The CVM itself has been central to this process – and is recognised as such by Bulgarian public opinion.⁹ It has helped to maintain the direction of reform at moments of pressure and to encourage changes which require the courage to challenge vested interests. The fact that external pressure is still necessary raises questions about the sustainability and irreversibility of change.

Ownership and implementation are therefore the key elements in the fulfilment of the CVM benchmarks. They determine the sustainability and irreversibility of reform. The appointment and work of the new Supreme Judicial Council and of the new General Prosecutor will be one of the indicators of the sustainability of reforms.

II.1 Judicial Reform 2007-2012

Benchmark 1: Adopt Constitutional amendments removing any ambiguity regarding the independence and accountability of the judicial system

Benchmark 2: Ensure a more transparent and efficient judicial process by adopting and implementing a new judicial system act and the new civil procedure code. Report on the impact of these new laws and of the penal and administrative procedure codes, notably on the pre-trial phase

Benchmark 3: Continue the reform of the judiciary in order to enhance professionalism, accountability and efficiency. Evaluate the impact of this reform and publish the results annually

Upon accession, Bulgaria committed to increase the independence, accountability and integrity of the judiciary and to ensure a more efficient, consistent and transparent judicial process. Such comprehensive reform objectives required legislative changes, a reform of judicial structures and staffing, and improvements to judicial procedures and judicial practice. They also required some changes in attitude amongst magistrates, and other actors in the judicial system. This combination implied an engagement by all powers of the state: by Parliament, the executive and the judiciary, with the support of civil society.

⁹ These conclusions are supported by public perception. 71% of respondents of a Flash Eurobarometer poll conducted in Bulgaria believe that EU action through the CVM has had a positive impact in addressing shortcomings in the judicial system. 67% share this view regarding corruption, and 65% concerning organised crime. At the same time, a majority believes that the situation in these areas has stayed the same or has deteriorated in the last five years. (Flash Eurobarometer 351).

Since 2007, Bulgaria has put in place a number of important building blocks to deliver on its commitments with the EU. The immediate aftermath of accession saw an important series of steps, with Constitutional amendments, a new Judicial Systems Act (JSA), a new Civil Procedure Code, new Administrative procedure code and amendments to the Penal Procedure Code. The first year of accession also saw the creation of new judicial institutions. An independent Judicial Inspectorate was created and a new Supreme Judicial Council (SJC) took office, with wide-ranging responsibilities for the management of the judicial system.¹⁰ These responsibilities included human resource management of the judiciary, including appointments, promotions, appraisals and staff allocation. The Council was also given disciplinary responsibility and therefore the task to safeguard the accountability and integrity of the judiciary and to ensure that judicial practice meets high professional standards.¹¹ With these attributions, the Council became the main actor in implementing judicial reform.

Bulgaria has achieved results in implementing this new legal and institutional framework. For the first time, independent controls of courts and prosecutors offices have been carried out, recommendations regarding court management and judicial practice have been issued and a more robust approach has been taken to disciplinary activity. In addition, Bulgaria has improved procedural codes in all three branches of law and started to improve judicial practice.

However, these efforts have not yet led to significant improvements in judicial accountability and efficiency. Legal proceedings are often of an excessive duration.¹² Disciplinary practice shows inconsistencies, and in many important cases has either not been able to conclude, or has not reached dissuasive results. Judicial appraisals, promotions and appointments are not yet transparent and do not follow objective and merit-based criteria. There is as yet no comprehensive human resources policy which can balance staff needs and workload. Measures to improve judicial practice often appear superficial and have not yet had a concrete effect on results in important cases. Questions remain about judicial independence.

Some of these weaknesses can be traced to failings in application of the law, but they also reflect important structural, procedural and organisational weaknesses within the Supreme Judicial Council and the prosecution. The upcoming elections to the Council this autumn, and the election of a new General Prosecutor and of a new President of the Supreme Court of Cassation, are crucial for Bulgaria to demonstrate its resolve to maintain the path of judicial reform.

The potential exists to use the structures put in place for the judicial system to drive reform, to address a lack of public confidence in the judiciary and to establish a system based on effective and accountable governance. This could deliver a system with the right balance between efficiency, accountability, integrity and independence. However, it requires a higher

¹⁰ The Supreme Judicial Council is structured according to the Constitution (Technical Report page 4, footnote 6).

¹¹ The SJC is assisted in these areas by the Judicial Inspection, by court presidents and by the Bulgarian judicial training institution, the National Institute for Justice.

¹² Statistics of the ECHR show that Bulgaria counts the highest number of ECHR judgements among any EU Member State which are pending execution. For a large majority, these judgements concern the excessive length of criminal proceedings and the absence of an effective remedy. Other elements include ineffective investigations and an excessive use of firearms by police. (Council of Europe: Supervision of the Execution of Judgements and Decisions of the ECHR, Annual Report 2011 at: http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2011_en.pdf)

level of commitment by the Supreme Judicial Council and the prosecution, strong enough to challenge well-rooted vested interests.

The engagement of civil society and professional associations of magistrates for judicial reform is an important achievement since 2007. The Bulgarian authorities should make better use of these resources, engage in more intense cooperation with foreign partners and bring all key players together in a common commitment to reform.

Independence, accountability and integrity of the judiciary

Constitutional amendments of February 2007 set the framework for judicial independence in Bulgaria. The Constitution gives the judicial system considerable managerial autonomy. However, it also gives a strong role to political institutions - half the elected members of the Supreme Judicial Council (SJC), and all judicial inspectors, are elected by Parliament¹³ – a source of criticism by the Venice Commission of the Council of Europe.¹⁴ Lay judges can have a decisive influence on decisions in court, but are nominated by local political forces.¹⁵ CVM reports have also pointed to the issue of merit-based appointments and appraisals.¹⁶

These concerns have been confirmed, as a number of key judicial appointments by Parliament and by the SJC have lacked transparency and objectivity and have been marred by allegations of political influence.¹⁷ Independence has also come in question following a series of direct political criticisms of individual judges - the dismissal from the judiciary of the President of the Union of Judges by the SJC raises concerns in this context.¹⁸ The Council has not taken clear action to protect judicial independence in these cases. The overall impression is of a failure to respect the separation of the powers of the state which has direct consequences for public confidence in the judiciary.

The same Constitutional amendments of 2007 and the adoption of a revised Judicial Systems Act in the same year also created the basis for a proper policy of integrity and accountability for the judicial system. The immunity of magistrates was restricted to the execution of professional duties and an independent judicial inspectorate was created. In 2009, Bulgaria adopted an ethical code for the magistracy and created a central integrity committee within the SJC¹⁹. Legal amendments in 2010 made integrity assessments a compulsory step in career

¹³ The members of the Parliamentary quota of the SJC are elected by simple majority whereas inspectors are elected by a majority of two-thirds.

¹⁴ See Technical Report page 5 and footnote 7.

¹⁵ See Technical Report page 18

¹⁶ Most recently, COM(2011)459 final, page 8.

¹⁷ The Commission's reports under the CVM of 20 July 2011 (COM(2011)459 final, page 4) and 8 February 2012 (COM(2012)57 final, page 2) raised concerns on the transparency and objectivity of senior judicial nominations in this context (see Technical Report pages 6 and 14)

¹⁸ Following to accusations of influence and bias in organised crime cases by a member of government, judges of Sofia City Court appealed to the SJC in February to protect judicial independence and establish the facts in this case. The accused judge also filed a court case for slander. The judge has subsequently been dismissed from the judiciary by the SJC on 12 July for delaying the motives in a court case. This led to walk-outs and protests by several courts including by a large number of judges from the Supreme Court of Cassation.

¹⁹ However, independent experts consulted by the Commission expressed concern at the lack of separation of roles inside the Council (Technical Report page 13, footnote 49),

development and promotion within the judiciary and set up local structures for integrity and appraisal. The result was the first real disciplinary activity within the Bulgarian judiciary.²⁰

Most of these disciplinary cases have been initiated by controls made by the inspectorate, which started its operational activities in 2008. The inspectorate has also actively represented its views on disciplinary issues within the SJC and was given the right to appeal disciplinary decisions in 2009. It makes detailed recommendations to court presidents. The control activity of the inspectorate represents a positive contribution to improving judicial discipline and accountability as such activities had not existed before.²¹ At the same time, the work of the inspectorate has not been directed at promoting solutions to the systematic shortcomings in accountability and judicial practice. Examples include the absence of inspectorate recommendations in areas like the random allocation system, or the correction of important and systematic shortcomings in judicial practice.²²

Disciplinary activity since 2007 shows a certain leniency and a reticence to address serious cases, in particular in relation to integrity. Two emblematic cases of alleged trade in influence amongst the judiciary were only pursued after major public pressure.²³ Successful challenges to disciplinary rulings in the Supreme Administrative Court point to weaknesses in the jurisprudence of the Court, in the disciplinary procedures of the SJC or in law: such shortcomings should be analysed and corrected. So too should the lack of criminal follow-up, as the prosecution did not systematically investigate magistrates involved in these cases. This links to the overall poor results of the judiciary in pursuing cases of corruption within its own ranks.²⁴

Overall, disciplinary jurisprudence itself has not been consistent. Bulgaria has also been unable to properly introduce integrity into the system of judicial promotions and appraisals, despite amendments to the Judicial Systems Act of 2010. Integrity verifications have been formalistic and with little preventive effect, sometimes relying on NGOs to put relevant information in the public domain. Various senior appointments during this period lacked sufficient transparency and continue to be marred by accusations of political influence and shortcomings in integrity.²⁵ The inability of the judicial leadership to define and implement a

²⁰ There has been little disciplinary activity prior to 2007 and to the creation of an independent inspectorate. Overall, the SJC determined 179 disciplinary cases between October 2007 and December 2011. The number of sanctions increased from 15 in 2008 and 24 in 2009 to 34 in 2010 and decreased again to 13 in 2011.

²¹ The inspectorate carries out regular and ad-hoc controls of the management of local courts and prosecutors offices, it followed up on complaints and also investigated particular issues such as case delays. By 2011, the inspectorate had carried out a full assessment of all judicial districts.

²² See Technical Report, page 7.

²³ All disciplinary sanctions have been cancelled in one of these two cases by the Supreme Administrative Court. See Technical Report page 14-15.

²⁴ This was highlighted in several CVM reports, including COM(2011)459final, page 4 and COM(2012)57final, page 2-3.

²⁵ Integrity issues were raised at the occasion of appointments of chairs to several senior courts, to the Inspectorate of the SJC and regarding some members of the SJC. (Technical Report, page 6 and 14 and COM(2011)459final, page 4.

proper anti-corruption strategy²⁶ alienated parts of the judiciary and can be seen to contribute to the low-level of public trust in this area.²⁷

Efficiency of the judicial process

The Supreme Judicial Council is responsible for the human resources policy of the judiciary. This includes initial recruitment, the provision of training through the National Institute of Justice, regular appraisals, promotions and appointments to senior judicial positions. Legal amendments in 2010 gave the SJC the role of assessing workload, amending areas of jurisdiction, reallocating resources and if necessary closing down courts. Consequently, the Council has all relevant powers to properly manage human resources and judicial structures for the benefit of judicial efficiency.

Looking back at the period since 2007, a number of difficulties can be highlighted in the way the SJC has discharged its responsibilities in this area. First, the Council has been unable to properly translate the objectives of the revised Judicial Systems Act into practice regarding promotions. The system as it is practiced does not ensure a career development of magistrates according to professional merit, as well as a proper consideration for issues of integrity. Although new appraisal criteria were defined in the law, these have not been used to properly reflect differences in performance.²⁸ The weaknesses of the appraisal system also affect promotion procedures, and have led to frequent challenges of promotion decisions in court.²⁹

Promotions and initial recruitments did not follow a coherent and predictable schedule,³⁰ based on an assessment of staff needs and on a strategy to satisfy them. Between 2009 and 2011, no promotion decisions were taken. The consequent high number of vacancies in some courts was filled through secondments – a procedure outside the promotion system, reliant solely on agreement between court presidents.³¹

There are important differences in workload between courts in Sofia and other courts in the country.³² These workload disparities have led to serious delays in a number of courts, particularly in issuing motivations of judicial decisions. These delays in publishing motivations are a real hindrance for the efficiency of the judicial process. They also affect judicial independence: as high workload in many courts often leads to delays in issuing

²⁶ For example, tackling shortcomings in the random allocation system of courts, where verification by the inspectorate has so far not led to concrete corrective action (see Technical Report page 7 and page 19).

²⁷ Bulgarians have the most negative perception regarding the prevalence of corruption in the judicial sector of any Member State. In September 2011, 76% of all respondents in Bulgaria believed that corruption is widespread within the judicial sector. This perception has however slightly improved since 2009. (Special Eurobarometer no. 374 on corruption perception in the EU published in February 2012)

²⁸ See Technical Report page 13. For example, the SJC has acknowledged that appraisals carried out in 2011 marked 98% of all magistrates as "very good".

²⁹ A promotion decision of the SJC was nullified by the Supreme Administrative Court in May as the consideration of academic results of the candidate by the SJC in this context was considered inappropriate.

³⁰ See Technical Report page 13, footnote 46.

³¹ De facto, secondments equal promotions and mostly concern courts and prosecutors offices in Sofia. In 2011, the total number of seconded judges and prosecutors amounted to 265 compared to 294 positions offered for promotion and transfer in the same year.

³² According to estimates by practitioners, workload at Sofia City Court is eight times higher than at other courts of first instance, the situation at Sofia Regional Court is considered worse. Reallocations of positions remained modest with 20 to 30 transfers on average by year (Technical report, page 14). No decisions to close entire courts and reallocate staff have yet been taken.

motivations, a large number of judges are in technical infraction. Professional associations have raised concerns that this opens the door to subjective treatment, arguing that some of their members have been sanctioned, while late motivations in other cases have been tolerated by the judicial inspection.³³

Other important conditions for a more efficient and consistent judicial process are efficient procedures and professional practice among police, prosecution and courts. Since 2007, Bulgaria has improved all three procedural codes, covering criminal, civil and administrative law.³⁴ As a result, this allowed the police to improve investigative practice and has facilitated the use of evidence in court. It also allowed courts to appoint reserve defence counsels to reduce the risk of delays and allowed the prosecution to appeal court decisions to send back cases for further investigation. Bulgaria also started to work on a new Penal Code in 2010 as the current Code is outdated and ill-suited to tackling many modern crimes, including corruption, abuse of office and organised crime.³⁵ Work on the Penal Code has proceeded at an uneven pace and the initial target to submit a first draft for public discussion in early 2013 has been postponed.

Weaknesses in judicial and investigative practice, in particular in relation to cases involving high-level corruption and serious organised crime, have been highlighted by the Commission since 2008.³⁶ Bulgaria initially responded to these concerns by introducing the monitoring of a number of cases of public interest by the Supreme Judicial Council, through training activities and with controls by the inspectorate to establish whether procedural rules had been respected by judges. The reform of penal procedures in 2010 was also accompanied by a structural re-organisation of police investigation, the extension of investigative tasks to a much larger group of police officers, and the provision of training and equipment for this purpose.

These measures contributed to the acceleration in court of some cases but had little effect on the most important cases of high-level corruption and organised crime monitored by the Commission. As a result of a detailed analysis of some key cases, the July 2011 CVM report recommended a comprehensive analysis of organisational structures and judicial procedures and the implementation of an action plan in cooperation with international experts and monitored together with civil society.³⁷ This was in particular directed at the need to see the different institutions as part of a continuum, rather than separate bodies pursuing their own strategies. In response, Bulgaria took a number of structural and organisational decisions involving the prosecution and its cooperation with other key bodies. These measures have not yet led to perceptible improvements in the results of police and the judiciary regarding cases of high-level corruption and organised crime (see below). In addition, law enforcement authorities and the judiciary have not yet engaged in a comprehensive and independent assessment of the weaknesses of the existing structures and procedures. Consequently, the potential impact of measures taken by Bulgaria in this context since last summer is yet to be seen.

³³ A case cited in this context is summarised in footnote 18.

³⁴ A new Civil Procedure Code was adopted in July 2007, the Administrative Procedure Code was amended in 2007 and 2011 and the Penal Procedure Code was amended in 2010. See Technical Report pages 10-12.

³⁵ See Technical Report, page 9.

³⁶ See Technical Report, page 16.

³⁷ COM(2012)459final, page 8, recommendation f and g.

In this context, it is important to stress the importance of judicial consistency. A recent consultation within the judiciary exposed stark disagreement among judges on the conditions for the application of preliminary detention of defendants in serious criminal cases. Disagreement in such important areas raises substantial concerns, and points to shortcomings in the pursuit of consistency by the judicial authorities, with the Supreme Court of Cassation (SCC) the most important player in this area. A proactive strategy by the SCC to identify and address inconsistent interpretation of the law in all relevant areas could bring major benefits, in particular in support of Bulgaria's fight against organised crime and corruption.³⁸ In addition, Bulgaria has not yet achieved a full publication of court rulings and motivations in a unified format.

Reform of the Judicial System

The shortcomings in accountability of the judiciary and in efficiency of the judicial process must be linked to the key institutions that drive progress in this area, in particular the Supreme Judicial Council and the prosecution. For these reasons, the Commission has recommended a comprehensive reform of these institutions, assessing and improving organisational structures and professional practice regarding serious criminal cases.³⁹ Although some limited action has been taken at the level of the prosecution,⁴⁰ these recommendations are essentially still pending.

The reform of the SJC has been in particular focus as the mandate of the current Council draws to a close. This focus on the Council was intensified when two members resigned in 2011 in disappointment over the Council's incapacity to deliver tangible improvements in judicial accountability and integrity, and shortcomings in transparency within its internal organisation. In the election to replace these posts, a number of courts refused to be involved, considering that the current Council had lost the legitimacy to represent the judiciary.

This debate led to reflections by the Ministry of Justice on reforming the elections to the Council, and a variety of contributions from within the judiciary and civil society to promote fundamental reform of the way the Council is organised and elected.⁴¹ Some of the concerns raised in this context were confirmed by experts consulted by the Commission.⁴²

³⁸ The SCC issued only five interpretative rulings concerning organised crime and corruption offences between 2007 and 2011.

³⁹ These recommendations were made by the Commission under points 1 and 3 on page 8 of the CVM report adopted on 20 July 2011 (COM(2011)459).

⁴⁰ For example, the prosecution created two new departments for combating financial crime and a department for juvenile justice. Bulgaria still has to take measures to strengthen the internal independence of prosecutors in order to ensure independent, objective and effective investigations. In particular, Bulgaria needs to address the absence in Bulgarian law of sufficient guarantees for an independent investigation into offences of which the Chief Public Prosecutor or other high-ranking officials close to him may be suspected (ECHR 1108/02 Kolevi, judgment of 05/11/2009, final on 05/02/2010).

⁴¹ Proposals for a comprehensive reform of the SJC were made to the Minister of Justice in February 2012 by a coalition of the most important professional organisations and NGOs active in the area of judicial reform. See Technical report page 16.

⁴² Experts notably highlighted the lack of formal separation within the Council between chapters of prosecutors and judges. This issue has previously been underlined by opinions of the Council of Europe's Venice Commission, as has the strong political role in the appointments.

The elections to the new Council this autumn are an important opportunity to strengthen its accountability and legitimacy among the judiciary and the public. They should be a starting point for a more fundamental reform towards a Council better able to fulfil its Constitutional role. For these reasons, the Commission recommended to the Bulgarian authorities that the introduction of direct elections in the judicial chapter would be an important step to address the shortcomings of the system today. Although the Bulgarian government endorsed direct elections to the SJC in principle, it considered that this was impossible to organise properly this autumn. Amendments to the Judicial Systems Act adopted in June include an important step forward in the transparency of the upcoming election procedure, for both the parliamentary and the judicial chapters. However, the judicial chapter will still be elected through the indirect election model, so the SJC will have to wait another five years before benefitting from recourse to direct elections.⁴³ First reports suggest that though the transparency requirements are proving a step forward in the process, postponing the use of direct elections for this year has led to inconsistent procedures and a dominant role for Court Presidents in the choice of delegates.

The upcoming elections still provide an opportunity to choose SJC members committed to a more active role for the Council in its next mandate. Both Parliament and the judiciary can focus their deliberations on criteria such as professional and educational qualification, integrity and a vision for the future. Transparency should mean an opportunity for the candidates to be scrutinised by civil society and Parliament and the judiciary should be ready to be accountable for their choices.

To contribute to the success of the Council's next mandate, it will be important to improve the Council's structure, procedures and organisation. The new leadership of the Council can take a fresh look at the role of the Council on the basis of a comprehensive analysis of the Council's current mandate. The ideas put forward by professional associations and civil society at the beginning of this year can offer inspiration for the new Council. An early test will be the upcoming elections of Prosecutor General and Chair of the Supreme Court of Cassation. The new Council could choose to make the elections for these most important judicial positions in the country emblematic of a new approach, with open and transparent proceedings, clear criteria and a real competition.

II.2 Fight against Organised Crime 2007-2012

Benchmark 6: Implement a strategy to fight organised crime, focussing on serious crime, money laundering as well as on the systematic confiscation of assets of criminals. Report on new and ongoing investigations, indictments and convictions in these areas

Upon accession, Bulgaria committed to demonstrate convincing results in the fight against organised crime. This involves demonstrating the capacity of law enforcement authorities and the judiciary to successfully investigate, prosecute and try important organised crime cases so as to achieve effective dissuasiveness. Key issues include systematic asset seizures and confiscation, the improvement of professional practice among police, prosecution and courts

⁴³ Candidacies will be published two months before the election date and public hearings of all candidates will be organised to allow for public scrutiny. An indirect election with a doubled number of delegates will be organised this autumn. Direct election is foreseen for the next Council elections in 2017.

and the establishment of effective structures and efficient cooperation between police, prosecution and other administrative authorities.

Activity against organised crime intensified in 2010 when police took a more active role, and a number of long-overdue procedural and institutional reforms were carried out. These efforts have led to a more solid institutional set-up, better procedures and won Bulgaria trust with law enforcement authorities in other EU Member States.⁴⁴ The resources devoted to police investigations have seen significant increases.⁴⁵ However, convincing results are still missing at both the pre-trial and trial phases to tackle effectively this form of criminality. There are still many unsolved and delayed cases in this area. Organised crime is still described by independent observers as a fundamental challenge for the state and the society,⁴⁶ a view shared by public opinion.⁴⁷

The institutional framework for the fight against organised crime has been adjusted several times since 2007.⁴⁸ There has been an overall trend towards more specialisation, more training and more careful security vetting.⁴⁹ Specialised joint teams for organised crime cases within the prosecution were created at the level of five district courts in 2010, and in 2012 a new specialised central prosecution office for organised crime and a new specialised court started its work.⁵⁰ This approach is in line with recommendations in successive CVM reports.⁵¹

These new specialised structures at the level of police, prosecution and court illustrate a commitment to adapting structures to tackle organised crime. However, so far, they have not yet been able to prove their effectiveness in the successful investigation, prosecution and trial of important cases. With very few exceptions, the specialised court has decided so far only minor cases as the underlying legislation does not allow the court to prioritise on the most important cases.⁵² This is accentuated by the staffing constraints on both the prosecution and the court. Another important weakness of the law is that it does not allow the court to pursue corruption offences which are in reality often linked to organised crime. Together with the general strengthening of penal procedures and the reform of police investigation, these new structures and reforms are a clear demonstration of Bulgaria's interest to achieve a step-change in the fight against organised crime.

⁴⁴ Europol has noted improvements in the cooperation of Bulgaria with law enforcement institutions in other EU Member States which had led to various successful joint operations.

⁴⁵ Police investigators have increased from 2000 in 2010 to 6000 in 2011 and should reach 8000 in total. (SEC(2011)967final, page 18).

⁴⁶ Europol considers organised crime in Bulgaria as unique in the EU to the extent that it exercises considerable influence over the economy which is a platform to influence the political process and state institutions. The annual turnover of the twelve most important organised crime activities in Bulgaria is estimated at 1.8 BEUR or 4.8% of GDP annually. (Serious and Organised Crime Threat Assessment 2010-2011. Centre for the Study of Democracy, Sofia. April 2012, p.5) Europol also notes that the number of cases initiated in Bulgaria, while on the rise, is still low compared to the scale of organised crime.

⁴⁷ 96% of respondents in a Flash Eurobarometer conducted in Bulgaria in May 2012 considered organised crime an important problem. (Flash Eurobarometer 351)

⁴⁸ Technical Report page 31.

⁴⁹ The overall strengthening of police investigation in 2010 has also had a positive effect on the capacity of police in this area.

⁵⁰ Technical Report page 32.

⁵¹ COM(2009)402final, page 7; COM(2010)400final, page 8; COM(2011)459final, page 9.

⁵² The definition of organised crime in the Bulgarian Penal Code is criminal offences committed by three or more individuals.

Better results in the forfeiture of assets are an important element to the dissuasiveness of the fight against organised crime and also the fight against corruption. The first years after accession saw little progress in this area, with few assets secured and forfeited in important organised crime and high-level corruption cases. The year 2011 saw a significant increase in the amounts of forfeited assets in Bulgaria and a more proactive and rigorous approach by the asset forfeiture commission under a new director. His resignation in 2012, on the grounds of insufficient political support, cast doubt on the sustainability of this improvement and pointed to wider obstacles to effective asset forfeiture.⁵³

To improve effective asset forfeiture, a new asset forfeiture act was adopted by Parliament in May.⁵⁴ This law offers for the first time the possibility to confiscate illegal assets through a procedure in civil courts which does not require a prior conviction, but can be launched upon the initiation of judicial investigations for a number of serious crimes and upon certain administrative infringements. With the adoption of this law, which required a particular effort by the government in Parliament, Bulgaria responded positively to longstanding recommendations by the international community and many Bulgarian practitioners. The Commission and Member States provided encouragement and support for this approach.⁵⁵ The law does not reflect all recommendations made by CVM reports in this context⁵⁶ and experts have highlighted other potential shortcomings.⁵⁷ In order to allow the new asset forfeiture act to achieve a real dissuasive effect, a systematic scrutiny of assets in all relevant cases and better inter-institutional cooperation will be necessary. This will require that the prosecution systematically associates the asset forfeiture commission, early enough during an investigation to prevent the disappearance of assets. Administrative control authorities will also have to set up close cooperation with the asset forfeiture commission to identify and profile relevant cases, as the commission lacks ex-officio powers to act on its own initiative. Consistency of court jurisprudence, in particular regarding the shift of the burden of proof foreseen in the new law will be another important element to determine its effectiveness. It will also be important to assure the independence and efficiency of the future asset forfeiture commission which will be created under the new law, notably through the appointment of competent and politically independent members in a transparent and objective process.⁵⁸

Although Bulgaria invested considerably to improve the institutional and legal framework for the fight against organised crime since 2010, results have been limited: Few important organised crime cases have received sentences⁵⁹ and there have been several acquittals in important cases where evidence in public domain raised expectations of convictions.⁶⁰ Serious concerns must be raised regarding the poor results in uncovering contract killings: Of 33 contract killings monitored by the Commission since 2006, only four court cases have started,

⁵³ Technical Report, page 34.

⁵⁴ A Constitutional challenge was registered in the beginning of July.

⁵⁵ After a first failure in Parliament in July 2011 and the Commission's recommendations to return to the law in two consecutive CVM reports, several Member States ambassadors intervened publicly in support of the law in May and the Commission advised on some aspects of the law.

⁵⁶ Missing in particular are asset control of senior officials and politicians and an ex-officio right for the asset forfeiture commission.

⁵⁷ Technical Report, page 35.

⁵⁸ Members of the new commission will be elected by Parliament, Government and the President.

⁵⁹ Notable exceptions are the cases of Dimitar Zhelyazhkov, and Plamen Galev and Angel Hristov.

⁶⁰ Since last July, four important cases have been finally acquitted by the Supreme Court of Cassation: The case of the so-called "crocodile gang", the case of the "Margin brothers", the case of Ilian Varsanov and the case of Dimitar Vuchev. Acquittals have furthermore been referenced in COM(2011)459final, page 5.

even if a number of investigations are still under way.⁶¹ A number of new contract killings have taken place this year. In this context it is important to mention that the Commission regularly receives complaints from Bulgarian citizens and foreign investors about judicial inaction and alleged collusion with organised crime on local level.⁶² More progress can be seen in areas linked to Bulgaria's cooperation with other Member States. This has led to a number of steps to specifically address crimes with a cross-border dimension, such as trafficking in drugs.⁶³

The weak results overall in the follow-up to individual cases cannot be attributed to a specific institution. Analysis shows that weaknesses are to be found at all stages of the investigative and judicial process among police, prosecution and courts.⁶⁴ Some of these weaknesses are of systematic character, notably the fragmentation of investigations among several bodies and shortcomings in cooperation, weaknesses in the use of evidence and specific shortcomings in area like witness protection and economic and financial analysis.⁶⁵ Bulgaria needs clear and effective procedures and practices and better tools for cooperation⁶⁶ to succeed in important organised crime cases. A comprehensive and independent assessment of case failures, with the support of EU partners, and corrective measures in the form of an action plan, seems the clearest way to make progress.

Systemic failures in law enforcement were recently demonstrated after two prominent convicts escaped enforcement of their prison sentence. The Bulgarian authorities failed to apprehend some of the most senior criminals of the country after an announced verdict was handed down by court. This must be seen as a major failure of the system.

II.3 Fight against Corruption 2007-2012

Benchmark 4: Conduct and report on professional, non-partisan investigations into allegations of high-level corruption. Report on internal inspections of public institutions and on the publication of assets of high-level officials

Benchmark 5: Take further measures to prevent and fight corruption, in particular at the borders and within local government

Upon accession, the CVM set out how Bulgaria was expected to demonstrate better results in the fight against corruption. This involved demonstrating the capacity of law enforcement authorities and of the judiciary to successfully investigate, prosecute and try high-level corruption cases and to investigate inexplicable wealth. Key tools include a system of asset control for high-level public officials, measures to fight corruption in law enforcement,

⁶¹ It is generally accepted that there have been some 150 or so contract killings over the last 10 years, very few of which have been uncovered and sanctioned.

⁶² This concerns in particular the Black Sea region.

⁶³ An important organised crime figure has been arrested in May and will be extradited for trial in another EU Member State. A recent large seizure of drugs was the result of cooperation between Bulgaria, several other Member States, and Europol.

⁶⁴ See Technical Report page 30.

⁶⁵ There is no information on assets secured or confiscated in relation to cases raised by the new specialised prosecution office for organised crime. An important money laundering case has been recently initiated concerning Plamen Galev and Angel Hristov.

⁶⁶ Proposals made by experts on the basis of practice in other Member States have included regular reporting by senior management in prosecution and police, and a central register for bank accounts to facilitate financial investigation.

prosecution, at borders and other parts of the public sector, and specific measures in the areas of conflicts of interest and public procurement.

Since 2007, Bulgaria has developed a comprehensive administrative framework and prevention measures to combat corruption. Risk assessment tools are available and specific methodologies have been implemented for key areas such as asset declarations and conflict of interest. Reforms among border police and customs have reduced corruption opportunities in these areas. However, implementation has remained patchy. Setbacks have come in areas like the 2009 amnesty act.⁶⁷ In addition, the Commission's recommendation to turn the asset verification system into an effective tool to detect illegal enrichment has not yet been followed.⁶⁸

In their analysis of the Bulgarian anti-corruption framework, experts consulted by the Commission highlighted some general weaknesses that inhibit progress in this area. Bulgaria lacks independent institutions in the area of anti-corruption with the authority and the obligation to make proposals and to drive action.⁶⁹ This limits their freedom of action to intervene in a pro-active way and to deliver independent monitoring. As a result, many administrative activities in this area tend to be reactive and to focus on formal compliance alone. The lack of sanctioning rights in some areas, and the absence of effective sanctions in areas where these rights exist, is illustrative of how difficult it is for this action to gain traction.⁷⁰

In order to take a step change in its fight against corruption in the next period, Bulgaria should consider establishing an independent body to coordinate and assist monitoring in this area. In this context, it would also be appropriate to carry out an independent impact evaluation of Bulgaria's national strategy for the fight against corruption and organised crime and to establish a new strategy with clearer indicators and benchmarks of achievement on this basis.

The scale of concern about corruption in Bulgaria is substantial: 96% of Bulgarians perceive corruption as an important problem and 68% consider the situation in this area unchanged or worse than in 2007.⁷¹ Public perceptions will only change when determined action has been seen to be taken in the fight against corruption.

High-level corruption

The response of the judiciary and law enforcement regarding cases of corruption and in particular cases of high-level corruption involving senior government officials and politicians has been a focus of the CVM since 2007. Bulgaria has developed specialisation in this area. Further to recommendations by the Commission⁷², in 2009 Bulgaria created a joint team for the investigation and prosecution of fraud with EU funds and strengthened its legal

⁶⁷ The amnesty act of 2009 led to 458 discontinued cases including abuse of office and misuse of public funds.

⁶⁸ COM(2011)459 final, page 10.

⁶⁹ Except for the National Audit Office, all authorities in this area are subordinated to the executive.

⁷⁰ The National Audit Office and the Conflict of Interest Commission cannot sanction if cooperation is refused. Inspectorates have the right to sanction non-compliance with corruption prevention rules but in reality have not exercised this right.

⁷¹ Flash Eurobarometer 351 of July 2012.

⁷² In 2009, the Commission recommended Bulgaria to set-up specialised structures for prosecuting and judging high-level corruption and organised crime cases. (COM(2009)402final, page7.

framework.⁷³ Some other high-level corruption cases were treated by joint teams focusing on organised crime, which were created at the same time. Following further recommendations in CVM reports⁷⁴, in 2012 Bulgaria created a dedicated joint team to focus on high-level corruption and reorganised the joint team on EU fraud, extending its remit to several other areas of fraud with public funds.

The results of these specialised structures are mixed. Although the creation of the joint team on EU fraud initially led to an increase in cases and court, case numbers decreased again in 2011⁷⁵ and the vast majority of these cases were of minor importance. In addition, the Commission's analysis showed a large number of unexplained dismissals and unsuccessful cases.⁷⁶

The results of the judiciary regarding other corruption cases show a similar picture: Although case numbers increased in 2009 and 2010, there was a significant drop in 2011.⁷⁷ In addition, there are very few high-level cases that reach court and many of those cases progress only very slowly in trial, with a disproportionately high number of acquittals.⁷⁸ Investigations into alleged corruption and abuse of office by magistrates have received a particularly weak response from the judiciary.⁷⁹

In this context, particular concerns must be expressed as to continuous delays and postponements at appeal court level in two emblematic cases regarding fraud with EU funds, where long prison sentences were handed down by court in first instance in March and October 2010. No satisfactory explanation has been found why the available procedural possibilities to accelerate these emblematic cases have not been actively pursued by the judiciary.⁸⁰ The disappointing results at both the pre-trial and trial phases in the pursuit of high-level corruption can be largely attributed to systematic weaknesses that affect judicial efficiency in other areas – such as the legal framework, court jurisprudence, and the practice of prosecution and administrative control authorities. They have been set out by the Commission in 2011⁸¹ and also find many echoes in an analysis carried out by the prosecution services in 2012. The remedial measures implemented by the prosecution⁸² demonstrate an

⁷³ Amendments to the Penal Code in May 2008 allowed for the admittance in court of evidence provided by the European Anti-Fraud Office OLAF.

⁷⁴ COM(2011)459final, page 8-9.

⁷⁵ Convictions in EU fraud cases rose from none in 2007 steadily to a high of 243 convictions in 2010 and decreased again to 159 in 2011. All indictments for EU fraud registered in 2011 were discontinued as criminal cases and turned into administrative infringements. (COM(2012)57final, page 6).

⁷⁶ In its reports of July 2011 and February 2012, the Commission points to a large number of discontinued cases where related aspects were prosecuted in another Member State (COM(2011)459final, page 6; COM(2012)57final, page 6).

⁷⁷ Newly initiated pre-trial investigations for corruption offences: 512 in 2007, 490 in 2008, 595 in 2009, 684 in 2010 and 522 in 2011.

⁷⁸ Since the Commission's last analysis in July 2011, verdicts have been achieved in five high-level cases, two of them final. Final convictions for prison sentences were pronounced in two cases concerning a former Member of Parliament and a former director of a state-owned enterprise, the execution of one sentence was suspended. During the same period, ten cases were acquitted involving three former ministers, one former deputy minister and other senior officials, managers of state-owned enterprises and businessmen.

⁷⁹ See above page 7.

⁸⁰ In both cases, a variety of delays mean that first instance convictions delivered in 2010 have barely progressed in appeal. (Technical Report, page 20, footnote 80).

⁸¹ Technical CVM Report of 20 July 2011 (SEC(2011)967 final), page 12.

⁸² See Technical report page 16-17.

increasing understanding within the judiciary that substantial change in professional practice and organisation will be needed to improve the results of Bulgaria in the fight against high-level corruption.

These measures should be embedded in an overall legal and institutional effort in Bulgaria to improve the way corruption cases are brought to justice, as recommended under the CVM in 2011.⁸³ This will require coordinated action in several areas. Firstly, Bulgaria should consider legal amendments to facilitate the prosecution of corruption offences by the judiciary.⁸⁴ Secondly, administrative control authorities should establish a pro-active attitude to identify cases and effective means of cooperation with the judiciary. Thirdly, police investigators and prosecutors need to develop the capacity to analyse complex economic and financial data. Finally, the prosecution also needs to be able to properly plan and steer complex investigations to successful closure and the court system needs to improve the ability of judges to appreciate economic and financial evidence, align jurisprudence and encourage dissuasive sanctions through cassation. In this context, it will be important to establish a close operational cooperation between the specialised joint team against corruption and the specialised prosecution office for organised crime.

Despite the various legal and procedural instruments developed to address high-level corruption, the continuing difficulties of such cases in court raises questions about the capacity and resolve of the judiciary. High-level corruption cases typically involve influential public personalities; they are therefore a test for the capacity and independence of the Bulgarian judicial system. As corruption and organised crime are often linked, detailed financial investigations are an important part of any investigation in this area and of particular importance to uncover links between organised crime and politics. These aspects have not received appropriate attention in Bulgaria. It will also be important to work closely with the asset forfeiture commission and other administrative control authorities in order to carry through an efficient pursuit of high-level corruption cases with dissuasive results.

Corruption in public administration

The efforts of law enforcement institutions in the fight against corruption need to be complemented by effective administrative action to identify transgressions of rules, to apply sanctions and to develop preventive measures. Since 2007, Bulgaria has developed a comprehensive administrative framework in this area. In particular, Bulgaria created a high-level coordination body for the fight against corruption under the Council of Ministers to supervise the implementation of Bulgaria's strategy and action plans in this area. Two new administrative bodies were created in 2010, a commission for the prevention of conflicts of interest, and a horizontal body to promote the fight against corruption. In addition, administrative inspectorates in each branch of government activity have been tasked to develop and monitor prevention activities and risk assessment tools and are also asked to apply disciplinary sanctions if required. This framework is completed by the National Audit office which is in charge of asset control of public officials.

With the help of this comprehensive administrative framework, Bulgaria has been able to register a number of achievements in preventing and sanctioning corruption since 2007. Risk

⁸³ For this purpose, the Commission recommended that Bulgaria undertake a comprehensive audit of judicial practice, procedures and organisation and establish a detailed action plan together with international experts. (COM(2011)459 final, recommendations under points 3 and 6, pages 8-9)

⁸⁴ See Technical report page 9.

assessment tools and codes of ethics have been developed and implemented in most areas of government, a system of regular declarations for conflict of interest, incompatibilities and assets for public officials has been set up and some institutions such as customs, tax authorities and border police carried out a structural reform, with particular attention to integrity and corruption prevention.

However, there are also a number of important shortcomings which Bulgaria should correct in order to make a step change in dissuading corruption and to improve the degree of trust Bulgarians have in their state institutions. The system of asset control whereby the National Audit Office collects and publishes asset declarations is a useful contribution to transparency, but the verification of declarations falls short and the system offers no possibility to detect illicit enrichment. Few cases of concrete follow-up of inconsistencies in declarations by other authorities have been reported.⁸⁵ The recommendation by the Commission to include asset verification in the new law on asset forfeiture has not been followed.⁸⁶ The fact that few of these cases are ever investigated strongly suggests that there is a gap here, and part of the administrative machine needs to have explicit responsibility for proactively pursuing illicit enrichment.

Bulgaria adopted a law on conflicts of interest in 2009 and set up an administrative authority to establish and sanction conflicts of interest.⁸⁷ The establishment of a dedicated commission to establish conflicts of interest and to suggest sanctions has led to an impressive increase of public signals on conflicts of interest and a number of decisions, but so far only one case has been finalised.⁸⁸ The assessment of the Commission's first 15 months of operation shows a new authority that has taken up its challenge and started work quickly, but which has not yet been able to prove itself in convincing decisions in important cases.⁸⁹ Questions must also be raised regarding the effectiveness of the law on conflicts of interest. The Commission's decisions can be appealed at two instances before the courts and any subsequent administrative sanction can also be appealed at two instances. As a result of this cumbersome two-tier procedure, the Commission has been able to issue altogether so far only five penal orders.⁹⁰ The Commission needs to demonstrate its ability to deliver sound judgement in

⁸⁵ Declarations are automatically checked by an IT programme against some other available data, such as tax declarations, but there is no risk profiling, no access to banking data, no comparison to declarations of previous years and therefore no possibility to follow-up on inexplicable wealth.

⁸⁶ The Commission recommended Bulgaria to "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" (COM(2011) 459 final, page 9)

⁸⁷ Bulgaria adopted a law in 2009 and then established the Commission for Prevention and Ascertainment of Conflict of Interest (CPACI) in 2011, after a suspension of EU funds in summer 2008 which was motivated in particular by several cases of conflict of interest and a lack of protection of EU funds in this area. (Technical Report, page 27; see also COM(2008)496final "Report on the Management of EU Funds in Bulgaria").

⁸⁸ See Technical Report page 27.

⁸⁹ Recent cases which have been publicly questioned involve the previous chairman of the Asset Forfeiture Commission and the former chairman and a former member of the Commission for Consumer Protection.

⁹⁰ Other weaknesses highlighted by experts notably include the inability to pursue anonymous signals and to apply administrative sanctions in cases incorrect declarations are submitted (see Technical report page 27).

sensitive cases. Recommendations by the Commission to apply conflict of interest rules to individual service contracts have not yet been followed.⁹¹

Bulgaria implements a methodology on corruption risk assessment across the executive under the authority of the General Inspectorate of the Council of Ministers. This methodology can be considered a useful tool for corruption prevention. However, its application is not mandatory and the capacity of the General Inspectorate to follow up on implementation is limited. In addition, corruption risk assessment is only mandatory for the executive branch⁹² and disciplinary sanctions have so far not been applied in cases where the requirements were not respected. A new structure to assess corruption risks across the Bulgarian institutional framework ("Borkor") is yet to become operational. To have added value, it would need to become a strong central institution to coordinate the fight against corruption, with authority to assess the plans of other institutions, to make a risk assessment of declarations on conflict of interest, or to act as a secretariat for an independent monitoring process.

Public Procurement

Weaknesses in the implementation of Public Procurement legislation are an important source of corruption. They also undermine the effective use of EU funds and, in a general sense, lead to a lower quality in the delivery of public goods and the waste of public money. Audits and assessment by various Commission services have identified substantial risks and shortcomings in this area.

Since 2007, Bulgaria has made efforts to improve its legal framework and administrative action regarding public procurement. Bulgaria reformed its public procurement-related legislation with the aim to simplify the latter and to strengthen some administrative controls in order to comply with recommendations by the Commission.⁹³ The Public Financial Inspections Agency (PFIA) and the Court of Auditors received powers to undertake ex-officio checks and the requirement on the Public Procurement Agency (PPA) to check tenders before they are published was extended. Efforts have been made to improve the expertise of the judiciary, including through specialisation.

However, these efforts have not yet led to the expected results. The complaints received by the Commission concerning the Bulgarian public procurement system continue to grow,⁹⁴ and there are clear cases of serious violations of EU procurement rules. Although additional staff has been made available this year,⁹⁵ the resources devoted to helping contracting authorities are still insufficient. It will be important for Bulgaria to implement new control procedures effectively. Giving the PPA right to perform ex-officio checks would send an important message that a more pro-active risk-based approach is expected from all control bodies.

III. Next Steps

⁹¹ (COM(2011)459 final, recommendation v, page 10) Individual service contracts are currently based on the law on obligations and contracts and therefore escape labour legislation and its provisions on conflict of interest and incompatibilities.

⁹² Corruption risk assessment is not compulsory for Parliament, the Judiciary, local self-government, public agencies, public institutes and public utilities and funds.

⁹³ COM(2011)459final, page 10.

⁹⁴ In the area of public procurement, the Commission received 4 complaints over the course of 2008 and 2009 and 26 complaints over the course of 2010 and 2011.

⁹⁵ The Public Procurement Agency has received 10 additional posts this year, mainly to carry-out additional ex-ante control functions.

The Commission's assessment shows the progress that Bulgaria has made in the five years since its accession to the EU. The CVM has made a positive contribution to this progress. The Commission considers that Bulgaria is on its way to attain the objectives of the CVM, provided it steps up the reform process. Deepening reforms will need a stronger ownership of reform, particularly in the leadership of the judiciary. It will also need a clear common direction by the authorities, and a comprehensive approach to implementing change, joining the work of different institutions together more effectively than in the past. This implies a stronger effort to demonstrate, that integrity is valued and that corruption and organised crime is effectively punished. The CVM should continue, in order to lend its support to these efforts and to keep up the momentum of change towards a sustainable and irreversible reform process – a process sufficiently strong that the external intervention of the CVM is no longer needed.

The past five years have shown that Bulgaria can take major strides when the political direction is clear. It has put many of the right tools in place. The next phase will be to use these tools in order to drive and implement reform. This will bring closer the fulfilment of the CVM requirements, as well as being a demonstration of commitment to the Bulgarian people. All Member States have both obligations and opportunities within the area of freedom, security and justice, and the Commission looks forward to Bulgaria completing the particular process of the CVM and addressing these issues on the same basis as other Member States.

Recognising that Bulgaria now needs to implement what has been decided, avoiding any steps backward and demonstrating a strong track record, the Commission has decided to make its next assessment at the end of 2013. This will allow the time required to assess tangible results. The Commission will also end the practice of issuing mid term stock taking reports. However, the Commission will monitor progress closely over this period, with regular missions, as well as frequent dialogue with the Bulgarian authorities and with other Member States.

IV. Recommendations

To maintain progress, the Commission invites Bulgaria to take action in the following areas, on the basis of recommendations designed to help Bulgaria to focus its efforts in preparing for the Commission's next assessment of progress under the CVM at the end of 2013.

1. Reform of the judicial system
 - Renew the Supreme Judicial Council with a mandate to undertake fundamental reform.
 - Establish and implement a medium-term human resource strategy for the judiciary, based on an analysis of needs and workload, with the changes in the structure of courts, recruitment and training.
 - A new General Prosecutor should have a mandate to reform the prosecution in structure, procedures and organisation on the basis of an independent functional audit and in cooperation with external experts.
 - Set a target for the completion of work on the new Penal Code, and for its implementation.
 - Ensure the open involvement of all significant NGOs and professional organisations in defining and monitoring strategies for reform.

2. Independence, accountability and integrity of the judiciary
 - Focus the work of the Inspectorate on integrity and judicial efficiency. Define a single, effective system of random allocation of cases for use nationwide.
 - Ensure that the election of the General Prosecutor gives an example of a transparent, competitive process based on criteria of integrity and effectiveness.
 - Make transparency, objectivity and integrity the top priority in appraisals, promotions, appointments and disciplinary decisions for the judiciary.
3. Efficiency of the judicial process
 - Establish a strategy for reducing the backlogs in publishing motivations for cases and analyse how to remedy this problem.
 - Close loopholes in the effective implementation of court decisions, such as absconding to evade prison sentences or failure to apply financial sanctions defined in court.
 - Adopt a strategy to improve legal consistency, including a proactive strategy by the Supreme Court of Cassation to identify and rule on areas of disagreement.
4. Fight against organised crime
 - Ensure that the new Asset Forfeiture Commission is appointed on the grounds of integrity, that other authorities, notably the prosecution, fully cooperate with its work; and that the Supreme Court of Cassation rules swiftly to preserve its authority if necessary;
 - Carry out an independent analysis of case failures covering weaknesses in both investigation and prosecution including witness protection, economic and financial analysis, collection of evidence by police and cooperation between the judiciary and the executive.
 - On this basis, remedy shortcomings in structure, management, staffing, training, cooperation and professional practice.
5. Fight against corruption
 - Use experience from past cases to improve the performance of police, the prosecution and courts.
 - Carry out an independent impact evaluation of Bulgaria's National Anti-Corruption Strategy. Entrust a single institution with the task to coordinate the fight against corruption, to assist and coordinate the efforts in different sectors, report on the results of the anti-corruption strategy in all public bodies, and support a new independent monitoring system involving civil society.

- Amend the law on conflicts of interest to allow dissuasive sanctions to be effectively applied. Revise the asset declaration and verification system turning it into an effective instrument to detect illicit enrichment.