



Council of the
European Union

130363/EU XXV. GP
Eingelangt am 26/01/17

Brussels, 26 January 2017
(OR. en)

5675/17

COVEME 1

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	26 January 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2017) 43 final
Subject:	REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL On Progress in Bulgaria under the Co-operation and Verification Mechanism

Delegations will find attached document COM(2017) 43 final.

Encl.: COM(2017) 43 final



EUROPEAN
COMMISSION

Brussels, 25.1.2017
COM(2017) 43 final

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

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

{SWD(2017) 24 final}

1. INTRODUCTION

The Cooperation and Verification Mechanism (CVM) was set up at the accession of Bulgaria to the European Union in 2007¹ to address shortcomings in judicial reform and the fight against corruption and organised crime. Since then, CVM reports have sought to help focus the efforts of the Bulgarian authorities through specific recommendations and have charted the progress made by Bulgaria. With the CVM having reached its tenth anniversary this year, the Commission is taking stock with an overview of the achievements, the challenges outstanding, and the remaining steps needed to achieve the CVM's objectives.

As repeatedly made clear by the Council,² the CVM will end when all of the six benchmarks applying to Bulgaria are satisfactorily met. The benchmarks were defined at the time of accession and cover issues essential to the working of Member States – judicial independence and efficiency, integrity and the fight against corruption and organised crime. To be met, they require a combination of legislative and institutional steps. In addition, such steps can only be fully assessed by looking at whether their intended effect is felt in practice, and whether they can be considered to be embedded in the legal and institutional framework of Bulgaria and to be irreversible. This allows citizens to have confidence that decisions and practices in Bulgaria fully respect the rule of law and provides the basis for the mutual trust that is required for effective implementation of EU law.

Judicial reform and the fight against corruption have been key issues for Bulgarian society over the past ten years.³ The CVM has an important role in Bulgaria as a driver for reform, as well as a tool to track progress. The Commission's conclusions and the methodology of the CVM have consistently received the support of the Council, as well as benefiting from cooperation and input from many Member States. Cooperation has also been reinforced by support to Bulgaria under EU Funds and more recently from targeted assistance coordinated by the European Commission's Structural Reform Support Service (SRSS).

Whilst tracking progress over the past 10 years, CVM reports have also noted that the pace of reform has varied, notably due to periods of political instability. A framework has gradually been put in place, including two important national strategies on judicial reform and the fight against corruption. Carrying this through into progress in tackling high-level corruption and organised crime has continued to be a challenge: for reform to be seen to have really taken root, there is a need to build a track record in terms of bringing high level cases to a successful conclusion in court.

This report looks back at the developments in Bulgaria since 2007. As in previous years, the report is the result of a careful analysis by the European Commission, drawing on close cooperation with the Bulgarian authorities, as well as the input of civil society and other stakeholders, including other Member States.

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

² Most recently in Council Conclusions in March 2016, which urged a decisive acceleration of efforts to address all the recommendations set out by the Commission in its 2016 report. (<http://data.consilium.europa.eu/doc/document/ST-7118-2016-INIT/en/pdf>). For relevant documents on the CVM, see http://ec.europa.eu/cvm/key_documents_en.htm

³ Flash Eurobarometer 445: The Cooperation and Verification Mechanism for Bulgaria and Romania, published on 25 January 2017

In this respect it is important to be clear about the scope of the CVM. The Decisions establishing the CVM set out the parameters of the CVM's scope on judicial reform and the fight against corruption and organised crime. These parameters will determine when the benchmarks are met. However, the pace and depth of reform has necessarily been conditioned by the environment in which the specific issues covered by the CVM can progress, the characteristics of Bulgarian society and its governance. For example, efforts to build administrative capacity in recent years are still under way, having consequences for the reform process. The legislative process in Bulgaria has not provided a predictable legal environment.⁴ The Bulgarian media environment is often characterised by low independence and ineffective enforcement of journalistic standards, which has a negative influence on public debate on reforms.⁵ While these issues are outside the CVM remit, they have a direct bearing on the ability to deliver reform and have made it more difficult for Bulgaria to make progress.

In the area of the CVM's work, this report also makes a number of recommendations for more intensive reporting and transparency. In the short term, this would help the Commission to reach final conclusions; once the CVM comes to an end, it would also provide support to the sustainability of reform by helping accountability.

Finally, it should also be underlined that the distinct nature of the CVM's scope militates against making direct links with other policy areas. The Commission does not therefore consider that it is appropriate to link the CVM to decisions in other areas, such as eligibility for European Structural and Investment Funds or the access to the Schengen area.

This report uses the longer-term perspective to identify the key remaining steps to realise the goals of the CVM. The momentum built up so far allows the focus to shift to the key remaining steps which need to be taken. When the steps set out under the benchmarks in this report are taken, the respective benchmark will be considered provisionally completed. When this applies to all benchmarks, the CVM will be closed. The recommendations set out can therefore be considered as sufficient to meet this goal - except if developments were to clearly reverse the course of progress. The Commission believes that this should also bring an acceleration of the process by the Bulgarian authorities and by the EU as a whole. In the benchmarks where it is considered that substantial progress has been made, the Commission considers that a determined implementation while maintaining both the pace and the consistent direction of reform would allow those benchmarks to be closed quickly – for other benchmarks, this would be more challenging. The Commission therefore intends to bring forward the next report to the end of 2017, and stands ready to provide further assistance to help reinforcing the irreversibility of progress and therefore bring the mechanism to a conclusion.

2. ASSESSMENT OF PROGRESS ON THE FULFILMENT OF THE BENCHMARKS SINCE THE START OF THE CVM

As well as looking at progress on the recommendations made in the 2016 CVM report, this section makes an overall assessment of ten years of reforms. The most relevant developments

⁴ An important development took place in November 2016, with amendments to the law on normative acts which required impact assessment for new laws proposed by the government.

⁵ Bulgaria has the lowest rank of all EU Member States in the 2016 World Press Freedom Index: <https://rsf.org/en/ranking>

and results are set out in detail in the accompanying technical report⁶. The six benchmarks can be assessed individually, but there are interconnections among them. The assessment of progress has involved looking at the structural conditions (such as laws, institutions, and resources); at the results and track record; and at whether progress can be considered irreversible. It should also be noted that since the time when the CVM benchmarks were agreed, there have been major developments in the case-law of the European Court of Human Rights, international standards and best practices, and comparative information on national justice systems in the EU, which have guided the Bulgarian authorities in their reforms and also help to give an objective and comparable measure of the development of the Bulgarian judicial system and fight against corruption and organised crime within the remit of the six benchmarks.

2.1 Judicial reform

Independence and accountability of the judiciary

The first benchmark relates to the reform of the judiciary, focusing on establishing a stable constitutional framework for an *independent and accountable judicial system*. Over the past ten years, Bulgaria has twice amended its Constitution, improving the functioning of the Supreme Judicial Council (SJC) and putting in place an Inspectorate to the Supreme Judicial Council (ISJC) to promote good management of judicial bodies and uphold integrity standards in the magistracy. The first changes took place shortly after accession. Further significant reforms were carried out with constitutional amendments adopted by the National Assembly in December 2015. In particular, these created separate chambers in the SJC for prosecutors and judges, while also improving the transparency of decision-making on personnel-related issues and in the election of SJC members, and strengthening the role of the inspectorate to the SJC in regard to integrity of magistrates. Some of these changes – such as the "one magistrate, one vote" principle in elections to the SJC – followed up on previous CVM reports. The translation of these latest changes into law was finalised in the course of 2016, so implementation needs to be completed before the full impact can be seen. So far it is clear that the reform of the Council has led to greater transparency in its decision-making, and increased democratisation will also feed into the elections to the Council in 2017. However, continued tension among members of the Council, amidst allegations of a lack of objectivity in key decisions, has remained a concern. The belated and incomplete follow-up to the situation discovered at the Sofia City Court towards the end of 2014 was highlighted in the two last CVM reports and has further fuelled allegations of undue influence within the SJC. Overall, Bulgaria has made substantial progress on Benchmark One, but still needs to show a track record in terms of implementation of the latest constitutional changes.

The legal framework

The second benchmark focusses on the legal framework in terms of *key legislation affecting the judicial system and judicial procedures*. Substantial developments have taken place over the last ten years, notably in relation to the Judicial Systems Act and in the improvement of civil procedures. Wide-ranging changes to the Judicial Systems Act were enacted in 2016, following up on the comprehensive judicial reform strategy developed by the government and endorsed in the National Assembly in 2015. These amendments, which were carried through

⁶ SWD (2017)24.

in close consultation with stakeholders and professions⁷, seek to improve the legislation in a number of areas, ranging from the career development for magistrates to the internal governance of courts. Together with earlier reforms, these changes represent a significant further step in the reform of the Bulgarian judiciary.

In the area of criminal procedures, developments have been less marked, and important challenges still remain to be addressed. In spite of important improvements in the years following EU accession, criminal procedures in Bulgaria continue to present serious problems for the effective prosecution of complex cases, which include those related to high-level corruption and serious organised crime. A number of concrete issues have been identified over the years, and some of these issues have been addressed through legislative action. However, the formalism of criminal procedures remains a challenge for the Bulgarian legal system. Further legislative proposals have recently been in preparation, some of which – in combination with appropriate organisational measures – could have an important impact.

The criminal code has also been identified as a source of problems in the prosecution of serious crimes and it has been the subject of continued discussion under successive governments.⁸ In 2015 the government launched a new reflection process on a broader criminal policy reform, which was taken forward in 2016 with a technical assistance project involving independent experts. This aimed at a comprehensive reform, which will require careful analysis and preparation, involving broad consultation within the judiciary and legal professions. It seems evident that any general reform of the criminal code would be a long-term process. Nevertheless, such a process would not rule out more immediate changes which could have a positive impact in regard to the prosecution of corruption or organised crime. Overall, Bulgaria has made some progress on Benchmark Two, but important issues are still outstanding, notably in terms of addressing formalistic criminal procedures and improving the legal framework for the investigation and prosecution of corruption and organised crime.

Continued reform of the judiciary

The third benchmark focuses on the reform of the judiciary to improve its *professionalism, accountability, and efficiency*. The ten years' perspective has clearly shown the difficulty of progressing if judges or prosecutors do not share a consensus. Over the years, there have been major improvements in various areas, including training of magistrates, the random allocation of cases within courts, and the analysis of workload of judicial bodies and individual magistrates. Steps have also been taken in areas like e-justice. The willingness of magistrates – as well as civil society – to speak out in support of reform has been a key factor in facilitating this progress. However, it has proved difficult to take decisions in sensitive areas like the restructuring of courts and prosecutors' offices as part of an overall reform of the judicial map. Whilst sensible managerial decisions – such as reallocating positions year by year – have gone some way to mitigate such gaps, the Supreme Judicial Council has not been able or willing to drive reform ahead in such areas. This has contributed to a workload imbalance for the larger courts in the country, with a negative impact on the overall performance of the Bulgarian judiciary. At the same time, there has been little progress in establishing fairness and transparency in the disciplinary proceedings of the Supreme Judicial Council.

⁷ The Government established a consultative council on judicial reform under the Ministry of Justice, which played a central role in the finalisation of the legislative proposals.

⁸ A draft reform of the criminal code prepared by a previous government in 2014 was not successful, as it did not meet expectations and the National Assembly was dissolved shortly after its presentation.

The reform of the prosecution service is another area which has proven highly sensitive and complex in Bulgaria. The Bulgarian Prosecutor's Office forms part of the judiciary and is independent of the executive power. At the same time, it plays a central role not only in criminal procedures but also in monitoring the administration more generally. This lack of distinction between its functions and the executive tends to exacerbate suspicions of undue influence and criticisms of a lack of overall accountability of the prosecution. In addition to the heated debate over what is seen by critics as an overly powerful prosecution service, the prosecution is also at the centre of the debate over Bulgaria's continued lack of a convincing track record of convictions in cases concerning high-level corruption or serious organised crime. Over the past ten years, the prosecution service has seen several rounds of reorganisation as well as legislative and other measures to improve its effectiveness. Nevertheless, in spite of these efforts, the results show that significant challenges remain.⁹ This was the background for the Bulgarian decision in 2016 to request the assistance of the SRSS and experts from a number of other Member States in a project to present an independent analysis of the Bulgarian prosecution service. It adds to previous analysis carried out over the years. Bulgaria still needs to draw the conclusions from all these analyses and chart a way forward on this important issue. Overall, though Bulgaria has again made some progress on Benchmark Three, important challenges still remain to be addressed.

2.2 Corruption

The fourth and fifth benchmarks relate to the *fight against corruption*, both high-level corruption and corruption more generally, in particular at local level and at the borders. In both areas, the ten years' perspective brings out the challenges Bulgaria has faced in the effort to slowly build up the necessary laws and institutions to tackle an evident credibility deficit seen in Bulgarian public opinion. So far, Bulgaria has a very limited track record of concrete cases leading to final convictions in court regarding high-level corruption, the clearest way to show that the fight against corruption is a genuine priority. Bulgaria continues to rank among the EU Member States with the highest perceived level of corruption,¹⁰ and corruption is still considered as an important problem by citizens¹¹ and business¹². High-profile scandals, such as that surrounding the conflict of interest commission in 2013¹³, do not see clear and determined follow-up. The problems have been the subject of extensive analysis over the years and candidates for explanations include outdated provisions in the criminal code, lack of capacity within the key institutions, disorganised or fragmented structures, and cumbersome procedures, issues which all take time, commitment and determination to address. In the early years after accession, Bulgaria undertook a number of legislative and institutional measures to address corruption. However, while early results seemed promising in some respects, these efforts have not brought about the necessary step-change in the fight against corruption. The government made a further effort in 2015 and 2016, centred on putting in place a unified anti-corruption agency with powers to conduct administrative investigations and to check conflicts of interest and personal property of high-level officials. But the anti-corruption law designed

⁹ The challenges are not limited to the internal workings of the prosecution, but involve all the institutions concerned in the different steps of criminal procedures.

¹⁰ Transparency International's corruption perceptions index 2015 ranks Bulgaria 69 out of 168 countries worldwide, the worst score of any EU Member States (Transparency International CPI, 2015).

¹¹ Flash Eurobarometer 445: The Cooperation and Verification Mechanism for Bulgaria and Romania, published on 25 January 2017.

¹² The World Economic Forum Global Competitiveness Report 2016–2017 ranks corruption as the single most problematic factor when doing business in Bulgaria. Global Competitiveness Report 2016–2017, p. 130.

¹³ Its chairman was charged with abuse of powers in 2013 and later given a suspended prison sentence. However, the post of Chairman of this body remains unfilled.

to put this body in place has failed to reach agreement in Parliament, illustrating a general lack of political consensus behind the efforts.

The overall institutional set-up to fight corruption in Bulgaria remains fragmented and therefore largely ineffective. As a consequence, generalised problems of corruption at lower levels in the public administration also remain a challenge.¹⁴ The government's 2015 anti-corruption strategy provided valuable analysis of the problems. However, the implementation of this strategy is still only at an early stage.¹⁵ Overall, Bulgaria's progress on Benchmarks Four and Five has been limited, with major challenges still outstanding in regard to the institutional and legal framework as well as the establishment of a track record.

2.3 Organised crime

The final benchmark focusses on the fight against *organised crime*. This benchmark was motivated in part by the prevalence in post-transition Bulgaria of large and powerful organised crime groups, connected to significant levels of violence. The Bulgarian authorities see an evolution in the years since accession, with a more fragmented pattern of organised crime, and with the problem more comparable to the situation in some other Member States. Nevertheless, fulfilment of this benchmark also requires Bulgaria to show the capacity of its law enforcement authorities to efficiently fight organised crime and develop a track record in this area. Bulgaria has introduced important institutional changes over the years, notably with the setting up in 2012 of a specialised court and prosecutor's office for organised crime and an independent Asset Forfeiture Commission with a mandate for non-conviction based confiscation of illicit assets. The Commission in particular has established a track record that shows how significantly this aspect of reform has been embedded. However, Bulgaria has been slow to develop a track record in terms of final convictions in serious organised crime cases. In recent years, political decisions to reorganise the key investigatory authorities dealing with organised crime have interrupted progress and had a detrimental impact on results. This has now stabilised, though a further change was recently agreed, extending the competences of the anti-organised crime directorate (GDBOB) to corruption, cybercrime and migrant smuggling and allowing them to engage earlier in criminal investigations. Consequently, the current institutional framework still needs time to show a track record. Furthermore, as mentioned above, the effective prosecution of organised crime continues to be hampered by a formalistic legal framework. Overall, Bulgaria has made substantial progress on Benchmark Six, although challenges still remain.

3. KEY REMAINING STEPS

Overall, the ten years perspective shows that successive governments and the judicial institutions have made important efforts. There have been important legislative and institutional developments, notably on the judicial side. However, effective progress in

¹⁴ Surveys based on experience as well as perceptions of corruption as well as international studies consistently point to corruption as a major challenge in Bulgaria, holding back the economy and undermining trust in the proper functioning of public institutions.

¹⁵ A notable exception in this regard is the concrete measures taken over the past two years in the Ministry of Interior as part of an effort to stamp out corruption within the Ministry, including among the border police. There have also been serious efforts focusing on customs authorities. More generally, Bulgaria has also been implementing several improvements to its public procurement system in recent years, which is a sector with significant corruption risks, including at local level.

carrying this through to a track record has been slower than expected when the CVM was launched, with cases of reluctance to follow up on CVM recommendations for the institutions to work together to identify common shortcomings and apply common solutions. Reform needs to be continued and internal structures strengthened to ensure the satisfactory and irreversible fulfilment of the benchmarks. This section therefore aims to set out the remaining steps needed to ensure that the objectives of the CVM are reached.

3.1 Judicial reform

Independence and accountability of the judiciary

As acknowledged in recent reports, the judicial reform strategy adopted by the government in 2014 and endorsed by the National Assembly in early 2015 provided a comprehensive blueprint for the reform of Bulgaria's judiciary. Since then, the government has followed up in a number of areas. Most importantly, the amendments to the Constitution, adopted in December 2015 and carried forward in legislative amendments to the Judicial Systems Act and internal procedures in 2016, represent a significant step towards a better functioning Supreme Judicial Council and the fulfilment of Benchmark One. Although the text of Benchmark One focuses on constitutional amendments, full reassurance regarding the independence and accountability of the judicial system can only be assessed in the light of the practical implementation of these changes.

The Supreme Judicial Council is the key institution governing the Bulgarian judiciary and concrete results in terms of judicial reform rest heavily on a well-functioning SJC, both in terms of professionalism and transparency. Its work is key to determining whether the judicial system can command respect and to reassure the broader public that judicial independence is being defended. This needs to be accompanied by a broader commitment of all state actors to judicial independence and loyal cooperation amongst institutions. A non-political and professional working climate inside of this institution, focusing on the priorities of judicial reform, is essential. The series of controversies and infighting that have marred the SJC over the past years have fuelled suspicion of external influence and affected public confidence in the judiciary.¹⁶ Therefore, one of the most significant tests for 2017 will be the election of the new Council, both for members appointed within the magistracy and those appointed by Parliament. It will be important that these elections are carried out, and seen to be carried out, in an open and transparent manner following a serious debate on the merits of the respective candidates. Then the newly elected college will have to develop a track record of impartial and professional decision-making in key areas.

- **Recommendation:** Ensure a transparent election for the future SJC, with a public hearing in the National Assembly before the election of the members of the parliamentary quota, and giving civil society the possibility to make observations on the candidates.

One of the main functions of the SJC is the appointment of heads of courts and prosecutors' offices, as well as the nomination of the Presidents of the three highest offices in the Bulgarian judiciary, the Presidents of the two Supreme Courts and the Prosecutor General. The conduct of such appointments in a merit-based and transparent fashion is a key test of its capacity to function as a professional and independent institution which can command the trust of the judiciary and of broader society. A particularly important election which will take place in 2017 concerns the President of the Supreme Administrative Court

¹⁶ Bulgaria consistently figures among the EU Member States with the lowest perceived independence of justice. 2016 EU Justice Scoreboard, p. 35-36.

- **Recommendation:** Establish a track record of transparent and merit-based appointments to high-level judicial posts, including the upcoming appointment of a new President of the Supreme Administrative Court.

The Inspectorate of the Supreme Judicial Council (ISJC) has contributed to the accountability and efficiency of the Bulgarian judiciary through its regular inspections and reports. However, its potential has not been used to the full. As of January 2017, the powers of the Inspectorate have been extended to allow it to investigate conflicts of interest and other integrity issues among magistrates, and the government has provided the ISJC with additional resources to perform its new tasks. While ultimately leaving the decisions on disciplinary penalties to the SJC, the new provisions on the integrity of magistrates give the ISJC a more central role in the essential task of following up on irregularities. The ISJC needs the best possible conditions for fulfilment of its new functions. In this regard, external expertise can be a useful element to support the efforts to enhance its organisational capacity.

- **Recommendation:** To improve the practical functioning of the ISJC and the follow-up by the Supreme Judicial Council to the inspectorate's findings, in particular on integrity issues, consider soliciting external assistance, for example from the SRSS and/or Council of Europe.

The legal framework

In 2016, as part of the judicial reform strategy, the Bulgarian government took forward two substantial packages of amendments to the Judicial Systems Act. The preparation of these acts benefited from widespread debate and consultation with civil society. Implementation of this new legal framework will be a major challenge for the judicial bodies and will rest heavily on general progress on judicial reform (Benchmark Three). In line with the judicial reform strategy, Bulgaria should continue to look at any problems raised with the legal framework and whether further amendments to the Judicial Systems Act would address such problems.

An important package of amendments to the Criminal Procedure Code has been prepared by the Ministry of Justice, with the support of the judicial authorities and the prosecution. This would substantially improve the response to serious crime, notably by addressing delays in criminal proceedings and facilitating the prosecution of corruption offences. Further needs for amendment to criminal procedures have also been identified in recent analyses. So it will be important to take this process forward.

A full revision of the Criminal Code has been cited in past reports as important, but would require a broad reflection on the future of criminal policy, together with widespread debate and careful preparation. It should be seen as a longer term project, also taking into account of the administrative capacity of Bulgaria. The priority at this stage should be to implement a number of targeted amendments in areas where existing provisions create operational difficulties in the prosecution of corruption or organised crime.

- **Recommendation:** Adopt amendments to the Criminal Procedure Code and the Criminal Code to improve the legal framework for the prosecution of high-level corruption and serious organised crime.

Addressing the complex challenges affecting criminal procedures in Bulgaria will require efforts and prioritisation by the new Bulgarian authorities. However, the preparatory work already initiated as well as input from technical assistance projects, including the recently finalised project coordinated by the Commission's Structural Reform Support Service (SRSS),

provides a good basis. Implementing the recommendations of these various studies should allow Bulgaria to effectively address issues both under Benchmark Two as well as several issues under other Benchmarks, in particular those related to the fight against corruption and organised crime.

Continued reform of the judiciary

The broader implementation of the judicial reform strategy will require continued effort and dedication by the Bulgarian authorities. A number of projects have already been completed and others are on the way or in preparation. The new IT system for the random allocation of cases in courts, which so far functions without controversy, is a promising step showing that long-standing problems can be addressed. The amended Judicial Systems Act should help to provide swift progress towards e-justice solutions in order to improve transparency and accessibility of justice throughout the country. A significant amount of work has been completed to develop workload standards for the assessment of workload in courts and prosecutor's offices. This work can now be carried forward so that these standards become the basis for managerial decisions in areas such as appraisals, promotions, disciplinary proceedings and staff allocation.

- **Recommendation:** Publish a report for public consultation detailing the progress made implementing the national judicial reform strategy and setting out the remaining steps to be taken. Establish a mechanism for continued public reporting of progress for the remaining duration of the strategy's implementation.

The SJC and the prosecution have initiated preparations for broader reforms in the judicial map. This is necessarily a long-term process as it will require time for coordination and consensus building with society at large. In the short term, pragmatic steps can already be taken to address uneven workload between judicial bodies and in particular to improve working conditions in some of the largest and most busy courts – and until this is in place, it is difficult to see how issues of delays in motivations can be looked at on an objective basis. The SJC has already taken incremental steps in this direction in previous years, but on the basis of the new workload standards, a more objective assessment can be made of the need to reallocate resources between courts.

- **Recommendation:** Address the workload situation in the busiest courts based on the new workload standards, and agree a roadmap for the reform of the judicial map in parallel with the development of e-justice.

The structural limits to independence and accountability in the organisation of the prosecution is an issue that had been highlighted in the judicial reform strategy. The recent amendments to the Judicial Systems Act contain some elements aimed at addressing this situation. In addition to this, Bulgaria asked for the assistance of the SRSS to prepare an independent analysis of the Prosecutor's Office. As a result, a report on the functioning of the prosecution has been prepared by experts from Germany, Spain, The Netherlands and the United Kingdom, also proposing recommendations.

- **Recommendation:** Establish a roadmap for the implementation of the recommendations of the SRSS report concerning the reform of the Prosecutor's Office and its interactions with other institutions, including a mechanism for the reporting of progress to the wider public.

In May 2016, the Prosecutor General commissioned a study to analyse the judgments of the European Court of Human Rights finding that Bulgarian authorities had failed to comply with their obligation to carry out an effective investigation¹⁷ and to propose remedies wherever the violations remain relevant. The analysis was completed in November 2016 and makes a number of valuable recommendations.

- **Recommendation:** Establish a roadmap for the implementation of the recommendations of the study, including a mechanism for the reporting of progress to the wider public.

The completion of actions falling under Benchmark Three will require important efforts. The development of further technical assistance projects under the auspices of the SRSS in areas covered by Benchmark Three could be considered to assist the Bulgarian authorities in these efforts.

3.2 Corruption

The fourth and fifth benchmarks for Bulgaria under the CVM concern the need for effective measures against corruption, including high-level corruption as well as corruption more generally in public institutions. The development by the government of an updated national strategy for the fight against corruption was an important step, but the challenge remains to ensure its implementation, to adopt the necessary legal framework and to set up the envisaged institutions. A year on from the January 2016 report, further progress remains limited in this regard.

High-level corruption

The government's draft anti-corruption law has not been adopted and consequently the proposed new unified anti-corruption authority has not been set up. This would be responsible for the control of conflicts of interest and property declarations of high-ranking officials and administrative investigations into possible corruption and illicit enrichment.

The adoption of a law to put in place an effective and accountable new anti-corruption institution will be a key test of Bulgaria's resolve in 2017. However, some features of the envisaged new institution, such as the merging of the Illegal Asset Forfeiture Commission into the new structure, should be carefully considered. Given the track record established by the Illegal Asset Forfeiture Commission, it is important that organisational changes do not undermine the progress already achieved. Some less controversial elements of the anti-corruption strategy also remain to be implemented, most notably a strengthening of the administrative inspectorates, where the necessary legislative proposals have still to be presented.

- **Recommendation:** Adopt a new legal framework on the fight against corruption in line with the intentions set out in the anti-corruption strategy, and ensure its implementation. Set up an effective anti-corruption authority.
- **Recommendation:** Adopt and implement a reform of the law on public administration to strengthen the internal inspectorates in the public administration.

Bulgaria's reporting of new cases under investigation and sent to court has progressed. However, ultimately any assessment of track record in tackling high-level corruption depends on final court decisions being concluded and enforced, given the pattern of high-level cases rarely ending in successful convictions. Showing to the public that transgressions can be

¹⁷ *Systemic problem of ineffectiveness of investigations in Bulgaria* [ECHR 070 \(2015\)](#)

identified and that the perpetrators are effectively brought to justice will be the strongest evidence for the success of the anti-corruption efforts. Bulgaria still needs to show such a track record in terms of final results. Useful analytical work has been carried out in 2016 in various forms, including via an analysis of past corruption cases by the Prosecutor's Office, which can be taken as a basis for further concrete measures.

- **Recommendation:** Building on the analysis of past cases, establish a roadmap between all relevant institutions to address shortcomings in the investigation and prosecution of high-level corruption cases, including a mechanism for the reporting of progress to the wider public.
- **Recommendation:** Establish a mechanism for public reporting on progress in high-level cases which are in the public domain. General Prosecution to report – whilst respecting the presumption of innocence – on investigations and indictments. Supreme Court of Cassation and Ministry of Justice to report on convictions as well as the enforcement of sentences.

To meet Benchmark Four will require a fresh approach by the Bulgarian authorities, most obviously in order to establish a track record on high-level cases. The preparatory work already initiated could provide a good basis, although some proposals for changes to existing institutions would benefit from further analysis and careful assessment to avoid any possible adverse impact on performance.

Corruption at local level and the borders

Wider efforts to address corruption at lower levels are needed in particular in terms of measures to enhance prevention, which should be introduced in combination with wider efforts to increase transparency and professionalism in the public administration. Public procurement is widely recognised as a particular risk area for corruption. Bulgaria has made progress on the implementation of the public procurement strategy since its adoption in 2014, including through the introduction of risk based, in-depth *ex ante* checks. Now it needs to show a track record of effective follow-up on these checks and introduce effective sanctions for any irregularities.

- **Recommendation:** Carry out an external review of the *ex ante* checks of public procurement procedures and their follow-up, including *ex post* checks, as well as on cases of conflicts of interest or corruption discovered and remedial measures taken to address identified shortcomings.

The Ministry of Interior has put in place a range of concrete anti-corruption preventive measures (notably with the traffic and border police) in the context of a broader reform of the Ministry. These measures should be continued and continuously followed up. In addition, plans to extend these efforts to other ministries should be stepped up.

- **Recommendation:** Put in place risk-based measures to address low-level corruption in high risk sectors within the public administration, taking inspiration from what has been done in the Ministry of Interior. Continue the efforts in the Ministry of Interior.
- **Recommendation:** Establish a mechanism for public reporting on the implementation of the national anti-corruption strategy covering the remaining duration of the Strategy's implementation.

3.3 Organised crime

The sixth CVM benchmark concerns the fight against organised crime. Analysis of the developments over the last ten years points to an evolution of organised crime, which has become more fragmented, versatile and diversified, developing towards legal businesses, as well as becoming less openly violent. Many Bulgarian interlocutors consider that Benchmark Six – as it has been agreed ten years ago – is therefore becoming less relevant, given that the crime picture is changing into something which is more comparable to that of some other Member States. However, Bulgaria needs to show it has a functioning system to fight organised crime by establishing a track record showing that final court decisions in cases involving serious organised crime are reached and enforced.

After a series of restructurings in recent years, the anti-organised crime directorate now appears to have largely recovered operational stability and capacity. However, the structural problems with the Criminal Procedure Code mentioned above, which complicate investigations, are still a source of concern. Moreover, there also are continued challenges in terms of operational capacity, training and equipment, which need to be further enhanced.

The Specialised Court and Prosecutor's Office for organised crime are building a track record. An assessment of the performance of the specialised courts by the Supreme Court of Cassation highlighted some critical issues, which need further consideration in the light of the broader issues considered in the context of Benchmarks Two and Three above. A proposal has been made to extend the competence of the Specialised Court to include high level corruption cases. Such changes in jurisdiction need to be carefully prepared and accompanied by appropriate analysis on resource needs and possible legal implications of the changes. It would need to be clear that there would be no unintended negative impact on organised crime cases.

In general, it is important that the competent institutions and agencies dealing with organised crime are given the necessary stability to work on cases and bring them to conclusion in court. Bulgaria has shown the beginnings of a track record on organised crime cases. This positive trend should be continued and further reinforced.

- **Recommendation:** Establish a mechanism for public reporting on progress in high-level cases which are in the public domain. General Prosecution to report – whilst respecting the presumption of innocence – on investigations and indictments. Supreme Court of Cassation and Ministry of Justice to report on convictions as well as the enforcement of sentences.

Concerning asset forfeiture, amendments to the law on confiscation of criminal assets have been tabled in order to remedy a series of problems (lowering of the threshold for unjustified wealth for example). However, those have not yet been adopted by the National Assembly. The Illegal Asset Forfeiture Commission nonetheless continues to produce solid results. However, its future as an independent structure remains unclear given pending proposals for its merging into the future unified anti-corruption authority.

- **Recommendation:** adopt the necessary amendments to the law on confiscation of criminal assets and ensure the Illegal Asset Forfeiture Commission continues to operate independently and efficiently.

4. CONCLUSION

The Commission's 2015 and 2016 CVM reports were able to acknowledge important steps taken by the Bulgarian authorities to put the reform process back on the agenda. During 2016 Bulgaria made additional significant progress in the implementation of the judicial reform strategy, while implementation of the national anti-corruption strategy still remains in an early stage. More generally, over the past ten years, overall progress has not been as fast as hoped for and a number of significant challenges remain to be addressed. The new government will need to drive reform forward to secure irreversible results. Therefore, this report cannot conclude that the benchmarks are at this stage satisfactorily fulfilled. However it is possible to identify a limited number of key recommendations to lead to the provisional closing of individual benchmarks, and then the conclusion of the CVM process.

The Commission considers that the CVM objectives can be achieved by following up the recommendations set out in this report. The speed of the process will depend on how quickly Bulgaria will be able to fulfil them in an irreversible way. The Commission therefore invites Bulgaria to take action to fulfil the recommendations contained in the present report. The Commission will assess progress made towards the end of 2017.