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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(2017) 750 final}

Benchmarks to be addressed by Bulgaria pursuant to Commission Decision of 13/XII/2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime¹:

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

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

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

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

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

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

List of acronyms:

BORKOR: Centre for the Prevention and Counteraction of Corruption and Organised Crime

CIAF: Commission on Illegal Asset Forfeiture

CPACI: Commission for the Prevention and Ascertainment of Conflicts of Interest

CVM: Cooperation and Verification Mechanism

ECtHR: European Court on Human Rights

ISJC: Inspectorate to the Supreme Judicial Council

NAO: National Audit Office

PACE: Monitoring Committee of the Parliamentary Assembly of the Council of Europe

SANS: State Agency for National Security

SJC: Supreme Judicial Council

SRSS: Structural Reform Support Service

¹ Previous CVM reports can be consulted at https://ec.europa.eu/info/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en

INTRODUCTION

This technical report sets out the information which the Commission has used as the basis for its assessment of Bulgaria's progress under the Co-operation and Verification Mechanism (CVM) since the last CVM report of 25 January 2017. This information has been collected from a variety of sources. In the first place, the Commission has had the benefit of working closely with the Bulgarian government and key judicial and State bodies on CVM issues, which have provided information on progress in detailed and focused reports as well as in face-to-face meetings.² The Commission services also follow developments on a continuous basis through a permanent presence in Sofia.³ Furthermore, Commission contacts with the Bulgarian administration across the full range of EU policies, including through the European Semester for economic governance, help to inform the CVM reports. Apart from official contacts with Bulgarian authorities, the Commission meets with non-governmental organisations active in the area of judicial reform and anti-corruption work as well as with professional associations of judges and prosecutors, and with representatives of other EU Member States in Bulgaria.

Over the years, Bulgaria has benefited from bilateral support from EU Member States among others. In 2016, for example, several Member States provided experts for a project led by the European Structural Reform Support Service (SRSS) to carry out an independent analysis of the Public Prosecutor's Office of Bulgaria. Such assistance is in addition to the contribution from EU funds. In the current programming period, the Operational Programme "Good Governance" under the European Social Fund has dedicated approximately EUR 30 million to a separate priority axis for judicial reform in Bulgaria.⁴ Support from the SRSS also continues to be available for reforms in Bulgaria, including in the justice sector.⁵

The Commission further draws on the various studies and reports that are available from international institutions and other independent observers in the field of judicial reform and the fight against corruption. Since the time when the CVM benchmarks were drafted, there have been major developments in ECtHR⁶ case-law, international standards and best practices, and comparative information on national justice systems in the EU⁷, which also help to give an objective and comparable measure of the development of the Bulgarian judicial system and fight against corruption and organised crime. While informed by these many different sources, the content of this report remains the responsibility of the Commission services.

The Commission Decision of 2006 laying out the basis for the CVM defined six benchmarks for Bulgaria. These benchmarks have never been modified. While the six benchmarks were conceived in a particular context and their concrete wording reflects the specific situation at the time, the underlying issues that they refer to have remained relevant in subsequent years.

The first three benchmarks relate to the reform of the judicial system, including the constitutional framework safeguarding judicial independence (benchmark 1), the relevant legislation (benchmark 2), and the need to improve the day-to-day functioning of the judiciary (benchmark 3). The following two benchmarks concern the fight against corruption, both high-level corruption (benchmark 4) and corruption more generally including at local level and the borders (benchmark 5). The final benchmark concerns measures to address organised crime (benchmark 6).

² The Commission services carried out fact-finding missions in Bulgaria in June and September 2017.

³ The Commission has a CVM Resident Adviser at the Commission Representation in Sofia.

⁴ 28 projects financed by OP Good Governance are in the process of implementation, covering one third of the available resources. Beneficiaries include Supreme Judicial Council, the Ministry of Justice, the Prosecutor's office, the National Institute of Justice, the Inspectorate of the SJC, the National legal Aid Bureau, and non-governmental organisations. Most of the projects are in an early stage of implementation.

⁵ In addition, funding for the Ministry of Interior is available through the Internal Security Fund – Police.

⁶ European Court on Human Rights.

⁷ The EU Justice Scoreboard <http://ec.europa.eu/justice/effective-justice/scoreboard/>

The Commission's latest CVM report of 25 January 2017 presented a comprehensive assessment of ten years' progress in judicial reform and the fight against corruption and organised crime under the CVM. The January report used this longer-term perspective to identify the key remaining steps necessary to realise the objectives of the CVM. It also defined a clear pathway towards the conclusion of the CVM process. Once the steps set out under each of the benchmarks have been addressed, the respective benchmark will be considered provisionally completed. When this applies to all benchmarks, the CVM will be closed, except if developments were to clearly reverse the course of progress.⁸ Consequently, this technical report will focus on the progress made by the Bulgarian authorities in regard to each of the key remaining steps – 17 in total – which were identified in the January report. The 17 recommendations of the January report are set out below under their respective benchmarks, each followed by a summary of the progress made since January 2017.

"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."

Source: Report on Progress in Bulgaria under the Co-operation and Verification Mechanism adopted on 25 January 2017⁹

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

Recommendation 1: *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.*

The Supreme Judicial Council is the key institution governing the Bulgarian judiciary, including the allocation of resources and the appointment of the heads of courts and prosecutors' offices. The functioning of this institution is therefore of key importance for a balanced development and professional management of the judiciary. The January CVM report noted that controversies and infighting over the past years have fuelled suspicions of external influence and affected public confidence in the judiciary.¹⁰ On this background the report identified as a significant test case for 2017 the election of the new members of the SJC, which was due this year for both groups of members: those elected within the magistracy (judicial quota) and those elected by the National Assembly (parliamentary quota).

The report highlighted in particular the importance of these elections being carried out, and being seen to be carried out, in an open and transparent manner following a serious debate on the merits of the respective candidates. Compared to the election of the previous SJC in 2012, the basic procedural framework has evolved significantly due to constitutional and subsequent legislative amendments enacted in 2015 and 2016. A key improvement under the new procedures is that the 11 members of the judicial quota were to be directly elected by judges and prosecutors, according to a one-magistrate one-vote principle.¹¹ Also under the new rules introduced in 2015, the election of the 11-member

⁸ COM(2017) 43 final, p. 3.

⁹ COM(2017) 43 final, p. 13.

¹⁰ COM(2017) 43 final, p. 8. The report also noted that tension among members of the Council, amidst allegations of a lack of objectivity in key decisions, had remained a concern (op cit., p. 4).

¹¹ In the January 2014 CVM report, the Commission regretted that the 2012 election of the judicial quota suffered from the decision not to allow for direct elections by judges – COM (2014) 36 final, p. 3.

parliamentary quota requires the support of a 2/3 majority in the National Assembly, reflecting a recommendation of the Venice Commission at the time.¹²

The elections to the judicial quota were completed by June and the final outcome of the vote was regarded by a large majority of interlocutors as representing a fair result reflecting the preferences of the entire body of magistrates.¹³

The election of the parliamentary quota in the National Assembly was in turn completed on 20 September with the successful candidates being elected by a wide majority of MPs, including MPs from the main opposition parties. 18 candidates had been nominated within the deadline in June, allowing for a significant period of public debate on the relative merit of the candidates. In spite of this, however, the election was criticised by civil society actors and some judges as giving the impression that the outcome had been predetermined through prior agreements between the main political parties and did not reflect an open consideration of the relative merit of the candidates. In particular, the prior public hearing in the legal affairs committee was criticised for giving insufficient time for discussion and for the fact that critical questions raised by civil society stakeholders were not raised.¹⁴ The fact that the final distribution of posts among candidates supported by the main party groups was widely predicted in advance of the vote, has been raised by some stakeholders as a concern, in particular as the proportion of members elected by the National Assembly in the Judges College remains high: the same number as for the judges elected by their peers. Concerns reflect the wide variety of decisions within the powers of the SJC, including decisions concerning judges' careers.¹⁵

Interlocutors have pointed to the presence of a number of well-renowned senior magistrates among the new members of both the judicial and parliamentary quota as a positive development, the implication being that this may bode well for a professional atmosphere to develop within the council. The new members were sworn in on 3 October. A track record of impartial and professional decision-making in key areas over the coming months will be an important indicator for the ability of the Council to establish its reputation.

Recommendation 2: *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.*

One of the main functions of the SJC is the appointment of heads of courts and prosecutors' offices. The SJC also elects nominees for the three highest offices in the Bulgarian judiciary, the Presidents of

¹² Six members for the judges' chamber and five members for the prosecutors' chamber from each quota, together with the three ex officio members (the chairs of the Supreme Court of Cassation and the Supreme Administrative Court as well as the Prosecutor general), make up the 25 members of SJC. The 2/3 majority requirement for the parliamentary quota was introduced on the recommendation of the Venice commission in order to minimise the risk of politicisation by preventing a narrow majority in the National Assembly to appoint the entire parliamentary quota.

¹³ The availability of an electronic voting system made possible a very high participation rate.

¹⁴ Questions from civil society were nevertheless received and made available for the public on the National Assembly's website, as required by the law.

¹⁵ These concerns are also reflected over years in analyses of Council of Europe bodies such as the Venice Commission and GRECO, pointing to the significant quota of political appointees in the Bulgarian judicial council. Recently, the risk of undue political influence was raised by GRECO in its compliance report on Bulgaria under the fourth evaluation round, adopted in June 2017 (<https://www.coe.int/en/web/greco/-/bulgaria-publication-of-the-fourth-round-compliance-report>). In addition, in a recent Opinion on Bulgaria, the Venice Commission reiterates its concerns about risks to the independence of judges within the SJC and makes a number of recommendations in this regard. The Venice Commission Opinion focuses in particular on the role of the prosecutors within the SJC and the minority position of judges elected by their peers. See Venice Commission, "Bulgaria: Opinion on the Judicial System Act", adopted at 112th plenary 6-7 October 2017. [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)018-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)018-e)

the two Supreme Courts and the Prosecutor General.¹⁶ As pointed out in the January report, the conduct of such appointments in a merit-based and transparent manner 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. This will therefore be an important area in which it will be possible to assess the approach of the new Council. As highlighted in previous reports, decisions of the outgoing Council have often been associated with controversy in this area as well as others.¹⁷ During the last year of the outgoing SJC, a polarised atmosphere has continued to affect the work of the SJC.¹⁸

The recommendation cited above makes particular reference to the election of the new chair of the Supreme Administrative Court, which was one of the main appointments in the judiciary due to take place in the course of 2017.¹⁹ The procedure was launched in July and the vote took place in the plenary of the outgoing SJC on 11 September, presenting a choice between two candidates both of whom had a background in the Supreme Administrative Court itself. The vote in the SJC had been preceded by a hearing of the general assembly of judges at the Supreme Administrative Court, under new rules introduced in the Judicial Systems Act in 2016 to strengthen the involvement of general assemblies of courts in the appointment of their management. The hearing resulted in a recommendation in favour of one of the candidates, who was also supported by the outgoing management²⁰, and who was ultimately also the candidate selected by the SJC plenary. However, following the vote in the SJC the nomination requires the endorsement of the President of the Republic, who let it be known that he considered it more appropriate for this election to have been carried out by the new incoming SJC, rather than the outgoing one. News media also reported criticism of the SJC's decision from other sides, with calls for the President to reject it.²¹ On 4 October the President decided to request a confirmation of the nomination from the newly formed SJC. On 19 October, the newly formed SJC confirmed the candidate with a large majority (20 votes in favour), and the new chair is expected to officially take up his responsibilities on 22 November.²²

Recommendation 3: *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.*

Previous CVM reports have acknowledged the positive contribution over the years of the Inspectorate to the Supreme Judicial Council (ISJC). However, the area of integrity and disciplinary proceedings has been a long-standing issue of controversy, with unclear practices within the SJC. With the constitutional amendments of 2015 the Inspectorate was given additional powers in the area of integrity, becoming responsible for checking declarations of interest and of private assets as well as verifying cases where integrity of magistrates has been put into question.²³ Under the new rules, the Inspectorate's role was also strengthened in regard to disciplinary proceedings. Previously, five members of the SJC could initiate a disciplinary procedure, whereas under the new rules this competence has been reserved for the Inspectorate, together with the administrative heads of the respective judicial bodies and the Minister of Justice. Although it is still ultimately the SJC which decides on the outcome of disciplinary proceedings, this has created a clearer division of powers between the different institutions involved.²⁴ Detailed rules and procedures for the exercise by the Inspectorate of its new powers were included in the Judicial Systems Act in 2016 and came into effect

¹⁶ In addition, these appointments are subject to endorsement by the President of the Republic.

¹⁷ See e.g. COM (2017) 43 final, p. 4; COM(2016) 40 final, p. 4.

¹⁸ As noted previously, tensions have been most visible in the judges' chamber, see SWD (2017) 24 final, p. 8.

¹⁹ The term of the outgoing chair expires in the second half of November.

²⁰ However, the procedure reportedly did not allow for a secret vote.

²¹ Among other issues, the criticism focussed on the fact that the outgoing SJC had deliberately chosen to bring forward the decision even though there would have been sufficient time for a new SJC to select a nominee before the end of the mandate of the currently serving chair.

²² The President signed off on the appointment on 23 October.

²³ The Inspectorate can initiate such checks on the basis of alerts from the public as well as media reports.

²⁴ Decisions of the SJC are furthermore subject to appeal at the Supreme Administrative Court.

in January 2017. As a result of these changes, the Inspectorate has now been given a much more central role in relation to all disciplinary matters with regard to magistrates than in the past.

Considering the very sensitive issues concerned, the January report recommended that Bulgaria should consider external assistance in order to improve the practical functioning of the new institutional set-up on integrity, including the newly strengthened role of the ISJC. The Bulgarian government has subsequently expressed interest in SRSS assistance for the Inspectorate. Also, a mission from the Venice Commission has been extended to Bulgaria on the initiative of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) in order to assess the recent reforms in the Bulgarian judiciary following the constitutional amendments of 2015 and subsequent legislative amendments, including the new functions of the Inspectorate. The resulting Opinion, adopted in early October 2017, sets out a number of considerations in relation to the composition and role of the Inspectorate.²⁵

In the meantime, the Inspectorate has taken up its new tasks, receiving and publishing interest and asset declarations for the more than 4,000 magistrates covered by the new rules. Proceedings have been launched against magistrates who have not submitted their declarations. Agreements have been signed with institutional counterparts on exchange of relevant information. The Inspectorate has been provided with additional resources, including technical staff needed to perform analysis of conflicts of interest and personal assets of magistrates. Checks on the first declarations submitted have reportedly commenced, although the pace of implementation has been delayed for various technical reasons. In particular, new software has had to be procured as the existing system used by the National Audit Office for other public officials is unsuited for the declarations by magistrates under the new rules.²⁶ In the course of the implementation some shortcomings have also been identified in the new rules, leading the Inspectorate to propose amendments to the Judicial Systems Act on a limited number of points, for example to facilitate access to bank account information as part of its checks.²⁷

The Inspectorate has received a number of alerts on magistrates but most of these have not led to investigations. According to the Inspectorate this is mostly due to incomplete information provided. It appears therefore that the system for receiving alerts has not so far been fully effective. Based on its normal inspections of the various judicial bodies, the Inspectorate continues to refer cases to the SJC for disciplinary follow-up. The outgoing SJC has initiated a practice of holding regular meetings with the Inspectorate to discuss the approach taken on such cases. It is to be seen how the interaction between the two institutions will evolve under the new SJC.

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 CRIMINAL AND ADMINISTRATIVE PROCEDURE CODES, NOTABLY ON THE PRE-TRIAL PHASE

Recommendation 4: 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.

The January report notes the continued challenges facing Bulgarian judicial authorities in ensuring effective investigation and prosecution of high-level corruption and organised crime under the existing

²⁵ The Venice Commission Opinion makes concrete recommendations on the procedures for the nomination and dismissal of inspectors, on the division of competences vis-à-vis the SJC, and on the need for further clarifying the rules on inspections and disciplinary proceedings. See Venice Commission, op cit.

²⁶ Procurement of new software is reportedly now in progress with funds being provided by Operational Programme "Good Governance" of the European Social Fund.

²⁷ Also, the legislation appears not to have provided for any administrative liability for magistrates having left the service under the new rules. Although they are required to continue to submit declarations at the end of their career, there could therefore be an issue with disciplinary follow-up on failures to do so. (Source: Meeting with the ISJC, September 2017.)

criminal code and procedures. These are long-standing challenges, which persist in spite of repeated efforts to modernise the legal framework over the years. In early autumn 2016, a package of draft amendments to the Criminal Procedure Code, which aimed to address some of these issues, was prepared by the Ministry of Justice, with the support of the Prosecutor's Office and other parts of the judiciary. Due to the subsequent political developments these amendments were not taken forward in 2016. However, in June 2017 the newly established government submitted draft amendments to the National Assembly, which proceeded quickly with their adoption. The amendments were promulgated on 4 August and entered into force on 5 November. The aim of the package is to accelerate procedures and improve the efficiency of justice, notably by limiting the possibility for courts to send cases back to the prosecution on formal grounds at the more advanced stages of the procedure.²⁸ Another important change is the transfer of competence in cases related to a range of serious crimes with a potential or direct corruption element perpetrated by high-level officials – including MPs, ministers and magistrates – to the jurisdiction of the Specialised Court and Prosecutor's Office on Organised Crime. A range of other changes were also included in the package, to ensure better enforcement of sentences, speed up deadlines, and allow for more flexibility on the length of pre-trial investigations in complex cases.²⁹

Civil society actors and parts of the judiciary have raised concerns about the very swift adoption of the package, citing concerns that it did not allow for a proper debate and consideration of possible impacts of the amendments.³⁰ For example, the acceleration of procedures and new limitations on courts' ability to send cases back to the prosecution has been criticised by some within the judiciary on the grounds that the requirement to identify all procedural errors in the preliminary hearing could be unrealistic and might therefore lead to unwarranted acquittals. At the same time, others have raised concerns that the rules could potentially infringe on the rights of defendants.³¹ In addition, the transfer of jurisdiction in criminal cases concerning high-level officials to specialised bodies has also been questioned by some stakeholders, both in terms of the underlying reasoning, which would be to ensure stronger specialisation in such cases (currently handled mostly by the Sofia City Court), and on more formal grounds.³²

More generally, it appears to be widely acknowledged that the benefits of the amendments will depend to a significant extent on the manner of their implementation and application in practice, including accompanying measures of a more organisational nature. Hence, it appears that there will be a need for determined follow up in terms of training and other measures to ensure proper implementation of the new system by all institutions involved. The January CVM report noted that the transfer of additional competences to the Specialised Court, and the Specialised Prosecutor's Office attached to it, needed to be carefully prepared and accompanied by appropriate analysis on resource needs and possible legal

²⁸ This is achieved by the introduction of a new step in the criminal procedure – a preliminary hearing – at which a decision has to be taken whether there have been formal procedural errors committed during the pre-trial stage. After this hearing, it will no longer be possible for the court to send the case back on such grounds. The new rules focus on general procedural errors, such as for example a failure to inform the defendant of the crime with which (s)he is being charged, or of his or her right to non-self-incrimination. The preliminary hearing does not deal with errors related to the admissibility, collection, examination or assessment of evidence. (See Criminal Procedural Code Article 248 and 249, as amended.)

²⁹ For example, a pre-existing rule which allowed defendants in serious criminal cases after two years of pre-trial investigation to require their case to go to court, or charges to be dropped, has been softened, introducing an independent assessment by a court. At the same time, similar rules have been extended to cover the relevant court proceedings. (Sere Criminal Procedure Code, Articles 368-369, as amended).

³⁰ In 2016 the previous government established a special consultative council on judicial reform which was used to ensure close involvement of relevant stakeholders in the preparation of a major reform of the Judicial Systems Act. This approach, which was highlighted in the January CVM report, appears not to have been applied in the same way in this case.

³¹ Some have referred to possible constitutionality issues on these grounds.

³² Some stakeholders have questioned the legal approach taken for the definition of jurisdiction in such cases as possibly raising constitutionality issues. This concern has however been rejected by the Prosecutor's Office and the Ministry of Justice.

implications of the changes.³³ These issues appear not to have been given proper consideration and have now taken on additional urgency given the short period allowed for the new rules to enter into force.³⁴

The amended Criminal Procedure Code was accompanied by specific amendments to the Judicial Systems Act providing for a new possibility to remove judges from office. The amendments provided that this should be possible as soon as criminal investigations by the prosecution are launched against a judge, apparently without leaving any discretion for the SJC to take a decision based on an overall assessment in each case and without any recourse to judicial appeal on the part of the judge. These amendments were very negatively perceived by judges and civil society representatives. They saw a risk that the judge could be arbitrarily taken away from a case (given that existing rules already include provisions on dismissal for abuse of office), and considered the new rules to present a threat to the independence of the judges and the rule of law.³⁵ The new rules on removal of judges in the context of a criminal investigation were also raised as a matter of concern in a recent Opinion on Bulgaria by the Venice Commission³⁶, prompting the government to take action to address the issue.³⁷

Work carried out in the context of the continued judicial reform strategy³⁸ has suggested additional avenues for possible improvements in the criminal procedures. This has led to the establishment of a working group under the Ministry of Justice to analyse different aspects and possibly identify the need for further amendment of the legislation. The areas covered include preliminary checks carried out by investigators prior to formal pre-trial investigations, authorisation of special investigatory measures, the role of witnesses in pre-trial investigations, status of reports of the Financial Intelligence Directorate³⁹ in criminal proceedings, and the possible need to give investigatory powers under the criminal procedure code to the State Agency for National Security (SANS). Alongside this working group under the Ministry of Justice, the Prosecutor's Office has also engaged in the preparation of draft amendments concerning key provisions of the procedural code governing the criteria for bringing cases to court and the content and format of indictments.⁴⁰ Many of these discussions go to the very heart of the existing procedural system and can be expected to require extensive analysis and consultation with stakeholders before any draft amendments are put forward to the National Assembly.

As regards the Criminal Code, the January report acknowledges that a more comprehensive overhaul of the legal framework will be a long-term process and that the more short-term priority would be to concentrate on targeted amendments to improve the investigation and prosecution of high-level

³³ COM(2017) 43 final, p. 13.

³⁴ Draft amendments to the Judicial Systems Act were tabled in the National Assembly in early October apparently to facilitate secondment of staff to the Specialised Court and Prosecutor's Office. Civil society actors expressed concern that these proposals were tabled directly by MPs without prior consultation or debate and appeared to roll back key elements of the 2016 reform. The draft amendments would make it possible to continue secondments over longer periods and would provide for performance based remuneration of staff at the Specialised Court and Prosecutor's Office. Although these were not government proposals, the Judicial Reform Council was later convened by the Minister of Justice to discuss them with stakeholders. However, at this stage the proceedings at the National Assembly were already well advanced. The changes were finally adopted on 27 October.

³⁵ Another change in the Judicial Systems Act adopted in July 2017 which triggered broad criticism on the part of magistrates was the newly introduced requirement for all magistrates to declare their membership in professional organisations or associations (which has apparently prompted a significant cancellation of membership in the Bulgarian Judges Association, attributed to a fear on the part of some judges that their membership could have a detrimental impact on their career).

³⁶ Venice Commission, *op cit.* p. 10-11.

³⁷ On the proposal of the Minister of Justice further amendments were subsequently adopted on 27 October to give the SJC some discretion to decide on the merits in cases not involving offences related to the official responsibilities of the magistrates concerned and providing for appeal at the Supreme Administrative Court.

³⁸ As referred to under Benchmark 3 and 4 below.

³⁹ The Bulgarian financial intelligence unit located within the State Agency for National Security (SANS)

⁴⁰ Articles 14, 246 and 249 (para 2) of the Criminal Procedure Code.

corruption and organised crime. A number of issues have reportedly been identified and are the subject of further work in various fora under the Ministry of Justice and the Public Prosecutor's Office. These deliberations concern issues such as the possible extension of abuse of office offences to cover the private sector and the need to prove damages resulting from abuse of office.⁴¹ It remains to be seen what the outcome of these deliberations will be.⁴² As is the case for the issues pertaining to the procedural code referred to above, amendments to the criminal code require careful consultation and debate before being adopted in law, even if these amendments would concern only a more limited number of provisions.

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

Recommendation 5: 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 judicial reform strategy adopted by the government in office at the end of 2014 and endorsed by a broad majority in the National Assembly in January 2015 remains the overarching framework for the continuation of the judicial reform process in Bulgaria.⁴³ This has been confirmed by the new government which took office in May. However, the judicial reform strategy is not merely a check list of planned initiatives. In order to ensure the achievement of the broad objectives set out in the strategy, there is a need for continuous debate and regular consultation of stakeholders to identify elements which require renewed consideration or further action as well as to develop broader ownership in society. The fifth recommendation of the January report sets out one element aimed at fostering such a public debate, namely to put in place a process of regular assessment and reporting on the implementation of the strategy, including the identification of steps still to be taken to achieve the objectives which were set out in the strategy.

In response to this recommendation, the Ministry of Justice under the interim government published a first implementation report in early 2017, covering the progress made in 2016. A discussion of the draft was organised with the participation of representatives of the institutions involved in the implementation of the strategy, as well as professional and non-governmental organisations. As a follow-up, the new government has published a second implementation report covering the first half of 2017, which was discussed in the consultative forum on the implementation of the judicial reform strategy on 24 July. It has been decided to continue publishing such reports every half year.

Recommendation 6: 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 development of workload standards and the preparation of a comprehensive reform of the court map have been important focus areas of the outgoing SJC. The January report noted that this work has now reached a stage where concrete steps should be possible towards a broader reform on a well-informed basis. Nevertheless, it is clear that such a reform requires broader political backing, as well as involvement of all levels of the judiciary, to ensure a good outcome. Meanwhile, the system of workload standards which is now in place could provide a good basis for a consistent policy of reallocating workload and resources to alleviate the pressure on the busiest courts.

⁴¹ Additional aspects having been under discussion, with possible links to the criminal code, include the ability to draw on cooperative witnesses and undercover agents (the latter in particular in the context of bribery).

⁴² Some amendments have already been published for public consultation.

⁴³ An English version of the strategy can be found via this link: www.strategy.bg/FileHandler.ashx?fileId=5570

Since January, the prosecutors' chamber of the SJC has endorsed in principle a model for a possible gradual consolidation of the 113 local prosecutors' offices within the 28 larger provincial districts, which could be implemented independently of a broader reform of the local courts.⁴⁴ However, no final decision was taken to move ahead with this reorganisation, leaving the issue for the new SJC. On the side of the courts, a consolidation of the 113 local courts has been the subject of analysis and consultations for several years, but these efforts have not yet proceeded to the stage of presenting a concrete roadmap for the reform⁴⁵, possibly reflecting a preference to leave such a significant decision to a future SJC with a renewed mandate.⁴⁶

A reform of the broader judicial map is bound to represent an important item on the agenda of the newly established SJC, which will need to set out the next step in this process.⁴⁷ As a broader reform will likely take time, however, measures are needed in the short term to address the workload situation in the busiest – and typically larger - courts. One approach to this consists in the allocation of additional staff and other resources to the busiest courts, an approach which can now proceed in a more systematic manner based on the standards for the measurement of workload developed under the previous SJC. So far, this process appears to have been pursued only very incrementally, so the problems remain. Moreover, the outgoing SJC appears to have recently taken the view, in spite of the workload analysis showing continued severe imbalances, that the allocation of additional staff posts was not the appropriate solution for the problems at certain larger courts.⁴⁸ Another approach to the workload issue consists in changing the attribution of jurisdiction for certain types of cases among courts through legislative changes. This approach is reportedly being considered by the government, with analysis focussing on possible amendments to the civil procedure code. As these various strands of work are all related and interdependent, this will inevitably be an area for the new SJC to take up in a proactive manner, and in consultation with the government and other stakeholders.⁴⁹

Recommendation 7: 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.

As noted in the January CVM report, the role and place of the Public Prosecutor's Office within the overall institutional architecture has been a divisive issue in Bulgaria and is at the same time of high importance in relation to the fight against corruption and organised crime.⁵⁰ In response to this issue, one of the actions envisaged under the judicial reform strategy was the completion of an independent analysis of the structural and functional model of the Bulgarian Prosecutor's Office. Such an analysis was carried out in 2016 with the assistance of the Commission's Structural Reform Support Service (SRSS) and experts (senior prosecutors) from Germany, Spain, The Netherlands and the United

⁴⁴ Previously there has been some uncertainty about the possibility of decoupling a reform of the prosecutors' offices from that of the courts under the Bulgarian Constitution, but in early 2017 the Prosecutor General referred this question to the Constitutional Court, which confirmed that such a decoupling was possible.

⁴⁵ A project financed under Operational Programme "Good Governance" of the European Social Fund is expected to provide support in bringing the process to the next stage, also involving the introduction of a common IT system for the judiciary. However, the project has reportedly been delayed and remains in an early phase of implementation.

⁴⁶ Similar discussions have taken place on consolidation of the five appeal courts or the three military courts as well as the need to further analyse the system of 28 administrative courts, also with no final decisions made.

⁴⁷ It should also be noted that the next steps are likely to be more about drawing conclusions and building a consensus than about further analysis.

⁴⁸ This lack of follow-up has led to frustration at the affected courts and criticism of the lack of an effective mechanism to address the problems identified.

⁴⁹ Under Bulgarian law the SJC has wide competences in regard to the overall management of the judiciary, including decisions on the number of judicial districts which are to be taken in consultation with the Minister of Justice (Judicial Systems Act, Article 30, para 2.).

⁵⁰ COM(2017) 43 final, p. 5.

Kingdom. The resulting report from December 2016⁵¹ contained recommendations for the improvement of the prosecution service and its interactions with other institutions, focusing on issues such as independence and accountability as well as transparency, effectiveness and efficiency.

The outcome of the independent analysis has been generally welcomed by the Bulgarian authorities. While some of the recommendations were considered by the authorities as difficult to implement within the specific Bulgarian context and were therefore expressly not followed up⁵², most of the recommendations were considered relevant and taken up for further consideration. In July 2017 the Ministry of Justice and the Prosecutor's Office set out a joint roadmap covering both organisational and potential legislative measures in response to the recommendations contained in the report.

On the legislative side, a number of working groups have been established under the Ministry of Justice to consider the possibility of amending various laws. These include two working groups set up to reflect on amendments to the Criminal Procedure Code and the Criminal Code. These were already mentioned above under benchmark 2. A third working group is looking into possible amendments of the Judicial Systems Act, notably on issues such as remuneration and external appointments to the Prosecutor's Office. A fourth group has been tasked with the elaboration of proposals to clarify procedural aspects of criminal investigations in regard to a serving Prosecutor General or Supreme Court chair. The independent analysis specifically recommended the introduction of a procedure for the investigation of a serving Prosecutor General, as this is where a potential gap in the rules has been identified.⁵³ However, the Bulgarian government appears to have decided that also the chairs of the two Supreme Courts should be considered in this context. Finally, a fifth working group is considering ways to improve the use of expert witnesses in the Judiciary.

In addition to the work on possible legislative changes, a number of organisational measures have also been considered in response to the analysis. Among those already implemented is a new practice of appearance of the Prosecutor General every three months before the Legal Affairs Committee of the National Assembly to discuss progress in the prosecution of corruption and organised crime,⁵⁴ as well as wider organisational and legal matters related to the work of the prosecution. In addition, measures described to the Commission include better transparency around general methodological guidance issued by the Prosecutor General, improving public communication, expanding access to training on anti-corruption and organised crime related topics, assigning additional prosecutors and investigators to work on corruption and organised crime, requesting interpretative rulings to clarify divergent practices on grounds for returning cases from courts to the prosecution. There would also be further analysis of the handling of European arrest warrants and controlled delivery, suspended cases, follow-up on suspicious transaction reports, and the interaction between the Prosecutor's Office and the Bulgarian asset recovery office.⁵⁵ In relation to IT, it is furthermore envisaged to explore the possibility of the Ministry of Interior joining the integrated information system of the Prosecutor's Office, in order to improve the handling of case files between the institutions.

⁵¹ An executive summary can be found at the website of the Bulgarian Ministry of Justice:

<http://www.mjs.bg/Files/Executive%20Summary%20Final%20Report%20BG%2015122016.pdf>

⁵² Notably, some of the recommendations aiming at strengthening the responsibility and accountability of the senior management within the Prosecutor's Office regarding important cases, as well as recommendations to extend the mechanisms for judicial review over certain prosecutorial decisions, were not taken up, as they were seen by the authorities as difficult to reconcile with the Bulgarian system or a step backwards towards practices which had not worked well in the past.

⁵³ One of the often raised criticisms of the Bulgarian system is that it is allegedly difficult to envisage an independent investigation into possible criminal actions of a serving Prosecutor General. Reference is often made in this context to a ruling of the ECtHR from 2009 (*Kolevi vs Bulgaria*), see [https://hudoc.echr.coe.int/eng#{"itemid":\["001-95607"\]}](https://hudoc.echr.coe.int/eng#{) This issue was also raised in a recent opinion of the Venice Commission, which recommends to increase the accountability of the Prosecutor General by setting out in law a procedure allowing for effective and independent investigation into alleged misconduct of a serving Prosecutor General. Venice Commission, op cit.

⁵⁴ Although without reference to specific cases.

⁵⁵ The Commission on Illegal Asset Forfeiture (CIAF).

While interim deadlines have reportedly already been observed on several of the above measures, many of these refer to first steps towards general objectives with concrete steps still to be taken and outcomes reported. It is to be expected that many of the measures may need a certain time to be translated into concrete action. As regards the reporting on progress to the general public, one option would be to build on the quarterly appearances of the Prosecutor General before the National Assembly's Legal Affairs Committee.⁵⁶

Recommendation 8: Establish a roadmap for the implementation of the recommendations of the study [on ECtHR rulings], including a mechanism for the reporting of progress to the wider public.

In response to a 2015 ruling of the ECtHR, mentioned in the January 2017 CVM report, in which the court expressed concern about the existence of a systemic problem of ineffective investigation of crime in Bulgaria⁵⁷, the Prosecutor's Office carried out an analysis in 2016 of the existing case law of the ECtHR on Bulgaria, identifying a number of concrete recommendations for legislative as well as organisational follow-up measures.

In July 2017 a roadmap was adopted and published by the Prosecutor's Office, including both organisational and possible legislative measures.⁵⁸ Among the organisational measures envisaged are: an analysis of case law on judicial review of prosecutorial decisions to terminate criminal investigations, the designation of specialised prosecutors and investigators to deal with complaints of excessive use of force by law enforcement, and updating the content of internal control within the Prosecutor's Office in light of the findings of the ECtHR. Training for prosecutors on effective investigations in light of the case law of the ECtHR and the 2016 analysis has been launched in the various appellate regions, and a proposal has been prepared for the integration of the subject in the mandatory training for junior prosecutors as well as making it a permanent feature of the programme of continued training. Finally, a working group has been set up to explore ways to step up cooperation between the Ministry of Justice and the Prosecutor's Office with respect to cases at the ECtHR and their follow-up.

On the legislative side, many of the actions already referred to above are also relevant in this context.⁵⁹ In addition, the roadmap refers to some further specific topics to be analysed, such as better enforcement of judicial review of prosecutorial decisions⁶⁰, the possible introduction of additional judicial review clauses⁶¹, analysis of the statute of limitations in a comparative context, clarifying the Prosecutor General's powers to reopen investigations in exceptional cases, clarifying rules on the temporary suspension of magistrates under criminal investigation, making mandatory the training of newly appointed police investigators in ECtHR case law, introducing ID marking of masked police officers, and the insertion of a new criminal offence on torture in the Bulgarian criminal code.

Similarly to the roadmap for the SRSS analysis, the measures under this roadmap are still at an early stage of implementation. Several of the measures are only defined in terms of broad objectives and are yet to be spelled out in concrete actions and results.

⁵⁶ Discussion of the SRSS report has proven difficult in the previous SJC. It is to be seen how such discussions will be handled by the new SJC.

⁵⁷ See *Systemic problem of ineffectiveness of investigations in Bulgaria*, ECHR 070 (2015).
<https://www.slideshare.net/NatashaDobрева/sz-v-bulgaria-systemic-problem-of-ineffectiveness-of-investigations-in-bulgaria>

⁵⁸ Endorsed by order of the Prosecutor General of 28 July 2017.

⁵⁹ See discussion above of criminal procedures as well as on the follow up to the SRSS analysis with regard to criminal investigation of a serving Prosecutor General.

⁶⁰ This refers in particular to judicial review over the termination of criminal investigations by prosecutors, where it is considered, depending on an analysis of current practice, to clarify the disciplinary liability of prosecutors who disregard such court rulings.

⁶¹ This refers to judicial review of decisions by prosecutors not to open investigations, which currently are only subject to review by a superior prosecutor. As referred to above, such issues were not taken up in the context of the follow-up to the SRSS analysis, but apparently it is nevertheless given consideration in this context.

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

***Recommendation 9:** 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.*

The fight against corruption was highlighted in the January CVM report as an area where only limited progress had been achieved in Bulgaria so far. The challenges have been noted in successive CVM reports over the years and include a fragmented landscape of institutional structures dealing with the prevention of corruption, as well as procedural and legal obstacles hampering the effective investigation and prosecution of high-level corruption, as already referred to above. In 2015, following a comprehensive evaluation of the existing anti-corruption policy and the presentation of a new national anti-corruption strategy, the government presented a draft law which would have seen the introduction of a new unified agency to ensure a more coordinated approach to addressing corruption risks among high-level officials, including issues such as conflicts of interest and declaration of personal assets.⁶² The new agency would also have had powers to conduct administrative investigations based on anonymous alerts. However, the draft law failed to receive backing in the National Assembly, forcing the government back to the drawing board.⁶³

Since 2015 discussions have continued on the draft law at various levels. Following further consultations, the government presented a revised version of the draft law in spring 2016.⁶⁴ This time the proposal passed the first reading stage in the National Assembly, allowing for deliberations to commence in relevant committees. However, the parliamentary process did not reach a decisive stage by the time the government stepped down and the National Assembly was dissolved in early 2017, resulting in a failure to bring the reform to a final vote.⁶⁵ Nevertheless, the issue remained on the public agenda through the election period, and the new government which took office in May affirmed its commitment to the anti-corruption strategy, including the proposal to put in place a new more effective institutional framework in the form of a unified agency.

The approach of the new government included some additional compromises in light of some of the sensitivities which had been revealed by the political discussions on the draft. Notably, this involved a rejection of the possibility of the new agency to act on anonymous alerts, although the agency would still carry out investigations based on alerts received from citizens and media and would inform the relevant judicial authorities of any evidence of criminal wrongdoing found. Also, the current proposal reportedly aims to ensure the continued functioning of the existing asset recovery office (CIAF) within the new structure, by in effect building the new structure up around that institution.⁶⁶ Finally, according to the government proposal, the head of the new agency would be elected by the National Assembly.

As the new draft contained a number of modifications compared to the original proposal, the government decided to go through an additional round of stakeholder consultations, before introducing

⁶² A number of existing institutions would be incorporated into the new agency, including the Commission for the Prevention and Ascertainment of Conflicts of Interest (CPACI), parts of the National Audit Office (NAO) dealing with asset declarations of public officials, and the Centre for the Prevention and Counteraction of Corruption and Organised Crime (BORKOR).

⁶³ COM (2016) 40 final, p. 8.

⁶⁴ An important new feature of the second draft law was the proposal to include the confiscation of illicit assets within its remit and incorporate the existing Commission on Illicit Asset Forfeiture (CIAF) in the new unified anti-corruption agency.

⁶⁵ COM (2017) 43 final, p. 6.

⁶⁶ The need for continued independent and effective functioning of the CIAF was raised in the January CVM report (COM (2017) 43 final, p. 11).

the proposal in the National Assembly on 4 October.⁶⁷ The government has indicated that it aims to have the proposal adopted before the end of the year, following which the new unified agency will have to be established and start working.⁶⁸

Recommendation 10: *Adopt and implement a reform of the law on public administration to strengthen the internal inspectorates in the public administration.*

A well-functioning system of internal control is a key element in the prevention of corruption in public institutions. The inspectorates in the State administration play an important role in this regard, but their impact could be improved through a clearer institutional framework and enhanced capacity. The 2015 CVM report noted that the effectiveness of these institutions was hampered due to lack of a coordinated approach, partly due to shortcomings in the legal framework.⁶⁹ Accordingly, one of the measures envisaged in the Bulgarian anti-corruption strategy in 2015 was a strengthening of the system of internal control through amendments to the Law on Public Administration to increase the independence, competencies and capacity of the inspectorates.

A draft amending law to the Law on Public Administration was prepared in spring 2015 but, due to a protracted process of administrative vetting, was brought forward to political endorsement only in September 2017, when it was adopted by the government and submitted to the National Assembly. It was adopted by the National Assembly on 12 October.

The amendments provide a clearer legal framework for administrative control⁷⁰, distinguishing the role of the inspectorates from that of other control agencies, such as those responsible for financial control or public procurement. It provides that an implementing regulation of the government should define the overall structure of inspectorates and define their number, as well as setting out working methods and procedures for their work, including for their interaction with specialised control agencies, and defining minimum qualifications for the managing heads of the inspectorates. The functions of the inspectorates are also more clearly defined in the draft law, including the central coordinating role of the chief inspectorate⁷¹, which will evaluate the work of sectorial inspectorates and will play a role in the coordination of general anti-corruption policy.

Adoption of the amendments to the Law on Public Administration is an important first step. Now the government will need to set out the implementing acts and ensure the implementation and application of the reform in concrete organisational terms.

Recommendation 11: *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.*

The establishment of an effective system of investigation and prosecution of high-level corruption has been highlighted as a key challenge in Bulgaria, with successive CVM reports underlining the need for careful analysis of the hurdles and challenges met through the pre-trial and trial stages to identify practical and legal measures which could make the system more effective.⁷² In 2016 the Prosecutor's

⁶⁷ This did not prevent criticism from some stakeholders who considered the consultations to be managed in a restrictive manner which did not allow for a proper discussion of the proposal as a whole.

⁶⁸ On 25 October the draft law was endorsed by the plenary of the National Assembly in first reading, allowing for more detailed deliberations to commence in the relevant committees.

⁶⁹ COM (2015) 36 final, p. 7. The analysis identified issues such as limited staff resources and high turnover and a lack of a clearly recognised status of internal administrative control in the law, making it difficult to enforce common binding guidelines and potentially creating a risk of political influence on inspections. See SWD (2015) 9 final, p. 21.

⁷⁰ Broadly, administrative control aims at verifying and evaluating actions of the administration for compliance with legal acts and for effectiveness and transparency as well as prevention of corruption.

⁷¹ The chief directorate is responsible for overall coordination and refers directly to the Prime Minister.

⁷² See for example: COM (2017) 43 final, p. 12; COM (2016) 40 final, p. 12.

Office analysed a broad sample of corruption cases processed since 2013, which resulted in the identification of a number of issues and recommendations for further work. The challenges include organisational, legal and procedural issues and would seem to require a comprehensive response at many levels.⁷³

The analysis carried out by the Prosecutor's Office was an important first step towards addressing the issues, but to provide effective solutions this needs to involve the relevant actors along the entire chain from investigation over prosecution to adjudication – as well as the government in as far as possible legislative amendments are considered. This was the background for the recommendation to bring all the relevant institutions together in a common process to identify joint solutions and plan concrete steps for the way ahead. The recommendation also highlights the need for public transparency around this effort. Such transparency can allow for the involvement of stakeholders in the debate and help create trust in the process on the part of the wider public.

In response to this recommendation, the Bulgarian authorities report that a roadmap was prepared and discussed at a meeting of the National Council on Anti-Corruption Policies on 20 July 2017.⁷⁴ The roadmap focusses to a large extent on elements which have already been mentioned under Benchmarks 2 and 3 above and include issues such as possible amendments to the definition of key corruption offences, simplification of criminal procedures, providing better tools for the prosecution of high-level corruption through the use of collaborating witnesses, analysis of current practice regarding judicial review of prosecutorial decisions to terminate investigations, improving the use of expertise in criminal proceedings, and further specialisation and training.⁷⁵

In order to ensure follow-up and publicity around the measures set out in the roadmap, the responsible institutions have agreed to provide six-monthly progress reports to the anti-corruption policy council, which will publish a summary on its website. Beyond the specific roadmap, the Bulgarian authorities also refer to the envisaged strengthening of the capacity of specialised units dealing with corruption cases.⁷⁶

Recommendation 12: Establish a mechanism for public reporting on progress in high-level [corruption] 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.

Successive CVM reports have noted that Bulgaria still needs to show a track record of final results in high-level corruption cases.⁷⁷ The Prosecutor's Office reports that a number of investigations are ongoing and new cases continue to be brought to court. However, the credibility of the system ultimately rests on whether cases brought to court lead to final convictions.⁷⁸

⁷³ SWD(2017) 24 final, p. 31-33.

⁷⁴ This council was set up under the previous government as a forum for monitoring and evaluation of progress on the anti-corruption strategy and is headed by the National Anti-corruption Coordinator (currently the Deputy Prime Minister for Judicial Reform and Minister of Foreign Affairs).

⁷⁵ Naturally there is a significant overlap between the issues identified in this process and those highlighted by the analysis of the structure and functional model of the Prosecutor's Office and in the wider discussion of criminal procedures.

⁷⁶ Reference is made in this context to the specialised anti-corruption unit currently under the Sofia City Prosecutor's Office. The subsequent decision to move key high-level corruption cases to the Specialised Prosecutor's Office for Organised Crime would however likely require some reassessment of these plans, depending on the exact working arrangements between the various institutions.

⁷⁷ See e.g. COM (2017) 43 final, p. 11; COM (2016) 40 final, p. 9.

⁷⁸ This is not to suggest that acquittals are problematic in the context of lacking evidence. Rather, the issue is overall lack of successful high-level cases, a situation which does not correspond to the perceived extent of the problem with high-level corruption in Bulgaria, further underlined by the high number of cases being brought to court by the prosecution each year. While a significant number of cases have been launched

Many of the efforts undertaken by Bulgaria in the context of the recommendations referred to above aim directly or indirectly at addressing this issue. However, in addition to measures to address legal and procedural issues, it is also important for the Bulgarian authorities to ensure transparency and public scrutiny of activities in the fight against high-level corruption, in full respect of procedural rights. This is the background for this recommendation, which calls for Bulgaria to establish mechanisms for regular public reporting on ongoing high-level corruption cases, so that it is possible for the public – including media and civil society – to be generally informed about such cases and follow the progress made in establishing a track record in this area. In addition, such reporting will also help the judicial and other authorities in identifying possible challenges of a procedural or legal nature which need a more systematic follow-up.

In response to this recommendation, a new system has been set up with the Supreme Court of Cassation for the collection and publication of information about ongoing corruption and organised crime cases on a dedicated website. The new system entered into force in April 2017. A unified catalogue of corruption crimes was approved as a basis for selection of cases to include in the new public register. Every month, summaries of new cases are to be sent by all courts, followed by regular updates, to be published on the website, organised per appellate region.⁷⁹ The information is also forwarded to the SJC and the Ministry of Justice on a monthly basis.

As for the Prosecutor's Office, the Bulgarian authorities refer to the existing provisions in the Judicial Systems Act, which require the Prosecutor General every six months to provide summarised information about the initiation and completion of case files to the prosecutors' chamber of the SJC, the Inspectorate of the SJC and the Minister of Justice.⁸⁰ In addition, the Annual report of the Prosecutor's Office contains general statistics on different types of criminal cases. The annual report is made public. It is submitted for a debate in the SJC following which it is submitted to the National Assembly for adoption.⁸¹ The statistics do not provide information on individual cases. For information on particularly emblematic cases, the Prosecutor's Office refers to its general communication to the public through press releases.

According to the Bulgarian Prosecutor's Office, overall numbers for cases brought to court appear to be stable compared to previous years. Recent cases under investigation or brought to court include several cases involving senior officials, including magistrates. A number of final convictions in corruption cases have been reported by the Supreme Court of Cassation, although the list remains limited in regard to high-level cases.⁸²

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

Recommendation 13: 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.

against senior officials as well as ministers and magistrates over the years, they only rarely result in final convictions, see SWD (2017) 24 final, p. 30-33. This pattern points to a generalised problem.

⁷⁹ The Specialised Court for Organised Crime has its own section as do the military courts.

⁸⁰ This provision was introduced in 2016. Judicial Systems Act, Article 138, item 11.

⁸¹ Constitution of the Republic of Bulgaria, Article 84, item 16.

⁸² Notably the list includes a recent confirmation at final instance of a one-year suspended prison sentence in a case on illegal surveillance permits involving the former Head of the Sofia City Court (the so-called 'Worms' case). Other final convictions confirmed since March this year include four cases of active bribery (bribing of police officers) with prison sentences of up to two years and eight months enforced, three cases of passive bribery (including a case of extortion by a senior official) with prison sentences of up to three years suspended, a case of smuggling by officials connected to the customs service with prison sentences of up to three years suspended, a case of intentional unfavourable transaction to the detriment of the state with a six months suspended prison sentence, and a case of embezzlement with a two years suspended prison sentence.

Public procurement is a key area of concern with regard to corruption. An important focus in previous reports has been on the introduction of more thorough ex ante checks on public procurement procedures in order to identify areas of risk and improve prevention.⁸³ In 2016, as part of a wider reform of its public procurement legislation⁸⁴, Bulgaria introduced a new approach to these ex ante checks performed by the Public Procurement Agency, replacing the previous system of automatic but rather formalistic checks with a system for randomised but more in-depth control. This was also accompanied by stronger powers for the Agency to monitor procedures and alert ex post control bodies⁸⁵ of potential risks.

The new system came into force in September 2016 alongside measures to enhance the capacity of the Public Procurement Agency and efforts to generally strengthen coordination with ex post control bodies. These efforts have also included a stronger focus on the prevention and detection of conflicts of interest in public procurement. This has involved training for local authorities organised by the Commission for the Prevention and Ascertainment of Conflicts of Interest (CPACI) as well as closer cooperation between this institution and the various control bodies.⁸⁶

The January CVM report recommended the Bulgarian authorities to carry out a general evaluation of the functioning of the new system, with the involvement of outside expertise, to identify avenues for further improvement and better implementation of the new rules. The review should also cover the application of rules on conflicts of interest and follow-up to any issues identified.

In response to this recommendation, the Bulgarian authorities are reportedly envisaging a review to be carried out in 2018 with an external contractor and funding from Operational Programme "Good Governance" under the European Social Fund.

Recommendation 14: 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.

The 2015 Anti-corruption Strategy included a focus on rolling out practical measures to address corruption in specific high risk sectors. The January report noted that progress on these plans was still at an early stage, with the exception of the Ministry of Interior, which had been implementing a broad range of targeted anti-corruption measures in the context of a more comprehensive administrative reform of the Ministry.⁸⁷ Other ministries have adopted action plans, although in a number of cases it has been unclear to what extent they went beyond existing practices⁸⁸ and how far they were advanced in terms of implementation: strong public statements by Ministers responsible for high-risk policy areas can act as a sign that such policies are being given high priority, but the Commission has not been made aware of examples of how this has translated into concrete results. Some measures in specific sectors have been focussed on further improving existing integrity policies and controls, for example improving the rules for confidential treatment of alerts, improving public procurement procedures to prevent corruption risks, or clarifying rules for private economic activity with possible relation to official responsibilities of employees. However, this is an area which requires focused and

⁸³ See COM(2016) 40 final, p. 12.

⁸⁴ The package adopted in January 2016 reportedly aimed at transposing recent changes to EU public procurement rules into national law. However, it should be mentioned that Bulgaria failed to meet the deadline of 18 April 2016 for the transposition of Directive 2014/23/EU on the award of concessions contracts into its national legal order by the deadline of 18 April 2016. Given the importance of this Directive for the public procurement sector, the absence of timely transposition may result in reduction of legal certainty and suboptimal use of public funds.

⁸⁵ The State Financial Inspection Agency and the National Audit Office.

⁸⁶ A cooperation agreement was recently signed in order to step up synergies between these institutions.

⁸⁷ COM (2017) 43 final, p. 6-7. This also includes a specific focus on prevention of corruption at the borders, including customs, with targeted checks, rotation of personnel, video surveillance etc.

⁸⁸ General integrity-related policies exist in different sectors of government, including training of new employees, rules on gifts, etc.

determined attention over time, sometimes necessitating a broader effort to change culture in sectors where practices may be entrenched. Structured and coordinated follow-up is a way of embedding such policies and efforts in a common policy across sectors.

The previous government in 2015 established a National Anti-corruption Policy Council, bringing together the various institutions and stakeholders to monitor progress in the implementation of the anti-corruption strategy. This institution has continued under the new government.⁸⁹ At the first meeting under the new government in July, a decision was taken to set in motion a cross-cutting analysis of the sector plans which had been prepared across the various government departments. The analysis should be finalised before the end of the year and result in recommendations for further improvement and streamlining of the efforts.⁹⁰

Recommendation 15: Establish a mechanism for public reporting on the implementation of the national anti-corruption strategy covering the remaining duration of the Strategy's implementation.

The comprehensive anti-corruption strategy adopted by the previous government in 2015 remains the framework within which Bulgaria implements its anti-corruption policy.⁹¹ As in the case of the judicial reform strategy, an important part of such a framework is to ensure regular evaluation of progress and encourage a continuous debate on objectives among stakeholders. This was the background for this recommendation to ensure regular public reporting on the implementation of the strategy, which is valid until 2020.

In response to this recommendation, the Bulgarian authorities report that they have revived the National Council for Anti-corruption Policy. As mentioned above, this institution was established under the previous government with the purpose of ensuring continued political attention to the implementation and further development of the strategy. The Council is responsible for following up and ensuring continuous evaluation of progress and initiation of the measures as set out in the strategy.

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 IN THESE AREAS

Recommendation 16: Establish a mechanism for public reporting on progress in high-level [organised crime] 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.

This recommendation is analogous to the recommendation under Benchmark 4 above concerning high level corruption cases. The follow-up by the Bulgarian authorities is also broadly similar. In fact it is the same general system applying to both types of cases.

In general, the January report acknowledged the progress made over recent years in establishing a track record in organised crime cases. The report also recognised a broader change in the nature of organised crime in Bulgaria over the past ten years, with an overall picture closer to the situation as it exists in various other Member States.

Based on information provided by the Bulgarian authorities, the Specialised Prosecutor's Office and Court for Organised Crime continue to consolidate the positive trend which has been observed in

⁸⁹ As mentioned above, it is headed by the Deputy Prime Minister for Judicial Reform and Minister for Foreign Affairs, who has also been given the title of national anti-corruption coordinator.

⁹⁰ The analysis is being carried out by the Centre for the Prevention and Counteraction of Corruption and Organised Crime (BORKOR).

⁹¹ An English version can be found via this link: http://rai-see.org/wp-content/uploads/2015/08/Bulgaria_Anti-corruption_strategy_-2015.pdf

previous years in terms of track record, with a steady stream of cases concerning serious organised crime leading to prison sentences at final instance.⁹²

Recommendation 17: 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.

The legislative amendments referred to in the previous report have been adopted. Generally, the asset forfeiture commission appears to continue developing its track record, now further facilitated by a more effective legal framework.⁹³ The new legislative proposal envisaging incorporating the asset forfeiture commission (CIAF) in a new unified anti-corruption institution could possibly reopen negotiations on the existing legal framework as well as affect the organisational set up. The Bulgarian authorities have however underlined their intention to ensure the continued effective functioning of the asset recovery office within the new set-up.⁹⁴

⁹² The number of effective prison sentences has ranged between 20 and 72 per year since 2012, with 33 in the first half of 2017. Examples of final convictions confirmed since March this year include a case against a group involved in counterfeiting of payment instruments and a case against a group (including a member of the border police force) involved in excise fraud, both cases resulting in prison sentences of up to six years.

⁹³ Total confiscated assets were at approximately EUR 9.4 million in 2016, which is significantly more than in previous years. The increase continues in 2017 with more than EUR 11 million confiscated by September.

⁹⁴ See also above.