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signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European  
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Progress in Bulgaria under the Co-operation and Verification mechanism

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**COMMISSION STAFF WORKING DOCUMENT**

**BULGARIA: Technical Report**

*Accompanying the document*

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

**On Progress in Bulgaria under the Co-operation and Verification mechanism**

{COM(2012) 411 final}

# COMMISSION STAFF WORKING DOCUMENT

## BULGARIA: Technical Report

### *Accompanying the document*

## 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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- *Implement fully the legislation on the independence of the inspectorates in the public administration and ensure more pro-activeness in their investigative role*
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- *Associate Member States' experts to provide guidance and assistance as regards improving the quality of investigations and reporting on this*
- *Hand over an action plan to implement the strategy to fight organised crime and implement it with reports at regular intervals*
- *Fully implement relevant legislation on confiscation of assets of criminals*
- *Report regularly and audit internally the new and on-going investigations, indictments and convictions*
- *Implement the new legislation to combat money laundering*

Note:

Under each of the six benchmarks, several issues of particular concern were mutually agreed when the Cooperation and Verification Mechanism was created in December 2006. These issues are listed above. You may consult previous reports at: [http://ec.europa.eu/dgs/secretariat\\_general/cvm/index\\_en.htm](http://ec.europa.eu/dgs/secretariat_general/cvm/index_en.htm)

## 1. INTRODUCTION

This technical report sets out the information and the data which the Commission has used as the basis for its analysis. This information has been collected from a variety of sources. Over the past five years, the Commission has devoted particular attention to collecting information and deepening its knowledge of Bulgaria. It has used a combination of on-the-spot dialogue with key Bulgarian interlocutors, a permanent presence in the Commission's representation, and the knowledge and experience of experts from other Member States. It has also had the benefit of working closely with the Bulgarian government, which has provided detailed and increasingly focused responses to a series of questionnaires. Finally, where relevant, the Commission has tested its findings against those of specialised international organisations, EU agencies and NGOs. This technical report makes several references to past reports of the Commission under the Cooperation and Verification Mechanism (CVM), which provide a collective record of progress since Bulgaria's accession to the EU.

## 2. BENCHMARK 1: ADOPT CONSTITUTIONAL AMENDMENTS REMOVING ANY AMBIGUITY REGARDING THE INDEPENDENCE AND ACCOUNTABILITY OF THE JUDICIAL SYSTEM

### *The role of the judiciary under the Constitution*

Before Bulgarian accession to the EU in 2007, the Council of Europe's Venice Commission had criticised several aspects of the judicial system in Bulgaria, including the immunity of prosecutors and judges, and the risk of politicisation of the Supreme Judicial Council (SJC).<sup>1</sup>

Constitutional amendments adopted on 2 February 2007 sought to strengthen the independence of the judiciary, its impartiality and accountability. The revised Article 130 of the Bulgarian Constitution set out the competences and attributions of the SJC.<sup>2</sup> It confirmed its functions as regards appointments, promotions, demotions, transfer and removal from office of magistrates,<sup>3</sup> as well as its budgetary role. The Constitution also requires reports to be made by the highest judicial bodies for debate in the National Assembly.<sup>4</sup> The scope and structure of these reports is determined by the SJC. Magistrates' immunity has been restricted to acts committed in performance of their official duties, and they can be liable for civil or criminal action in relation to their judicial functions in situations when they commit an intentional indictable offense.<sup>5</sup>

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<sup>1</sup> [http://www.venice.coe.int/docs/2008/CDL-AD\(2008\)009-e.pdf](http://www.venice.coe.int/docs/2008/CDL-AD(2008)009-e.pdf) (p.4)

<sup>2</sup> The amendments of February 2007 introduced new provisions concerning the judiciary: Art. 130 – (6), (7), (8), (9); Art. 84(16); Art. 132, 132 (a).

<sup>3</sup> See: Article 130 (6) reiterates powers already set out under Art. 129 (1) of the Bulgarian Constitution.

<sup>4</sup> See: Art. 84 and Art. 130-7 of the Bulgarian Constitution: The Council submits annual reports from the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General on the application of the law and their respective activities to the National Assembly.

<sup>5</sup> See: Art. 132 of the Bulgarian Constitution.

The composition of the SJC was maintained.<sup>6</sup> The Venice Commission criticised a particular aspect of the election process, the risk that the use of simple majority vote meant that a parliamentary majority could determine the entire 11 members of the parliamentary quota.<sup>7</sup> The Venice Commission was of the opinion that this risked the politicisation of the Council. This concern has also been echoed by independent experts assessing judicial reform for the European Commission.

The Minister of Justice has the function of chairing the Supreme Judicial Council, though with no voting rights. An amendment introduced in 2006 also provided that the Minister of Justice may make proposals for appointment, promotion, demotion, transfer and removal of office of judges, prosecutors and investigators. The Minister also proposes a draft budget for the Council's consideration and manages the property of the judiciary. However, the role of the Minister in inspecting judicial institutions and verifying progress of judicial proceedings in individual cases was removed from the Constitution in 2007. The Venice Commission has expressed reservations concerning the role of the Minister, notably the right of initiative in the area of human resources and acting as a chairman of the Council.<sup>8</sup> Over the past five years, experience shows that Ministers of Justice have in practice used their role in the SJC in different ways and to different degrees, but the general trend has been to leave issues concerning management and careers to the SJC. CVM reports have not highlighted the role of the Minister in the SJC as an area of concern.

The constitutional revision of 2007 introduced a new provision on the Inspectorate to the Supreme Judicial Council, which was given the power to inspect all judicial bodies, including courts, prosecution offices and investigating services.<sup>9</sup> The Inspectorate can act ex-officio, or based on signals from citizens, state bodies, legal entities or judicial bodies. It has the discretion to plan its activities. It can approach the competent judicial authorities, with alerts, proposals and reports. The chief inspector and the inspectors are appointed by the National Assembly for a mandate of 5 and 4 years respectively, by vote of two-thirds majority.<sup>10</sup> The two-thirds majority requirement means that successful nominees would normally have the support of a wider spectrum of political parties represented in Parliament.

The legal framework set by these constitutional amendments was complemented by a new Judicial System Act (JSA) adopted in July 2007, which defined key rules governing the organisation of the Bulgarian judiciary.<sup>11</sup>

These constitutional amendments have an important bearing on the independence of the judiciary. In the opinion of independent experts including the Venice Commission, the guarantees for the independence and accountability of the magistracy enshrined in the Bulgarian Constitution are considered a good basis for

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<sup>6</sup> Its 25 members include three members by law, the General Prosecutor and the Presidents of the Supreme Court of Cassation and the Supreme Administrative Court, 11 members designated by Parliament and 11 members designated by the magistracy (6 judges, 4 prosecutors and one investigating magistrate)..

<sup>7</sup> [http://www.venice.coe.int/docs/2008/CDL-AD\(2008\)009-e.pdf](http://www.venice.coe.int/docs/2008/CDL-AD(2008)009-e.pdf) (para 25, p.7)

<sup>8</sup> Idem, p.8-9.

<sup>9</sup> See: Art. 132 (a) of the Bulgarian Constitution.

<sup>10</sup> The Chief Inspector is appointed by the National Assembly through a ¾ majority for a term of 5 years. Inspectors are appointed by the National Assembly for a term of 4 years. The budget of the Inspectorate is voted by the National Assembly. The Inspectorate submits a yearly report on its activities to the Supreme Judicial Council (Art. 132a of the Bulgarian Constitution).

<sup>11</sup> See benchmark 3, below.

an independent judiciary in a mature democracy. However, there have been continuing areas of concern. Expert opinion has highlighted the risk of politicisation of both the Inspectorate and the SJC, due to the role of the National Assembly in the nomination procedure.<sup>12</sup> The procedures have not led to appointments seen to be determined by the professionalism and integrity of the candidates. Elections for vacancies in the SJC from the parliamentary quota in July 2011 were criticised for their lack of transparency and for the lack of public debate on the nominated candidates. Parliament's appointments of judicial inspectors in December 2011 and March 2012 raised similar criticism and did not allow for a real competition to take place.<sup>13</sup>

Some further concerns in the area of independence have been voiced in relation to the fact that the SJC brings together representatives of prosecutors, investigators and judges. This means that prosecutors and investigators participate in decisions on career development, disciplinary matters and dismissals of judges.<sup>14</sup> This again became the subject of public debate at when discussing amendments to the Judicial Systems Act in 2012.

These concerns about independence have been accentuated as a result of criticism by the authorities of individual judges and particular judicial decisions. In terms of substance, this approach undermines the separation of powers. Just as importantly, underlying the benchmarks on independence and the role of the Inspectorate is the principle of an independent judiciary without political pressure. This concern has also been echoed by United Nations bodies.<sup>15</sup>

#### *Inspectorate to the Supreme Judicial Council*

Following the constitutional amendments of February 2007, the Inspectorate became operational in the first quarter of 2008.<sup>16</sup> The Inspectorate's yearly plans of inspections defined priorities for each year so as to ensure full geographical coverage and focus on specific thematic issues. It can also launch ad hoc inspections, triggered

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<sup>12</sup> [http://www.venice.coe.int/docs/2008/CDL-AD\(2008\)009-e.pdf](http://www.venice.coe.int/docs/2008/CDL-AD(2008)009-e.pdf) (p.11)

<sup>13</sup> Although the list of candidates considered by the National Assembly was published in advance, no presentation of the candidates and no discussion on their suitability to perform the functions of inspectors took place before the vote. See also 'Human Rights in Bulgaria in 2011', Bulgarian Helsinki Committee, p.17: "The ruling party and the opposition were united in their drive to assign people without the necessary professional and moral merits, but with political protections, to these positions with the goal of controlling the exercise of disciplinary power over magistrates via the SJC."

<sup>14</sup> The Venice Commission has underlined that: "The prosecution should have no involvement whatsoever in the ultimate administration of justice, nor in the appointment and functioning of judges, and the operation of the court system." ([http://www.venice.coe.int/docs/2008/CDL-AD\(2008\)009-e.pdf](http://www.venice.coe.int/docs/2008/CDL-AD(2008)009-e.pdf)).

<sup>15</sup> United Nations Committee on Torture, 14 December 2011: "The Committee is concerned..... that the principle of the independence of the judiciary is not respected by the organs outside the judiciary, including high-ranking government officials, nor fully applied within the judiciary" It noted the responsibility of the state to "raise the awareness of judicial and other officials and the public at large about the importance of independence of the judiciary." 'Human Rights in Bulgaria in 2011', Bulgarian Helsinki Committee, p. 15: "In 2011, the independence of the courts suffered serious attacks, both from the executive branch, primarily in the person of the Deputy Prime Minister and Minister of the Interior Tsvetan Tsvetanov, as well as from the Supreme Judicial Council (SJC) and its Inspectorate (ISJC). Parliament also contributed to the creation of dependencies within the judicial system. No institution took an appropriate corrective position in response."

<sup>16</sup> The head of the Inspectorate was appointed in December 2007 and the positions of the inspectors and administrative staff were filled by May 2008.

by signals or, increasingly since after 2008, initiated ex-officio.<sup>17</sup> Between early 2008 and December 2011, the Inspectorate carried out inspections covering all the judicial bodies in Bulgaria.

The first round of inspections by the Inspectorate reported significant divergence in the application of legal provisions and a lack of respect for procedural deadlines required by law. It also pointed to a lack of follow up to these shortcomings from the administrative heads and higher jurisdictions responsible. The Inspectorate issued tailored recommendations addressed to the judicial bodies concerned. A system of follow-up inspections has been designed to ensure monitoring of measures taken in response to the Inspectorate's recommendations. The Inspectorate can make use of disciplinary proceedings, including through proposals for disciplinary sanctions to the Supreme Judicial Council.

The Inspectorate reports that the inspections have led to improvements as regards celerity of judicial proceedings and the alignment of judicial practice. They have also promoted a more active role for the administrative heads, and improved the accountability of individual magistrates, notably through disciplinary action.

The SJC and the Inspectorate have sought to ensure follow-up to recommendations issued by the Inspectorate, including on disciplinary matters. A joint working group was established in December 2009 and institutionalised in February 2010 as a *Commission on the analysis and follow-up to the ISJC recommendations*. It is considered to have helped to ensure alignment of disciplinary practice. Another step has been the plan to publish the Inspectorate's recommendations on the SJC website, to give visibility to the problems identified by the Inspectorate.

The Inspectorate's work has not had a decisive impact on the shortcomings of the judicial system. It has not been able to provide the evidence base needed to help address systematic problems such as uneven distribution of workload across judicial bodies and wide variations in the size of judicial districts. Its investigations have not resulted in clear solutions to key horizontal issues like random distribution of cases, where divergent IT systems, how to assess complexity of cases, and the impact on the distribution of workload would have benefitted from an authoritative assessment by the Inspectorate. The Inspectorate has not exploited the opportunity to focus on specific problems of divergent legal interpretation, which could have led to legislative clarifications, guidelines, and input into the training curricula offered by the National Institute of Justice.

It has also not secured a track record in terms of consistent and dissuasive disciplinary action. For example, when assessing the judiciary, it has tended to look at quantity (e.g. number of delayed cases by a given magistrate) rather than quality (difficulty and volume of a given case, quality of reasoning). In 2011, the Inspectorate was accused of carrying out inspections for political goals,<sup>18</sup> or

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<sup>17</sup> Between January 2007 and December 2011, the Inspectorate carried out geographical planned inspections of all courts and prosecution offices in all the appellate regions in Bulgaria, 52 thematic inspections and 179 ad hoc inspections.

<sup>18</sup> 'Human Rights in Bulgaria in 2011', Bulgarian Helsinki Committee, p. 15: "In June, the ISJC conducted a special unprecedented check of the whole criminal division of the SCC with the goal of blurring the responsibility of the newly appointed court chairperson for her confirmed abuses in cases (in connection with a concrete complaint against her) and, at the same time, to penalize with disciplinary measures prominent representatives of the BJA [Bulgarian Judges Association], which was positioning itself as a significant opponent of the government with tangible civic influence."



launching cases only after public pressure. Such claims are supported by cases like the weak response by the Inspectorate and the prosecution to two emblematic cases of alleged trade in influence and corruption in 2009 and 2010, in which a large number of senior magistrates and their families were involved.<sup>19</sup>

**3. 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**

*Judicial System Act*

Following Bulgaria's accession to the EU, a new Judicial System Act was adopted on 24 July 2007<sup>20</sup>. This has since been the subject of several amendments, with a view to introducing more effective promotion and appointment procedures and giving the leadership of the judicial system the tools needed to manage the system and its human resources. In 2009, amendments gave the Inspectorate the right to appeal disciplinary decisions of the Supreme Judicial Council (SJC), which gave an extra "check and balance" to the fairness and impartiality of disciplinary procedure. In 2010,<sup>21</sup> new procedures were introduced for appointments and appraisals of magistrates, notably through introducing a functional separation in the career management of prosecutors and judges, as well as decentralised appraisal commissions.<sup>22</sup> Integrity became an explicit criterion in appraisals, promotions and senior appointments. The SJC received new attributions to assess workload of judicial bodies, adjust personnel schemes, change jurisdiction areas, reallocate resources or even close down some courts. The SJC can decide to open new vacant positions in a given court or prosecution office (based on a request of the administrative heads), and it can assign additional positions to a given court or prosecution office to deal with workload. Up to 20% of the vacant positions in a given court or a prosecution office can be filled through external recruitment of candidates with sufficient experience in the legal profession.

The 2009 amendments received a positive assessment of the Venice Commission and addressed some of their earlier concerns.<sup>23</sup> In the assessment of independent experts,

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<sup>19</sup> Following to public pressure, cases were launched against a number of magistrates in the first major case which involved alleged trade in influence for a large number of senior judicial positions, however, only two cases led to more serious sanctions. In the second emblematic case involving alleged trade in influence and corruption for the purchase of real estate, only few disciplinary cases were launched and all sanctions were later cancelled by the Supreme Administrative Court.

<sup>20</sup> The Judicial System Act adopted in July 2007 entered into force on 10 August 2007. It was subsequently amended in April 2009 and in December 2010. The latest amendments entered into force in January 2011.

<sup>21</sup> The amendments to the Judicial System Act were adopted by Parliament in December 2010 and entered into force on 4 January 2011.

<sup>22</sup> The reform of the appraisal system introduced more precise quantitative and qualitative criteria, taking into account the workload of magistrates. Magistrates undergo evaluation by decentralised standing commissions established at the level of courts and prosecutions offices. Integrity issues and results of inspections are taken into account in appraisals and promotions.

<sup>23</sup> [http://www.venice.coe.int/docs/2009/CDL-AD\(2009\)011-e.pdf](http://www.venice.coe.int/docs/2009/CDL-AD(2009)011-e.pdf) One point relevant to earlier Venice Commission criticisms was that precise rules have been introduced on the composition of the

the 2010 amendments also gave the SJC the powers needed to effectively discharge its managerial functions and to safeguard the independence and accountability of the judiciary.

A further set of amendments to the Judicial System Act was passed in July 2012. These have particular significance for the selection of members of the Supreme Judicial Council, as well as its workings (see benchmark 3 below).

### *Penal Code*

CVM reports have consistently noted that Bulgarian criminal justice suffers from an outdated Penal Code. The current Penal Code dates back to 1968 and many practitioners consider it ill-suited to modern types of crime. Serious crime and petty offences are prosecuted according to the same procedures, irrespective of the social threat posed. Certain criminal offenses such as abuse in office need to be revisited to ensure adequate protection of the public interest. Bulgaria applies the principle of legality, which obliges the prosecution to process all cases, irrespective of their objective threat to social order: a lack of discretion to prioritise which increases the workload on the prosecution and courts and makes it difficult to concentrate on the more important cases. A possible shift to the opportunity principle has been held back by public concerns that such discretion would not be used objectively.

Amendments to the Penal Code adopted in April 2007 introduced more severe penalties for certain serious crimes.<sup>24</sup> In 2009 Bulgaria initiated a more fundamental reform of the *Penal Code*. The original timeline for this legislative reform has been postponed on a number of occasions, but a draft section on general provisions was published for consultation in January 2012<sup>25</sup> and work on specialised provisions continued.<sup>26</sup> This included looking at modern crimes, such as cybercrimes and environmental offences. A revised Code would also give an opportunity to modernise definitions and sanctions for corruption and organised crime offences, with GRECO recommendations on corruption offenses to be taken into account.<sup>27</sup>

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disciplinary panel within the SJC. The involvement of prosecutors and investigators in decisions on judges' careers has thus been diminished, albeit not eliminated.

<sup>24</sup> These included the crime of inciting prostitution, inducing to use drugs for the purpose of acts of prostitution, organised crime group involved in inciting to prostitution.

<sup>25</sup> The general part of the draft Penal Code introduces notably the following changes: abolishing the life imprisonment without the possibility of pardon, changing the concept of probation, abolishing the sanction of deprivation of the right to receive honorary titles, distinctions and military ranks. It also reportedly increases the penalties for serious crimes, defines stricter terms of recidivist criminals, regulates the criminal liability of minors.

<sup>26</sup> The draft specialised provisions of the Penal Code are being elaborated by working groups composed of experts and representatives of the Ministry of Justice. They will notably aim to redefine the categories of crime, abolish outdated offenses and introduce some new offenses. Some of the current criminal offenses will be redefined as administrative violations. Some legal definitions and concepts will be better defined.

<sup>27</sup> [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7\\_Bulgaria\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_One_EN.pdf)

GRECO recommends inter alia to ensure that the offences of active bribery in the public sector, as well as trading in influence, are construed in such a way as to unambiguously cover instances where the advantage is not intended for the official him/herself but for a third party (p.19) and to continue to clarify the interpretation of the law following the 2002 amendments relating to the criminalisation of both material and non-material advantages (p.20). It also recommends to revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery in the public sector in cases of effective regret (article 306 of the Criminal Code) (p.21) and to spell out clearly that bribery of foreign arbitrators is a criminal offence also when the arbitrator performs his/her functions under the national law on arbitration of any other State.

Further recommendations provided by the UNCAC report should offer further guidance to the legislator.<sup>28</sup> A public consultation on the finalised draft is foreseen for summer 2012, and the Government considers that a finalised draft may be ready to table in Parliament in September 2012.

### *Penal Procedure Code*

The penal procedure rules were identified at the time of accession as one of the key factors hampering the effectiveness of criminal justice in Bulgaria, in particular an excessive formalism which hampered court proceedings, as well as inconsistency. A monitoring group established in April 2006 worked to identify divergent practices in criminal proceedings. Bulgaria has received advice from a number of bilateral twinning projects on how to modernise its criminal procedures.

2010 saw an important reform of the *Penal Procedure Code* (PPC).<sup>29</sup> This extended the investigative powers of the police, clarified rules on the admissibility of evidence and introduced other provisions aimed at streamlining criminal proceedings. Decisions by courts to return cases to the prosecution for further investigation can now be appealed. Stricter rules were introduced on medical certificates justifying absence at court hearings, and the possibility of reserve defence counsels was introduced to target the intentional absenteeism of defence lawyers. The reforms also helped to provide the legal basis for the establishment of a specialised court for organised crime and an attached specialised prosecution office.<sup>30</sup>

Bulgaria reports that the 2010 amendments have helped to streamline and enhance the effectiveness of criminal proceedings.<sup>31</sup> The extension of investigative powers conferred to the police has reportedly had positive impact on the pre-trial phase.<sup>32</sup> Amendments to the Penal Procedure Code extended the investigative powers of police, allowed certain police officers to testify in court, and introduced the possibility for courts to hear covert witnesses.<sup>33</sup> However, occurrences such as the absence of defence counsels which lead to postponement of hearings continued to be

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<sup>28</sup> The UNCAC Report on Bulgaria October 2011 puts forward recommendations inter alia on sanctions against legal persons, enhancing protection for whistle blowers, expanding the scope of the law on the forfeiture of proceeds of crime to corruption in the private sector (see pp.7-8).  
<http://www.unodc.org/documents/treaties/UNCAC/COSP/session4/V1186294e.pdf>

<sup>29</sup> For further information on the PPC amendments see also: SEC(2010) 948.

<sup>30</sup> See benchmark six below

<sup>31</sup> Bulgaria reported some positive effects of the amendments on administration of evidence and the possibility to use testimonies of police operational staff. The application of reserve defence counsels has reportedly helped to improve the celerity of some high-level cases. Bulgaria reports that the possibility to appeal courts' decisions to return cases to the prosecution for further investigation has helped to reduce the number of such decisions.

<sup>32</sup> Bulgaria reports that expanding powers to institute pre-trial proceedings to investigative bodies led to increase in new pre-trial proceedings initiated (2010: 19.765; 2009: 13.360); increase in new cases decided by the prosecution: 2010: 19.208; 2009: 18.860; 2008: 12.985; decrease in cases unsolved by prosecution: 2010: 2.741; 2009: 5.655; 2008: 7.265. The Ministry of Interior reports increase in the number of pre-trial proceedings finalised: 2010: 57.834 cases; 2009: 51.690 cases. The number of cases finalised beyond the statutory deadline: in 2010: 4200 delayed investigations; 2011: 1068 delayed investigations. The number of criminal proceedings returned to the police by the prosecution or by court: in 2010: 20 139; in 2011: 13 112.

<sup>33</sup> Experts have however criticised the fact that only operative policemen can be heard by court and not the police investigator who has overall knowledge of all aspects of the case, contrary to practice in other Member States. Similarly to the Penal Procedure Code, practitioners see amendments to the Administrative Procedure Code in general positive but consider that the potential of the new Civil Procedure Code to accelerate the judicial process has not yet been fully exploited.

a cause of delays in some emblematic cases, suggesting that the new provisions have not been used to their full potential.

On 10 May 2011, the European Court of Human Rights (ECHR), published its first pilot judgments, concerning Bulgaria.<sup>34</sup> The ECHR has required Bulgaria to introduce a remedy or remedies to deal with unreasonably long criminal proceedings and, in addition, a compensatory remedy in respect of unreasonably long criminal, civil and administrative proceedings. Those remedies must conform to the Court's principles and become available within 12 months from the date on which the judgments became final. The cases concern the excessive length of civil and criminal proceedings in Bulgaria.

In November 2011, additional amendments to the Penal Procedure Code re-introduced investigative powers of customs officers.

Since before accession, the function of investigating magistrates (*sledovateli*) has been identified as a source of overlaps in competences among the police, the investigators and the prosecution and thus a factor increasing the complexity of criminal proceedings. According to the Penal Procedure Code currently in force, investigating magistrates are in charge of investigating crimes against the State, violations of State secrets, leakages of classified information and crimes against peace and humanity.<sup>35</sup> Commitments were made before accession to limit the competencies of investigating magistrates, but Bulgaria has argued that their status as magistrates means they cannot be dismissed or transferred to other judicial roles, so their role has been perpetuated. They are now located within the Prosecution office. The Commission has questioned the utility of a category of magistrates who appear to add to the complexity of the Bulgarian judicial system to no discernible advantage.<sup>36</sup>

#### *Civil Procedure Code*

A revised *Civil Procedure Code* adopted in July 2007<sup>37</sup> was intended to bring gains in terms of the efficiency and speed of court proceedings, with further amendments aiming at improving the enforcement of court decisions and allowing the re-opening of civil cases following decisions of the European Court of Human Rights.<sup>38</sup>

Contacts with practitioners suggest that, with the new provisions not used proactively by the management of the judiciary, there has not been a substantial acceleration of civil proceedings or more streamlined judicial practice. Some provisions have led to further delays (this has been suggested, for example, in respect of double exchange of documentations). The implementation of the Civil Procedure Code has been monitored by the Inspectorate to the SJC. The detailed findings of these inspections have been reported to the administrative heads and to the SJC for follow-up and the

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<sup>34</sup> In the cases *Dimitrov and Hamanov v. Bulgaria* and *Finger v. Bulgaria*.

<sup>35</sup> These offenses are dealt with by a service of 400 investigating magistrates (according to the information provided by Bulgaria). The General Prosecutor confirmed that this means that the average workload of the investigating magistrates is considerably lower than that of the regular prosecution.

<sup>36</sup> Technical Update 2008 (COM(2008)495, page 8.

<sup>37</sup> The new Civil Procedure Code adopted in July 2007 entered into force in March 2008, with further amendments in 2009.

<sup>38</sup> Technical Update 2009 (COM(2009)402, page 7.

Council reported a positive effect of such inspections in terms of identifying divergent practices and taking measures to eliminate them. It remains unclear to which extent these findings are being shared with judicial bodies across the country. The results from inspections have not been used by the SJC or the Inspectorate to propose horizontal measures such as guidelines on judicial practice, training curricula or legislative amendments.

#### *Administrative Procedure Code*

Amendments to the Administrative Procedure Code were adopted in March 2007 and in May 2011 in order to improve proceedings and re-organise the first-instance jurisdiction in a number of administrative cases from the Supreme Administrative Court to the district administrative courts. Particular arrangements were put in place for monitoring the changes, which concluded that implementation was relatively satisfactory and made a number of suggestions for improvements.<sup>39</sup>

#### **4. 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**

##### *Judicial Reform Strategy*

A *Strategy for the continuation of Judicial Reform* was adopted in June 2010 and has been taken forward through detailed action plans adopted by the Council of Ministers. These Plans cover some 6 months, and are accompanied by timetables listing measures to be taken within established deadlines.<sup>40</sup> Given that the powers to structure and manage the judiciary in Bulgaria rest to a great extent with the Supreme Judicial Council (SJC), the key tool for the Ministry of Justice to promote reforms has been through initiating legislative proposals for consideration by Parliament. Such measures have included amendments to the Judicial Systems Act and to other legislation concerning the responsibilities and organisation of courts.<sup>41</sup>

##### *Role of the Supreme Judicial Council*

The Judicial System Act adopted in 2007 gave the SJC extensive powers over the organisation of the justice system, the planning and execution of the budget, human resources management, and integrity and disciplinary matters.<sup>42</sup> The SJC received additional powers to report and analyse the workload of courts and prosecution offices, and to adjust personnel levels by cutting and opening new positions.

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<sup>39</sup> See Technical Update 2009 (COM(2009)402, page 7. A working group to monitor the application of the Administrative Procedure Code was established in March 2007 and reported positive results in the first year of its application in terms of streamlining the administrative procedure. Technical Update 2009 (COM(2009)402, page 7.

<sup>40</sup> The initial Action Plan covered the period of July-December 2010. The Action Plan has been subsequently supplemented for the period January-July 2011, August- December 2011, January- July 2012.

<sup>41</sup> See benchmark 1 above.

<sup>42</sup> The functions of the Supreme Judicial are enumerated in Article 30 of the JSA. Since January 2011, appraisals and promotions are facilitated by commissions established at the local level. Appraisals of judges and prosecutors are prepared by two sub-commissions of the SJC *Commission for Appointments and Appraisals*. Competitions for administrative heads are interview-based and run by the SJC. The vote by the SJC is public and the Council is obliged to motivate its appointment decisions.

The SJC therefore enjoys considerable powers to tackle existing problems in the judiciary such as differences in workload, systems for appraisal and promotion that command the confidence of the public and the judicial profession, and the need for the judiciary to set an example in terms of integrity. Successive CVM reports have concluded that the SJC has not taken the opportunity to fully use its powers to this end.<sup>43</sup> The judicial leadership continues to face criticism from both within the profession and in public opinion more widely.<sup>44</sup> The Council has not developed a human resources strategy that plans the needs of the system and sets out how to achieve this, and promotes a profession with independence and integrity at its heart.

A number of specific difficulties can be highlighted. First, there is no consistent human resource planning, either at entry level or for promotions. Promotion competitions for magistrates have been organised at irregular intervals, despite a steady level of vacancies.<sup>45</sup> Promotions were suspended for over 2 years, reportedly due to the need to develop secondary legislation. During this period, gaps were filled by secondments largely at the sole discretion of the administrative heads of courts. Secondment has occurred on considerable scale, and has often been prolonged up to two and a half years. This practice has effectively undermined normal appraisal and promotion arrangements.

Competitions for administrative heads have been held more regularly, but have differed significantly in the number of positions opened per year.<sup>46</sup>

Second, the appraisals system has not been able to deliver the accurate and consistent appraisal necessary for promotion. One problem has been an inability to use appraisal to differentiate between magistrates.<sup>47</sup> Both before and after new rules on appraisals introduced in amendments to the Judicial Systems Act in December 2010, the vast majority of magistrates were scored as very good: reports suggest that the end-2011 round of appraisals based on the revised JSA shows that 98% of the magistrates received very good marks. This intensifies concerns about the promotion system, in particular that local appraisal commissions do not use consistent or

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<sup>43</sup> Technical Update 2011 (COM(2011)459, p.5-6; Interim report 2011 (COM(2011)81, p. 4; Technical Update 2010 (COM2010)400, p. 9; Technical Update 2009 (COM(2009)402 p. 8; Technical Update 2008 (COM92008)495, p. 11.

<sup>44</sup> 76% of Bulgarian respondents of a Eurobarometer poll conducted in September 2011 are of the opinion that corruption is widespread in the judiciary. This is the highest result collected in this poll among respondents in any EU Member State (Special Eurobarometer 374). This was also noted by the United Nations Committee on Torture, 14 December 2011: "The Committee is concerned..... by allegations of corruption within the justice system and lack of trust in the administration of justice, resulting in lack of public trust in the judiciary."

<sup>45</sup> Promotion competitions for 220 magistrates were organised in 2008, 122 in 2009. There were no promotions organised in 2010 and the last round of promotions for 294 magistrates was launched end 2011.

<sup>46</sup> Appointments for administrative heads and deputy administrative heads included: 64 senior positions filled in 2007, 41 in 2008, 240 in 2009, 178 in 2010 and 55 in 2011.

<sup>47</sup> Lacking objective input through proper appraisals or written competitions, promotion interviews at the SJC often fall back on academic results or statistical information on case disposition by candidates. Statistical data on the number and timeliness of case handling by candidates does not appear to take fully into account the differences in workload and the fact that case data does not properly reflect the complexity of individual cases.

relevant criteria during interviews. Experts consulted by the Commission also pointed to a lack of clear separation of role in the Council.<sup>48</sup>

Third, senior appointments conducted by the Council have been frequently criticised for the lack of transparency and objectivity in assessing candidates' professional qualities, managerial experience and integrity. Disparities in the numbers of senior positions open from year to year may adversely affect the quality of candidates. In 2009, the year with the highest number of senior appointments, the objectivity of these appointments was challenged by reports of alleged trading in influence within the Supreme Judicial Council.<sup>49</sup> Concerns about a non-transparent appointment by the SJC were raised again in 2012.<sup>50</sup>

Finally, the SJC has not addressed the issue of disparities in workload. This is widely recognised as a serious problem, at its most critical in the Sofia based courts and prosecution offices.<sup>51</sup> The SJC has analysed the problem, but with no results as yet: the starting point, defining criteria to measure workload per court and per magistrate, has not yet been undertaken.<sup>52</sup> The Council has the power to close down unviable courts, to open new ones or to redefine the geographical scope of jurisdiction, but these opportunities have not been used. The transfer of positions from judicial bodies with low workload to more busy ones has been applied to only a limited extent.<sup>53</sup>

This is linked to a serious problem of delays in issuing motivations of judicial decisions, which seems to affect a number of courts in Bulgaria. This has consequences for the administration and transparency of justice, and for the accountability and independence of judges. There has been no examination of the extent to which this is linked to uneven workload between courts, or indeed the uneven distribution of workload within courts.

#### *Integrity, ethics and disciplinary action*

Closely linked to appraisal and promotion is the establishment of a system for promoting ethics and integrity and applying disciplinary measures. This also has wider relevance of public confidence in the judicial system. The Code of Ethics adopted in May 2009 put in place an important point of reference setting out principles of ethical behaviour for magistrates in the exercise of their professional

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<sup>48</sup> With cases reported where the same Council member advised on the ethical quality of a candidate, considered this advice as part of the promotion committee and took a decision on the same candidate in the plenary of the Council.

<sup>49</sup> These reports led to the dismissal of two of the Council's members, however, evidence was deemed insufficient to start criminal proceedings. Some cases are still pending.

<sup>50</sup> This concerned the appointment of the Deputy Chair of the Supreme Court of Cassation and the recent appointment of a Chief Appellate Prosecutor.

<sup>51</sup> See SEC(2011) 967, page 9.

<sup>52</sup> The study on the workload of individual magistrates and judicial bodies launched by the Supreme Judicial Council in 2011 has not yet been presented or discussed. No operational steps have been taken yet concerning the reallocation of staff in order to address the imbalances in workload. No further information is available on the follow-up to a draft project prepared by the SJC Nominations and Appraisal Commission on reducing the number of positions in the judicial bodies with the least workload.

<sup>53</sup> In 2007, transfer of 29 prosecutors' positions, in 2009 transfer of 20 judges' position and 24 prosecutors, in 2010 transfer of 4 judges and 28 prosecutors, in 2010 8 judges positions and 10 prosecutors' positions.

duties but also in their conduct in private sphere.<sup>54</sup> Violations of the code of ethics have been used by the SJC to launch disciplinary proceedings and apply disciplinary sanctions.<sup>55</sup> Recent rulings by the Supreme Administrative Court, overruling the disciplinary measures imposed on magistrates, have shown that the structures for ensuring proper disciplinary control over the judiciary are failing to deliver. The prosecution also did not pursue criminal investigations in this case.<sup>56</sup> The disciplinary practice of the SJC is not deemed by independent experts to have contributed to improving the accountability of the judiciary. Concerns have also been raised on the make-up of disciplinary panels under the SJC, for example that prosecutors sit in judgment on disciplinary proceedings concerning judges.

The SJC set up a Commission for professional ethics and prevention of corruption (Ethics Commission). The opinions produced by the Ethics Commission in the context of appraisals, promotions and senior appointments have not led to a rigorous and transparent assessment of candidates' integrity. A number of controversies put in question the methodology of the Ethics Commission and the objectivity of its input. It was only after a civil society initiative to produce profiles of candidates that the track record of candidates started to come consistently into the public domain. The Ethics Commission has not taken any concrete steps in the field of corruption prevention. A strategy for preventing corruption within the judiciary produced in 2008 has not been followed by any noticeable steps on the ground.

Before 2007, disciplinary action against magistrates was virtually non-existent.<sup>57</sup> This responsibility lay with an inspection attached to the Ministry of Justice, and the role of higher ranking judicial bodies to inspect courts and prosecution offices within their jurisdiction had not been effectively exercised. Restricting magistrates' immunity to acts performed within professional duties and the establishment of the Inspectorate have been important steps towards strengthening the accountability of the judiciary in Bulgaria. The Judicial System Act provides for two types of procedures, one initiated by the SJC and one by administrative heads.<sup>58</sup> Disciplinary sanctions can be also taken based on the violation of the Code of Ethics. According to the information provided by Bulgarian authorities, the 179 disciplinary proceedings submitted to the SJC between January 2007 and December 2011 led to

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<sup>54</sup> Before the code of ethics adopted in 2009, Bulgaria disposed of a rudimentary form of code of ethics prepared by judges association and endorsed by the Supreme Judicial Council in December 2003.

<sup>55</sup> Examples of disciplinary measures taken based on the code of ethics include the dismissal of two SJC members in the scandal on alleged trade in influence in senior appointments, sanctions of removal from office of administrative heads and other sanctions against three judges involved in a real estate property scandal.

<sup>56</sup> The Supreme Administrative Court cancelled disciplinary sentences for three senior judges from the same court who had allegedly been involved in a case of trade in influence and corruption related to real estate purchases. The court argued that a breach of the ethical code alone could not justify sanctions; concrete violations committed in office were required. The prosecution raised no cases against magistrates involved in the "Krassyo" and "Primorsko" scandals.

<sup>57</sup> 3 disciplinary cases launched against top prosecutors in 2007, sanctions confirmed by SAC. Parallel criminal proceedings have also been launched.

<sup>58</sup> Disciplinary action taken by administrative heads can take the form of reprimand, censure or admonition. Disciplinary Action taken by the Supreme Judicial Council can lead to a range of sanctions from reprimand to removal from office.



172 decisions. This included 137 sanctions, most of which were reprimands and censures.<sup>59</sup>

Concerns have been raised concerning the action taken when transgressions have been identified. First, the decisions and sanctions have not always been consistent, including at the level of appeals to the Supreme Administrative Court. The Court could play an important role in promoting consistency, for example in cases of delays in motivations.<sup>60</sup> Second, despite plausible signs pointing to criminal offenses, in some emblematic cases the prosecution did not decide to initiate criminal proceedings against the magistrates concerned.<sup>61</sup>

#### *Debate on the reform of the SJC*

The 2012 amendments to the Judicial Systems Act provided an opportunity to put in place new arrangements for the SJC and the selection of its members. This has been a source of concern in CVM reports, and by others including United Nations bodies.<sup>62</sup> The amendments introduced a number of measures to increase the transparency and rigour of the selection process. Candidates will be publicly nominated at least one month before the election date and their CVs will be published on the websites of the SJC or the National Assembly. Criteria for selection and key information about the candidates, for both the parliamentary and judicial quota, will be set out more clearly.

At the same time, the Ministry of Justice, professional associations, civil society and other stakeholders engaged in a debate on other potential changes to the SJC and its selection process. Proposals included a stricter separation between judges and prosecutors, a part-time mandate for SJC members, and the introduction of one-magistrate-one-vote for the judicial quota. The principle of one-magistrate-one-vote has been introduced for future elections in the judicial quota, but will not apply in this year's elections. This year's selection process will see a greater number of delegates chosen by judges at the local level, but will retain a system of delegation rather than direct vote – though the Prosecutor-General has considered organising a more open system for elections amongst prosecutors.

#### *Judicial practice*

Successive CVM reports have pointed to weaknesses in judicial and investigative practice, and to the particular consequences of this in tackling high level corruption

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<sup>59</sup> In 2011, the SJC ruled on 21 disciplinary proceedings and applied 3 reprimands, 7 reductions in salaries, 1 reduction in salary one removal from the function of administrative head and 4 dismissals. Between January 2007 and December 2011, disciplinary proceedings initiated by the Inspectorate led to 39 sanctions imposed by the SJC and 96 disciplinary sanctions imposed by administrative heads.

<sup>60</sup> This could mitigate the approach of the Inspectorate, which has been to consider such instances on a case by case basis and adopt a more lenient stance where a high workload or high complexity of cases were interpreted as mitigating circumstances. This approach, while having the merit of flexibility, presents clear disadvantages to the parties and to the administration of justice as a whole as it de facto authorises breaches of statutory deadlines, without clear criteria.

<sup>61</sup> In 2010, two members of the Supreme Judicial Council were dismissed from the judiciary in relation to allegations of trade in influence in senior appointments. In another scandal linked to real estate property, sanctions applied by the Supreme Judicial Council against three magistrates have been subsequently revoked on appeal by the Supreme Administrative Court.

<sup>62</sup> United Nations Committee on Torture, 14 December 2011: "The Committee is concerned.... by the lack of transparency regarding the selection and appointment of judges and members of the Supreme Judicial Council "

and organised crime through efficient prosecution and final decision in court.<sup>63</sup> Independent expertise has pointed to particular issues concerning the effectiveness of the prosecution and the investigation bodies.

A number of steps have been taken in Bulgaria to improve judicial and investigative practice. These ranged from intensifying training for magistrates and investigative services, reforming the institutional set-up, to changes in the legal framework. The National Institute of Justice enlarged its training offer on criminal matters and started to organise joint trainings for judges and prosecutors on topics such as financial investigations, money laundering, and trafficking in human beings.

An SJC commission for monitoring cases of high public interest was set up with the intention of having an overall disciplinary effect on how such cases are being dealt with by the judiciary, although some of these cases continued to suffer significant delays.<sup>64</sup> A methodology for the analysis of acquittals is currently being developed jointly by the Ministry of Justice, the General Prosecutor and the SJC.

In 2011, the General Prosecutor introduced Instructions and a new management supervision scheme in prosecution offices to help make use of guidance and advice by more experienced prosecutors. A unified instruction on the application of the penal procedure code was published at the end of 2011. Another joint methodological instruction on pre-trial proceedings for the police and the prosecution and a new instruction to improve and unify prosecutorial practice in the field of complex economic and financial crimes have been adopted. A number of agreements have been signed between the prosecution and other administrative bodies to facilitate cooperation and exchange of information.<sup>65</sup> A concept paper on structural reform in the prosecution presented in February 2012 recognises the need for further specialisation and methodological guidance to address weaknesses in the work of the prosecution and to create appropriate structures to deal with cross-border crimes.<sup>66</sup> In addition to the proposed structural reform in the Supreme Prosecution Office of Cassation, the General Prosecutor has set up networks of prosecutors specialised in different categories of crimes (e.g. on corruption offenses, tax crimes, cyber crimes), linked to dedicated training. The effectiveness of these networks will need to be assessed.

To bring about a decisive improvement, these measures will have to offset a number of structural weaknesses such as the high degree of management autonomy for local heads of prosecution offices and the role of the investigating magistrates (sledovатели). Despite a number of formal agreements, the prosecution – as other parts of the administration – suffers from communication difficulties which seem to hold back cooperation between different services.<sup>67</sup> The prosecution considers that an

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<sup>63</sup> Technical Update 2011 (COM(2011)459, p12, p.17.; Interim report 2011 (COM(2011)81, p.5-6; Technical Update 2010 (COM2010)400, p.11, p.14; Technical Update 2009 (COM(2009)402 p.13-14; Technical Update 2008 (COM92008)495, p.13-15, p.20-21.

<sup>64</sup> See also benchmark 4 and 6

<sup>65</sup> For example, the following agreements were signed in 2011: with CEPACA, with the Customs Agency, with the Public Financial Inspection Agency.

<sup>66</sup> In addition to the existing departments on organised crime and on corruption, the concept paper proposes the establishment of a department for criminal offenses committed by minors and a department dealing with violations of citizens' rights (e.g. elections). The EU fraud department will enlarge its competence to tax crimes, customs and excise crimes and money laundering.

<sup>67</sup> See for example the small number of signals between different services on issues of local corruption.

improved quality in the collection and presentation of evidence can be seen in a reduced number of cases being returned from court.

The prime responsibility of the Supreme Court of Cassation in unifying judicial practice is exercised through cassation decisions. The Court has been less active in using another tool at its disposal: interpretative rulings.<sup>68</sup> In 2011, the Supreme Court created a special unit within its criminal section whose role is to identify non-unitary jurisprudence. In addition to generating material for interpretative ruling, the unit has the task to promote discussions at the level of courts of appeal on matters of criminal law which raise diverging interpretation. This initiative can bring positive results if pursued with vigour and received with interest by judges.

Identifying non-unitary jurisprudence has been made more difficult due to the fact that not all courts publish court decisions and motivations systematically and in a timely manner. Despite certain efforts to improve access to court verdicts and motivations, access is incomplete, delays are common and search opportunities are limited. There are significant differences in publication modalities from court to court. CVM reports have raised this issue on a number of occasions<sup>69</sup> and the SJC

Bulgaria has a system of lay judges who sit alongside professional judges in passing judgement, and who have the majority voice on panels. They are chosen to serve on a list by the local municipality. This appears an area where the Ministry of Justice and the SJC could undertake reforms to ensure more clarity and transparency.

### *Training*

The National Institute of Justice (NIJ) has evolved from a training centre into an autonomous training institute providing initial and continuous training. Training is offered to judges, prosecutors, investigators and court administration. The number of participants trained per year by the NIJ has steadily increased from 3000 in 2007 to approximately 6000 in 2011. Efforts have been made to improve the range and quality of the training offer on a regular basis. The initial training for candidates for magistrates has been extended from 6 to 9 months and concludes with both an oral and written exam.<sup>70</sup> Attention has been drawn to the need to strengthen the offer for those magistrates recruited among lawyers with 3 years professional experience.

The NIJ has sought to adapt the training offer to the needs of the judiciary based on a needs assessment. Since 2011, tailored training on judicial and investigative practice in criminal matters has been made available to judges, prosecutors and police officers. The NIJ invested in expanding online training modules and decentralised training, which is more accessible for magistrates across the country. Training in EU law has evolved from general introductory training to integrating specific aspects of EU law into modules on national law (i.e. the direct application of EU law). In 2011 and 2012, the training offer on criminal law, including with the involvement of

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<sup>68</sup> Between January 2007 and December 2011, the Supreme Court of Cassation issued 5 interpretative rulings concerning provisions on organised crime and corruption offenses. Three more signals of inconsistent jurisprudence on criminal law provisions have been filed to the SCC in 2012.

<sup>69</sup> Technical Update 2011 (COM(2011)459, p.11.; Interim report 2011 (COM(2011)81, p.4.; Technical Update 2010 (COM2010)400, p.9; Technical Update 2009 (COM(2009)402 p.7; Technical Update 2008 (COM92008)495, p.12.

<sup>70</sup> These changes have been introduced through amendments to the JSA of 2010. The first round of candidates undergoing 9 month training will start the initial training in September 2012.

foreign experts, was expanded, with an emphasis on enhancing the capacity of investigating bodies.

The NIJ's human resources capacity and the budget have remained frozen for the past 3 years, despite the increase in their activities.<sup>71</sup> This led the Institute to pro-actively seek alternative sources of financing through international funding and bilateral cooperation projects. An international department has been created to ensure oversight and facilitate implementation of these projects. In 2012, these alternative sources of financing are expected to exceed funding from the state budget. This entails certain risks in terms financial management and cannot replace appropriate financing through the state budget in the long run.

#### *Random allocation of cases*

The system of random allocation of cases in courts is based on IT software accredited by the SJC. According to the Bulgarian authorities, all the judicial bodies have been by now equipped with the IT systems for random allocation of cases. According to the information shared by practitioners, different systems deployed in different courts demonstrate a range of shortcomings. Problems identified include insufficient security guarantees, opening the door to manipulation, and an inability to take into account the complexity of cases. This gives rise to concerns that it can exacerbate the uneven workload given to each judge. The system does not assign lay judges to cases. A new system taking into account the complexity of cases, has started to be tested in the Supreme Court of Cassation in 2012, and the SJC has acknowledged the desirability of a single IT software. This would facilitate monitoring of the practical application of random allocation and should allow for greater transparency of the system.

### **5. 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**

High-level corruption has been consistently identified as a serious problem for Bulgaria, both before accession and in successive CVM reports.<sup>72</sup> This view is shared by Bulgarian public opinion. This has been confirmed in a number of studies<sup>73</sup> and opinion polls on corruption in general. For example, a Eurobarometer poll saw 95% of Bulgarians defining corruption as a major problem. Bulgaria had figures well over the EU average in terms of perceived corruption in the judiciary, the police, the customs service and amongst politicians.<sup>74</sup> Corruption has also been identified as the greatest obstacle to doing business in Bulgaria<sup>75</sup>.

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<sup>71</sup> The yearly budget of the NIJ increased from BGN 2,2 to 3 mln between 2007 and 2009 but was maintained at BGN 2,5 mln in the last 3 years. The staff capacity increased remained stable with around 60 positions of which 56 occupied.

<sup>72</sup> See COM(2007)377 Final p 13; COM(2008)63final p 9; COM(2008)495final p6; COM(2009) 402final p6; COM(2010)112final p5; COM(2011)459final p 6; COM(2012)57final p 2

<sup>73</sup> "Money, politics, power: Corruption risks in Europe", study by Transparency International with financial support from the European Commission, the ISEC Programme. June 2012. p 13

<sup>74</sup> Special Eurobarometer 374, February 2012

<sup>75</sup> [http://www3.weforum.org/docs/WEF\\_GCR\\_Report\\_2011-12.pdf](http://www3.weforum.org/docs/WEF_GCR_Report_2011-12.pdf) The global competitiveness report 2011–2012. World economic forum. Country fiche on Bulgaria p 130. Geneva, Switzerland, 2011.

In recent years, there have been some 100-200 cases of corruption coming before the courts each year. High-level cases have been few. They have faced delays and have suffered from procedural errors. The few final court rulings for corruption cases that can be reported mostly date from 2010 onwards, although the start of the cases often goes back to 2007 and 2008.

A satisfactory legal framework is in place to allow the prosecution of corruption-related offences. This was confirmed by the GRECO report on Bulgaria, which stated that the legal provisions on bribery and trading in influence provide a good basis for the prosecution of various corruption offences, although some room for improvement can be still achieved.<sup>76</sup> However, analysis by the prosecution has pointed to some suggestions for legislative amendment.<sup>77</sup>

The lack of results in terms of final court rulings in the field of high level corruption is therefore to a large extent attributable to weaknesses in both investigative as well as judicial practice. The general shortcomings in these areas highlighted in CVM reports are particularly evident in the area of high-level corruption. Weaknesses have included the lack of a proactive approach towards investigative practices, an undeveloped capacity to conduct complex financial investigations, and investigations or indictments with too narrow a focus. Two recent cases involving fraud against EU funds provide typical examples of delays, in this case on appeal following lengthy first instance prison sentences.<sup>78</sup>

The trend towards specialisation in the prosecution and the police has included efforts to focus on high level corruption cases. This includes setting up separate units for the fight against corruption in the prosecution;<sup>79</sup> increasing the specialisation of police investigators as part of the overall reform of the Ministry of Interior; establishing SANS with specific focus on the fight against high-level corruption as a threat to national security; the establishment in 2012 of joint investigation teams on high-level corruption; and specialised training for magistrates and police. Most recently, following an order dated 8 May 2012 of the Prosecutor General, an internal specialised network of prosecutors for counteracting corruption crimes was established. The Commission's recommendation to focus on complex financial crime has been followed up by a commitment by the prosecution to set up networks of

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<sup>76</sup> [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7\\_Bulgaria\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_One_EN.pdf) p.16. See also benchmark 2.

<sup>77</sup> The analysis of the prosecution notably considers the articles in the Penal Code in relation to "abuse of office" (art.282 Penal Code) as inapplicable to many real situations of corruption, sees a need for an alignment and consolidation of legislation in specific areas and suggests reconsidering legal requirements as i.e. the need to prove "direct intent" and a "special purpose".

<sup>78</sup> Data provided by Bulgaria in April 2012 show in the first case a first instance conviction in March 2010 of 10 years imprisonment. The case resumed at appeal level in May 2011 and has been postponed at least 7 times since then, notably for the failure of defence councillors to attend court hearings – a circumstance in which the Penal Procedure Code allows court to appoint ex-officio lawyers. A conviction of 12 years of imprisonment was handed down in the second case in October 2010, however court motivations were only finalised in October 2011 and were only delivered to all defendants in April 2012. In April this year, the case had not yet effectively started as certain documents could not yet be delivered to some defendants whose whereabouts could not be established. Already at first instance level, these cases were marred by procedural delays and cases of witness intimidation.

<sup>79</sup> The prosecution has also undertaken a number of procedural and management actions, notably a monthly analysis of cases, regular inter-institutional meetings, the conclusion of agreements of cooperation between the prosecution and administrative control authorities, the issuing methodological guidance and management supervision and training.

specialised prosecutors for economic and financial crime<sup>80</sup> and to develop methodological instructions for the investigation of complex economic and financial crimes in co-operation with international experts. It is too early to assess the results of these measures.

Following Bulgaria's accession to the EU, several EU member states have continued to provide technical assistance either through bilateral or EU funded projects or on an ad hoc basis. This transfer of know how and best practices remains very useful to assist the Bulgarian administration and the judiciary to step up its capacity to adequately deal with both the prevention and fight against petty and high level corruption based on EU best practices.

These efforts have not translated into a high level of dissuasiveness through clear indications that high-level corruption is systematically punished. In part, this is due to the broader issues of confidence of the public in the ability of Bulgaria to tackle corruption (as discussed above). But it also reflects the fact that the number of indictments has remained stable in recent years, and that a substantial, though declining, proportion of cases have resulted in acquittals.<sup>81</sup>

#### *Asset declaration and verification*

A well-functioning asset declaration and verification system can be an effective tool to prevent and fight corruption, to uncover inexplicable wealth and to promote good governance. In Bulgaria, the first steps to establish an asset declaration and verification system were taken well before accession with the Law on the Publicity of the Property of Persons Occupying State Positions, adopted in April 2000. The law was amended every year between 2002 and 2008 and as a result, nearly 7000 officials are required to fill out asset declarations annually, as well as at the beginning and at the end of their careers. Since their spouses/children fall under the same obligation, all together some 13,000 people are concerned. The National Audit Office (NAO) is in charge of checking these declarations (e.g. against data available in other registers) and has a special software for this task. Where needed the NAO can ask the National Revenue Agency (NRA) for additional cross checks, or even a full tax audit.<sup>82</sup> SANS is also be notified of these cases. The declarations are subsequently put on-line by the National Audit Office.

The coverage of this system is undermined by a number of potential loopholes. The declaration covers bank accounts and securities held on 31 December each year, so does not cover other accounts held in the course of the year, nor their maximum balance. It is not an offence to make a false declaration, unless intent can be established. In cases of real estate, the declared value does not always correspond to market value. There is no prioritisation of checking certain categories of officials and the NAO does not have investigative powers to

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<sup>80</sup> Trainings of the prosecutors from the specialized unit for counteracting fraud with EU funds and from the Sofia City Prosecution Office and Sofia Regional Prosecution Office involved in networks for counteracting tax, customs, excise duties, financial and credit systems crimes were organized in May 2012.

<sup>81</sup> According to official figures the number of acquitted persons with enforced acquittals for corruption crimes decreased over the years but still remained considerable : in 2007 36 persons were acquitted and 109 persons condemned, in 2008 23 acquitted and 111 condemned , in 2009 43 were acquitted and 152 condemned, in 2010 12 acquitted and 166 condemned and in 2011 21acquitted and 147 condemned

<sup>82</sup> In 2011 297 persons were subject to such inquiries which resulted in 4 full fledged tax audits  
In 2010 263 persons resulting in 3 tax audits.

In 2012 : 167 persons are currently subject to additional inquiries by the NRA.

further look into suspicious cases. While spouses are concerned, this is not the case with partners not bound by marriage. Art works, shares in trusts or jewellery do not have to be declared.

The system has resulted in only a few cases of irregularity, mainly linked to tax evasion. The CVM report of July 2011 concluded that despite the large number of the officials covered and the extension to their families, the system did not yet constitute an effective tool in detecting illicit enrichment.<sup>83</sup> There have been no further improvements to the system.

## **6. BENCHMARK 5: TAKE FURTHER MEASURES TO PREVENT AND FIGHT CORRUPTION, IN PARTICULAR AT THE BORDERS AND WITHIN LOCAL GOVERNMENT**

Over the last five years Bulgaria has adopted several anti-corruption strategies and action plans<sup>84</sup> and a number of different state institutions have been involved in their implementation. In 2009, the Government adopted an integrated strategy to prevent and fight organised crime and corruption.<sup>85</sup> The strategy is being implemented through a series of action plans. The variety of legal steps taken has been recognised by the United Nations Convention against Corruption.<sup>86</sup> However, little qualitative data on inspection strategies, control priorities and actual risk assessments conducted is available. It is also difficult to assess the extent to which inspectorates not only react to signals, but also make proactive efforts to seek out unethical practices.

The Commission has noted the benefits of a close engagement of civil society in the fight against corruption. Over the years, some improvements have been noted in this respect and civil society itself has become more engaged and better equipped to monitor ethical issues and corruption in general.

### *Corruption and public administration*

Bulgaria's anti-corruption efforts within the public administration are co-ordinated by the Commission for the Prevention and Countering of Corruption (CPCC) established in 2006 within the Council of Ministers. The organisation of the Commission's work and the administrative and technical services are carried out by the Directorate "General Inspectorate" (GI) responsible to the Prime Minister. The GI co-ordinates the activities of inspectorates in Ministries and state agencies, and reports each year on control activities in public administration<sup>87</sup>. It has also, for example, developed a methodology for an integrity test. The

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<sup>83</sup> See COM(2011)459final p. 7 and SEC(2011)967final p. 14.

<sup>84</sup> - National Strategy for good governance, prevention and counteraction of Corruption 2006-2008  
- Action plan for the implementation of the Strategy for Transparent Governance and for Prevention and Counteraction of Corruption (2006 -2008)

- Integrated Strategy for prevention and countering corruption and organized crime and the instruments for its implementation (2009)

- Action plans to implement the Integrated Strategy for prevention and countering corruption and organized crime and the Complex Model for Prevention and Countering Corruption and Organized Crime (2010)

<sup>85</sup> The Commission has not been informed on whether any impact assessment of the previous strategy had been carried out or whether any detailed risk assessment to identify priority areas or actions had been conducted to feed into the 2009 integrated strategy to combat corruption and organised crime.

<sup>86</sup> The UNCAC noted "considerable efforts to adopt reforms of Bulgaria's legal, and particularly, penal law system, to address issues of corruption." (16 January 2012).

<sup>87</sup> Between January 2007 and December 2011 a total of 7575 inspections were carried out resulting in 645 disciplinary proceedings.

independence of the inspectorates is stipulated in law, but functions and powers are specified in the rules of procedure of the respective administrations. By the end of 2007, all parts of the central administration had introduced a corruption risk assessment system.<sup>88</sup>

Based on the analysis of the yearly reporting by the GI, some recurrent shortcomings have been detected, related to the overall lack of internal control mechanisms. In order to remedy these shortcomings, a concept was elaborated to improve the analytical capacity of the inspectorates as units of internal control. This was endorsed by the Prime Minister and submitted to the Council of Administrative Reform in 2012.

At regional level, Bulgaria has set up institutions with a mandate to prevent and fight corruption. All 28 regions in Bulgaria have anti-corruption Councils, which have been strengthened in recent years to include representatives from local government, territorial structures, the judiciary, various ministries, civil society and the business community. Their real impact on the reduction of corrupt behaviour in local and regional public bodies remains difficult to assess<sup>89</sup>

At the level of municipalities, a number of anti-corruption measures were carried out, such as introducing the system of "one-stop-shops" to reduce the number of officials in direct contact with the public, enhancing transparency through municipal newsletters, public hearings and websites<sup>90</sup>, Codes of Ethics, establishing systems for internal financial management and control, recruiting some 400 internal auditors and recruiting local public mediators (local ombudsmen). Such measures have been included in local programmes to prevent corruption as part of the national anti-corruption strategy.

The newest element in Bulgaria's anti-corruption framework is the BORKOR project. Under preparation since 2010 and reportedly to be operational in summer this year, it is designed to assess the strengths and weaknesses of the current legal and institutional environment and to recommend improvements. In this way it aims to complement, rather than replace, the (already numerous) existing anti-corruption structures. Substantial resources have been devoted to this project.<sup>91</sup> BORKOR is currently designing a risk assessment model to prevent and fight corruption in public procurement. The legal framework providing the required human resources to BORKOR entered into force on 1 July 2012. Training programmes for staff have been deployed in the spring and soft and hardware has been delivered. However, as it has only recently been put into full operation, its effectiveness cannot yet be assessed.

Whistleblowing enables public employees to report serious irregularities outside the normal reporting channels. If there is sufficient trust in the capability of institutions to protect whistleblowers, this can be a useful additional tool for disclosing unethical or criminal behaviour. Bulgaria's legal framework on whistleblowing<sup>92</sup> was amended in 2009 through the

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<sup>88</sup> The State Agency for National Security (SANS) had responsibilities for corruption issues from 2008 to 2009, as an independent administrative entity with its own budget.

<sup>89</sup> Between 2007 and 2011 2464 financial inspections have taken place at local level, uncovering irregularities worth 2,5M € involving 140 officials. Inspections in over 3000 public procurement procedures at local level worth 1,4billion € revealed irregularities in 2/3s of them for a total value of nearly 1 billion €. 339 inspection reports were transferred to the public prosecutor for judicial follow up

<sup>90</sup> 80% of municipalities in Bulgaria have a website.

<sup>91</sup> Its staff is currently at 150, 40 of which are permanent, the rest seconded. So far, €1,25 million has been allocated to BORKOR, with €2,5 million earmarked in the 2012 budget.

<sup>92</sup> This is based on the Administrative Procedure Code (effective since 2006) and on the Conflict of Interest prevention ascertainment act (effective since 2009).



adoption of the Conflict of Interest Prevention and Ascertainment Act containing further provisions on the protection of whistleblowers' identity. However, effective administrative arrangements for whistleblowers do not yet exist.<sup>93</sup> The 2011 implementation review by United Nations Convention against Corruption drew attention to the need for Bulgaria to establish more comprehensive provisions on the protection for whistle blowers.<sup>94</sup> There remain so far very few, if any, cases of successful whistleblowing.

The number of complaints concerning unethical behaviour by staff of the Ministry of Interior shows a slight decrease in terms of signals (561 in 2007 compared to 495 in 2011) while there is an increase in the number of persons referred to the prosecution service (40 in 2007 compared to 72 in 2011) as well as in the number of pre-trial proceedings (23 in 2007 compared to 67 in 2011). Various operations have been conducted in the past three years against road traffic police officers, border police officers and customs officers, leading to the initiation of pre-trial proceedings which have not so far reached the stage of final sentencing.

In 2011, the CVM report raised a particular issue concerning donations from private and legal persons to the Bulgarian Ministry of Interior, mainly the police.<sup>95</sup> The Bulgarian government decided to limit donations to police public bodies and state owned companies and to improve their transparency.<sup>96</sup> However, there remains an issue of accountability and financial transparency, and in particular the risk that large-scale donations, which can still be made, can be used to circumvent public procurement rules.

Bulgaria has taken a variety of measures to prevent and sanction corruption at the borders and within border agencies. This is recognised as an area under considerable pressure,<sup>97</sup> relying on staff with relatively low salaries.<sup>98</sup> The border police has adopted a methodology for assessing and managing the risk of corruption, a code of ethics and various instructions and orders on disciplinary actions in cases of corruption. Tests on entry, specialised training and awareness campaigns target the issue of corruption, as well as the obligation to fill out a declaration of assets and of conflict of interest. Border staff wear badges to facilitate identification, booths are numbered and information sign boards are displayed to encourage complaints in case of

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<sup>93</sup> For example, in the summer of 2011 the police officer who unveiled the policy of the Bulgarian Interior Ministry towards traffic violations committed by its donors was subsequently forced to resign and threatened with a court case.

<sup>94</sup> "Rules for the protection of whistle-blowers are only included in the Law on Prevention and Disclosure of Conflict of Interest of 2008 without comprehensive provisions on the protection of persons providing relevant information on corruption-related acts. The existence of such legislation would significantly enhance domestic efforts to prevent and detect corruption".  
<http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1187232e.pdf> (p.7).

<sup>95</sup> SEC(2011)967 final p. 18.

<sup>96</sup> These are now entered on a public register.

<sup>97</sup> "As a result of increasing migration flows globally and the difficult situation at the Greek-Turkish land border in 2011, Bulgaria's entry into the Schengen area may lead to higher pressure from secondary illegal migration at the Bulgarian Greek border". *Serious and Organised Crime Threat Assessment 2010 – 2011*. Centre for the Study of Democracy. Sofia, April 2012. p 8.

<sup>98</sup> "The analysis showed the salary levels of border guards working along EU's external eastern land border are significantly lower in comparison to the salaries in border services in most other MS. In addition, in the past two years the pressure from petty as well as organised smugglers of illicit tobacco products has grown significantly. The existing vulnerability of low-paid border guards and the increased threat from organised criminals has heightened the risk of corruption along EU's external land borders." Study on anti-corruption measures in EU border control. Sofia, April 2012. Written by the Centre for the Study of Democracy for FRONTEX. See p. 112.

inappropriate behaviour through e.g. hotlines or complaint boxes. Video surveillance covering the entire border crossing point, including control booths is in place. The rotation principle is now introduced at all border checkpoints and contributes to reducing the risk of petty corruption. Unannounced and planned inspections take place on a regular basis. Disciplinary action ranging from fines to dismissals has been applied in proven cases of wrongdoings. Over the past five years the number of detected cases of unethical behaviour has remained relatively stable<sup>99</sup>

The Customs Agency underwent a number of structural reforms in order to increase the importance of ethical standards and professionalism. At the time of accession, staffing was rationalized and a new structure put in place.<sup>100</sup> A new system for selection and career development of staff has been implemented since 2010, which includes integrity testing of candidates. A Code of Ethics for customs officials is in force and failure to comply with it constitutes grounds for disciplinary action. The Law on the Customs requires officials to provide information about their and their families' property upon appointment, annually and upon leaving the institution. If the data indicate a conflict of interest, the Commission for preventing and establishing conflicts of interest is notified. Measures have been taken to guarantee that citizens can file signals.<sup>101</sup>

Customs officials in Bulgaria face considerable challenges given the pressures of organised crime at the borders, for example as regards cigarette smuggling<sup>102</sup>. They also now have the power to investigate customs, currency and excise violations. It is therefore of particular importance that possible transgressions are followed up. Disciplinary penalties have been imposed, and a few cases have been brought to court: 8 pre-trial investigations were opened against custom officials in 2007, 5 in 2008, 4 in 2009, 4 in 2010 and 1 in 2011<sup>103</sup>.

The health and education sectors have frequently been flagged in CVM reports as being particularly vulnerable to corrupt practices.<sup>104</sup> In both areas some preventive measures have been taken, such as a system for evaluating corruption risks in the health sector, the establishment of a Medical Audit Executive Agency to deal with complaints and signals of corruption, and an electronic register for signalling corruption practices. Both areas are also

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<sup>99</sup> 35 inspections leading to 25 disciplinary proceedings and 15 dismissals in 2007 to 35 inspections leading to 28 disciplinary proceedings and 22 dismissals in 2011. In total 157 inspections were conducted between 2007 and 2011 with 111 disciplinary proceedings and 81 dismissals and 29 other sanctions imposed.

<sup>100</sup> This included a substantial reduction in staff numbers (from 4003 to 3337), removing the level of the regional customs directorates and restructuring the Central Customs Directorate, and replacing the previous Inspectorate with a combination of an internal audit unit and an Investigation Division.

<sup>101</sup> This includes anonymous questionnaires handed out to passengers and carriers at border crossing points to identify possible corruption practices, and a hotline.

<sup>102</sup> "The illegal distribution of tobacco products is a generator of corruption, which in some regions affects various levels of the law enforcement institutions, customs and the judiciary. In some cases entire shifts of customs officers, security police officers, mid and high level police officers receive additional monthly payments from the illegal trade in tobacco products." *Serious and Organised Crime Threat Assessment 2010 – 2011*. Centre for the Study of Democracy. Sofia, April 2012. See p 44.

<sup>103</sup> The figures for 2012 will undoubtedly be influenced by an operation conducted on 2 May at the Capitan Andreevo checkpoint on the Bulgarian-Turkish border. The operation, carried out by the Directorate for Combatting Organized Crime, GDBOP, the Internal Security Department of the Interior Ministry, and the Sofia City Prosecutor's Office, aimed at countering racketeering of people and companies passing through the checkpoint. 30 Bulgarian Customs Officers were reportedly caught red-handed with bribes.

<sup>104</sup> SEC(2010) 948; COM(2009) 402 final ; SEC(2009) 1074, COM(2008) 495 final SEC(2008) 2350/2, COM(2008) 63 final.

subject to checks by the inspectorates of the respective Ministries in charge<sup>105</sup>. Nevertheless, reports on corruption in health<sup>106</sup> and education continued to be frequent. Such practices have consequences in areas like equal access to the health system<sup>107</sup> and the perception of Bulgarian diplomas.

### *The electoral system*

- (a) A recurrent problem highlighted in various CVM reports has been the allegations of electoral fraud, especially vote buying. All local and to a lesser extent Parliamentary, Presidential and European elections held in the past five years have reportedly suffered from such practices, which have also been confirmed by specialised international organisations<sup>108</sup> and local NGOs<sup>109</sup>. Amendments to the penal code in October 2007 criminalized vote-buying: there have been cases of criminal investigation and so far 43 people have been sanctioned.<sup>110</sup>
- (b) The National Audit Office systematically checks the accounts of all political parties that participate in elections and of candidates. They must disclose their bank accounts and they must channel election expenditure through those accounts. Donations to political parties have to be made public.
- (c) Bulgaria sought to take account of GRECO recommendations of 2010 on financing of political parties and election campaigns<sup>111</sup> in the new Election Code which according to specialised international organisations "provides a sound basis for democratic elections".<sup>112</sup> As set out in the

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<sup>105</sup> Inspections in the education sector in the period 2007 – 2001 were predominantly related to allegations of conflict of interest and to a lesser extent following corruption complaints. The number of checks varied between 5 and 15 per year. As regards the health sector, the Medical Audit Executive Agency started to work in 2010 and carried out checks on corruption, bad management and abuse of office (6 thematic checks and 2 ad hoc checks in 2010 and 1 thematic check and 5 ad hoc checks in 2011). The majority of checks took place in response to complaints and signals.

<sup>106</sup> <http://futurechallenges.org/news/healthcare-in-bulgaria%E2%80%94do-we-still-call-ourselves-european-citizens/> Healthcare in Bulgaria—do we still call ourselves European citizens? Bertelsmann Stiftung, March 2012 / [Radina Ivanova](#)

<sup>107</sup> "In Bulgaria, high-income urbanized patients were more likely to make informal payments and thus receive care they needed in contrast to low-income patients" p 12

<sup>107</sup> <http://www.undp.org/tt/News/UNODC/Anticorruption%20Methods%20and%20Tools%20in%20Health%20L%20Res%20final.pdf> Fighting corruption in the health sector – methods tools and good practices. UNDP, October 2011.

<sup>108</sup> "Nevertheless, pervasive allegations of vote-buying and the fact that virtually all campaign coverage in the media had to be purchased underscored the need for continued reform." Presidential and Municipal elections 23 and 30 October 2011 OSCE/ODIHR Limited Election Observation Mission - Final Report. p3.

<sup>109</sup> [http://riskmonitor.bg/js/tiny\\_mce/plugins/ajaxfilemanager/upload/Reports/RM-24-fr-book.pdf](http://riskmonitor.bg/js/tiny_mce/plugins/ajaxfilemanager/upload/Reports/RM-24-fr-book.pdf)

<sup>110</sup> 2008: 8 criminal proceedings launched resulting in 1 sentenced person and 1 acquittal, in 2009 79 criminal proceedings launched and 21 persons sanctioned, in 2010 4 criminal proceedings launched and 1 person sanctioned and in 2011 92 criminal proceedings launched and 20 persons sanctioned. Sanctions vary from fines, over a number of hours of community services, deprivation of the right to be elected, to maximum one year of imprisonment.

<sup>111</sup> [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7\\_Bulgaria\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf)

<sup>112</sup> <http://www.osce.org/odihr/80841European> Commission for Democracy through law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR). Joint Opinion on the election code of Bulgaria. Adopted by the Council for Democratic Elections at its 37th

CVM report of July 2011, full implementation of all GRECO recommendations with regard to the transparency of financing for political parties would be an important step in the fight against corruption.<sup>113</sup>

### *Prevention of conflict of interest*

Following the suspension of pre-accession funds in 2008, triggered by a series of financial irregularities, including some linked to conflicts of interest, a law on the prevention of conflict of interest was adopted and came into force in 2009.

Parliament set up a Committee on Anti-Corruption, conflict of interests and parliamentary ethics (CACCIPE) in July 2009. This initiated several ex-officio inspections which revealed that 5 MPs had not submitted their declarations before the deadline.

Work to prevent conflicts of interest became more operational in summer 2011, when the new Commission for the Prevention of Conflict of Interest started its work.<sup>114</sup> Due to the fact that the implementation of the law was delayed, for some time signals on conflict of interest were not followed up. The Commission has received 300 signals<sup>115</sup> and issued a total number of 71 decisions, with conflict of interest established in 30 cases. One case out of these 30 has been finalised so far. Co-operation with various agencies and bodies in the administration is reported to be good, including with the local level.

Experts consulted by the European Commission confirmed that weaknesses in the system include a long and cumbersome procedure leading to a final decision. 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. Independent experts have also noted other shortcomings: that the final sanction is taken by the President of the Commission alone and not by the entire Commission in a collegial way; that the Commission has no way of obliging requested information or evidence to be provided; and that it cannot oblige entities to publish the conflict of interest declarations of their staff. The Commission does not follow up anonymous signals, though it has the power to convert these into *ex officio* actions. The effectiveness and impartiality of the commission still needs to be proven and will ultimately depend on its ability to deliver sound judgment, especially in sensitive cases or cases involving high-level officials and politicians.

### *Public procurement*

Within the CVM, the Commission evaluates also the progress made in the implementation of *public procurement rules* since weaknesses in this area are

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meeting (Venice, 16 June 2011) and by the Venice Commission at its 87th plenary session (Venice, 17-18 June 2011). P. 20.

<sup>113</sup> Bulgaria has submitted a compliance report to GRECO in response to its evaluation report containing a number of recommendations (October 2010) on incriminations and on political party funding, the two themes of the third evaluation round. GRECO will now assess to what extent its recommendations have been dealt with satisfactorily

<sup>114</sup> The Commission has 19 staff. Its Commission budget for 2011 amounted to BGN 555.000 of which BGN 290.000 for building refurbishment. The budget for 2012 BGN 1,5 million.

<sup>115</sup> This represents a major increase: in 2009 only one signal of conflict of interest was received by the authorities, in 2010, 22 signals were received and between April 2011 and February 2012, 201 signals were filed

considered as an important source of corruption. Administrative capacity and practice and also the ability by administrative control authorities and the judiciary to protect against irregularities, misuse of funds and fraud are elements of the Commissions considerations in this context.

Since 2007, Bulgaria has made efforts to improve its legal framework and administrative action regarding public procurement. Bulgaria reformed its public procurement legislation in 2011 and 2012 with the aim to simplify the procedures and to strengthen some administrative controls, in order to comply with the recommendations addressed by the Commission.<sup>116</sup> 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, Ex-officio powers which were conferred to the Court of Auditors and the Public Financial Inspections Agency were not conferred upon the PPA for the purpose of ex-ante verification. In order to foster a culture of focussed and risk-based controls and to avoid a "rubber-stamping" approach in these tasks, it would be advisable that ex-officio powers are granted also to the PPA. Giving the PPA the right to perform ex-officio checks would send an important message that a more proactive approach is expected. Following the broadening of its ex-ante control competences, the key challenge for the PPA would be to cope with the number of files to be processed.<sup>117</sup>

Although additional staff has been made available this year,<sup>118</sup> the resources devoted to helping contracting authorities seem still insufficient. It will therefore be important for Bulgaria to implement new control procedures effectively.

The Bulgarian *public procurement legislation* has been subject to frequent modifications<sup>119</sup>. Although some of these amendments were due to the obligation to transpose the European procurement directives, such frequent changes have reduced legal certainty and have rendered the management of public procurement more complex for the administration and for the business.

The efforts made by Bulgaria have not yet led to the expected results. The complaints received by the Commission concerning the Bulgarian public procurement system continue to grow,<sup>120</sup> and there are clear cases of serious violations of EU procurement rules which the national control system cannot either detect, or treat in appropriate manner. For instance, the award of the contract for the construction of a

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<sup>116</sup> COM(2010)400final, page 9 and COM(2011)459final, page 10.

<sup>117</sup> Two months after the entry into force of the new ex-ante control model, the PPA received 116 requests for checks; 84 draft documents were checked and out of them 21 were subject to the second stage of the ex-ante control. Consequently, for the whole year 2012 the number of procedures is expected to be higher than for 2011.

<sup>118</sup> The Public Procurement Agency has received 10 additional posts this year, mainly to carry-out additional ex-ante control functions.

<sup>119</sup> Since 2004, the legislation has been amended 24 times.

<sup>120</sup> 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.

Flue Gas Desulphurisation plant<sup>121</sup>, infringed the public procurement legislation since it was based on false information<sup>122</sup>. This situation remained without appropriated reaction from the national authorities and, consequently, the fraudulent bidder is still performing the contract. The most common violations are related to the direct and indirect discrimination of bidders, equal treatment, transparency and direct award of contracts without tendering procedures.<sup>123</sup>

### *Protecting EU funds*

As of 2008, following the suspension of over €500 million of EU financial assistance due to mismanagement, a special focus was put on investigations into cases related to abuse of EU funds. Responding to the Commission's recommendation to foster specialisation, Bulgaria established permanent EU fraud “joint teams” within the Supreme Cassation Prosecution at the end of 2008.<sup>124</sup> This first step in the structural reorganisation of the investigation phase was coupled with a new methodology<sup>125</sup> focusing on a limited number of high profile cases. The joint teams consist of staff of the prosecution, the police, the SANS and the national investigation service. Other services (e.g. tax authorities) can be associated to their investigations on a case by case basis. In 2010 the competencies of the joint team on EU fraud were enlarged to a wider range of offences in relation to fraud to the EU budget. That same year, the joint teams on EU fraud started to report better results in terms of number of cases in pre-trial proceedings, indictments and court sentences compared to 2009. Since 2011 there is an increasing trend in terms of final court rulings in cases of EU fraud.<sup>126</sup>

## **7. BENCHMARK 6: IMPLEMENT A STRATEGY TO FIGHT ORGANISED CRIME, FOCUSING 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**

Organised crime is an important challenge for Bulgaria<sup>127</sup>. According to Europol, Bulgarian organised crime groups are active in 15 EU Member States and therefore among the most widespread in Europe. They mainly specialise in human trafficking and payment card fraud. While their role and impact outside Bulgaria is comparable to that of other organised crime groups, their role inside Bulgaria is unique.<sup>128</sup> It

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<sup>121</sup> A complaint has been received by the Commission in January 2009.

<sup>122</sup> This was confirmed by an investigation performed by OLAF.

<sup>123</sup> An analysis by the Bulgarian Construction Chamber of June 2012 alleges that in 35% of the contract notices of May 2012 in this sector discriminatory criteria were used.

<sup>124</sup> Their permanence was in contrast to the teams established for organised crime.

<sup>125</sup> The methodology was developed by prosecutors from the Specialized Prosecutor's Offices on the basis of the first experiences of the joint teams

<sup>126</sup> Bulgaria reports the following data on indictments in EU fraud cases: 2007: 4; 2008: 10; 2009: 27; 2010: 74; 2011: 50. Data on the number of persons convicted in EU fraud cases: 2007: 0; 2008: 4; 2009: 39; 2010: 225; 2011: 159.

<sup>127</sup> "The 12 most significant organised criminal activities generated around €1.8 billion in annual turnover which is equivalent to 4.7% of the country's GDP. This ratio to the GDP indicates that the criminal economy generates much lower turnover compared to the period prior to Bulgaria's EU accession. At the same time, such size of the illegal economy poses a serious threat". *Serious and Organised Crime Threat Assessment 2010 – 2011*. Centre for the Study of Democracy. Sofia, April 2012. p 5.

<sup>128</sup> Europol

differs from the situation in other EU Member States in a sense that still today they exercise a considerable influence over economic activities in the country. From an economic perspective, this restricts competition and deters foreign investment. It also gives these groups a platform from which to influence the political process and state institutions.<sup>129</sup>

One of the keys to tackling organised crime is clearly that it is seen to be systematically and successfully investigated and prosecuted. It is accepted that over 150 murders over the past decade can be defined as contract killings. Though many of these cases are reportedly still being worked on, the fact remains that very few have come to court, and fewer still have resulted in a successful conviction. It is also unclear whether these crimes have been systematically followed up with financial investigations.

The Commission has monitored in detail some 77 key "high level" cases of organised crime. Only 16 of these cases have ended in a final court ruling and in 10 of these cases some or all defendants were acquitted – a much higher acquittal rate than average for all organised crime cases.<sup>130</sup> In the last two years law enforcement has shown increased efforts to fight organised criminal groups, though early 2012 saw a renewed number of contract killings.

Over the past five years, the quality of criminal investigations into major cases of organised crime has continued to suffer from significant structural weaknesses.<sup>131</sup> The limited number of final rulings is a reflection of these weaknesses. However, a number of important cases are now on trial and should be decided in the course of this year.<sup>132</sup> Bulgaria has tried to address some of these through general legislative and institutional changes (see benchmarks 2, 3 and 4 above). The Ministry of the Interior has also undertaken a number of reforms which have included increasing the number of investigating police officers recruited and trained (see below).

An area of particular attention remains trafficking in human beings<sup>133</sup>. The June 2012 Trafficking in Persons report (US Department of State)<sup>134</sup> qualified Bulgaria as a "Tier 2" country, meaning that the Government of Bulgaria does not fully comply

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<sup>129</sup> The Centre for the Study of Democracy – *Examining the links between corruption and organised crime*. Study conducted for DG HOME Affairs, Sofia, 2010. p 19; *Serious and Organised Crime Threat Assessment 2010 – 2011*. Sofia, April 2012. p 67.

<sup>130</sup> These cases include a number of contract killings and the most notorious cases of large scale fraud with EU funds. In one case 2 defendants were acquitted and 4 were convicted. Of the remaining 9 cases, in 3 cases defendants received suspended sentences, in one case probation and a fine. For the remaining 5 cases the sanctions varied between 4 years and life imprisonment. When all cases defined as "organised crime" under the Penal Code (art. 93/20 Penal Code) are considered, according to official information from the General Prosecutor of Bulgaria, the share of acquitted persons in final instance remains below 4%.

<sup>131</sup> Analyses of acquittals by the prosecution notably point to problems in the assessment and administration of evidence by police and prosecution, in operational aspects of police work, with financial expertises, in witness protection, regarding incomplete and weak indictments, but also point to the high evidence-base usually required by courts and to the difficulties of the prosecution to achieve guilty verdicts on the basis of indirect evidence.

<sup>132</sup> This concerns i.e. the case of the "killers" pending in court in Shumen.

<sup>133</sup> See COM (2012)286 final "The EU Strategy towards the Eradication of Trafficking in Human Beings 2012 – 2016, p 3 confirms that most victims identified within the EU come from Romania and Bulgaria.

<sup>134</sup> <http://www.state.gov/documents/organization/192587.pdf>

with the minimum standards for the elimination of trafficking while recognising the efforts to do so. In December 2011 GRETA, the specialised anti-trafficking body of the Council of Europe had concluded in its assessment on Bulgaria<sup>135</sup> that both the legal framework and institutional framework provide a good basis for tackling this phenomenon from a human-rights based perspective. The Bulgarian authorities were invited to take further steps to ensure that the human rights-based and victim-centred approach is fully reflected and applied in particular through special attention for vulnerable groups, training for law enforcement officers and overall, through more and better assistance for and protection of victims of trafficking in human beings. Some concrete measures are under way.

#### *Institutional change to address organised crime*

There have also been specific measures taken to address organised crime, with several new institutions put in place. In 2008, SANS (State Agency for National Security) was established, uniting some core tasks on the fight against organised crime from the Ministry of Interior as well from the National Security Service, the Military Counter Intelligence Agency and the Financial Intelligence Unit. CVM reports pointed to continued weaknesses including the lack of specialisation at all levels, the lack of clearly defined competencies for SANS, and poor co-operation with other agencies. These accentuated general problems with investigative and judicial practice such as the frequent return of cases to prosecution by courts, and adjournments in courts for questionable reasons, such as uncorroborated absence due to illness. Admissibility of evidence, witness protection and the need for more special equipment and skills has also been highlighted. In 2009 Member States also reported weaknesses in co-operation with Bulgarian law enforcement authorities in areas like confidentiality, and a notable difference when cases involved influential persons.

Other measures taken in this period have had a positive impact on proceedings. The number of effective convictions increased when the principle of plea bargaining was applied and when expedited procedures were introduced after the confession by the defendant.<sup>136</sup>

2010 saw a change of gear with intensified police actions against organised crime, which resulted in a number of targeted police operations and arrests of well-known figures. Even if this did not lead to the expected number of cases in court, with some pointing to failings in evidence collection, there is evidence that the structures of organised crime were disrupted, with a positive impact curbing prostitution, human trafficking and counterfeiting.<sup>137</sup>

Two consecutive amendments to the Ministry of Interior act (end 2009 and in 2010) as well as amendments to the penal procedure code (2010) led to important institutional changes in the Ministry of Interior with an impact on both the quality and speed of the pre-trial stage. Structures were streamlined (doing away with the

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<sup>135</sup> [http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA\\_2011\\_19\\_FGR\\_BGR\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2011_19_FGR_BGR_en.pdf)

<sup>136</sup> Bulgaria reports the following data: In 2010 and 2011, out of 313 persons convicted in corruption cases 106 were convicted through expedited procedure and 21 through plea bargaining. Out of 499 persons convicted in organised crime cases in 2010 and 2011, 70 persons were convicted through expedited procedure and 204 through plea bargaining.

<sup>137</sup> Source : EUROPOL;



overlap between SANS and the Ministry of Interior) and the number of police investigators was substantially increased (from 2000 to 8000). Training was also stepped up. The reforms also included the re-establishment of Chief Directorate "Countering Organised Crime" as an independent police structure, specialised in combating serious and organised crime. As a result in 2011 there was a substantial reduction of cases referred back from the prosecution to the police, the length of investigations has been reduced and overall the quality of evidence had improved. In addition, the number of the cases overdue has been substantially reduced (4200 in 2010 compared to 1068 in 2011).

At the same time, the ongoing reform of the police has not ended concerns about human rights abuses. Independent analysts continue to point to arbitrary action by the police and the use of unnecessary force.<sup>138</sup>

CVM reports have consistently underlined the benefits of specialisation in tackling organised crime.<sup>139</sup> In September 2009, a decision was taken by the National Security Agency, the Prosecutors Office and the Ministry of Interior to form "special teams" to increase the effectiveness in the fight against organised crime. In parallel, at court level, in 2010, specialised organised crime joint teams were established in five district courts and the idea was launched to establish specialised structures at central level.

This process of specialisation was taken one step further with the adoption in December 2010 and January 2011 of legislation to establish specialised prosecutor offices and courts in charge of organised crime cases.<sup>140</sup> The original intention of this legislation had been to deal with serious cases of organised crime and corruption. However, during the course of discussions in Parliament, the draft law was amended to exclude corruption cases, except when committed by organised crime groups.

The new specialised court and prosecution office for organised crime cases became operational in January 2012.<sup>141</sup> The law foresees that they deal with all "organised crime" cases. This includes the offence of being part of a criminal organisation as well as crimes carried out by organised criminals: the scope of the work of the court is therefore defined by the nature of the perpetrators of the crime, not by its seriousness, which runs the risk that the structures will have to divert much of their resources to relatively minor offences. Changes to the Penal Code should be of help in terms of allow a more effective penal response to serious and organised crime, including abuse of EU funds.

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<sup>138</sup> 'Human Rights in Bulgaria in 2011', Annual report of the Bulgarian Helsinki Committee, p 9: "The BHC received many credible complaints from individuals regarding ill-treatment on the part of police, some of which amounted to torture. Such practices were justified several times by the Minister of the Interior and the Chief Secretary of the Ministry."

<sup>139</sup> COM(2011) 459 final p 9, COM(2011) 81 final p 6 and 7, COM(2010) 400 final p 9, COM(2009) 402 final p. 7 and 8.

<sup>140</sup> Amendments to the Penal Procedure Code and the Judicial System Act established the specialised criminal court and the attached prosecution office.

<sup>141</sup> These new structures were given specific new offices and equipment

The CVM report of summer 2011 underlined the need for the new structures to be properly resourced, and to be able to prioritise.<sup>142</sup> Today 20 judges and 17 prosecutors work in the specialised court and prosecution office, in addition to 30 police officers at central level and 206 investigative police officers across the country that have been designed to support the investigations of the specialised prosecution office for organised crime. So far, the Court has ruled in 64 cases and convicted 48 persons. Most of these verdicts were achieved through plea bargaining.

An area of judicial practice of particular importance to organised crime is witness protection. Concerns remain that Bulgaria's witness protection system does not offer the high degree of protection needed. Although there are a number of protected witnesses in the Bulgarian witness protection programme, this programme has not delivered results in a number of important cases, where the protection of witnesses failed.<sup>143</sup> In the assessment of the prosecution, the withdrawal of witness statements is an important reason for the failure in court of organised crime trials. In a number of cases there are concerns that changes in evidence from witnesses are the result of external pressure.<sup>144</sup>

### *International cooperation*

A considerable amount of assistance has been provided to Bulgaria before and right after accession through EU funded projects to modernise the Bulgarian police and contribute to improving the quality of investigations. Many of these projects took the form of twinning projects with one or more EU Member States. Member States have also provided bilateral assistance to Bulgaria in particular for training and capacity building in areas such as the fight against trafficking in and smuggling of human beings, trafficking of drugs or money laundering.

At the same time, in the past few years cooperation with law enforcement agencies elsewhere in the EU has improved, in particular as regards intelligence sharing.<sup>145</sup> Bulgaria has also participated in international police co-operation activities together with Europol, Member States, and other countries in the region. These joint operations focused on various criminal activities, including counterfeiting of Euros, cigarette smuggling, drugs and credit card fraud.<sup>146</sup> Nevertheless, despite the

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<sup>142</sup> The Commission recommended in 2011: "Allocate appropriate resources and staff and properly define the scope and internal organisation of the specialised court and prosecution office for organised crime in order to assure an effective judicial treatment of the most important cases." (COM(2011)459final, page 9).

<sup>143</sup> Cases where the protection of witnesses failed include notably the case of the "Margin Brothers". The number of protected witnesses per year as communicated by the Bulgarian authorities: 2007 : 72; 2008 : 86; 2009 : 84; 2010 : 101 and 2011 : 91. In the majority of these cases the "witness" is him/herself involved in criminal activity.

<sup>144</sup> The withdrawal of witness statements notably led to the final acquittals in March of defendants in the "crocodiles gang" – a case involving alleged organised crime, highway robbery and attempted murder. Weaknesses in witness protection also became apparent in 2012 in the context of the case of the "Galevi brothers" and in the case of Evelin Banev where several witnesses refused to testify.

<sup>145</sup> Source: Europol

<sup>146</sup> In January 2011, Bulgaria identified a prolific and sophisticated Bulgarian and Greek Organised Crime Group linked to at least 21 separate tobacco seizures all round Europe, which accounted for about 366 million cigarettes being seized. In May 2011 Bulgarian police raided and dismantled a sophisticated counterfeit Euro print shop in a joint operation with Europol. The Bulgarian police arrested six suspects and seized over half a million very high-quality counterfeit Euro banknotes from print shops in Plovdiv

increased quantity of information shared, Europol has noted that the number of cases initiated – while on the rise - remains quite low compared with the scale of organised crime in Bulgaria.

### *Freezing and confiscating assets*

One of the most important ways to protect the mainstream economy from organised crime is to ensure there are efficient procedures in place to freeze and confiscate funds and property – with the necessary safeguards as regards fundamental rights – acquired through crime. In Bulgaria, successive measures have been taken in an attempt to provide a sound and efficient legal and institutional framework to freeze, manage and confiscate criminal assets. In 2005, a law on forfeiture of criminal assets set up the Commission for the identification of criminal assets (CEPACA). However, it was hamstrung by limited resources and only a limited number of cases were submitted to courts – with an even a smaller number of cases successful. The first final rulings on cases of asset forfeiture came only in 2009. Concerns remained that the confiscation procedure started too late in the pre-trial phase to prevent assets being transferred elsewhere to escape the law, and that final seizure was dependent on criminal conviction.

2011 saw two important developments. First, under new leadership, CEPACA started to be more effective and proactive. In cases carried through in 2011, it obtained final court rulings equivalent to some €5 million. Though only a small proportion of many estimates of criminal wealth in Bulgaria,<sup>147</sup> this represented a substantial increase compared to previous years.<sup>148</sup> Closer co-operation was established with the prosecution office, albeit still on an ad hoc basis. However, the resignation of the Director of CEPACA in early 2012, on the grounds that internal reforms were being obstructed and political support was lacking, cast doubt on the sustainability of this improvement. The effectiveness of the Commission also rests on the reputation of its members, and appointments have not always reflected this imperative.<sup>149</sup>

Second, the government decided to strengthen the legal framework. In the CVM report of summer 2010, the Commission set out a number of recommendations to ensure an effective asset forfeiture regime.<sup>150</sup> A first attempt to adopt a strengthened legal basis failed before Parliament in July 2011, but amendments, a strong political prioritisation, and support from EU partners meant a new law was adopted in May 2012.<sup>151</sup> It introduces a general procedure for non-conviction based confiscation of

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and Parvomay. The operation was carried out as a Joint Investigation Team between Europol, Bulgaria, Spain and Eurojust. Source : Europol.

<sup>147</sup> Which is only a fraction of the estimated value of the main criminal markets in Bulgaria : "The 12 most significant organised criminal activities generated around €1.8 billion in annual turnover, which is equivalent to 4.7% of the country's GDP". P 14 .*Serious and Organised Crime Threat Assessment 2010 – 2011*. Centre for the Study of Democracy. Sofia, April 2012.

<sup>148</sup> Amounts of assets forfeited in 2009 : 335.000€, 2011: 3,3 M€, 2011 5,M€ For the first quarter of the year 2012 eight court decisions entered in force regarding claims of a value approximately amounting to BGN 4 million .

<sup>149</sup> One current member of CEPACA was under investigation at the time of appointment to the Commission for having made a fraudulent declaration when not disclosing he was a member of a private company.

<sup>150</sup> COM(2010)400, page 9.

<sup>151</sup> Several Member States' Ambassadors intervened publicly in support of the law.

unlawfully-acquired assets, to be exercised in front of civil courts. It regulates the freezing and confiscation of assets, and the management or disposal of such assets. The law does not regulate third party confiscation, although its provisions on non-conviction based confiscation can in certain circumstances also be applied to third parties.

Some shortcomings in the legislation have been identified, in part due to weakening its provisions to ensure passage through Parliament. Compared to the July 2011 draft, the law saw provisions removed on asset control of high officials and politicians, and the ex-officio rights for the new Commission to act in this area. The thresholds to determine action are high (€125.000). The law does not foresee precautionary freezing - the Commission can ask a court to freeze assets, but the delay involved and the burden of proof may give the chance to evade effective seizure of the assets. The law also does not seem to cover all corruption offences and does not allow for continued scrutiny of assets after a sentence has been served, to capture assets which had been successfully hidden at the time of an investigation, but which later resurface. In addition, the law's effectiveness regarding economic crime may be limited by rules restricting asset control of legal persons to cases where such assets exceed 50% of the total assets of the company or non-profit entity in question.

The result is that for the law to have the dissuasive effect intended, much will depend on the way the law will be implemented by the new Commission for Forfeiture of Unlawfully Acquired Assets. The main task of this Commission is to identify suspicious assets, with the forfeiture taking effect through a court judgment. The Commission had also recommended that this could be an opportunity to strengthen control of the assets of senior officials, magistrates and politicians, but the task of stepping this up will now stay with control bodies such as the tax authorities. Members of the Commission will be appointed for 5 years by the executive (with the Prime Minister nominating the chairperson) and legislative authorities (the Deputy Chairperson and two of the members will be elected by the National Assembly). Finally, one member will be appointed by the President of the Republic. There will be "general oversight" by the National Assembly of the activity of the Commission.

Implementation will rely heavily on a strong and independent Commission, and on good cooperation and a pro-active attitude by the prosecution and administrative control authorities such as the tax authorities. With no ex officio power, the Commission depends on notification of cases from such bodies. A situation where cases are in the public domain, but where the Commission is unable to act because it has received no notification, would quickly undermine public confidence in the effectiveness of the system. Also essential will be the approach of the courts: whether court jurisprudence will adopt a consistent approach to the law and allow a shift of the burden of proof in practice.

#### *Money laundering*

The Financial Intelligence Directorate (FID) within SANS collects, stores, investigates, analyzes and discloses financial intelligence information under the terms and procedures of the Measures Against Money Laundering Act and Measures Against the Financing of Terrorism Act. The Directorate acts as the Bulgarian financial intelligence unit (FIU). Although considerable efforts have been made and there has been an increase in the number of final convictions for money laundering

over the past five years, both the Bulgarian money laundering legislation<sup>152</sup> and in particular its application continue to show a number of shortcomings.<sup>153</sup> Large scale investments in real estate in tourism areas remain an important risk area for money laundering which could be investigated proactively.

In 2008 the Commission noted that the mechanism for the control of cash payments showed severe deficiencies, and in 2009 it concluded that money laundering was still not systematically prosecuted – coming almost always only as an accessory crime to a main offence, and often being dropped if the main offence is dropped.<sup>154</sup>

A lack of specialisation and expertise throughout the system contributes to the low number of cases. In 2010 some minor improvements were registered, such as a joint manual issued by SANS and CEPACA. In 2011 the Council of Ministers adopted a Strategy to prevent and fight money laundering, drafted in co-operation with the NGO sector, followed by an inter-institutional working group to prepare an Action Plan for its implementation.

An operation of law enforcement agencies in February 2012 against a network of fictitious firms, some registered in the United Kingdom and the United States, to evade tax and launder money revealed that in this case alone the loss to the state through fraudulent documentation to evade tax and launder money was estimated at about €15 million.

There continues to be a lack of prioritisation of money laundering investigations. This is also reflected in the instruction of the Prosecutor General of March 2012 which serves as guidance for conducting a financial investigation, which has a rather narrow focus on asset confiscation in comparison to existing FATF recommendations.<sup>155</sup>

## **8. DIRECT SUPPORT TO THE REFORM PROCESS FROM THE EU AND ITS MEMBER STATES**

Substantial support has been made available to Bulgaria in the area of justice and home affairs in the years before and after accession. Prior to accession, institution-building support to Bulgaria was given by the Phare programme and the Transition

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<sup>152</sup> Both MONEYVAL (Council of Europe) and FATF (Financial Action Task Force) confirm in their most recent assessments that numerous developments have taken place which resulted in a more effective framework to fight money laundering. However both institutions confirm that Bulgaria does not yet “fully” comply with any of their recommendations.

<sup>153</sup> "During the past 20 years money laundering was not a law enforcement priority and the majority of the criminal entrepreneurs in Bulgaria have established some forms of legal business. In the field of organised tax fraud the use of legitimate business structure is a necessary part of the criminal activity. But even in other forms of organised crime (narcotics, prostitution, racketeering, etc.) the majority of the criminal groups control some legal business structure. Bulgarian criminal groups participate in the legal economy at higher rates than groups in Western Europe. This represents a challenge to attempt to investigate money laundering and to uproot corruption." *Serious and Organised Crime Threat Assessment* 2010 – 2011, Centre for the Study of Democracy, Sofia, April 2012 p 64.

<sup>154</sup> See: SEC(2008)2350/2 p 22 and SEC(2009)1074 p 15-16.

<sup>155</sup> <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatfrecommendations2012.html>  
See in particular recommendation 30.

Facility, a significant proportion of which was available to support reform in justice and home affairs.

Under the current Financing Period, the Commission has made available significant support under the Administrative Capacity Operational Programme of the European Social Fund (ESF). The ESF has two strategic priorities in Bulgaria – to improve the functioning of state administration and to enhance the professionalism, transparency and accountability of the judiciary. Under the second objective, the ESF has made some €41m available. 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 and are in various stages of implementation. Many of the projects implemented have directly assisted with reforms necessary for the CVM.

Over the years important support has also been supplied by Member States. These bilateral projects have assisted a wide range of institutions and covered a comprehensive range of issues connected to judicial reform, police reform and the fight against organised crime and corruption.<sup>156</sup> Recent projects have included judicial training, police training, border control, customs, public procurement, legal assistance and support to the fight against organised crime. A large number of Member States have been involved in assistance to Bulgaria in this area since accession. Significant assistance has also been provided by other states and international organisations.

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<sup>156</sup> Beneficiaries have included the National Institute for Justice, the Ministry of the Interior, Border Police, Customs, the Supreme Judicial Council, the Prosecution and Courts.