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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 purpose of the Co-operation and Verification Mechanism¹ (CVM), established on the accession of Bulgaria to the EU, is to help put in place an impartial, independent and effective judicial and administrative system properly equipped inter alia to fight corruption and organised crime. This involves making certain fundamental changes, which takes time and also requires broad political support across the political spectrum as well as in society at large. At the same time, these changes are an indispensable investment in the future of Bulgaria – an effective administrative and judicial system is necessary for sound public finances and well rooted socio-economic development. It is also necessary to enable Bulgaria to play its full role as a member of the EU in areas such as justice and home affairs.

This report is the fourth annual report since the CVM was set up². It sets out the Commission's assessment of the state of the reform process and makes recommendations on what needs to be done next to continue with the necessary reforms. The Commission considers that the CVM serves a useful purpose:

- for Bulgaria by providing objective assessments and recommendations on where action is needed;
- for the other Member States which can follow progress and provide appropriate support to Bulgaria.

In this year's report the Commission points to a strong reform momentum which has been established in Bulgaria since the Commission's last annual report in July 2009. The new strategy for judicial reform demonstrates the existence of a strong political will in Bulgaria to achieve a deep and lasting reform of the judiciary. The report also recommends that Bulgaria improve judicial practice in order to allow the judiciary to act more pro-actively and to show a stronger sense of responsibility.

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 experts and has drawn on documentation and input provided by a variety of sources. The accompanying staff working paper 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

Since July 2009, Bulgaria has adopted important reforms of its penal procedures. Legislation to strengthen asset forfeiture and to improve protection against conflict of interest is under discussion. The structural set-up of the prosecution to deal with fraud and organised crime has been strengthened. Organised crime is actively tackled for the first time since the inception of the CVM. In June the Government adopted an ambitious and far-reaching strategy which provides a blue-print for a comprehensive, long term reform of the judiciary. The most pressing reforms to improve the efficiency, accountability and consistency of the judicial process through amendments to the Judicial Systems Act are in the process of consultation within the Government.

The strong push for reform by the Government is showing some results in the judicial system. Allegations of corruption within the judiciary in April are receiving a stronger disciplinary and criminal response than in the past. The number of indictments for organised crime has increased and severe sentences were pronounced, but not yet enforced, in a case involving large scale fraud of EU funds in April and June.

At the same time, the Commission's analysis shows that important deficiencies remain in judicial practice both at the level of the prosecution and at the level of the court. The judicial process in Bulgaria lacks initiative and professional capacity. Complex investigations show a lack of direction and purpose, procedures are too formal and too long and often fail in court.

The Commission's analysis also shows continuing shortcomings regarding the prevention of corruption and protection against conflict of interest. Effective implementation of the new national anti-corruption strategy adopted in November 2009 has not yet started. The implementation of the conflict of interest law is insufficiently effective. Shortcomings in the implementation of public procurement procedures are widespread. To strengthen the prevention of corruption and conflict of interest, Bulgaria should pursue its plans to create a special and independent commission for protection against conflict of interest, accelerate the implementation of the action plan for the national anti-corruption strategy and strengthen legislation on asset forfeiture.

Reform of the Judiciary

With amendments to the Penal Procedure Code adopted at the end of May, Bulgaria implements long-standing recommendations by experts and the judiciary to reduce important procedural restrictions in order to improve the judicial process. With some exceptions, the amended Penal Procedure Code now allows for policemen to be heard as witnesses in court and provides for a protection of the identity of witnesses. Reserve defence counsels may now be assigned by court decision to prevent the attempts by defendants to delay court hearings on unjustified grounds. The procedural modalities for using in court witness' statements collected during the investigation have been improved and information provided by OLAF may now be used as evidence. The changes introduced by Bulgaria address some of the most

frequent procedural obstacles encountered in Bulgaria and can therefore be considered an important step forward.

However, to achieve the expected benefits of increased flexibility in penal procedures in terms of a higher number of indictments, shorter trials and deterring sanctions, Bulgaria must invest in improving judicial practice.

Although the law requires magistrates to take action for the benefit of justice once a suspicion of crime is brought to their attention, this duty is rarely fulfilled in an effective way. In practice, the Commission has observed reluctance on the part of the prosecution to start investigations on the basis of obvious signals and to pursue complex and time-consuming investigations. For instance, a standard prosecutorial practice in the case of indications for serious fraud, to execute search warrants without prior warning is rarely applied. This lack of initiative by the prosecution adds to practice at court where, in the admissibility of evidence, respect of formal and still restrictive criteria appears often more important than the quality of evidence.

Shortcomings regarding the accountability of the judiciary persist. Since July 2009, the Bulgarian judiciary has faced a series of allegations of corruption, trade of influence and mismanagement which have damaged its public reputation. In its interim report of March 2010, the Commission insisted on full disciplinary and criminal examination of these allegations. Regarding allegations of corruption in relation to senior judicial appointments in the second half of 2009, three magistrates were dismissed, 15 other disciplinary sanctions were imposed. Two members of the SJC resigned but kept their positions as magistrates. Disciplinary proceedings initiated against one of them are still ongoing. The latest case in April this year regarding the transfer of valuable real estate below market price to family members of senior magistrates, prompted the SJC and the prosecution to start disciplinary and criminal investigations against all magistrates involved, the outcome of which is not yet known. To protect the reputation of the magistracy, Bulgaria must further strengthen the accountability of the judiciary through a strict application of all legal and disciplinary means to sanction corruption.

Comprehensive reforms are required to improve judicial practice. These reforms relate to improvements in the curricula of legal studies and training, to changes in the appraisal system in order to create career incentives for pro-active behaviour and to improvements in selection and appointment procedures. Bulgaria's new strategy for the reform of the judiciary focuses on the development of human resources within the judiciary to address many of these weaknesses. Draft amendments to the Judicial Systems Act, which would introduce some important improvements in this area, are in the process of consultation within the Government.

Amendments to the Judicial Systems Act should also lead to considerable strengthening of the role and responsibilities of the Supreme Judicial Council (SJC). If adopted, the act will require the SJC to prepare an annual analysis of workload and authorise the council to re-balance personnel and open or close courts on the basis of workload data gathered. The amendments will also increase the transparency of appointment decisions and improve accountability by introducing an open vote and detailed reasoning of decisions and by concentrating all disciplinary powers with the SJC. In addition, members of the council will now explicitly be prohibited from voting in situations where they could be in a conflict of interest.

Since July 2009, the inspection of the SJC has continued to identify weaknesses in judicial practice, which are brought to the attention of heads of courts in the form of recommendations and followed up in subsequent inspection visits. Except for the Sofia Appellate Region, regular inspections by the SJC's Inspectorate have now reportedly covered the whole Bulgarian judicial system. Together with its own monitoring of high-level cases, the council now has a good basis of information regarding weaknesses in structure, discipline and practice. With the adoption of the forthcoming amendments to the JSA, the SJC should use its stronger role in order to launch initiatives to improve the efficiency of justice, the consistency of judicial practice and the accountability of the judiciary. The Commission will monitor progress in this respect in its next report.

Fight against Organised Crime

Following a recommendation of the Commission, Bulgaria created permanent joint teams for organised crime cases under the leadership of the prosecution. The teams include police-officers, investigating magistrates and staff members of the State Agency for National Security (SANS). For the time being, these teams target a small number of high-profile cases which are assigned in agreement between the General Prosecutor, the Minister of the Interior and the Director of SANS. The extension of this promising organisational set-up to all organised crime cases should be considered, as well as including members of the Commission for the establishment of property acquired through criminal activity (CEPACA) at an early stage of the investigation.

Bulgaria also stepped up efforts by carrying out a number of police raids on organised crime groups although little judicial follow-up to these raids has been reported.

Since July 2009, Bulgaria can demonstrate an increased number of indictments in organised crime cases. However, at court level, important cases have seen little development. To date, the large majority of sentences in organised crime cases are achieved through plea-bargaining and expedited procedure, sometimes below the legal minimum of the penalty, following a confession of the defendant. The Bulgarian judiciary must demonstrate that it is also able to pronounce deterrent sanctions for serious crime.

Although data for 2009 show a continuous positive track record regarding freezing and forfeiture of criminal assets by the Commission for the establishment of property acquired through criminal activity (CEPACA), the number of confirmed forfeiture decisions by courts remains very low. Two final decisions have been registered after May 2009 and 2 cases have been rejected, while 206 requests are still pending with courts. As the freezing and forfeiture of presumed criminal assets is an effective sanction and carries an important deterrent effect in the fight against organised crime, Bulgaria should strengthen further this effective instrument .

Fight against Corruption

Bulgaria has stepped up its efforts to fight against high-level corruption. Since July 2009, a number of indictments were registered against two Members of Parliament, three former ministers, three former deputy ministers and, for the first time also against an acting minister. In addition, a number of high-level officials and mayors were also indicted for high-level corruption. Bulgaria strengthened the capacity of the joint team dealing with EU fraud; a sentence for imprisonment of one high-level official for corruption involving EU funds has been pronounced, as well as sentences in two emblematic cases regarding fraud with EU funds and money laundering. High sentences of 10 and 12 years imprisonment for the main defendant were pronounced, but detention orders were not imposed by the court.

The Commission's analysis of judicial practice in this area points to a number of weaknesses that should be corrected. In its investigation of fraud involving EU funds, a comprehensive and pro-active investigative strategy by the prosecution is necessary. This strategy should lead to systematic investigations of links between related cases, aspects of organised (financial) crime and links in fraud schemes to administrative authorities. In order to step up the fight against high-level corruption, Bulgaria should also consider a more forceful protection of witnesses in line with best practice in other Member States.

The data provided by Bulgaria on the first year of implementation of the law on the prevention of conflicts of interest which was introduced in late 2008 show that still few cases of conflict of interest have been identified or sanctioned and few signals on corruption have been sent to the prosecution. However, regarding the central administration, inspections have become more frequent and a number of cases led to disciplinary sanctions or have been forwarded to the prosecution³ Bulgaria should strengthen as soon as possible the law on the prevention of conflict of interest in order to create an independent central Commission in charge of implementing the law.

Bulgaria adopted a National Anti-Corruption Strategy in November 2009 and an action plan for its implementation. The action plan foresees ambitious prevention activities across the public sector with the help of foreign assistance; however implementation has not yet started. Bulgaria has not yet addressed the Commission's recommendations as to the strengthening of inspectorates and cannot report results in strengthening the regional anti-corruption councils.

The implementation of public procurement legislation in Bulgaria shows important weaknesses. Bulgaria initiated checks by its competent authorities which have established an irregularity rate of 60% among all tenders verified. This rate reaches almost 100% for large public infrastructure projects where the authorities have an obligation of ex-ante control.

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During the period August 2009 - May 2010, Bulgaria reports that, in the framework of the central administration, 185 signals were filed under the law for the prevention and detection of the conflict of interest and 198 inspections were carried out. In 33 cases disciplinary sanctions were imposed and penal orders were issued against 7 individuals.

At the same time, the administrative and judicial authorities are not in a position to protect public procurement against conflict of interest in an effective way. This is due to a number of weaknesses in structures and procedures. The capacity of administrative authorities to advise on public procurement procedures and to perform checks is insufficient. The capacity of the Public Financial Inspection Agency has been reduced substantially; as a result, the agency performed ex-post controls in only 12% of all public tenders in 2009. At the same time, ex-post administrative checks do not follow a proper risk assessment. The introduction of the system of ex-ante control should help to remove shortcomings in the procedure for big structural projects. However, the Public Procurement Agency lacks sufficient capacity to verify the legality of tenders through ex-ante checks and to follow up whether its recommendations have been followed.

The different administrative authorities in charge of implementing the various aspects of public procurement legislation, providing guidance, drafting legislation, following up to complaints and performing checks on public tenders, do not cooperate systematically with each other to the benefit of the implementation of the law. Administrative sanctions that can be imposed are not sufficiently deterrent in the case of conflict of interest or corruption. In addition, internal procedures do not allow for an effective detection of conflict of interest which could be communicated to the prosecution authorities. A systematic follow-up of irregularities with disciplinary or criminal sanctions should be ensured.

3. CONCLUSIONS

Since July 2009, Bulgaria has established a strong reform momentum. Bulgaria adopted improvements in its penal procedures and can demonstrate a higher number of indictments for cases involving high-level corruption and organised crime. Still too few cases are concluded in court. There is a need for improvements of professional practice within the police, prosecution and courts for which external assistance will be needed. The judiciary must take the initiative more often and show a stronger sense of responsibility. Public funds must be better protected against fraud and conflict of interest.

Bulgaria's new strategy for judicial reform, approved by the Government on 23 June demonstrates political determination to achieve a profound reform of the judiciary. The strategy addresses the current shortcomings which should be addressed by Bulgaria as a matter of national priority and in a joint effort by the political level, the judiciary and Bulgarian society.

Success will require a sustained commitment by Bulgaria, the Commission and other Member States.

Bulgaria has established a new partnership with the Commission and improved the quality of its reporting on progress under the CVM. The Commission will continue to support Bulgaria in achieving further progress under the CVM and provide its next assessment in summer 2011.

4. RECOMMENDATIONS

In the light of its assessment of progress by Bulgaria in meeting the benchmarks set out in the CVM, the Commission invites Bulgaria to take immediate action in the following areas:

Recommendations regarding the Reform of the Judiciary

While recalling the outstanding recommendations of July 2009, notably regarding the requirement for all courts to publish their judgements online, the Commission invites Bulgaria to take immediate action in the following areas:

- (1) Implement the new judicial strategy in order to achieve a profound reform of the judiciary. Adopt and implement changes to the Judicial Systems Act that aim at improving training, appraisal and appointment within the judiciary and to strengthen the accountability and efficiency of the Supreme Judicial Council. Strengthen the accountability of the judiciary through a strict application of all legal and disciplinary means to sanction corruption and trade in influence.
- (2) Improve judicial practice within the prosecution and the courts through a detailed analysis of shortcomings, in cooperation with foreign experts. Develop manuals of best practice, training programmes and coaching schemes for specific cases and introduce systematic management supervision in courts and prosecutors offices. Promote specific training and the specialisation of police services, prosecutors and judges to enhance their expertise and effectiveness in pursuing complex cases in particular regarding economic and financial crime and organised crime.
- (3) Pursue work on a new Penal Code in the light of the new Concept of Penal Policy adopted by the Government on 23 June 2010, which contributes to judicial efficiency through i.e. a decriminalisation of obsolete and petty offences. Continue monitoring the implementation of the new procedure codes and consider further improvements. Pursue the creation of a medical inspection agency to improve the quality and expediency of medical certificates requested by court.

Recommendations regarding the Fight against Organised Crime

While recalling the outstanding recommendations of July 2009, notably regarding specialisation within the judiciary, the Commission invites Bulgaria to take immediate action in the following areas:

- (4) Strengthen the capacity of the joint teams on organised crime, extend their competence to all organised crime cases and associate CEPACA to assure the freezing and forfeiture of relevant assets during the investigative phase according to operational requirements.
- (5) Pursue the reform of police in order to create a competent criminal police force able to apply best practices of other Member States.

- (6) Strengthen further asset forfeiture legislation following the principle of "non-conviction based civil confiscation" and recommendations by the Council of Europe's Venice Commission, in particular to ensure the application of law while respecting fundamental rights and freedoms. Consider a right of initiative for the Commission for the forfeiture of Criminal Assets (CEPACA) to initiate proceedings to secure and forfeit assets, introduce rules to secure assets early in the investigative phase in cooperation with the prosecution and extend the group of related persons to better target criminal activity through forfeiture.

Recommendations regarding the Fight against Corruption

While recalling the outstanding recommendations of July 2009, notably regarding the promotion of ex-officio investigations into allegations of corruption and conflict of interest by administrative authorities, further strengthening the inspectorates and regional anti-corruption councils and safeguarding of whistle-blowers, the Commission invites Bulgaria to take immediate action in the following areas:

- (7) Improve judicial practice in high-level fraud and corruption cases in line with best practice in other Member States. Apply a comprehensive and pro-active investigative strategy which systematically investigates links between related cases, aspects of organised crime and links to administrative authorities. In order to step up the fight against high-level corruption, Bulgaria should apply legal possibilities for detention in serious cases more strictly and improve the protection of the witnesses in line with best practice in other Member States.
- (8) Strengthen the law on the prevention of conflicts of interest, notably through an authority with a pro-active mandate in charge of identifying and sanctioning conflict of interest. Accelerate the implementation of the action plan to implement the National Anti-Corruption Strategy.
- (9) Perform a continuous risk assessment regarding the implementation of public procurement legislation and target prevention and control activities accordingly in a pro-active and result-oriented manner. Strengthen the capacity of the competent administrative authorities to perform ex-ante and ex-post checks and strengthen the capacity of its help desk where contracting authorities can seek advice. Ensure that all existing sanctions for infringements of public procurement rules against individuals, including disciplinary measures, are fully implemented to strengthen deterrence.
- (10) Encourage cooperation between procurement authorities to regroup tenders with a view to pool expertise and create economies of scale. Strengthen the training efforts for officials of the competent authorities in order to identify and prevent conflict of interest and other important irregularities in public procurement. Develop and apply best practice of systematic cooperation between competent administrative authorities with judicial authorities.