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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

Subject: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT
AND THE COUNCIL
on Progress in Bulgaria under the Co-operation and Verification
Mechanism

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

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

{SWD(2017) 700 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. As underlined by the Council², the CVM will end when all six benchmarks applying to Bulgaria are satisfactorily met.

In the January 2017 CVM report,³ the Commission took stock with an overview of the achievements, and the challenges outstanding, and set out the key remaining steps needed to achieve the CVM's objectives. To this end, the Commission made seventeen key recommendations that if followed up will lead to the conclusion of the CVM process. The recommendations set out in January 2017 can therefore be considered as sufficient to close the CVM – except if developments were to clearly reverse the course of progress. The report highlighted that the speed of the process would depend on how quickly Bulgaria will be able to fulfil the recommendations in an irreversible way.

Therefore, at this stage of the CVM process, this report presents the progress made in following up the recommendations set out in the January 2017 report. As in previous years, it is the result of a careful process of analysis by the Commission, drawing on close cooperation with Bulgarian institutions, as well as the input of civil society and other stakeholders, including other Member States.

In his September 2017 State of the Union address, President Juncker emphasised the importance of the rule of law and of the independence of the judiciary;⁴ an imperative valid for all EU Member States, not just those involved in the CVM.

Based on its analysis of progress in Bulgaria over the entire span of the CVM process since 2007 and on progress made since the January 2017 report, the Commission remains of the opinion that, with a continued political steer and a determination to advance the reform, Bulgaria should be able to fulfil the remaining outstanding CVM recommendations in the near future. The analysis underlines the importance of addressing the remaining challenges in a spirit of good cooperation between institutions.

The Commission intends to assess progress towards the end of 2018, and stands ready to provide further assistance to help reinforcing the irreversibility of progress and therefore bring the mechanism to a conclusion.

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

² Council conclusions on the CVM.

³ COM(2017) 43 final, 25.1.2017.

⁴ http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm

2. GENERAL SITUATION

As noted in the January 2017 report, political instability over the years has affected the capacity for reform. A new government came into office in May.⁵ Once the new government was in place, the various strands of work which had been underway under the previous government in 2016 were revived, allowing reforms to move ahead with a degree of continuity in policy, picking up work from the previous government. The new Government showed determination to make up for lost time by pushing ahead quickly with legislative initiatives, targeting the completion of a number of significant reforms before the end of the year. In some cases, individual stakeholders have raised concerns about the quality of legislation or their involvement in the process.⁶ Important legislative initiatives are still under preparation or consideration and it will be important for these to be brought forward in a spirit of broad public debate and consultation with affected stakeholders. The Commission believes that inclusive legislative processes relying on better regulation principles are central to the sustainability of reform.

Meanwhile, recent events in the National Assembly have again drawn attention to the impact of an unpredictable legislative decision-making process. In July a package of draft proposals for changes to the Judicial Systems Act were put on the agenda of the National Assembly by MPs, without public debate or consultation of stakeholders. The draft amendments gave rise to widespread criticism, as they were seen by many within the judiciary and civil society as a direct attack on judicial independence. While the most far-reaching amendments were withdrawn before the final vote⁷, some amendments which were adopted were criticised for potentially undermining the independence of judges and are seen by some observers as potentially unconstitutional.⁸ Additional draft amendments to the Judicial Systems Act were introduced in the same manner in early October, by individual MPs without public debate or consultation of stakeholders, and were again criticised by observers as reversing key elements of the 2016 reforms.⁹ Bulgaria should ensure the irreversibility and credibility of the judicial reform process by establishing an environment of mutual trust and cooperation between institutions, crucial for the successful implementation of reforms. Whilst there is a clear need to accelerate the pace of reform, this should not lead to the by-passing of consultation procedures, which would risk creating a climate of uncertainty and a lack of ownership.

⁵ The caretaker government, in place until the formation of the new government in May, was able to take some steps of a preparatory or administrative nature, but progress on major legislative reforms was slowed down.

⁶ See below in 3.2. An important element in the implementation of the judicial reform strategy of 2014 was the establishment in early 2016 of a consultative council for judicial reform, which via the direct involvement of stakeholders in the preparation of the amendments, played a key role in ensuring wide public support for the major legislative changes adopted in 2016. In 2017, the determination to see quick results in some cases have resulted in a less inclusive approach, affecting the reception of reforms by affected parties within the judiciary and civil society.

⁷ Notably, some of the draft amendments would have restricted the access of professional associations of magistrates to foreign funding. These amendments were eventually withdrawn.

⁸ This referred notably to amendments for the obligatory suspension of any magistrate being put under criminal investigation, without right of appeal, and requiring magistrates to declare their membership of professional associations. Concerns were raised that in the Bulgarian context, such provisions could either be misused or inadvertently result in pressure on judges. The first element mentioned above was also criticised in a recent Opinion of the Venice Commission (see reference in footnote 10 below). Following it, on 27 October, Bulgaria adopted further amendments addressing some of the concerns expressed.

⁹ These amendments aimed at allowing the posting of magistrates to other courts for longer periods of time as well as the introduction of performance-based remuneration for magistrates in the specialised court and prosecutor's office dealing with high-level corruption and organised crime.

In the judiciary, the newly elected Supreme Judicial Council (SJC) has an opportunity to address the generally negative environment of debate which has reigned within the judiciary under the previous SJC, with evident divisions and mutual suspicions hampering an impartial decision-making process. Recent reforms have introduced undeniable improvements, notably the establishment of separate chambers within the SJC for judges and prosecutors. However, lingering doubts over possible undue influence on judges through the SJC could undermine the impression of an independent decision-making process within this key institution.¹⁰ Given this challenge, it will therefore be important for the new composition of the SJC to create an atmosphere of open debate and transparency on key decisions so as to recreate the trust among magistrates and the wider public which is fundamental to a well-functioning judiciary.

3. ASSESSMENT OF PROGRESS ON THE FULFILMENT OF THE CVM BENCHMARKS ON THE BASIS OF THE RECOMMENDATIONS SET OUT IN THE JANUARY 2017 CVM REPORT

3.1 Benchmark One: Judicial Independence

***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.*

***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.*

***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.*

The most important development this year in regard to the judiciary has been the election of a new Supreme Judicial Council (SJC), which took office on 3 October. The elections to the judicial quota were completed in June in accordance with the "one magistrate-one vote" principle, previously highlighted by the Commission, and, despite some concerns voiced at the time, the process was generally regarded as fair. This was a significant improvement compared to the election of the previous SJC in autumn 2012.¹¹ The election of the parliamentary quota was completed by the National Assembly on 20 September with the successful candidates being elected by well over the required two-third majority. Criticism was raised in the media and civil society that the outcome was predetermined through agreements between the main political parties, and, with a threadbare debate, that it did not reflect an open consideration of the relative merit of the candidates.¹² A particular criticism voiced was that the prior public hearing in the legal affairs committee did not allow time to

¹⁰ The basis of such concerns in remaining structural weaknesses in the Bulgarian system have recently been highlighted in reports of the Venice Commission and the Group of States against Corruption (GRECO - established in 1999 by the Council of Europe to monitor compliance with the organisation's anti-corruption standards), see GRECO's compliance report on Bulgaria of June 2017 (<https://www.coe.int/en/web/greco/-/bulgaria-publication-of-the-fourth-round-compliance-report>) and the Venice Commission's opinion on Bulgaria of 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)).

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

¹² In particular taking into consideration that 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.

address critical questions raised by civil society, though these were received and made available for the public on the National Assembly's website. Overall, however, the elections to the new SJC showed the merits of the new legislative framework which was put in place in 2016. It will now be up to the new composition of the SJC to illustrate their independence in practice through a track record of impartial and professional decision-making in key areas.

An important responsibility of the SJC is the appointment to high level positions within the judiciary. It will be important to see such decisions being made in a merit based and transparent manner. A particularly important decision in 2017 was the nomination of the new chair of the Supreme Administrative Court. Even though this decision could have been taken by the new composition of the SJC, the outgoing SJC decided to elect its nominee on 11 September and present their candidate for confirmation by the President of the Republic.¹³ Meanwhile, the President returned the candidature on the grounds that it would have been more legitimate if the nomination process had been completed by the new incoming SJC. This allowed the new composition of the SJC to reconsider the nomination at a meeting on 19 October, where the chosen candidate was confirmed by a second vote with a wide majority.

The other main institution set up under the Constitution to protect the independence of the judiciary is the Inspectorate. Constitutional amendments enacted in 2015 gave the Inspectorate stronger powers in key areas such as integrity, including checks on conflicts of interest and private assets of magistrates, and a more central role in the preparation of disciplinary proceedings. Although final decisions on such proceedings remain with the SJC, such powers are inevitably sensitive – disciplinary decisions of the SJC have given rise to controversies in the past – and therefore need to be implemented in a careful manner. Taking this background into account, the January 2017 report recommended that the Bulgarian authorities call upon external expertise to improve the practical functioning of the new inspection and disciplinary system.¹⁴ In October, the Venice Commission adopted an opinion on Bulgaria which contains important elements which could form the basis for further assessment in the context of such a review.¹⁵

On the basis of an analysis of recommendations 1, 2 and 3, overall, Bulgaria has made further significant progress on benchmark one. However, some elements from recommendation 2 and 3 are still outstanding and will require further follow-up in the coming months.

3.2 Benchmark Two: Legal Framework

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.*

On criminal procedures, a package of amendments to the criminal procedure code was adopted by the National Assembly in July. These proposals aim at addressing delays in criminal proceedings, notably by limiting the ability of courts to refer cases back to the

¹³ According to the Bulgarian Constitution it is the President who appoints the chairs of the two supreme courts as well as the Prosecutor General, on a motion of the SJC. The President can refuse a candidate once, but cannot block a second time.

¹⁴ The Bulgarian government has expressed interest in SRSS assistance for the Inspectorate.

¹⁵ See reference in footnote 10 above.

Prosecutor's Office on formal grounds. While many of the changes are in line with proposals that were presented already in the autumn 2016, there were concerns voiced that the final package was pushed through in the National Assembly without much time for wider debate within the judiciary, leaving some possible concerns unaddressed. One consequence of these newly enacted amendments was the transfer of jurisdiction over corruption cases involving high-level officials – including ministers, MPs and magistrates – to the Specialised Court for Organised Crime. The very short deadline made available for the implementation of this change has created organisational challenges.¹⁶ As noted in the January report, such changes need to be carefully prepared and accompanied by appropriate analysis on resource needs and possible legal implications of the changes. In addition, 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, which has been raised as a concern by the Venice Commission.¹⁷ More generally, the impact of the still recent changes is expected to become visible in the track record on cases as the various provisions are implemented in practice.

A range of additional areas for possible legislative changes to the criminal procedures and the criminal code are under consideration in working groups under the Ministry of Justice, benefiting from technical input from the Public Prosecutor's Office and others, to address issues identified in the context of benchmarks three and four.¹⁸ The issues under consideration have been identified by experts and Bulgarian authorities as being relevant for a more effective investigation and prosecution of serious offences linked to corruption and organised crime. However, in order to foster the necessary trust in this process among the wider public, as well as acceptance within the judiciary of the changes proposed, it is of key importance that fundamental changes to the criminal laws are carried out in a transparent way, following public debate within the judicial professions and consultation of civil society. Not only the content of the legislative changes, but also the procedure used for their preparation and adoption, have an impact on the sustainability of progress.

Overall, Bulgaria has taken concrete steps to address recommendation 4 to meet the objectives of benchmark two. A number of changes to the criminal procedure code have already been adopted, and further legislative proposals are in preparation in relation to benchmarks three and four, including in the criminal code. The successful implementation of these reforms will require careful preparation and follow-up, in addition to public debate and consultation of relevant stakeholders in the judiciary and civil society.

3.3 Benchmark Three: Continued Judicial Reform

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.*

¹⁶ In apparent connection with the enacted amendments, additional draft amendments to the Judicial Systems Act were proposed in the National Assembly in early October without prior debate or consultation, which were criticised for calling into question elements of previously enacted reforms and possibly raising additional concerns. The amendments were nevertheless adopted by the National Assembly on 27 October.

¹⁷ See footnote 8 above.

¹⁸ See below in 3.3 and 3.4.

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.

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.

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.

Four recommendations in the January 2017 report aimed at strengthening public accountability and cooperation between institutions. The goal was to foster wider ownership in society to the reform process and thereby provide a stronger element of irreversibility. This is particularly relevant in the context of the continued reform of the judiciary. While a successful implementation of the judicial reform strategy ultimately needs to rest on the involvement of many separate institutions, both within the judiciary and beyond, the government and the SJC have a key role in this process, including in providing an overarching framework for public debate and inter-institutional consultations. Some steps have been taken by the Bulgarian government, with a commitment to publish regular reports on progress under the strategy. This could form the basis of public debate as well as a dialogue with the SJC and the judiciary at large on the concrete measures and specific objectives which need to be pursued in order to achieve the overall strategic goals set out in the 2014 strategy over the remaining period until 2020.¹⁹ It is expected that this process is brought forward in cooperation with the newly elected SJC in the coming months.

A reform of the judicial map and the introduction of a comprehensive e-justice system have been on the agenda for some years, with the previous SJC having carried out a significant amount of preparatory work, and further analysis being underway under a project supported with EU funds. This still appears to be a longer term project, to be developed by the new SJC and also requiring wider political support. However, some elements can move ahead more quickly. Notably, the Prosecutor General has already presented a concrete model for a consolidation of local prosecutors' offices within the 28 regions, which would not necessarily require a parallel consolidation of the local courts. More specifically, there is an urgent need to address the workload imbalances between courts, with especially the larger courts in the capital being subject to higher workload than the average.²⁰ This issue is inevitably one of the important agenda items for the new SJC as it takes up its functions. Besides the allocation of extra staff to overburdened courts, another possible approach consists in reconsidering the jurisdiction for certain types of cases. The government is exploring certain possibilities in this direction. Such changes naturally require appropriate consultations and debate with relevant stakeholders, notably given the impact on access to justice.

Important avenues for further possible reforms have been highlighted last year in an analysis of the Bulgarian Prosecutor's Office, which was carried out with assistance from the Commission's Structural Reform Support Service (SRSS) with a team of senior prosecutors from Germany, The Netherlands, Spain and the United Kingdom. The Bulgarian authorities –

¹⁹ An English version of the strategy can be found via this link: www.strategy.bg/FileHandler.ashx?fileId=5570

²⁰ The previous SJC developed an analytical framework for the analysis of workload, which is now bearing fruit in terms of providing comprehensive data on workload in all courts and prosecutors' offices.

with the Prosecutor's Office in the lead and with the support of the Ministry of Justice – have prepared a roadmap containing a number of actions as a follow-up to this analysis. Given the complexities involved, many of the actions envisaged in the roadmap are still to be translated into concrete outcomes and decisions on how to proceed.²¹ It remains to be seen if a consensus can be developed among the various institutions involved on the changes which are necessary in order to implement a thorough follow-up to the recommendations set out in the expert report.²²

In a separate initiative in 2016, the Prosecutor's Office itself carried out an analysis of European Court of Human Rights (ECtHR) rulings concerning ineffective criminal investigations in Bulgaria. The follow-up to this analysis is also progressing in the context of a roadmap prepared by the Prosecutor's Office, which is in the process of implementation.

Overall, Bulgaria has taken further steps to address the four recommendations under benchmark three. However, these initiatives are still to be finalised and need to be translated into a clear plan of action to be taken in key areas.

3.4 Benchmark Four: High-level Corruption

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.*

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

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.*

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.*

The fight against corruption was highlighted in the January CVM report as the area where least progress had been made in Bulgaria over the ten years of the CVM, including in the implementation of the anti-corruption strategy that was adopted in 2015²³ and the related efforts to pass a comprehensive reform of the legislative framework and set up a unified anti-corruption agency. The new government presented a revised draft to the National Assembly on 4 October with the expressed aim of having this major legislative reform adopted by the end of the year. When the law has been adopted, the new institution will need to be

²¹ Many of the measures concern legislative changes in the criminal code or criminal procedure code and there is therefore a significant overlap with the measures envisaged under benchmark two above.

²² 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>

²³ An English version can be found via this link: http://rai-see.org/wp-content/uploads/2015/08/Bulgaria_Anti-corruption_strategy_-2015.pdf

established and start working.²⁴ A key aspect will be the appointment of the leadership of the new institution in an open and transparent procedure, to provide the basis for the new institution to command broad-based trust in the wider society, as well as among public officials.

Another important element coming out of the anti-corruption strategy in 2015 concerns the operation of internal inspectorates in the State administration. These important structures are responsible for internal control of good administrative practices but have so far been working without a clear legal framework and common operating standards. In order to strengthen the role of the inspectorates, draft amendments to the Law on Public Administration were presented in September 2017 and adopted by the National Assembly on 12 October. The new law now needs to be implemented in concrete organisational terms.

Apart from these reforms of key institutional structures, Bulgaria also needs to establish a track record of effective investigation, detection and prosecution of corruption. Many of the challenges noted under benchmarks two and three above are particularly relevant also in this context. However, in order to ensure a specific focus on the challenges related to high-level corruption cases, the Prosecutor's Office carried out an analysis of a sample of cases processed since 2013, in order to identify possible lessons to be learnt and measures to be taken to make such investigations and proceedings more effective in the future. On the basis of this analysis, a roadmap was drawn up and is now being carried forward by the relevant institutions. Regular reporting will take place in the National Council for Anti-Corruption Policies, established under the previous government to bring together the various institutions dealing with anti-corruption policy and chaired by a National Anti-Corruption Coordinator.²⁵ As for the other roadmaps referred to under benchmark three above, many of the measures envisaged are only formulated in general terms and have not yet been spelt out in concrete actions.

Finally, an important element underpinning a credible strategy for the investigation and prosecution of high-level corruption is the existence of a coherent framework for communication to the public about progress. In response to the recommendation in the January 2017 report, the Bulgarian Supreme Court of Cassation has established a mechanism for keeping track and reporting on corruption cases as they proceed through the court system. This comes in addition to the communication by the Prosecutor's Office on prosecutorial actions in concrete cases.²⁶

Overall, Bulgaria has taken further steps to address the four recommendations of the January report under benchmark four. However, several key initiatives are still to be adopted and implemented. Others are in an initial stage of implementation with concrete actions still to be clearly defined.

²⁴ In this context, the January 2017 report noted some concern as regards the continued effective functioning of the Commission for Illegal Asset Forfeiture in the new framework, an area where Bulgaria has developed a solid track record in recent years.

²⁵ The current Deputy Prime Minister for Judicial Reform and Minister for Foreign Affairs has also been appointed National Anti-Corruption Coordinator.

²⁶ On the latter, no systematic mechanism of reporting has been put in place. The Prosecutor's Office reports such data to the SJC and the Ministry of Justice and also informs the public in regular press briefings.

3.5 Benchmark Five: Corruption in General including Local Level and Borders

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.

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.

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 January 2017 report acknowledged progress in the public procurement area and recommended Bulgaria to undertake an external evaluation of the functioning of the new system of *ex ante* checks and their follow-up. In response to this recommendation, the Bulgarian authorities are reportedly envisaging having an external contractor to carry out such a review in 2018.²⁷

Another strand of work under the strategy focuses on the introduction of anti-corruption plans, with targeted and practical measures to prevent corruption in various high-risk sectors. The National Council on Anti-Corruption Policies decided in July to launch a review of existing sectorial anti-corruption plans in the State administration in order to identify possibilities for further coordinated action in this area. The review is expected to be finalised before the end of the year, following which it will need to be followed up in the various sector administrations. This is an area where continued and determined action is needed on the part of the management, inspectorates and other actors across the State administration.

The final recommendation under this benchmark aims to ensure continued public debate and political attention to the implementation and further development of the Anti-corruption strategy, through a mechanism for public reporting. The Bulgarian authorities have decided to continue the National Council on Anti-corruption Policy and charge it with regularly evaluating and informing the public on progress.

Overall, Bulgaria has taken steps to address the three recommendations of the January report under benchmark five. On the basis of the steps taken, necessary actions should be taken in 2018.

3.6 Benchmark Six: Organised Crime

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.

²⁷ With funding provided from Operational Programme "Good Governance", under the European Social Fund.

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 January 2017 report recognised that a broad change in the criminal environment has taken place over the past ten years, with organised crime becoming less visibly violent and constituting less of a threat to the stability of society than in the past, and the overall picture in Bulgaria therefore becoming more similar to the situation in some other Member States. In addition, it was noted that the specialised institutions which had been created in 2012 were beginning to establish a coherent track record in terms of final convictions in organised crime cases and the confiscation of illicit assets.

The report nevertheless included some key final recommendations aimed at further consolidating this positive trend. Firstly, it was recommended to establish a system of reporting on serious organised crime cases allowing the public and media to follow progress on such cases. This recommendation is analogous to the similar recommendation on high-level corruption cases and the measures taken cover both recommendations. As noted above, the January 2017 report acknowledged the track record of the Specialised Court and Prosecutor's Office on Organised Crime. However, the Commission notes that recent changes to the law on criminal procedures provides for important organisational changes, with jurisdiction in high-level cases being moved to the Specialised Court. Bulgaria should ensure that these changes will strengthen the progress already achieved in this area.

Secondly, it was recommended to adopt amendments to the asset forfeiture law to address a number of challenges which had been identified by the Commission on Illegal Asset Forfeiture (CIAF). In response to this recommendation, the Bulgarian authorities have informed the Commission that the legal amendments have been adopted. The Commission nevertheless notes that the new anti-corruption law currently under consideration in the National Assembly includes provisions on illicit asset forfeiture and provides for a new institutional set up. As noted in the January 2017 report, it will be important to ensure that these changes do not put into question the progress already made in this area and the institutions' ability to maintain the positive trend observed so far.

Overall, Bulgaria has taken steps to implement recommendations 16 and 17 under benchmark six. However, the Bulgarian authorities should ensure that the recent decisions on organisational and legal changes are carried out in such a manner as to consolidate the progress achieved.

4. CONCLUSION

During the nine-month period since the January 2017 report, setting out the key recommendations to fulfil all CVM benchmarks, further positive developments have taken place. While political uncertainty led to some delays in the implementation of reforms early in the year, since May the reform process has again taken on momentum, even if final outcomes are still to be seen, notably in areas requiring legislative reform and government action, such as in the fight against corruption. In the judiciary, important developments have also taken place this year, notably with the election of a new SJC, the impact of which should begin to show in the coming year.

This report notes that significant progress has been achieved on the recommendations set out in the January 2017 report, in particular recommendations 1, where it will now be up to the new composition of the SJC to demonstrate results, and 16 and 17, where the progressive trend should be maintained. Important progress has also been made on recommendation 4, although more remains to be done. While the Commission cannot yet conclude that any of the benchmarks are at this stage satisfactorily fulfilled, it remains of the opinion that, with a continued political steer and a determination to advance the reform, Bulgaria should be able to fulfil the remaining outstanding CVM recommendations in the near future.

The Commission invites Bulgaria to implement the necessary actions and fulfil all recommendations, and will assess progress again towards the end of 2018.