

**Evaluation of the Bulgarian judicial system reform for the period 2010-2017
according to the European Commission monitoring reports**

by

Krasimir Enchev

1777688

Submitted in partial fulfillment of the requirements for the degree of Master of
Science, program Master of Public Administration

University of Twente

2017-2018

Supervisors:

Dr. Veronica Junjan, v.junjan@utwente.nl

Dr. Viktoria Daskalova, v.i.daskalova@utwente.nl

„Ако спечеля, печеля за цял народ — ако загубя, губя само себе си.

Дела трябват, а не думи.

Да бъдем равни с другите европейски народи, зависи от нашите собствени задружни сили.

Ще имаме едно знаме, на което ще пише: "Свята и чиста република" “

(Васил Левски 1837-1873)

“If I shall win, I shall win for the entire nation. If I shall lose, I shall lose only myself.

Deeds are needed, not words.

To be equal with all the other European nations depends on our own united efforts.

We will have one flag, on which will be written: “Saint and pure republic”

(Vasil Levski 1837-1873)

ABSTRACT

Bulgaria joined the European Union (EU) in 2007. Being one of the post-communistic Eastern European countries, Bulgaria has been passing through a transition period, aiming to achieve implementation of market economy and governance, based on democratic principles as the rule of law and separation of powers. During the last 29 years, Bulgaria has executed a number of governmental reforms. Although the state has been a member of the EU for 11 years, Bulgaria (altogether with Romania) is still subject to the EU monitoring “Cooperation and Verification mechanism” (CVM) at the moment of writing. The mechanism is unique due to the fact that the EU Commission (EC) had never executed monitoring on member states’ internal affairs before 2007. The CVM aim is providing an intensive monitoring of the two judicial systems’ reforms, in order to improve their implementation and guarantee the control over corruption and organized crime. The success in conducting the judicial reform might predetermine to a great extent whether the two member states’ future is related to the Eurozone and Schengen.

The main research question answers *what is the relationship between the transparency and consistency of the CVM monitoring and the reform implementation in the Bulgarian judicial system for the period 2010-2017?* The overall attainment of the CVM goals for the period reveals controversial success: ‘yes’ – 3%, ‘yes, partially’ – 26.8%, ‘no’ – 57.8% and ‘not available’ – 13.3%. These results (crosschecked by a second researcher) provoke concerns for the level of reform implementation, emphasized numerous times in the CVM reports. At the same time, the current master research has recognized a number of patterns which support the claim that the CVM monitoring over the Bulgarian judicial system shall be considered transparent and consistent for the period 2010-2017. Moreover, this study has gathered evidence that more specific and quantitative CVM goals contribute to more efficient Bulgarian judicial reform implementation within the time frame 2014-2017. The positive influence of more clearly stated measurable goals on the implementation process is not surprising for the public administration scientific literature. The study’s contribution to the academia comes from the finding that the consistency of monitoring is also crucial for reform implementation under a longitudinal monitoring process.

Keywords: public management reform implementation, monitoring and measurement of performance, steer&control, efficiency, monitoring goal attainment

ACKNOWLEDGEMENTS

At the first place, I would like to thank my father and my mother for the endless moral support and love I have always received from them, including during the master course at the University of Twente. I would like to thank my main supervisor Dr. Veronica Junjan, who has been mentoring me for the whole period of writing and streaming my ideas in a field close to my heart, where sometimes the emotions popped up. I am grateful to my second supervisor Dr. Victoria Daskalova who guided me in the legal perspective of my thesis. I am thankful to my friend and colleague Thom Roozenbeek who has dedicated a significant period of his free time to conduct an independent data analysis of my work. At last but not least I am grateful for the moral support of my friends in the Netherlands and back in Bulgaria. They are all familiar with the importance of the Bulgarian judicial system reform and were next to me in the difficult moments while writing the master thesis.

TABLE OF CONTENTS

1	INTRODUCTION	1
2	THERORETICAL FRAMEWORK.....	3
2.1	Public Management Reform Implementation.....	5
2.2	Monitoring (measurement) of performance	7
2.3	Conceptual specificities.....	9
2.4	Study proposition and expectations.....	10
3	RESEARCH METHODOLOGY	10
3.1	Research design.....	10
3.2	Case selection.....	14
3.3	Operationalization	14
3.4	Limitations and Remedies	19
3.5	The ethics of measurement.....	20
4	ANALYSIS	20
4.1	Explicit analysis	20
4.2	Policy intent.....	28
5	CONCLUSION.....	32
5.1	Findings.....	32
5.2	Academic implications	33
5.3	Policy recommendations	34
5.4	Further research.....	35
	REFERENCES	36
	APPENDICES	39
	Appendix 1: Operationalization of independent and dependent variables	39
	Appendix 2: List of official documents 2010-2017.....	40
	Appendix 3: Coding sheet for the analysis of the CVM reports	41
	Appendix 4: Results of data analysis of researcher 1 and researcher 2.....	46
	Appendix 5: Cohen’s Kappa interpretation and results of the agreement between the two researchers .	52
	Appendix 6: Index of figures.....	55
	Appendix 7: Index of tables	56
	Appendix 8: Description of the background concepts.....	57
	Appendix 9: Coding of the CVM reports 2010-2017.....	59

1 INTRODUCTION

1.1 Structure of the paper

The first chapter introduces the research questions of this study. **Chapter 1** concludes by describing the scientific and societal relevance, and the context of the master research. **Chapter 2** provides the theoretical framework of this study and the two before-hand statements about the expected findings. **Chapter 3** unfolds the research design, including the operationalizing process, data collection methods and the limitations of the research. **Chapter 4** provides a description and discussion of the results of the data analysis. **Chapter 5** highlights the key findings under the consideration of the limitations and the theoretical implications. The last chapter concludes with policy recommendations for further reform steps.

1.2 Research Questions

The topic of the research covers the evaluation of the Bulgarian judicial reform implementation according to the EC monitoring reports for the period 2010-2017. The EC CVM mechanism monitors specifically the Bulgarian judicial reform implementation. The monitoring focuses on the pitfalls in the current functioning of the judicial system and its institutional structure in Bulgaria. First of all, a non-efficient interaction between the judicial branches (judicial, prosecutor and criminal investigators') often results in slow case processing (postponed justice) or lack of prosecution of criminals. Secondly, the insufficient level of accountability of the judicial institutions, especially of Prosecutor General, is designated in the Bulgarian Constitution. All the prosecutors are not accountable to their operational managers, but only to the Prosecutor General. At the same time, the Prosecutor General is not accountable to any governmental body. This represents a gap in the check and balances' system between the executive, legislative and judicial powers, and a fragmented chain of accountability within the prosecution.

This study formulates the main research question 'what is the relationship between the transparency and consistency of the CVM monitoring and the reform implementation in the Bulgarian judicial system for the period 2010-2017?'

The study represents the following sub research questions:

SQ1: To what extent the goals in the CVM reports are reported in a transparent and consistent manner for the period 2010-2017?

SQ2: To what extent the goals in the CVM reports are reported as attained for the period 2010-2017?

The first subquestion analyzes to what extent the EC monitoring goals are stated in a transparent and consistent way, while the second subquestion answers to what extent those goals are reported as achieved for the period 2010-2017.

1.3 Relevance

From a scientific point of view, the contribution of this master research is the analysis of the first track record of the EC monitoring process over its member states. Only two out of twenty-eight EU member states have been experiencing the EU monitoring in conducting a public sector reform since the foundation of the Union: Bulgaria and Romania. The monitoring on both countries started simultaneously with their accession in the EU (2007) and is still in place. The one-decade field experience could reveal to what extent the EU external monitoring strengthens a member state's reform implementation. Moreover, it could lead to an enhanced EU monitoring procedure in other countries (for instance, the upcoming enlargement in the Western Balkans).

From a societal point of view, the Bulgarian judicial reform implementation is a decisive factor for improving both the standard of living and the perception of fairness among Bulgarians. At the moment of writing, Bulgaria has been a member of the EU for 11 years and a number of public reforms have been successfully implemented. Nevertheless, the main obstacle to more rapid economic development is the lack of efficiency and independence of the judicial system. As a result, the corruption is widely spread at any stage, including among the high-level public officials. Bulgaria does not always use efficiently the EU funds, designated for infrastructural, educational and social projects. Likewise, the both foreign direct investments' attraction and retention do not follow a positive, sustainable trend. Above all, the ordinary Bulgarian citizen perceives lack of fairness within the society, which do not conform to the European democratic values.

1.4 Context of This Research

Bulgaria has started its new democratic era of governance in 1989 and joined the European Union in 2007. The implementation of a judicial reform relates to an adjustment in other public administration branches as public procurement, for instance. In a broad sense, the reform implementation reflects two perspectives.

On the one side of the coin, the rigidity of the system on an institutional, political and societal (cultural) level constrains the reform execution. On the other side, the EC monitoring mechanisms demand the system to change at an expeditious pace. Naturally, in this complex environment, plenty of variables influence the Bulgarian judicial reform implementation. The study's scope focuses on analyzing the potential relationship between the EC monitoring and the implementation of the reform.

To respond to the research questions, the conducted literature review in **Chapter 2** defines the concepts 'public management reform implementation' and 'monitoring of performance'. The theoretical framework in **Chapter 2** streamlines two before-hand statements about the expected findings. Based on the research methodology in **Chapter 3**, the aim of the data analysis in **Chapter 4** is to track a potential relationship between the transparency and consistency of the CVM monitoring and the attainment of the prescribed CVM goals.

2 THERORETICAL FRAMEWORK

This chapter represents the theoretical framework of the master thesis. The literature review defines the concepts 'public management reform implementation' and 'monitoring of performance'. Section 2.1 *Public management reform implementation* focuses on factors which influence the reform execution as goal ambiguity, organizational structure & strategy, managerial networking. 2.2 *Monitoring (measurement) of performance* describes the monitoring process and its potential relationship with public reform implementation. Based on the conducted literature review, section 2.3 *Conceptual specificities* indicates the chosen dimensions of the two main concepts. The chapter concludes by stating two before-hand expectations in section 2.4 *Study proposition and expectations*.

The master thesis focuses on the potential relationship between the concepts EC monitoring and Bulgarian judicial reform implementation. As discussed in section 2.2 *Monitoring (measurement) of performance*, the EC monitoring over a member state pursues a steer & control function, measured via efficiency (Van Dooren et. all 2010:105). The efficiency represents the ratio between output and input. In this research, the input reflects the reform goals, while the output – the extent to which the goals are achieved. The next figure illustrates the interaction between reform implementation and monitoring, analyzed in the literature review:

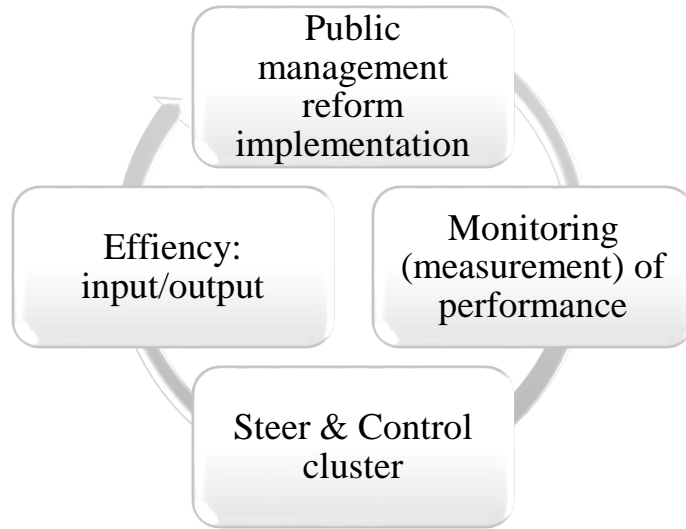


Figure 1: Interaction between public management reform implementation and monitoring (measurement) of performance (Van Dooren et. all 2010:105)

The following figure represents the interconnection between the main and background concepts of this study. The background concepts do not cover the main focus of the research, but they explain key factors which influence the Bulgarian judicial reform implementation in line with the data analysis in section 4.2 *Policy intent*. The definitions of the background concepts are summarized in *Appendix 8: Description of the background concepts*.

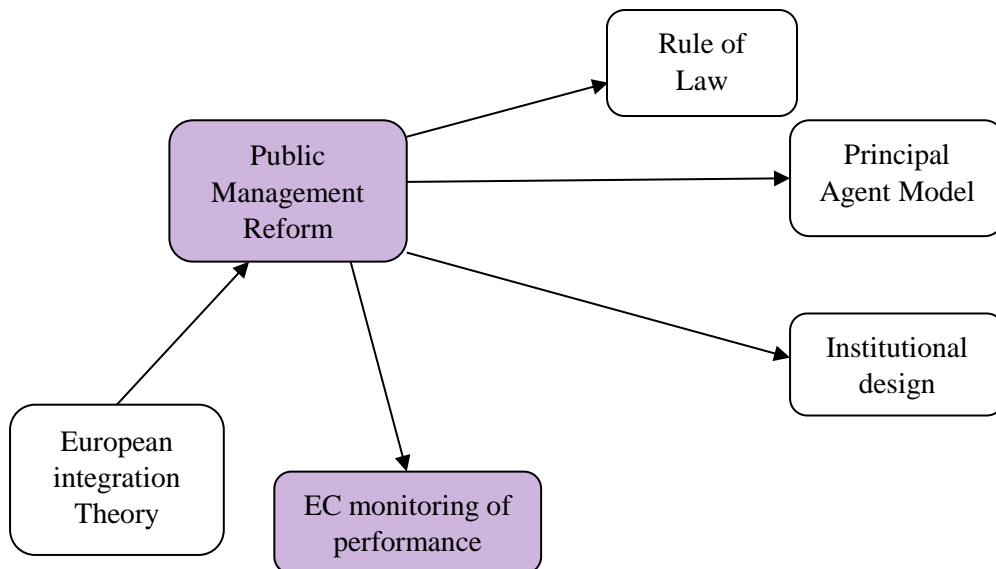


Figure 2: Key concepts' interaction scheme (in purple marked the scope of this master research)

2.1 Public Management Reform Implementation

According to Pollitt & Bouckaert (2011:33) the public management reform is a multidimensional concept, which is a result of the interaction on a national level between socio-economic and political forces. That interplay characterizes the elite's judgment for feasibility and preferences for the public reform implementation, comprising of three elements: the content of reform package, implementation process and results achieved. The national socio-economic forces are dependent on the global economic ones, revealing the indirect influence of international elites on the determination of public reforms in a certain state. The ongoing spontaneous events as scandals and disasters also influence the reform implementation (e.g. the massive street riots which took place in Bulgaria in 2013). The capacity of this research cannot cover all the factors affecting public management reform, represented in the next figure. Therefore, the study's focus lies within 'K. Administrative system' of public management reform.

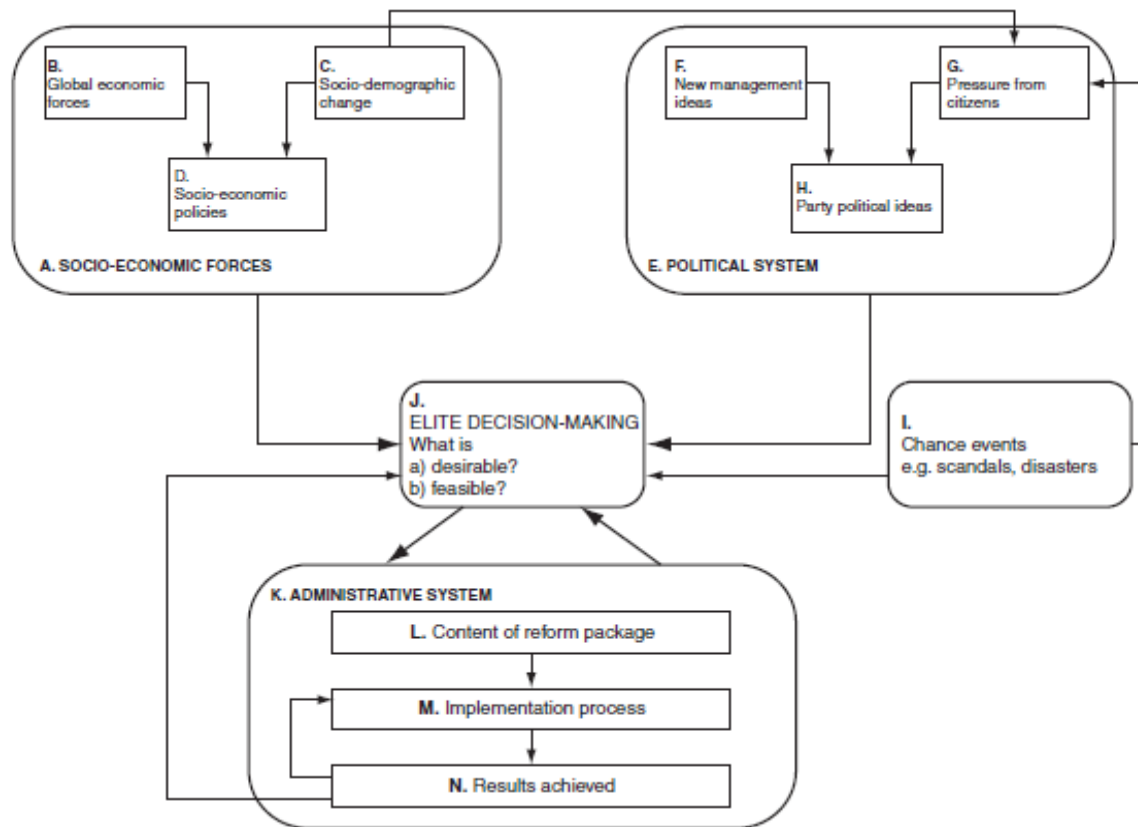


Figure 3: A model of public management reform (Pollitt & Bouckaert 2011:33)

The following lines discuss the key dimensions of the concept of public management reform implementation (namely goal ambiguity, organizational structure & strategy, and managerial networking).

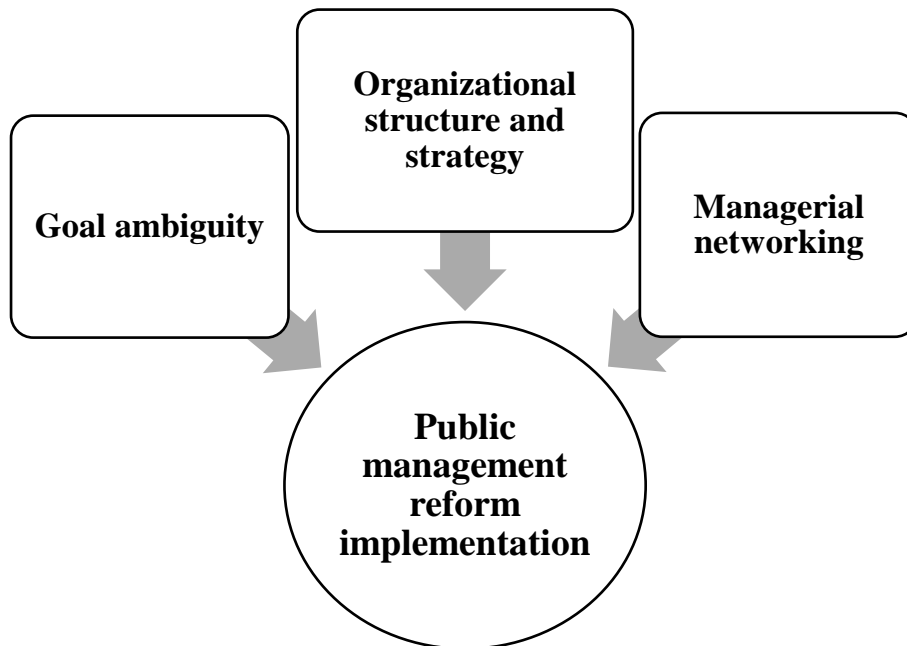


Figure 4: Dimensions of public management reform, affecting performance in the administrative system

2.1.1 Goal ambiguity

The specificities of a judicial system predispose to a higher level of goal ambiguity in comparison to other public branches. Naturally, this phenomenon contributes to obstacles in the performance measurement. According to Rainey & Jung (2012:52) the larger number of politically active stakeholders determines the higher level of goal ambiguity. For instance, within the Bulgarian context, the politically active groups need to compromise at the first place on the content of the reform package. At the same time, the pace of the actual implementation shall not affect negatively the interests of the main national stakeholders. As a result, certain reforms could be only formally implemented. To conclude, within the scope of the current research, one dimension of the transparency of EC monitoring relates to goal clarity and is explained in section 2.3 *Conceptual specificities*.

2.1.2 Organizational structure & Strategy

Organizational structure & strategy's theoretical framework also provides insights into potential pitfalls in policy implementation. According to Miles and Snow's model (cited in Walker et al. 2012:232) four types

of organizations' functionality exist: prospectors prioritizing innovations; defenders – conservative behavior focused on executing the core tasks; analysts – the combination of the first two; reactors – reforming triggered only by the circumstances. Walker (2013:675) emphasizes the importance of the mix of strategies, concluding that the following combinations deliver higher probability for organizational success: prospecting and incremental strategy or defending and centralized approach. Moreover, the incremental method overcomes complex and dynamic environments, and the microclimate for performing the judicial reform in Bulgaria is a typical example as such. Likewise, the rigidity of a judicial institution predisposes to defending actions by its agents to keep the status quo.

2.1.3 Managerial networking

Managerial or hierarchical governance reveals another dimension of public management reform implementation. On the one hand, managerial networking (corresponding to multiple political stakeholders) could hinder the reform implementation, as discussed in section 2.1.1 *Goal ambiguity*. On the other hand, according to Meier & O'Toole (2012:128) managerial networking is crucial for organizational success in an interdependent environment. The judicial institutions should interact with each other, in order to carry out successful trials, for instance. In addition, the networking with the external EU institutions and judicial bodies of other member states provide valuable know-how of good practices. If the judicial body is conservative, defending and strictly hierarchal, the resistance for innovative reforms' implementation shall be considered higher.

2.1.4 Policy implementation as goal achievement

De Bruijn (2007) describes goal achievement as a proper conceptualization of policy implementation. Rainey (2014) classifies goals as a broad description (e.g. mission statements) or operative goals (smaller in scope but applicable for measurement). Practically, the operativeness could relate to the goals' transparency (clarity and quantitative measurement availability) and within the context of the longitudinal monitoring – consistency of repetition of non-achieved goals. The categorizing of the goals, based on the level of transparency and consistency, contribute to streamlining the theoretical constructs in 2.3 *Conceptual specificities*. The following section discusses the concept of monitoring (measurement) of performance.

2.2 Monitoring (measurement) of performance

The efficiency of the European integration process and the subsequent monitoring mechanisms are going to be judged in the history textbooks in relation to the thin borderline between formal and behavior

adoption of rules. According to Andrews & Entwistle (2014:3) the main implication of efficiency in the public sector is modifying the productivity in a business-like manner. The performance monitoring of public reforms is a complex multilevel concept because of the various factors which influence the implementation. Measuring performance aims saving money, improving efficiency, increasing effectiveness and enhancing citizens' satisfaction and trust (Pollitt & Bouckaert 2011:126). Within the Bulgarian judicial system, these categories could be translated into specific ones. For instance, an optimization of human resources in the national courts shall reduce the percentage of delayed cases and decrease the expenses for judicial payroll. From citizens' perspective, this means optimization of public taxes spending. The more efficient functioning of the judicial branch might lead to reducing the corruption and relocating a financial stream from the grey sector into the government. As a result, the citizens' satisfaction shall rise up.

The scientific literature provides various and controversial findings on the relationship between performance management and measurement. The measurement of performance in public organizations passes through five stages (Van Dooren et al. 2010:54): targeting, indicator selection, data collection, analysis, and reporting. According to Van Dooren et al. (2010:32) performance in a broad sense relates to efficiency, effectiveness, and transparency. As discussed in section 2.3.4 *Policy implementation as goal achievement*, the transparency of the EC monitoring process could reflect the level of goals' clarity and their quantitative measurement availability. In addition, the extent of repetition of non-achieved goals shall also characterize the longitudinal monitoring.

Pollitt & Bouckaert (2011:134) distinguish the challenges in performance measurement in line with the reform implementation pitfalls marked in section 2.3 *Public Management Reform Implementation*. De Bruijn (2007:17) emphasizes that performance measurement may also lead to perverse effects as bureaucratization, strategic behavior, blocking innovation and ambition, or veiling the actual performance. The specificities of the EC monitoring process over the judicial reform implementation do not predispose to blocking innovation and ambition. Meanwhile, the backsliding from the reform in Bulgaria has occurred through the analyzed time span 2010-2017, especially during periods of political crisis. According to de Bruijn (2007:5) 'the performance measurement may avoid the negative effects of monitoring by applying a managerial system, based on interaction, variety, and dynamics'. In addition, Rainey (2014:442) identifies the key role of the individuals in delivering a positive change. The employees must see the reform implementation, personally, as important and useful for them.

Performance measurement has come along with the New Public Management doctrine in the 1980s-1990s (Van Dooren & Bouckaert 2009:177). Performance measurement provides three broad purposes (clusters), which interact with each other (Van Dooren et. al 2010:104-108): learning, steer & control, and

accountability. Each of them predisposes to the use of different measurement indicators. The EC monitoring process does not aim only institutional learning, which would be completely unconditional. At the same time, the EC does not demand the complete form of accountability as Bulgaria is a sovereign state. Furthermore, according to the EU treaties, the area of justice lies within the shared competences between the EU and the member state. This means that the EU as an international organization does not pursue direct legal means to hold the Bulgarian government accountable for the judicial reform implementation. In this way of thinking the steer & control function, guided by scientific standards and good practices, defines the EC monitoring over a member state. According to Van Dooren et al. (2010:105) the main indicator for evaluating the steer & control function of performance is efficiency, which measures the ratio between output and input. In this research, the input reflects the CVM goals for the Bulgarian judicial reform, while the output – the extent to which the goals are achieved.

2.3 Conceptual specificities

The theoretical framework of this study renders the endogenous and exogenous concepts. The academic literature suggests a potential relationship between performance monitoring (measurement) and reform implementation, which defines the transition from theoretical constructs to variables:

Table 1: Exogenous and Endogenous concept

	Exogenous concept	Endogenous concept
Theoretical construct	Extent to which monitoring goals are transparent and consistent	Extent to which monitoring goals are attained
Variable	CVM goals’ transparency and consistency (Van Dooren et. all. 2010:32) (Rainey & Jung 2012:52) Bruijn, J. (2007)	CVM goals’ attainment (steer & control cluster via efficiency of implementation) (Van Dooren et. all 2010:105)

The European Commission applies the CVM mechanism to Bulgaria (described in *section 3.1.1.1 Cooperation and Verification Mechanism*) as an external assistance for conducting the national judicial reform. The exogenous concept reflects the independent variable of this research and has two dimensions: transparency and consistency of the CVM monitoring goals. As de Bruijn (2007) emphasizes, the transparent monitoring is a determining factor for successful performance. Due to the longitudinal CVM monitoring over Bulgaria, consistency represents an important dimension of the exogenous concept. The monitoring transparency reflects the goals’ textual clarity and their quantitative measurement availability. The consistency represents the repetition of non-achieved goals in the consecutive CVM reports. The endogenous concept reflects the dependent variable of this research, namely the level of attainment of goals, which defines the efficiency of implementation (Van Dooren et. all 2010:105).

2.4 Study proposition and expectations

This master thesis aims to identify a potential relationship between the CVM goals (their transparency and consistency) and the CVM goals' attainment in the Bulgarian judicial system reform for the period 2010-2017. The research also pursues an explanation of the findings. In order to achieve these targets, the study answers the main research question *what is the relationship between the transparency and consistency of the CVM monitoring and the reform implementation in the Bulgarian judicial system for the period 2010-2017?* and the two subquestions: *to what extent the goals in the CVM reports are reported in a transparent and consistent manner for the period 2010-2017?* (SQ1) and *to what extent the goals in the CVM reports are reported as attained for the period 2010-2017?* (SQ2). In favor of streamlining the answers to the research questions, the study formulates two before-hand expectations:

1. The more transparent the CVM monitoring, the more efficient the goal attainment is.
2. The more consistent the CVM monitoring, the more efficient the goal attainment is.

The research design and strategy, described in the next chapter, explain the transition from theoretical concepts to operationalized variables and measurements.

3 RESEARCH METHODOLOGY

This chapter unfolds the methodology of the current research. The first section *3.1 Research design* describes the chosen methodological approaches in building the research design. *Section 3.2 Case selection* reveals the case selection and its representativeness. The section *3.3 Operationalization* describes the independent and dependent variables, their measurement, and represents the methods for data collection analysis. The last two sections deliver insights into the limitations, remedies against them and ethics of this research respectively in *3.4. Limitations and Remedies* and *3.5 The ethics of measurement*.

3.1 Research design

This paper represents a qualitative evaluation case study on the relationship between the EC monitoring process and the actual implementation of the judicial reform in Bulgaria. The case study pursues the nomothetic explanatory approach, which is preferred over the idiographic one because the nomothetic paradigm does not imply complete causality requirement. Therefore, even if exceptions in the case study

are present, the causal relationship is still valid (Babbie, 2011:97). The approach is suitable for analyzing complex social phenomena as the Bulgarian judicial reform implementation under the EC monitoring mechanism. Moreover, the inductive grounded theory facilitates coding and comparing the documents' data: analyzing the patterns, themes, and common categories (Strauss & Corbin 1998). In order to streamline the pattern examination, Huberman & Miles (1994) introduce two strategies for cross-case investigation. This study selects the variable-oriented analysis because it explains the relationship between a few variables in line with the nomothetic paradigm. The research design also aims to test the replicability of the study and to reduce the probability of biased evaluation of the author. A second researcher, who is a colleague of the author at the University of Twente, conducted independently the content analysis of the CVM reports (in section 4.1 *Explicit analysis*). The second researcher followed the instructions in sections 3.3.2 *Operationalizing and measuring performance monitoring* and 3.3.3 *Operationalizing and measuring reform implementation*, in order to fill in the *Coding sheet for the analysis of the CVM reports* (Appendix 3). In addition, section 4.2 *Policy intent* provides a supplementary analysis of another EC monitoring report over the Bulgarian judicial system, delivering contextualization and clarification of the CVM reports' findings.

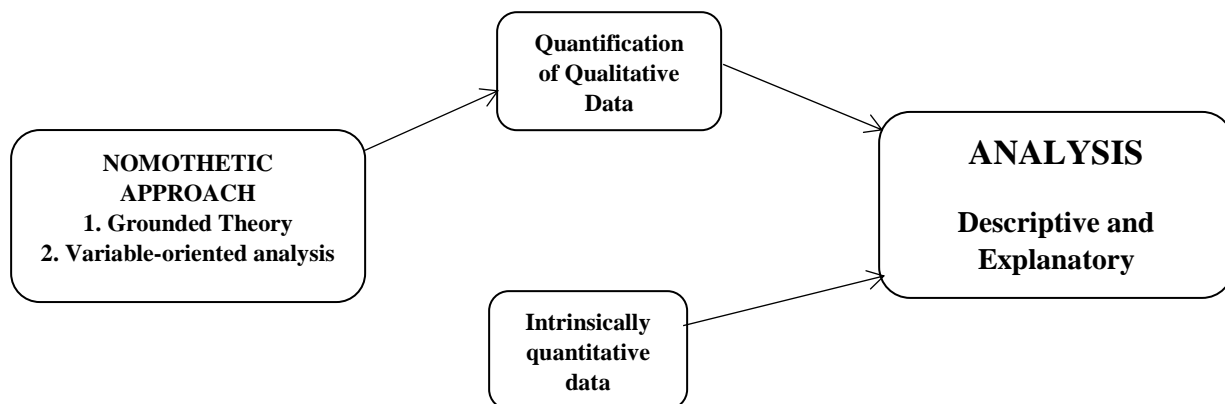


Figure 5: The logic behind the research design

3.1.1 Units of analysis

As discussed in section 1.3 *Context of This Research*, various factors influence the Bulgarian judicial reform implementation, which are out of the range of the EC monitoring mechanisms. The scope of the current research lies within the EC monitoring mechanism for the period 2010-2017. All the data sources are listed in *Appendix 2: List of official documents 2010-2017*. The next section represents the primary data source for this study - the EC CVM monitoring mechanism.

3.1.1.1 Cooperation and Verification Mechanism

The European Commission's Cooperation and Verification Mechanism (CVM) has been applied on both Bulgaria and Romania after their accession to the European Union in 2007 (European Commission, 2017). The main argument for implementing this monitoring instrument was that both member states still had to obtain significant progress in the fields of judicial reform, corruption, and organized crime. More specifically, the EC aims to ensure that the two countries develop effective administrative and judicial systems, in order to guarantee the correct implementation of the EU legislative and regulatory measures. Informally, the success of the CVM mechanism might open both member states' door to Schengen and Eurozone.

The CVM reports are based on a continuous dialogue with the two member states' authorities. The reports have also benefitted from good practices from other EU member states, civil society, international organizations. Overall, eight detailed CVM reports have been issued during the researched time span. The annual CVM report was not released in 2013 due to an intensive political crisis in Bulgaria, while two reports were published in 2017. The benchmarks for Bulgaria are divided into three categories:

- the independence, professionalism, and efficiency of the judicial system
- the fight against corruption
- the fight against organized crime.

The CVM reports consist of two sections: evaluation of the achieved progress and further recommendations (comprised of goals). The CVM reports guide, monitor, and evaluate the progress of the judicial reform in Bulgaria. Furthermore, the CVM reports represent the most specific EU monitoring mechanism over the Bulgarian judicial system for the time span 2010-2017. To sum up, the CVM is the only source for running the independent variable and the primary source in measuring the dependent one, discussed in section 3.3 *Operationalization*.

3.1.1.2 Other data sources

The second data source is the EU Commission's Structural Reform Support Service (SRSS) experts' report on the Bulgarian prosecution, issued in December 2016, which provides qualitative explanations on the CVM reports in section 4.2 *Policy intent* (Ministry of Justice of Bulgaria, 2016). The EC SRSS experts' report was issued due to the request from the Bulgarian government for an external independent analysis of the judicial reform (with regards to the prosecution, its functionality, and structure). The

experts' team has executed more than 200 interviews with prosecutors, investigators, police officers, judges, lawyers, journalists and NGOs' representatives in Bulgaria.

Each CVM report is followed by the Council of Ministers' concluding report. These concluding reports share political support and summarize the information of the CVM reports. Therefore, the Council of Ministers' reports are not applicable as a data source for this study. Based on identical argumentation, the scope of this research excludes the European semester country reports and the Council recommendations on the National Reform Programme. The inclusion of the official national response documents might provide both advantages and cons to this study. The advantage is that the research shall reflect the Bulgarian standpoint as well. At the same time, the Bulgarian documents often represent judicial strategies, which are practically impossible to operationalize. Yet, the national documents would add another perspective to the contextualization of the findings in the CVM reports, discussed in *4.2 Policy intent*. To sum up, the research focuses on the EC monitoring documents, representing the data source, which runs the data analysis.

3.1.2 Research objectives

This master thesis aims to identify a potential relationship between the CVM goals (their transparency and consistency) and the reported CVM goals' attainment for the period 2010-2017. The following table summarizes the objectives and methods of the study:

Table 2: Objectives and methods of the master thesis

Objectives of the master thesis	Methods	Variable
Evaluating the transparency and consistency of the reported goals in the CVM monitoring reports 2010-2017	Secondary data analysis, Ground-Theory, Variable-oriented analysis	Exogenous
Evaluating the extent of reported goals' attainment 2010-2017	Content analysis, Variable-oriented analysis	Endogenous
Analyzing the relationship between the transparency of the goals and the extent of goals' attainment 2010-2017	Content analysis, Variable-oriented analysis	Relationship between endogenous and exogenous concepts
Analyzing the relationship between the consistency of the monitoring and the extent of goals' attainment	Content analysis, Variable-oriented analysis	Relationship between endogenous and exogenous concepts

3.2 Case selection

This section provides details about the case selection and sampling. The master thesis represents an in-depth case study. Ragin & Becker (1992) emphasize that the term ‘case’ is used broadly in the social science literature. For instance, a case could categorize a certain group of people under analysis or a certain time span. This study considers a case the relationship between the stated CVM goals (their transparency & consistency) and the reported CVM goals’ attainment for the period 2010-2017. Babbie (2011:329) underlines that an in-depth case study aims both describing and explaining the researched phenomenon, which is in line with the methodology of the current research. The following section 3.2.1 *Representativeness and generalization* explains the case selection justification.

3.2.1 Representativeness and generalization

The sample comprises of two cases: Bulgaria and Romania, being the only two member states subject to the CVM mechanism. The two countries represent the small-N, where the purposive sampling is the preferred analytical approach (Seawright & Gerring 2008: 294). This study relies on the typical case study method, which explores the relationship mechanism within the typical representative case (Seawright & Gerring 2008: 294). Bulgaria and Romania are neighboring countries, similar in economic and political level of development, which entered the EU simultaneously in 2007. At the same time, the specific political climate in each of the member states does not predispose to generalization beyond the national case. This study aims rather arrive at findings which might be useful in further EU monitoring projects (for instance, the upcoming enlargement process in the Western Balkans).

3.3 Operationalization

This section reveals the process of operationalization. Babbie (2011:146) emphasizes that conceptualization and operationalization constantly link to each other. While conceptualization refines abstract concepts into specific definitions, operationalization represents research procedures that enable the empirical observation and measurement of the concepts. Conceptualization unfolded the exogenous and endogenous concept of this study in section 2.5 *Conceptual specificities*. The next table shows the operationalization process, which is explained thoroughly in the following sections 3.3.1 *Operationalizing process*, 3.3.2 *Operationalizing performance monitoring (measurement)*, and 3.3.3 *Operationalizing reform implementation*.

3.3.1 Operationalization process

Table 3: Operationalization process

	Exogenous concept	Endogenous concept
Theoretical construct	Extent to which monitoring goals are transparent and consistent	Extent to which monitoring goals are attained
Variable	CVM goals' transparency and consistency	CVM goals' attainment
Measurement	IM ₁ = textual clarity of the goals IM ₂ = quantitative measurement availability of the goals IM ₃ = follow-up of non-achieved goals in the next report	DM ₁ = extent to which the goals are attained
Data resource	CVM Country reports for Bulgaria	I. Explicit analysis: 1. CVM country reports II. Policy intent 2. EU experts report on Bulgarian prosecution 3. World Bank Governance Indicators for Bulgaria

The *exogenous concept* (independent variable) reflects the extent to which the reported CVM goals are transparent and consistent. The *endogenous concept* (dependent variable) translates the extent to which the stated CVM goals are attained. The following two sections represent separately the operationalization procedures of the independent and dependent variables.

3.3.2 Operationalizing and measuring performance monitoring (measurement)

The independent variable reflects two characteristics of the CVM goals: transparency and consistency. As discussed in section 2.5 *Conceptual specificities*, monitoring shall have a positive influence on policy implementation if the goals are set in a transparent way (Bruijn 2007). Due to the longitudinal nature of the CVM monitoring, the consistency of repetition of non-achieved goals in the consecutive reports completes the independent variable. The transparency of the goals reflects the IM₁ and IM₂ measurements, while the IM₃ represents the level of consistency of the monitoring process. The next table summarizes all the three measurements:

Table 4.: Operationalizing the independent variable

Measurement	Definition	Operational definition	Attributes
IM ₁	textual clarity of the goals	Is the goal clearly described and separated from the other goals?	1: yes, to a great extent 2: yes, to a certain extent 3: no, to a certain

			extent 4: no, to a great extent
IM ₂	quantitative measurement availability of the goals	Are the quantitative indicators to measure the goal explicitly presented?	1: yes, to a great extent 2: yes, to a certain extent 3: no, to a certain extent 4: no, to a great extent
IM ₃	follow-up of non-achieved goals in the next report	Is a non-achieved goal present in the following report recommendation section?	1. Yes 2. No

The evaluation of the goals' transparency has two dimensions. The first one (IM₁) evaluates to what extent a goal is clearly described and separated from the other goals. Due to the fact that the recommendation sections of the CVM reports comprise of free-structured text, the author codes that section into separate goals. The coding represents the complete content of the recommendation section by fragmenting the whole text into distinct goals. Therefore, the IM₁ measurement reflects, firstly, an internal validation of the initial coding process. Secondly, the IM₁ measurement evaluates the textual clarity of the already coded goals. The IM₂ measurement reveals to what extent the attainment of a goal could be translated into a quantitative value. The attributes of the IM₁ and IM₂ measurement are ordinal in four degrees (yes, to a great extent; yes, to a certain extent; no, to a certain extent; no, to a great extent).

The IM₃ measurement assesses the consistency of repetition of non-achieved goals in the following reports. The next example describes the IM₃ measurement process. First of all, according to the CVM 2011, a particular CVM 2010 goal is evaluated as non-achieved (DM₁ – “no”, please see section 3.3.3 *Operationalizing and measuring reform implementation*). Secondly, the CVM 2011 content analysis evaluates if this CVM 2010 non-achieved goal conforms to one of the CVM 2011 goals. The attributes are nominal and binary: yes/no. The following table describes the clarification of the attributes of the three measurements:

Table 5. Clarification of the attributes of the measurement of the independent variable

Measurement	Operational definition	Attributes	Clarification of the attributes
IM ₁	Is the goal clearly	1: yes, to a great extent	1.the goal is clearly described, and its

	described and separated from the other goals?	2: yes, to a certain extent 3: no, to a certain extent 4: no, to a great extent	content is fully separated from the other goals 2. the goal is clearly described, but not wholly and its content is not completely separated from one/some of the other goals 3.the goal is rather blurry described and could be referred to one/some of the other goals 4.the goal is completely unclearly described and could be referred to one/some of the other flags
IM ₂	Are the quantitative indicators to measure the goal explicitly presented?	1: yes, to a great extent 2: yes, to a certain extent 3: no, to a certain extent 4: no, to a great extent	1.the goal attainment could be explicitly measured 2.the goal attainment could be measured within the context of reform implementation 3.the goal attainment could rather not be measured explicitly, because of its broad/strategic definition, but evaluated via the achievement of other goals 4.the goal attainment could not be measured at all because of its broad/strategic definition
IM ₃	Is a non-achieved goal present in the following report goals' section?	1: yes 2: no	1.the non-achieved goal from the previous CVM report is explicitly present in the recommendation's section of the current CVM report 2. the non-achieved goal from the previous CVM report is NOT explicitly present in the recommendation's section of the current CVM report

3.3.3 Operationalizing and measuring reform implementation

The dependent variable reflects the extent to which the CVM goals are reported as attained. For instance, the CVM 2011 evaluates to what extent a particular CVM 2010 goal is attained. The attributes are the following: three ordinal measures ('yes', 'yes, partially', 'no') and one nominal measure ('not available N/A'). The DM₁ measurement defines the efficiency of goal attainment (Van Dooren et. all 2010:105): the ratio between the completely achieved goals, partially achieved goals, non-achieved ones, and the goals' evaluation which is not present.

Table 6: Operationalizing the dependent variable

Measurement	Definition	Operational definition	Attributes
DM ₁	the extent to which the goals are attained	To what extent a goal is reported as attained in the following year?	1. Yes 2. Yes, partially 3. No 4. N/A

The next table describes the attributes of the dependent variable:

Table 7: Clarification of the attributes of the measurement of the dependent variable

Measurement	Operational definition	Attributes	Clarification of the attributes
DM ₁	To what extent a goal is reported as attained in the following year?	1: yes 2: yes, partially 3: no 4: not available	1.the goal is explicitly completely attained according to the CVM evaluation section in the following year 2. the goal is explicitly partially attained according to the CVM evaluation section in the following year. 3.the goal is explicitly not attained according to the CVM evaluation section in the following year. 4. the information for the goal attainment is missing in the CVM evaluation section in the following year.

The following section 3.3.4 *Data collection, categorizing and coding* provides information on the technical side of collecting data, categorizing and coding it.

3.3.4 Data collection, categorizing and coding

This research project relies on data gathered from document and content analysis. The main data source is the qualitative EC monitoring reports, recorded in *Appendix 2 List of official documents 2010-2017* and discussed in *3.1.1 Units of analysis*. The operationalization of the variables completes this research methodology and guarantees its capability to be reproduced. Babbie (2011: 426) defines the key process of classifying or categorizing large pieces of data as coding. The coding of the reports follows the content analysis's technique of manifest content to analyze the visible, surface content (Babbie. 2011:362). Then, the information is categorized in a way similar to a standardized questionnaire. The recommendation section of the CVM reports is a free-structured text and the author codes that section into clearly described and distinct goals. The coding reflects the complete content of the recommendation section by

fragmenting the whole text into explicit goals. The author accomplishes the initial coding in order to be able to compare the results with the second researcher.

3.4 Limitations and Remedies

The section discusses the limitations of this research design in combination with potential remedies. The criteria of the measurement quality are accuracy, precision, reliability, and validity (Babbie 2011:165). On the one hand, the current longitudinal case study's main drawback is that the relationship between the CVM monitoring and the actual reform implementation cannot be strictly verified. On the other hand, the chosen nomothetic approach can confirm a relationship between variables without excluding the effect of other factors. For instance, six governments have been in charge for the period 2010-2017 in Bulgaria, and the country was experiencing rapid political crisis and street riots against the government in 2013. In line with the changes in the political climate, the intensity of reform implementation also has been swinging.

The operationalizing process represents another strength of the design, which follows the precise transition from theoretical concepts to variables and their measurable attributes. Furthermore, the explicit content analysis (section 4.1 *Explicit analysis*), based on the manifest content approach, obliges the author to rate the variables' attributes only on the criteria of tangible arguments. Yet, the probability of personal bias always exists and the remedy is the conducted data analysis by a second researcher. The aim is to measure the agreement level on the qualitative (categorical) items between the two observers (researchers) via Cohen's Kappa statistics (Blackman & Koval 2000). Section 4.1.5 *Inter-rater reliability and implications* discusses the results of the inter-rater agreement calculations.

This research design takes into consideration threats to validity on the following dimensions: construct validity, internal and external validity. As discussed in **Chapter 2** the conceptualization of complex multi-level concepts is a significant challenge. In order to lower the probability of construct invalidity, the study streamlines the two main concepts to specific dimensions, which are then measured. Reform implementation is measured via goal attainment (the extent to which goals are reported as achieved). The CVM monitoring is assessed in two dimensions: the level of transparency and consistency of the CVM goals.

One internal validity threat applicable to this study represents the chance for reversed causality. Another threat to internal validity is the probability other events outside the study to influence the independent or dependent variable. The remedy is that this research aims to find incremental patterns than prove strict causal relationship or exclude all the external factors. The external validity threat is not applicable as the research does not aim generalization beyond the Bulgarian case. This study rather strives to arrive at

findings which might be useful in further EU monitoring projects (for instance, the upcoming enlargement process in the Western Balkans). The countries from the Western Balkans are similar to Bulgaria regarding the level of statehood development, challenges, societal, cultural values.

3.5 The ethics of measurement

The current research design relies on unobtrusive methods of data collection and analysis. Therefore, this study avoids many of the potential ethical issues (Babbie 2011:384). Nevertheless, the conceptualization and measurement shall not be guided by the author's preference for particular outcomes. A personal motive for impartiality derives from the fact that a non-biased finding may deliver some objective insights for the monitoring procedure, which is still ongoing in Bulgaria. The role of the second researcher also strengthens the expected satisfactory level of the ethics of the measurement.

4 ANALYSIS

Chapter 4 provides an analysis of the relationship between the CVM monitoring and the implementation of the judicial reform in Bulgaria for the period 2010-2017. The chapter comprises of two main sections: *4.1 Explicit analysis* and *4.2 Policy intent*. Section *4.1 Explicit analysis* represents the analysis of the CVM reports. The chapter concludes in section *4.2 Policy intent* which delivers contextualization and clarification of the CVM reports by analyzing the EC SRSS experts' report over the Bulgarian prosecution with a combination of World Governance Indicators, issued by the World Bank.

4.1 Explicit analysis

This section comprises of an explicit analysis of the results of the author, structured in the following subsections: *4.1.1 Independent variable and the first research subquestion*, *4.1.2 Dependent variable and the second research subquestion*, and *4.1.3 Relationship between the CVM monitoring and the reform implementation*. Section *4.1.4 Summary of the results of the second researcher* summarizes the results of the second researcher. The *4.1 Explicit analysis* concludes in section *4.1.5 Inter-rater reliability and implications*, which provides the interpretation of the level of agreement between the two researchers, based on Cohen's Kappa statistics. The results of the data analysis of both researchers are placed in *Appendix 4: Results of Data analysis of researcher 1 and researcher 2*. The coded reports are recorded in *Appendix 9: Coding of the CVM Reports 2010-2017*. The CVM 2013 report is missing because that year was marked by a political crisis and street riots against the corruption in Bulgaria.

4.1.1 Independent variable and the first research subquestion

The independent variable's three measurements reflect the level of the CVM goals' transparency and consistency over the period 2010-2017. Transparency of the goals is evaluated via two measurements. The first one measures the textual clarity of each goal and its meaningful separation from the other goals in the particular annual CVM report. The IM₁ represents an internal validation of the initial segmentation of the recommendation section into goals. In addition, it shows to what extent a goal is clearly described and separated from the other goals. The results of IM₁ measurement are imperative. 96.9% of all the coded goals (160 out of 165) are evaluated the most positively 'yes, to a great extent' in respect to their textual clarity and separation from the other goals, while the rest 3.1% - 'yes, not a certain extent'. The complete positive assessment might be read in two perspectives. Firstly, the initial coding is accomplished successfully. Secondly, the CVM goals are clearly described and completely separated from each other in content.

The second measurement evaluates to what extent the goals' attainment can be measured quantitatively. Again, the measurement reflects the identical (as in IM₁) ordinal four degrees of attributes: 'yes, to a great extent', 'yes, to a certain extent', 'no, to a certain extent', 'no, to a great extent'. In contrast to the first measurement, IM₂ results are more heterogeneous and the following figure reflects the dynamics:

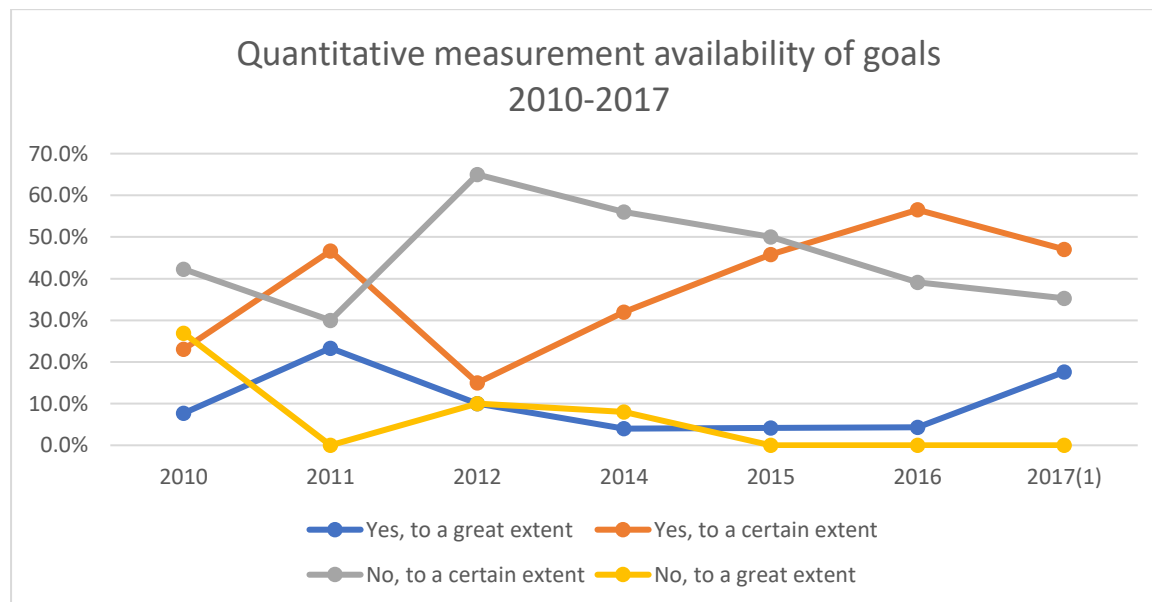


Figure 6: Quantitative measurement availability of the goals 2010-2017

While the period 2010-2012 marks shifting trends, 2012-2017 reveals a remarkable tendency of increasing the share of quantitative goals and reducing the number of the ones which are more difficult to be

measured. Nevertheless, the trend above is significant only for the two less extreme categories ‘yes, to a certain extent’ and ‘no, to a certain extent’. For instance, the share of ‘yes, to a certain extent’ goals (the goals, which achievement could be measured within the context of reform implementation) raises up rapidly from 15% in 2012 to 56.5% in 2016. In contrast, the percentage of ‘no, to a certain extent’ goals (goal attainment could rather not be measured, because of their broad/strategic definition, but evaluated via the achievement of other goals as well) declines significantly from 65% in 2012 to 35.3% in 2017. Overall, the data reveals a steady rise in the quantitative availability of the goals for the period 2012-2017. A number of reasons could trigger this tendency. One is that the EC experts, who prepare the reports, have been working intensively with the Bulgarian authorities and have become more aware of the state of the judicial system. Interestingly, the two less extreme categories in sum constitute a share of 65.4% in 2010 to 82.4% in 2017, which explains how difficult is to place quantitative indicators for goals in a public sector reform, especially concerning a judicial system.

The third measurement of the independent variable (IM_3) reveals the level of consistency of the monitoring, meaning whether a non-achieved goal in a CVM report is present in the following year’s recommendation section. The attributes are ‘yes’ and ‘no’. The following table summarizes the results:

Table 8: Follow-up of non-achieved goals

Year	Total number of non-achieved goals	Follow up in next report	
		Yes	No
2010	18	72.2%	27.8%
2011	19	47.4%	52.6%
2012	10	90.0%	10.0%
2014	21	76.2%	23.8%
2015	13	69.2%	30.8%
2016	10	70.0%	30.0%
Overall	91	69.2%	30.8%

An important remark is that the IM_3 analysis includes the time frame 2010-2016, since two CVM reports are published in 2017, but the second one only evaluates the goal attainment of the first report. Therefore, the last benchmark for the goals’ consistency is the first CVM report for 2017 concerning the CVM 2016 recommendations. Overall, the results show a constant positive trend of the percentage of follow-up of non-achieved goals through the time frame 2010-2016 with one outlier. In 2011, less than half (47.4%) of the non-achieved goals are followed up in 2012. Interestingly, in the consecutive 2012 report, 90% of non-achieved goals are repeated in 2014. In the particular time frame (2010; 2014-2016), the share of followed-up non-achieved goals is around 70%, while the lack of consistency constitutes around 30%. To conclude, the results of the IM_3 measurement do not reveal a general trend of shifts in the level of

repetition of non-achieved goals in the consecutive reports. On the contrary, the overall outcome shows that approximately 2/3 of the non-achieved goals are constantly repeated in the consecutive reports, where identical results are at place in 4/6 of the analyzed annual reports.

The data analysis of the three measurements of the independent variable provides an answer of the first subquestion: *To what extent the goals in the CVM reports are reported in a transparent and consistent manner for the period 2010-2017?* The transparency of the monitoring regarding textual clarity is outstanding. The goals set in the CVM reports are clearly stated and separated from each other. The goals' quantitative measurement availability evolves through the period 2010-2017. A significant and steady increase in quantitative goals is present for the period 2012-2017. The rather quantitative goals' share goes up from 30.8% in 2010 to 64.7% in 2017. Regarding consistency, in the common cases and on average, around 70% of the non-achieved goals are present in the following reports' recommendation section. The consistency shall be considered as a key factor for longitudinal monitoring. To sum up, the CVM goals are rather reported in a transparent and consistent manner for the period 2010-2017. Nevertheless, the fluctuations in the availability of quantitative indicators determine certain shifts of the level of monitoring transparency.

4.1.2 Dependent variable and the second research sub-question

A single measurement evaluates the dependent variable of this study by tracking to what extent a goal is reported as achieved. Goals from a particular annual CVM report are measured in the evaluation section of the next CVM report. The possible attributes are separated into four exclusive categories: three ordinal ('yes', 'yes, partially', 'no') and one nominal ('not available') attributes. The following figure summarizes the results:

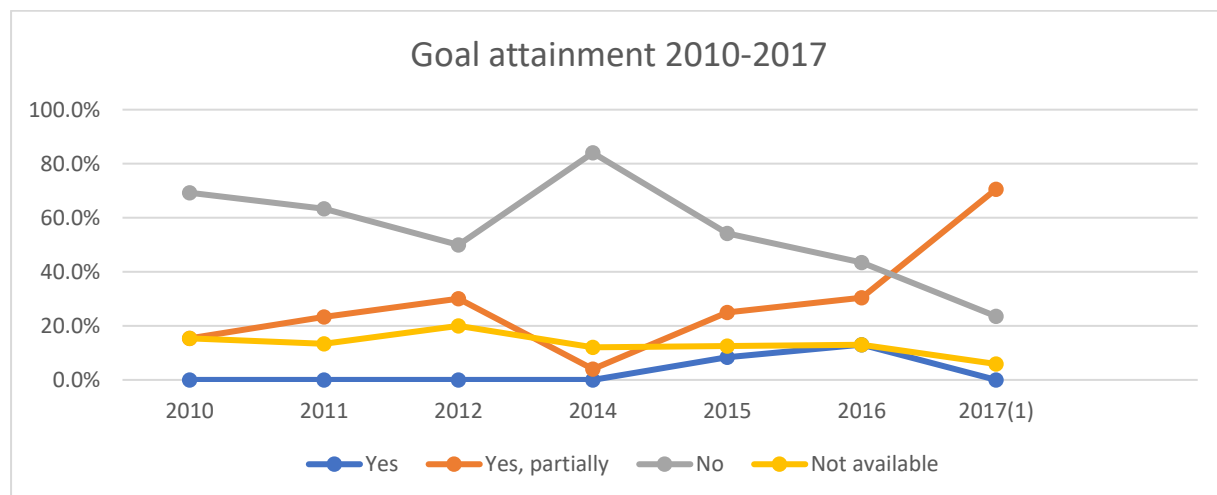


Figure 7: Goal attainment 2010-2017

Overall, during the whole period 2010-2017, the goals' attainment is as follows: 'yes' – 3%, 'yes, partially' – 26.8%, 'no' – 57.8% and 'not available' – 13.3%. The level of goal achievement can be divided into three sub-periods: 2010-2012, 2012-2014 and 2014-2017. Interestingly, only the time frame 2012-2014 reflects a negative trend of goal attainment where the partially achieved goals decline from 30% to 4%, while the non-accomplished ones raise from 50% to 84%. The time frames 2010-2012 and 2014-2017 reveal a similar steady trend of rising the goal attainment, despite it is more remarkable during the second period. The share of partially achieved goals doubles during 2010-2012 (from 15.4% in 2010 to 30% in 2012), while the non-accomplished goals drop down from 69.2% in 2010 to 50% in 2012. During 2014-2017, the partially achieved goals increase steadily, starting from 4% in 2014 and reaching 70.6% in 2017. Reciprocally, the non-achieved goals drop from 84.0% in 2014 to 23.5% in 2017. Furthermore, the CVM evaluation on 2015 and 2016 reflects the first completely achieved goals – 8.3% and 13.0% respectively.

The single measurement of the dependent variable provides evidence to answer the second subquestion of this study: *To what extent the goals in the CVM reports are reported as attained for the period 2010-2017?* The positive goal attainment (partially and completely achieved goals) equals to 29.8% of all the goals during the analyzed period. The results deliver the following remarks. First of all, the negative trend of reducing the extent of goal attainment is present only for the period 2012-2014, which shall be explained by the ongoing political crisis and street riots in Bulgaria. Secondly, the other time frames 2010-2012 and 2014-2017 mark a steady positive tendency of increasing the partially achieved goals. Moreover, the period 2014-2017 signifies the more enhanced level of goal attainment. For example, the only instances wherein sum fully and partially achieved goals overweigh the non-achieved ones take place in 2016 and 2017:

- 2016: “yes + yes, partially” share constitutes 43.7% in comparison to non-accomplished ones - 43.5%
- 2017: “yes + yes, partially” summed percentage is 70.6% in comparison to non-accomplished ones 23.5%

4.1.3 Relationship between the CVM monitoring and the reform implementation

The separate data analyses of the independent and dependent variables have drawn certain patterns on the relationship between the CVM monitoring and the Bulgarian judicial reform implementation for the period 2010-2017. Firstly, the IM_1 and IM_3 measurements reveal overall non-fluctuating results. At the same time, the results of IM_2 provide evidence for the variation of the level of quantitative measurement availability of the goals through the analyzed time frame 2010-2017. The measurement of the dependent

variable (DM₁) leads to an identical conclusion. Therefore, the figure below suggests a potential relationship between the CVM monitoring and the goal attainment via these two measurements (IM₂ and DM₁):

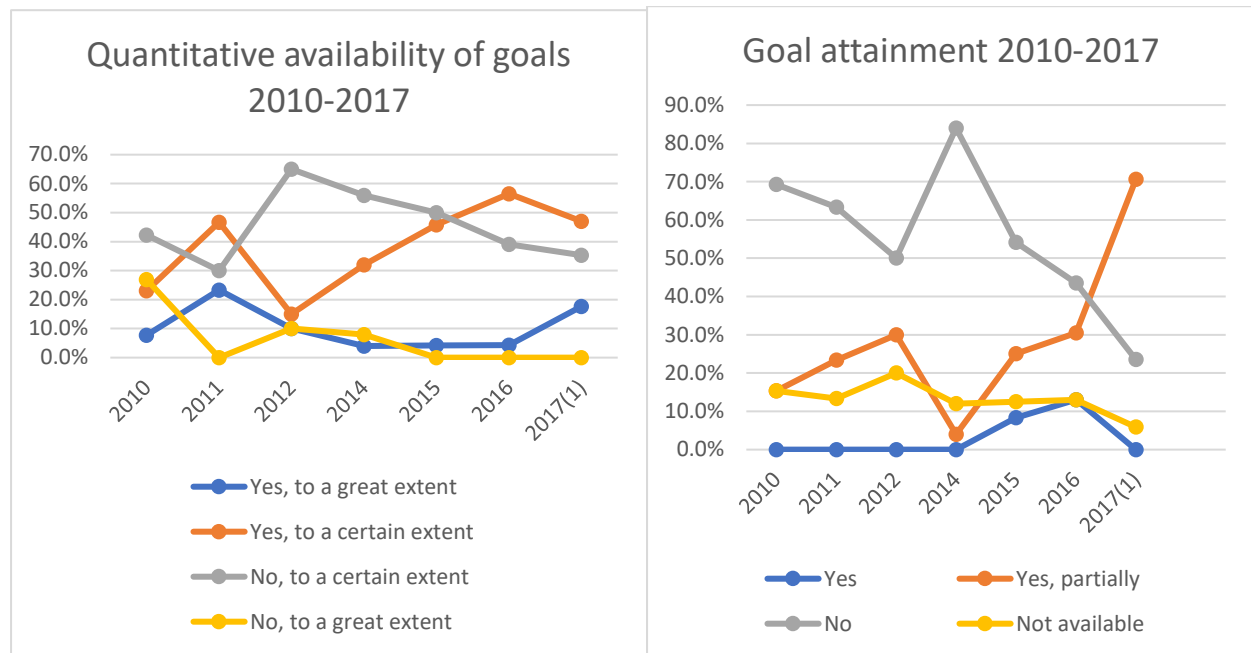


Figure 8: Goals' quantitative measurement availability and goal attainment 2010-2017

The comparison between the two measurements provides room for the next discussion. Firstly, the fluctuating share of quantitative goals does not relate to the level of goal attainment for the period 2010-2014. Secondly, the increasing share of the quantitative goals follows a similar trend to the level of goal attainment for the period 2014-2017. As discussed in section 4.1.2 *Dependent variable*, this time frame signifies the most outstanding positive results of goal attainment in comparison to the whole period under analysis. Therefore, the both measurements' results (IM₂ and DM₁) suggest a right proportional relationship between the transparency of the monitoring process and the level of goal attainment for 2014-2017. Then, the data analysis provides evidence to respond to the two before-hand expectations, stated in 2.6 *Study proposition and expectations*:

1. The more transparent the CVM monitoring, the more efficient the goal attainment is.
2. The more consistent the CVM monitoring, the more efficient the goal attainment is.

The results show that the consistent repetition of the CVM non-achieved flags does not explain the variation of the level of goal attainment. The explicit data analysis cannot confirm the expectation that the more consistent CVM monitoring process leads to more efficient goal attainment. Nevertheless, the consistent repetition of non-achieved goals (70% on average) shall be considered a key determinant of

longitudinal monitoring. At the same time the similar steady, progressive and significant trend of raising both the share of quantitative goals and increasing the goal attainment for the period 2014-2017, delivers a piece of evidence in supporting the expectation that the more transparent monitoring contributes to more efficient goal attainment.

4.1.4 Summary of the results of the second researcher

This section represents the summary of the results of the data analysis, conducted by the second researcher, benchmarked with the first researcher’s results. The next section *4.1.5 Inter-rater reliability and implications* provides the results and interpretation of the level of agreement between the two researchers, based on Cohen’s Kappa statistics. The IM₁ measurement reflects results almost identical with the first researcher. Overall, 98.1% (162 out of 165 goals) are assessed as clearly described and separated from the other flags. The next table summarizes the IM₃ measurement results:

Table 9: Results of IM₃ measurement: researcher 1 and researcher 2

IM1	Researcher 1		Researcher 2	
	Yes	No	Yes	No
2010	72.2%	27.8%	77.8%	22.2%
2011	47.4%	52.6%	47.4%	52.6%
2012	90.0%	10.0%	80.0%	20.0%
2014	76.2%	23.8%	66.7%	33.3%
2015	69.2%	30.8%	69.2%	30.8%
2016	70.0%	30.0%	80.0%	20.0%
Overall	69.2%	30.8%	68.1%	31.9%

The comparison of the IM₃ results of both researchers reveals similar trends with slight differences in the values. The average share of repetition of non-achieved goals in the following reports by both researchers is almost equal (researcher 1 – 69.2% to researcher 2 – 68.1%). Likewise, the results of IM₂ and DM₁ measurements of researcher 2 follow resembling variations for the period 2010-2017. Nevertheless, the IM₂ results of the second researcher reflect higher shares for the attributes ‘yes, to a great extent’ and ‘yes, to a certain extent’. To sum up, researcher 2 evaluates slightly higher the quantitative availability of the goals, but the trend of all the fluctuations is similar between the two researchers.

The results for DM₁ measurements between the researcher 1 and the researcher 2 are analogous. The main difference is that the results of the second researchers provide the higher share of achieved goals and subsequently lower percentage of the partially achieved ones during 2014-2017. Then, researcher 2 rates 32.7% of all the goals as achieved or partially attained, while researcher 1 – 29.1%. The figure below visually represents the resembling evaluation between researcher 1 and researcher 2 on IM₂ and DM₁. The

paired increase of the quantitative indicators and level of goal attainment during 2014-2017 is also present in the second researcher's results.

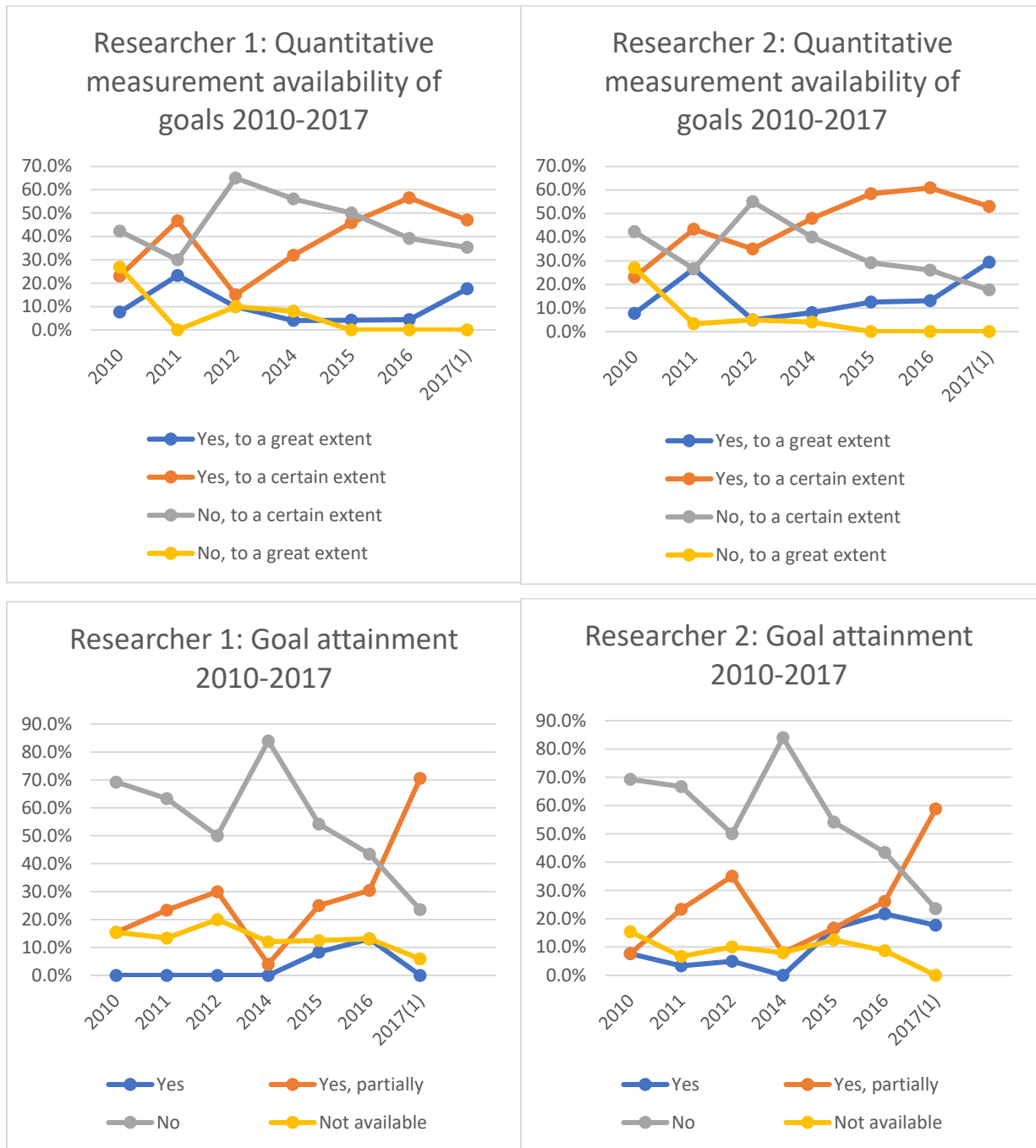


Figure 9: Graphic representation of IM_2 and DM_1 results for researcher 1 and researcher 2

4.1.5 Inter-rater reliability and implications

The previous section represented a summary of the results of the explicit data analysis, conducted by the second researcher. The current section shows the level of agreement on the qualitative (categorical) items between the two researchers, excluding the agreement which can happen by chance. The Cohen’s Kappa calculation has been applied via the statistical software SPSS. The scale for interpreting the results of Cohen’s Kappa and the level of agreement between the two researchers are recorded in *Appendix 5: Cohen’s Kappa interpretation and results of the agreement between the two researchers*. The next table 11 summarizes the results:

Table 10: Guidelines of Landis and Koch (cited in Munoz & Bangdiwala 1997:106)

Kappa statistic (k)	Strength of agreement
<0	Poor
0-0.2	Slight
0.2-0.4	Fair
0.4-0.6	Moderate
0.6-0.8	Substantial
0.8-1	Almost perfect

Table 11: Results of the inter-rater agreement

Measurement	Kappa statistic
IM ₁	0.564
IM ₂	0.584
IM ₃	0.894
DM ₁	0.785

The coefficient “k” can vary from -1 to 1. If k=0, the actual agreement is equal to the one that could happen by chance. If k<0, the observed agreement is less than the expected one. If k>0, the observed agreement is higher than the one which can occur by chance. In all the four measurements k>0.5, which places the strength of agreement in the higher spectrum of the scale of Landis and Koch (higher than the fair degree of agreement). The strength of agreement between the two researchers on IM₁ and IM₂ is moderate and both Cohen’s Kappa coefficients are close to the higher degree’s threshold (0.6: substantial). The strength of agreement on DM₁ is substantial (0.785 close to 0.8: almost perfect), while the IM₃ agreement excluding the chance score is almost perfect (0.894). The complexity of the task to conduct data analysis on the CVM monitoring over judicial reform implementation of a member state justifies the variation between the two pairs of measurement (IM₁ and IM₂) and (DM₁ and IM₃). Overall, the level of inter-rater reliability is satisfactory (from moderate to almost perfect), which confirms the resemblance of the results of both researchers, discussed at section 4.1.4 *Summary of the results of the second researcher*.

4.2 Policy intent

This section provides contextualization of the explicit analysis of the CVM reports by investigating another EC monitoring document over the Bulgarian judicial system (the EC Structural Reform Support Service experts’ report on the Bulgarian prosecution). The report is a valuable data source of the master

research because it provides an in-depth analysis and clarification of key CVM recommendations. As a starting point of the discussion, the next table summarizes the Worldwide Governance Indicators (WGI) ‘control of corruption’ and ‘rule of law’ for Bulgaria and Croatia for the time span 2010-2016:

Table 12: WGI ‘rule of law’ and ‘control of corruption’ for Bulgaria and Croatia 2010-2016

	2010	2011	2012	2013	2014	2015	2016
Bulgaria: rule of law	-0.07	-0.11	-0.09	-0.1	-0.05	-0.1	-0.04
Croatia: rule of law	0.2	0.22	0.25	0.29	0.32	0.2	0.44
Bulgaria: control of corruption	-0.19	-0.22	-0.23	-0.27	-0.25	-0.26	-0.16
Croatia: control of corruption	0.06	0.06	0.01	0.12	0.22	0.25	0.19
Estimate of governance (ranges from approximately -2.5 (weak) to 2.5 (strong) governance performance)							
Control of corruption: reflects perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests.							
Rule of Law: reflects perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.							
The Worldwide Governance Indicators (WGI), published by the World Bank, retrieved from http://info.worldbank.org/governance/wgi/#home							

Although the WGI indicators as ‘rule of law’ and ‘control of corruption’ reflect complex phenomena and could be considered too abstract in their nature, the table above provides valuable information. Croatia and Bulgaria might be placed close to each other regarding their geographical, political and cultural similarities. At the same time, Bulgaria joined the EU in 2007, while Croatia – in 2013. Nevertheless, Croatia scores higher in the two indexes in 2010 and shows significant progress through the six-year span. In comparison, Bulgaria, being a member state of the EU and subject to the CVM monitoring since 2007, demonstrates very slight improvements on the both ‘rule of law’ and ‘control of corruption’ indicators. The results are in line with the overall level of attainment of CVM goals for the period 2010-2017, discussed in section 4.1 *Explicit analysis* (‘yes’ – 3%, ‘yes, partially’ – 26.8%, ‘no’ – 57.8%).

The EC SRSS experts’ report was issued in 2016 due to the request from the Bulgarian government for an external independent analysis of the judicial reform (with regards to the prosecution, its functionality, and structure). The experts’ team has executed more than 200 interviews with prosecutors, investigators, police officers, judges, lawyers, journalists and NGOs’ representatives in Bulgaria. Overall, the EC experts have concluded significant deficiencies in the functioning of the judicial system, where the responsibility between the prosecutors and judges shall be shared. The report provides some specific recommendations to improve the performance of the judicial system (and within the prosecution in particular), summarized in the following table and tightly related to the CVM monitoring:

Table 13: SRSS experts' insights for the Bulgarian prosecution

Deficiency in the system	Possible measures
Insufficient level of accountability of the Prosecutor General (PG) to other institutions	<ol style="list-style-type: none"> 1. Decentralization of the prosecution: PG to act on the basis of clear documented procedures, in order all the actions to be subject to future external audits; 2. Deputy PG to be accountable to the National Investigation Authority and to participate in the process of investigation of high-level crimes of PG 3. Establishment of a parliamentary commission which monitors the work of PG. Also, PG to report to the Parliament every three months, discussing pitfalls and potential improvements in the legal framework and procedures.
Insufficient level of accountability within prosecution: any prosecutor accountable only to Prosecutor General	<ol style="list-style-type: none"> 1.Foundation of a chain of accountability: junior prosecutors to be accountable to direct administrative managers at the local level, while the managers – to Prosecutor General. 2.Establishment of external Inspectorate to control the prosecution's actions. Each case to be investigated with the cooperation of at least one foreign prosecutor.
Lack of efficiency of the investigation	<ol style="list-style-type: none"> 1.the prosecution investigation to be subject to judicial control 2.to establish legal possibility for initiating private prosecution according to the EU Directive 2012/29/EC 3.to minimize the focus of prosecution on civil and administrative cases, in order to keep the resources for the criminal ones
Human resources management, workload, and appraisals	<ol style="list-style-type: none"> 1.the local administrative managers to have more influence in hiring and appraisal of prosecutors 2.the salaries to be decided by the level of responsibility and workload 3.the formalistic appraisal to turn into a functional one, conducted at least once a year
Legal, procedural and institutional pitfalls against effective dealing with high corruption and organized crime	<ol style="list-style-type: none"> 1. The standard “inner conviction’ for the prosecutor’s decision making to be removed from the legal framework and to act only on clear procedures. 2. Judges demand too formal indictment acts as the prosecutors are “witnesses” to the crime. Legal amendment of the procedures for the preparation of indictment acts to be executed. 3. To place a legal limit how many times an indictment act can be returned to the prosecution 4. To revoke art.368 and art. 369 of the Penal Act, which provides a possibility for the prosecutors to act opportunistically 5.The phone calls about criminal cases on local level between officials to be recorded, in order to be subject to future external audit 6.To establish an anti-corruption agency, external from the prosecution 7.the assets to be confiscated in the start of the trial and those assets to be reinvested in conducting reforms in the judicial system

The prescribed experts' measures aim to improve the check and balances' system and accountability within the judicial system, and between the judicial bodies and external institutions, in order to enhance the judicial system's performance:

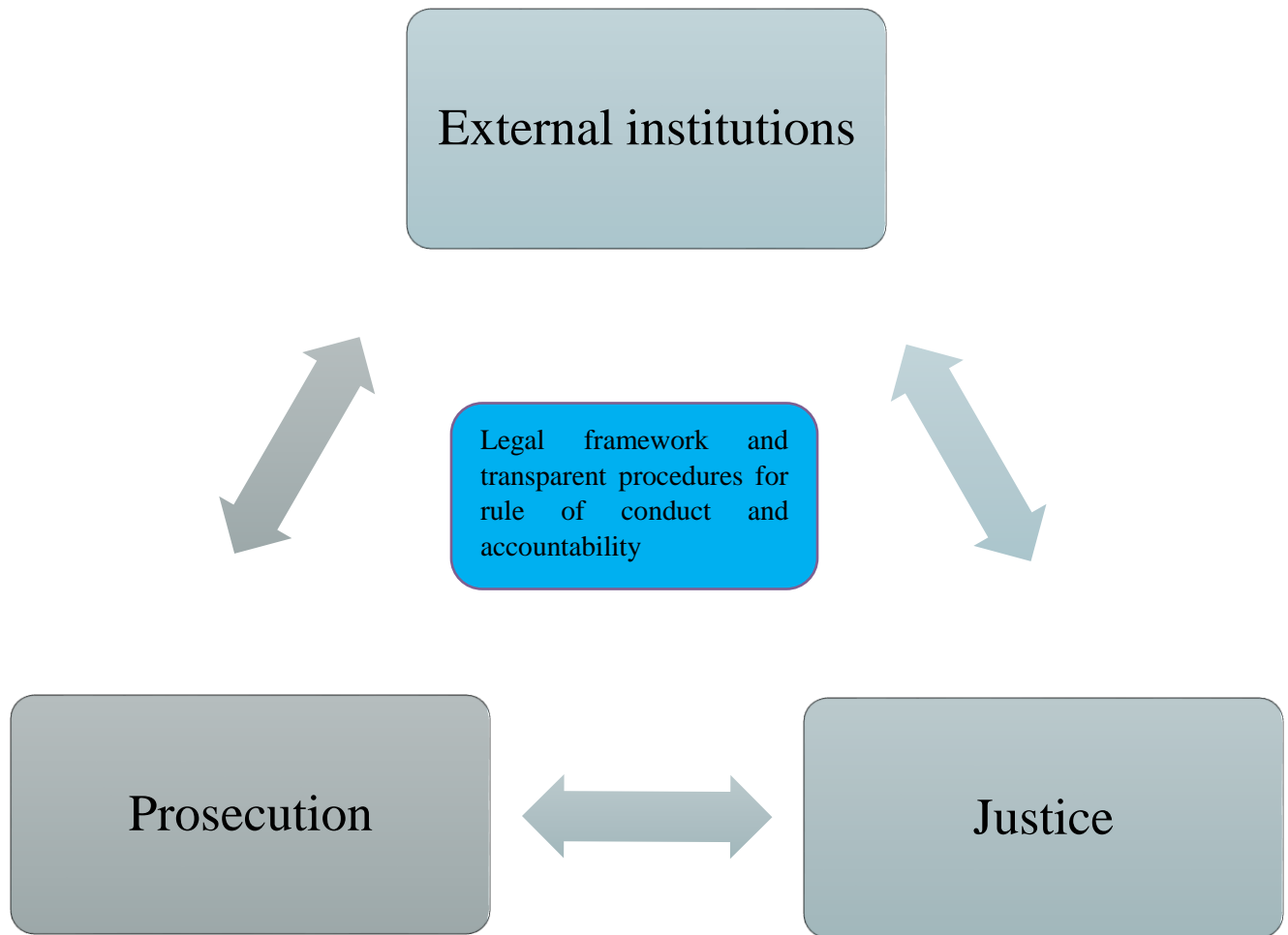


Figure 10: The SRSS experts' policy intent

Overall, the SRSS experts' report provides clarification of the most of the CVM recommendations and evaluation. Interestingly, the SRSS experts' report focuses predominantly on the background concepts of this study (in *Appendix 8: Description of the background concepts*). On the one hand, conducting a reform of any judicial system is indeed a complex task. On the other hand, the thorough external SRSS analysis and recommendations provide room for the Bulgarian authorities to act proactively, in order to improve the institutional design, accountability, and performance in the judicial system. The SRSS experts' report cites results from an official public poll, where 72% of Bulgarians believe that the institutions are incapable of fighting organized crime and high-level corruption. Furthermore, the EC experts state that

49% of the cases of high-level corruption with high-level of public interest are suspended in 2015, while the percentage of all ceased crimes is 24%. The experts express their concern with the lacking track record of successfully finalized high-level corruption cases.

To conclude, the findings and recommendations in the EC monitoring reports altogether with the WGI indicators for Bulgaria provide evidence that the reform implementation of the judicial system needs wider political support and more efforts of the Bulgarian authorities in the upcoming years. The good news is that the EC monitoring reports, analyzed in sections *4.1 Explicit analysis* and *4.2 Policy intent*, show tendency to become more specific through the period 2010-2017, which seems to contribute to improving the efficiency of the goal attainment in the Bulgarian judicial reform implementation. At last but not least, the recommendation for attaching external foreign experts in handling key issues provides an instrument to the Bulgarian authorities to adopt already tested good practices.

5 CONCLUSION

Chapter 5 answers the research question and reveals the scientific contribution of the study in section *5.1 Findings*, followed by *5.2 Academic implications*, which analyzes the findings through the theoretical framework, provided in **Chapter 2**. This master research suggests next reform steps in section *5.3 Policy recommendations*. The concluding section *5.4 Further research* provides directions for a next study.

5.1 Findings

This paragraph provides an answer to the main research question *what is the relationship between the transparency and consistency of the CVM monitoring and the reform implementation in the Bulgarian judicial system for the period 2010-2017?* The overall attainment of the CVM goals for the period reveals controversial success: ‘yes’ – 3%, ‘yes, partially’ – 26.8%, ‘no’ – 57.8% and ‘not available’ – 13.3%. These results (crosschecked by a second researcher) provoke concerns for the level of reform implementation, emphasized numerous times in the CVM reports. At the same time, the current master research has recognized a number of patterns which support the claim that the CVM monitoring over the Bulgarian judicial system shall be considered transparent and consistent for the period 2010-2017. Moreover, this study has gathered evidence that more specific and quantitative CVM goals contribute to more efficient Bulgarian judicial reform implementation within the time frame 2014-2017. The positive influence of more clearly stated measurable goals on the implementation process is not surprising for the public administration scientific literature. The study’s contribution to the academia comes from the

finding that the consistency of monitoring is also crucial for reform implementation under a longitudinal monitoring process.

At last but not least, the SRSS report provides clarification of the CVM goals. Interestingly, the SRSS experts' specific recommendations refer to the most of the background concepts discussed in **Chapter 2** as separation of powers, check and balances' system, accountability, institutional design, principal-agent theory. This reflects the complexity of a judicial reform implementation and explains the inclusion of the background concepts in the theoretical framework of the study. The next section 5.2 *Academic implications* reveals the scientific argumentation behind the stated findings.

5.2 Academic implications

The bottom line is that the CVM monitoring mechanism has not lead to the expected results yet. The main reason might be that various external from the monitoring factors stir the implementation process. **Chapter 2** enlisted variables which influence policy reform implementation as goal clarity/ambiguity, organizational structure & strategy, and managerial networking. A number of scholars (Van Dooren et al. 2010:32, Rainey & Jung 2012:52, Bruijn, J. 2007) define the transparency of the goals as a crucial determinant for improved reform implementation and measurement of performance. Rainey's categorization (2014) and the identified patterns in **Chapter 4** confirm the positive influence of the operative goals (in contrast to broad descriptive ones) on goal attainment.

The theoretical framework for organizational structure & strategy also explains some of the pitfalls in the Bulgarian judicial reform implementation. The rigid hierarchical Bulgarian judicial system and its agents naturally tend to obey a defending strategy against changes, while conducting reform often demands an innovative prospecting approach, that may lead to a higher degree of decentralization (Miles and Snow's model cited Walker et al. 2012:232). Moreover, decentralization pairs up with managerial networking governance, which according to Meier & O'Toole (2012:128) is crucial for organizational success in an interdependent environment. The Bulgarian judicial reform relies on a number of networks: within the judicial system institutions; between the governmental institutions and with external stakeholders (the EU) as a continuation of the European integration process. The high-density of various stakeholders in combination with the conservative rigid institutional nature of the Bulgarian judicial system might be decreasing the efficiency of the behavior reform implementation.

Above all, the CVM monitoring and the SRSS experts' reports in a nutshell state that the EU democratic principles demand Bulgarian citizens live in a society, where the rule of law is obeyed and the judicial system functions properly; where the organized crime is threatened by the government; where the standard

of living of the ordinary citizens in the poorest EU member state raises up significantly. In order to come to that point, most of the reform goals need to be implemented not only formally. In favor of an efficient judicial reform implementation, a broad consensus among the very wide political spectrum must be achieved. Naturally, the actual results are coming up in a slower pace than Bulgarians and the European Commission wish, which is justified in the academic literature on public management reform implementation and monitoring (measurement) of performance.

5.3 Policy recommendations

The results of this study reflect a share of 3% completely attained CVM goals for the period 2010-2017, which triggers the author to formulate policy recommendations for the next steps for the Bulgarian judicial reform implementation. This study's policy suggestions take into consideration the analyzed EC monitoring mechanisms over the member state for 2010-2017 in combination with the author's understanding of the cultural specificities in Bulgaria:

- Amendment of the Constitution and the Judicial System Act, in order to build a chain of accountability within prosecution and between prosecution and other institutions
- Legal and procedural amendments in favor of effective dealing with high corruption and organized crime, including: closing loopholes in the Penal Act and improving the rule of conduct's procedures in every judicial institution and department. All the measures shall follow the method 'try, measure the outcome, amend again if needed'
- The judicial officials' salaries have to be increased significantly in accordance with responsibility and workload. An average Bulgarian wage, received by a chief prosecutor or judge, who process cases for millions of euros, provokes corruption. The salary should correspond to the employee's influence in the process, and make the employee feel satisfied and significant of what is doing. Then, the personal motive for entering corruption schemes will be lowered, as the employee would prefer not to lose the adequate salary, social status, and reputation. All the public administration sectors in Bulgaria could apply such a remuneration approach.
- Foreign judicial experts from the EU shall be attached to the Bulgarian teams, which monitor operationally the reform implementation.
- At least one foreign judicial expert from the EU shall be attached to the operational work on every high-level corruption and/or organized crime case.

5.4 Further research

This study suggests a research design, which can provide a more thorough picture of the relationship between the external EC monitoring and the Bulgarian judicial reform implementation. The SRSS experts' model of reporting (based on data from 200 purposively selected interviews) in combination with the assessment of the CVM monitoring and the Bulgarian official responses represent a valuable combination of data sources and methods for further in-depth research. Such a research design could allow tracking the EU monitoring, the Bulgarian response, and ultimately, the contextual reasoning behind the level of reform implementation.

REFERENCES

- Andrews, R., & Entwistle, T. (2014). *Public service efficiency: Reframing the debate* (Routledge critical studies in public management). London: Routledge.
- Babbie, E. (2011). *The basics of social research* (5th ed. ed.). Australia: Wadsworth / Cengage Learning
- Blackman, NJ. & Koval JJ. (2000). Interval estimation for cohen's kappa as a measure of agreement. *Statistics in Medicine*, 19(5), 723-41.
- Bruijn, J. (2007). *Managing performance in the public sector* (Second edition. ed.). London: Routledge.
- Dimitrova, A. (2005). Europeanization and Civil Service Reform in Central and Eastern Europe. In Schimmelfennig, F & Sedelmeier, U. *The Europeanization of Central and Eastern Europe* (Cornell studies in political economy) (71-91). Ithaca, NY: Cornell University Press.
- European Commission (2017) Assistance to Bulgaria and Romania via CVM. Retrieved by https://ec.europa.eu/info/strategy/justice-and-fundamental-rights/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/cooperation-and-verification-mechanism-bulgaria-and-romania_en
- Fitschen, T. (2008). Inventing the rule of law for the united nations. *Max Planck Yearbook of United Nations Law Online*, 12(1), 347-380. doi:10.1163/18757413-90000028
- Goodin, R. (1996). Institutions and Their Design. In Goodin, R. (Eds), *The theory of institutional design* (1-54). Cambridge: Cambridge University Press.
- Gerring, J. & McDermott, R. (2007) An experimental template for case-study research. *American Journal of Political Science* 51(3): 688-701
- Glaser, B & Anselm Strauss (1967). *The Discovery of Grounded Theory: Strategies for Qualitative Research*. Chicago: Aldine.
- Hardin, R. (1996). Institutional Morality. In Goodin, R. (Eds), *The theory of institutional design* (126-154). Cambridge: Cambridge University Press.
- Heringa, A. (2016). *Constitutions compared: An introduction to comparative constitutional law* (Fourth revised and updated] edition. ed., *Ius commune* reeks, 104). Cambridge: Intersentia.
- Huberman, M. & Miles, M. (1994) Data Management and Analysis Methods. Pp. 428–44 In *Handbook of Qualitative Research*, edited by Norman K. Denzin and Yvonna S. Lincoln. Thousand Oaks, CA: Sage.

- Kassim, H. (2003). The principal-agent approach and the study of the European Union: *Promise Unfulfilled?* *Journal of European Public Policy*, 10, 121-139.
- Kiewiet, D.R., and McCubbins, M.D. (1991) *The Logic of Delegation: Congressional Parties and the Appropriations Process*, Chicago: University of Chicago Press.
- Meier, K & O'Toole, L. (2012). Managerial networking, managing the environment, and programme performance: a summary of findings and an agenda. In: Walker, R., Boyne, G., & Brewer, G. (2012). *Public management and performance: Research directions*. Cambridge: Cambridge University Press.
- Ministry of Justice of Bulgaria (2016). Structural Reform Support Service experts' report on Bulgarian Prosecution. Retrieved from:
<http://www.mjs.bg/Files/Executive%20Summary%20Final%20Report%20BG%2015122016.pdf>
- Moe, T.M. (1984) The new economics of organization. *American Journal of Political Science* 28(4): 739–777.
- Munoz, S., & Bangdiwala, S. (1997). Interpretation of kappa and b statistics measures of agreement. *Journal of Applied Statistics*, 24(1), 105-112.
- Offe, C. (1996). Designing Institutions in East European Transitions. In Goodin, R. (Eds), *The theory of institutional design* (199-227). Cambridge: Cambridge University Press.
- Pollitt, C. & Bouckaert, C. (2011). *Public management reform: A comparative analysis: New public management, governance, and the neo-Weberian state* (3rd ed. ed.): Oxford University Press.
- Rothstein, Bo (2009). Creating political legitimacy: electoral democracy versus quality of government. *American Behavioral Scientist*, Vol. 53, No. 3, 311–330.
- Rainey, H. & Jung, C. (2012). Extending goal ambiguity research in government: from organizational goal ambiguity to programme goal ambiguity. In: Walker, R., Boyne, G., & Brewer, G. (2012). *Public management and performance: Research directions*. Cambridge: Cambridge University Press.
- Rainey, H. G. (2014). *Understanding and managing public organizations* (Fifth edition.). (Essential texts for public and nonprofit and public leadership and management; Essential texts for nonprofit and public leadership and management). San Francisco, CA: Jossey-Bass, Wiley. Retrieved from
<http://public.eblib.com/choice/publicfullrecord.aspx?p=1595184>
- Ragin, C. & Becker, H (1992). *What Is a Case? Exploring the Foundations of Social Inquiry*. Cambridge, England: Cambridge University Press.

Schimmelfennig, F., Börzel, T., Langbein, J. and Toshkov, D. (2015). Enlargement and the Integration capacity of the EU. MAXCAP.

Schimmelfennig, F. Engert, S. & Sedelmeier, U. (2005). The Impact of EU Political Conditionality. In Schimmelfennig, F & Sedelmeier, U. *The Europeanization of Central and Eastern Europe (Cornell studies in political economy)* (29-51). Ithaca, NY: Cornell University Press.

Schimmelfennig & Sedelmeier, U. (2005). Introduction: Conceptualizing the Europeanization of Central and Eastern Europe. In Schimmelfennig, F & Sedelmeier, U. *The Europeanization of Central and Eastern Europe (Cornell studies in political economy)* (1-28). Ithaca, NY: Cornell University Press.

Seawright, J& Gerring, J, (2008). Case selection techniques in case study research. *Political Research Quarterly*, 61(2), 294-308

Strauss, A. & Corbin. J. (1998). Grounded Theory Methodology: An Overview. pp. 273–85 In *Handbook of Qualitative Research*, edited by Norman K. Denzin and Yvonna S. Lincoln. Thousand Oaks, CA: Sage. *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory*. Thousand Oaks, CA: Sage.

Vidlakova, O. (2001). Politico-administrative Relations in the Czech Republic. In *Politico-Administrative Relations: Who Rules?* Ed. Tony Verheijen, 86-109. Bratislava, Slovakia: NISPAcee

Van Dooren, W., Bouckaert, G., & Halligan, J. (2010). *Performance management in the public sector (Routledge masters in public management)*. Hoboken: Taylor & Francis.

Van Dooren, & W., Bouckaert (2009). Performance measurement and management in public sector organizations. In Bovaird, A., & Löffler, E. (2009). *Public management and governance* (2nd ed. ed.). London: Routledge.

Walker, R., Boyne, G., & Brewer, G. (2012). *Public management and performance: Research directions*. Cambridge: Cambridge University Press.

Walker, R. (2013). Strategic management and performance in public organizations: Findings from the miles and snow framework. *Public Administration Review -Washington Dc-*, 73(5), 675-685.

APPENDICES

Appendix 1: Operationalization of independent and dependent variables

Independent variable

Measurement	Definition	Operational definition	Attributes
IM ₁	textual clarity of the goals	Is the goal clearly described and separated from the other goals?	1: yes, to a great extent 2: yes, to a certain extent 3: no, to a certain extent 4: no, to a great extent
IM ₂	quantitative measurement availability of the goals	Are the quantitative indicators to measure the goal explicitly presented?	1: yes, to a great extent 2: yes, to a certain extent 3: no, to a certain extent 4: no, to a great extent
IM ₃	follow-up of non-achieved goals in the next report	Is a non-achieved goal present in the following report recommendation section?	1. Yes 2. No

Dependent variable

Measurement	Definition	Operational definition	Attributes
DM ₁	the extent to which the goals are attained	To what extent a goal is reported as attained in the following year?	1. Yes 2. Yes, partially 3. No 4. N/A

Appendix 2: List of official documents 2010-2017

Documents	2010	2011	2012	2013	2014	2015	2016	2017
I.EU level								
1.CVM country report	yes	yes	yes		yes	yes	yes	yes-2
2. Council conclusions on CVM reports	yes	yes	yes		yes	yes	yes	yes
3. European semester country report						yes	yes	yes
4. Council recommendations on the National Reform Program		yes	yes	yes	yes			
5. EU Commission's Structural Reform Support Service experts' report on Bulgarian Prosecutor Office							yes	
III. Other international								
2.Worldwide Governance Indicators for control of corruption and rule of law for Bulgaria	yes	yes	yes	yes	yes	yes	yes	

Appendix 3: Coding sheet for the analysis of the CVM reports

Goal	IM1		IM2		IM3		DM1	
	R1	R2	R1	R2	R1	R2	R1	R2
2010								
1.1								
1.2								
1.3								
1.4								
1.5								
1.6								
1.7								
1.8								
1.9								
1.10								
1.11								
2.1								
2.2								
2.3								
2.4								
3.1								
3.2								
3.3								
3.4								
3.5								
3.6								
3.7								
3.8								
3.9								
3.10								
3.11								
2011								
1.1								
1.2								
1.3								
1.4								
1.5								
1.6								
1.7								

1.8								
1.9								
1.10								
1.11								
2.1								
2.2								
2.3								
2.4								
2.5								
2.6								
2.7								
2.8								
3.1								
3.2								
3.3								
3.4								
3.5								
3.6								
3.7								
3.8								
3.9								
3.1								
3.11								
2012								
1.1								
1.2								
1.3								
1.4								
1.5								
1.6								
1.7								
1.8								
1.9								
1.10								
1.11								
1.12								
2.1								
2.2								
2.3								

3.1								
3.2								
3.3								
3.4								
3.5								
2014								
1.1								
1.2								
1.3								
1.4								
1.5								
1.6								
1.7								
1.8								
1.9								
1.10								
1.11								
1.12								
1.13								
1.14								
1.15								
2.1								
2.2								
2.3								
2.4								
2.5								
2.6								
3.1								
3.2								
3.3								
3.4								
2015								
1.1								
1.2								
1.3								
1.4								
1.5								

1.6								
1.7								
1.8								
1.9								
1.10								
1.11								
1.12								
2.1								
2.2								
2.3								
2.4								
3.1								
3.2								
3.3								
3.4								
3.5								
3.6								
3.7								
3.8								
2016								
1.1								
1.2								
1.3								
1.4								
1.5								
1.6								
1.7								
1.8								
1.9								
1.10								
1.11								
1.12								
1.13								
2.1								
2.2								
2.3								
3.1								
3.2								
3.3								

3.4								
3.5								
3.6								
3.7								
2017 (1)								
1.1								
1.2								
1.3								
1.4								
1.5								
1.6								
1.7								
1.8								
2.1								
2.2								
3.1								
3.2								
3.3								
3.4								
3.5								
3.6								
3.7								

Appendix 4: Results of data analysis of researcher 1 and researcher 2

		IM1				IM2				
Researcher 1	Overall	Yes, to a great extent	Yes, to a certain extent	No, to a certain extent	No, to a great extent	Yes, to a great extent	Yes, to a certain extent	No, to a certain extent	No, to a great extent	
2010	26	23	3	0	0	2	6	11	7	
2011	30	30	0	0	0	7	14	9	0	
2012	20	18	2	0	0	2	3	13	2	
2014	25	25	0	0	0	1	8	14	2	
2015	24	24	0	0	0	1	11	12	0	
2016	23	23	0	0	0	1	13	9	0	
2017(1)	17	17	0	0	0	3	8	6	0	
Overall	165	160	5	0	0	17	63	74	11	
Researcher 2										
2010	26	25	1	0	0	2	6	11	7	
2011	30	30	0	0	0	8	13	8	1	
2012	20	19	1	0	0	1	7	11	1	
2014	25	25	0	0	0	2	12	10	1	
2015	24	24	0	0	0	3	14	7	0	
2016	23	23	0	0	0	3	14	6	0	
2017(1)	17	16	1	0	0	5	9	3	0	
Overall	165	162	3	0	0	24	75	56	10	

		IM3		DM1			
Researcher 1	Overall	Yes	No	Yes	Yes, partially	No	Not available
2010	26	13	5	0	4	18	4
2011	30	9	10	0	7	19	4
2012	20	9	1	0	6	10	4
2014	25	16	5	0	1	21	3
2015	24	9	4	2	6	13	3
2016	23	7	3	3	7	10	3
2017(1)	17			0	12	4	1
Overall	165	63	28	5	43	95	22
Researcher 2							

2010	26	14	4		2	2	18	4
2011	30	9	10		1	7	20	2
2012	20	8	2		1	7	10	2
2014	25	14	7		0	2	21	2
2015	24	9	4		4	4	13	3
2016	23	8	2		5	6	10	2
2017(1)	17				3	10	4	0
Overall	165	62	29		16	38	96	15

Goal	IM1		IM2		IM3		DM1	
	R1	R2	R1	R2	R1	R2	R1	R2
2010								
1.1	1	1	1	1	2	2	3	3
1.2	1	1	3	3			2	1
1.3	1	1	4	4	1	1	3	3
1.4	1	1	4	4	1	1	3	3
1.5	1	1	3	3	1	1	3	3
1.6	2	1	2	2			4	4
1.7	1	1	4	4	1	1	3	3
1.8	1	1	3	3	2	1	3	3
1.9	1	1	3	2			2	1
1.10	2	2	4	4			4	4
1.11	1	1	2	2			4	4
2.1	1	1	2	3	1	2	3	3
2.2	1	1	4	4	1	1	3	3
2.3	1	1	3	3	1	1	3	3
2.4	1	1	3	3	1	1	3	3
3.1	1	1	4	3	1	1	3	3
3.2	1	1	3	2	1	1	3	3
3.3	1	1	2	2	2	1	3	3
3.4	2	1	4	4	1	2	3	3
3.5	1	1	2	3	2	1	3	3
3.6	1	1	1	1			2	2
3.7	1	1	2	2			2	1
3.8	1	1	3	3	1	1	3	3
3.9	1	1	3	3			4	4
3.10	1	1	3	4	1	1	3	3
3.11	1	1	3	3	2	2	3	3

2011									
1.1	1	1	3	3				2	2
1.2	1	1	2	2				2	2
1.3	1	1	2	1	1	1		3	3
1.4	1	1	1	1	2	2		3	3
1.5	1	1	1	2				4	4
1.6	1	1	2	2	1	1		3	3
1.7	1	1	3	3				4	4
1.8	1	1	3	4				4	3
1.9	1	1	2	2	1	2		3	3
1.10	1	1	1	1	2	2		3	3
1.11	1	1	2	1	1	1		3	3
2.1	1	1	3	3	1	1		3	3
2.2	1	1	3	2				2	2
2.3	1	1	2	2				2	2
2.4	1	1	2	2	2	2		3	3
2.5	1	1	2	2				2	2
2.6	1	1	1	1	2	2		3	3
2.7	1	1	3	3	1	1		3	3
2.8	1	1	1	2	2	2		3	3
3.1	1	1	3	3	2	2		3	3
3.2	1	1	2	3	2	1		3	3
3.3	1	1	3	3				2	2
3.4	1	1	2	3	1	1		3	3
3.5	1	1	2	2	2	2		3	3
3.6	1	1	1	1	1	1		3	3
3.7	1	1	2	1	2	2		3	3
3.8	1	1	2	2	1	1		3	3
3.9	1	1	1	1				4	2
3.1	1	1	3	2				2	1
3.11	1	1	2	2	2	2		3	3
2012									
1.1	1	1	4	3				2	2
1.2	1	1	3	3				2	2
1.3	1	1	3	3				2	2
1.4	2	1	4	4				2	1
1.5	1	1	3	3	1	1		3	3
1.6	2	2	3	3	1	1		3	3
1.7	1	1	1	2	1	1		3	3

1.8	1	1	3	3			4	2
1.9	1	1	2	2	1	1	3	3
1.10	1	1	3	3	1	1	3	3
1.11	1	1	3	2	1	1	3	3
1.12	1	1	3	3			4	4
2.1	1	1	3	3	1	1	3	3
2.2	1	1	2	2	1	1	3	3
2.3	1	1	1	1	1	2	3	3
3.1	1	1	3	3	2	2	3	3
3.2	1	1	3	2			2	2
3.3	1	1	2	2			2	2
3.4	1	1	3	3			4	4
3.5	1	1	3	2			4	2
2014								
1.1	1	1	3	2	1	1	3	3
1.2	1	1	3	3	1	1	3	3
1.3	1	1	3	3	1	1	3	3
1.4	1	1	2	2	1	1	3	3
1.5	1	1	4	3	2	2	3	3
1.6	1	1	4	4	2	2	3	3
1.7	1	1	3	3			2	2
1.8	1	1	2	2	1	1	3	3
1.9	1	1	3	2			4	4
1.10	1	1	2	2	1	1	3	3
1.11	1	1	2	2	2	2	3	3
1.12	1	1	2	2	1	1	3	3
1.13	1	1	2	2			4	2
1.14	1	1	3	3	1	1	3	3
1.15	1	1	2	1	1	1	3	3
2.1	1	1	3	3	1	2	3	3
2.2	1	1	3	3	1	1	3	3
2.3	1	1	3	2	2	2	3	3
2.4	1	1	3	2	1	1	3	3
2.5	1	1	3	3	2	2	3	3
2.6	1	1	3	3			4	4
3.1	1	1	1	1	1	1	3	3
3.2	1	1	3	3	1	1	3	3
3.3	1	1	3	2	1	1	3	3
3.4	1	1	2	2	1	2	3	3

2015									
1.1	1	1	3	2			1	1	
1.2	1	1	3	3	1	1	3	3	
1.3	1	1	2	1			1	2	
1.4	1	1	2	2	1	1	3	3	
1.5	1	1	3	3	1	1	3	3	
1.6	1	1	2	2			2	1	
1.7	1	1	3	2			2	2	
1.8	1	1	2	2			4	4	
1.9	1	1	2	2			2	1	
1.10	1	1	3	3	1	1	3	3	
1.11	1	1	3	3			4	4	
1.12	1	1	3	2	1	1	3	3	
2.1	1	1	3	3	2	2	3	3	
2.2	1	1	2	2	1	1	3	3	
2.3	1	1	2	2	2	2	3	3	
2.4	1	1	3	2	2	2	3	3	
3.1	1	1	1	1	1	1	3	3	
3.2	1	1	3	3			2	2	
3.3	1	1	2	2			2	1	
3.4	1	1	2	2	1	1	3	3	
3.5	1	1	2	1			4	4	
3.6	1	1	3	3			2	2	
3.7	1	1	3	2	2	2	3	3	
3.8	1	1	2	2	1	1	3	3	
2016									
1.1	1	1	3	2			1	1	
1.2	1	1	3	3			2	2	
1.3	1	1	2	2			1	1	
1.4	1	1	2	2			2	2	
1.5	1	1	3	3			2	1	
1.6	1	1	3	2			2	2	
1.7	1	1	3	3	1	1	3	3	
1.8	1	1	2	2	1	1	3	3	
1.9	1	1	2	2	2	1	3	3	
1.10	1	1	1	1			2	2	
1.11	1	1	2	2	2	2	3	3	

1.12	1	1	2	2			4	4
1.13	1	1	2	1			1	1
2.1	1	1	2	2			4	4
2.2	1	1	3	3	2	2	3	3
2.3	1	1	2	2	1	1	3	3
3.1	1	1	2	2			2	1
3.2	1	1	2	1	1	1	3	3
3.3	1	1	3	2	1	1	3	3
3.4	1	1	2	2	1	1	3	3
3.5	1	1	2	2			4	2
3.6	1	1	3	3	1	1	3	3
3.7	1	1	3	3			2	2
2017 (1)								
1.1	1	1	2	1			2	2
1.2	1	1	2	2			4	2
1.3	1	1	3	2			2	2
1.4	1	1	3	3			2	2
1.5	1	1	2	2			2	1
1.6	1	1	1	1			3	3
1.7	1	1	1	1			2	2
1.8	1	1	1	1			2	2
2.1	1	2	2	2			2	1
2.2	1	1	3	3			2	2
3.1	1	1	3	2			3	3
3.2	1	1	3	3			2	2
3.3	1	1	2	1			3	3
3.4	1	1	2	2			2	2
3.5	1	1	3	2			2	2
3.6	1	1	2	2			3	3
3.7	1	1	2	2			2	1

Appendix 5: Cohen's Kappa interpretation and results of the agreement between the two researchers

Kappa statistic (k)	Strength of agreement
<0	Poor
0-0.2	Slight
0.2-0.4	Fair
0.4-0.6	Moderate
0.6-0.8	Substantial
0.8-1	Almost perfect

Guidelines of Landis and Koch

(cited in Munoz & Bangdiwala 1997:106)

IM1 * IM1 Crosstabulation

Count

		IM1		Total
		Yes, to a great extent	Yes, to a certain extent	
IM1	Yes, to a great extent	160	0	160
	Yes, to a certain extent	3	2	5
Total		163	2	165

Symmetric Measures

		Value	Asymp. Std. Error ^a	Approx. T ^b	Approx. Sig.
Measure of Agreement	Kappa	.564	.225	8.049	.000
N of Valid Cases		165			

a. Not assuming the null hypothesis.

b. Using the asymptotic standard error assuming the null hypothesis.

IM2 * IM2 Crosstabulation

Count

		IM2				Total
		Yes, to a great extent	Yes, to a certain extent	No, to a certain extent	No, to a great extent	
IM2	Yes, to a great extent	14	3	0	0	17
	Yes, to a certain extent	10	49	4	0	63
	No, to a certain extent	0	23	49	2	74
	No, to a great extent	0	0	3	8	11
Total		24	75	56	10	165

Symmetric Measures

		Value	Asymp. Std. Error ^a	Approx. T ^b	Approx. Sig.
Measure of Agreement	Kappa	.584	.053	11.144	.000
N of Valid Cases		165			

a. Not assuming the null hypothesis.

b. Using the asymptotic standard error assuming the null hypothesis.

IM3 * IM3 Crosstabulation

Count

		IM3			Total
		0	Yes	No	
IM3	0	74	0	0	74
	Yes	0	57	6	63
	No	0	5	23	28
Total		74	62	29	165

Symmetric Measures

		Value	Asymp. Std. Error ^a	Approx. T ^b	Approx. Sig.
Measure of Agreement	Kappa	.893	.030	15.475	.000
N of Valid Cases		165			

- a. Not assuming the null hypothesis.
- b. Using the asymptotic standard error assuming the null hypothesis.

DM1 * DM1 Crosstabulation

Count

		DM1				Total
		Yes	Yes, partially	No	Not available	
DM1	Yes	4	1	0	0	5
	Yes, partially	13	30	0	0	43
	No	0	0	95	0	95
	Not available	0	6	1	15	22
Total		17	37	96	15	165

Symmetric Measures

		Value	Asymp. Std. Error ^a	Approx. T ^b	Approx. Sig.
Measure of Agreement	Kappa	.785	.040	15.071	.000
N of Valid Cases		165			

- a. Not assuming the null hypothesis.
- b. Using the asymptotic standard error assuming the null hypothesis.

Appendix 6: Index of figures

Figure 1: Interaction between public management reform implementation and monitoring (measurement) of performance (Van Dooren et. all 2010:105)	4
Figure 2: Key concepts' interaction scheme (in purple marked the scope of this master research).....	4
Figure 3: A model of public management reform (Pollitt & Bouckaert 2011:33)	5
Figure 4:Dimensions of public management reform, affecting performance in the administrative system..	6
Figure 5: The logic behind the research design.....	11
Figure 6: Quantitative measurement availability of the goals 2010-2017.....	21
Figure 7: Goal attainment 2010-2017.....	23
Figure 8: Goals' quantitative measurement availability and goal attainment 2010-2017	25
Figure 9: Graphic representation of IM ₂ and DM ₁ results for researcher 1 and researcher 2	27
Figure 10: The SRSS experts' policy intent	31

Appendix 7: Index of tables

Table 1: Exogenous and Endogenous concept	9	
Table 2: Objectives and methods of the master thesis	13	
Table 3: Operationalization process	15	
Table 4: Operationalizing the independent variable	15	
Table 5: Clarification of the attributes of the measurement of the independent variable	16	
Table 6: Operationalizing the dependent variable	18	
Table 7: Clarification of the attributes of the measurement of the dependent variable	18	
Table 8: Follow-up of non-achieved goals	22	
Table 9: Results of IM ₃ measurement: researcher 1 and researcher 2	26	
Table 10: Guidelines of Landis and Koch	Table 11: Results of the inter-rater agreement	28
Table 12: WGI 'rule of law' and 'control of corruption' for Bulgaria and Croatia 2010-2016	29	
Table 13: SRSS experts' insights for the Bulgarian prosecution	30	

Appendix 8: Description of the background concepts

Background concepts represent a broader theoretical framework of this study and reflect the contextual factors which might be influencing the Bulgarian judicial reform implementation. The background concepts of this study are public agent theory, institutional design, check and balances system, accountability, European Integration process, rule of law:

Public agent theory:

- ‘an analytic expression of the agency relationship, in which one party, the principal, considers entering into a contractual agreement with another, the agent, in the expectation that the agent will subsequently choose actions that produce outcomes desired by the principal’ Moe (1984: 756).
- The asymmetric distribution of information in favor of the agent provides a room for opportunistic behavior (for the agent) (Kiewiet & McCubbins 1991). The limited access to information of the principal reduces the probability of detection of the agent’s opportunistic behavior (Kassim 2003:124).
- Pollack (1997:108) describes two approaches for monitoring. The first one (ex-ante) comprises of the principal’s administrative control procedures before execution, obeyed by the agent. The second set of measures is ex-post by imposing sanctions as budgetary cuts, for instance

Institutional design:

- Reasons an institution to fail to achieve its goals Hardin (1996:207): the failure of the institution itself (because of weak institutional design) or the failure of individual actions (Public-agent theory)
- The properly functioning institution depends on both the set of rules and morality of the employees Goodin (1996:39)
- The institution might be flexible in admitting its imperfection in order to perform “learning by doing.” At the same time, the good institutional design predisposes to the robustness of the institution. This explains a trade-off between robustness and flexibility of an institutional design (Offe 1996:206). The more stable the institution is, the more difficult reforms within the system would be performed.

Check and balances system and accountability:

- aims to ensure that no single branch (executive, legislative, judicial) accumulates too much power for itself (Heringa 2016:29);

- the check and balances' system between governmental institutions is tightly related to the level of accountability between them. Accountability is a multidimensional concept related to (but not limited to) democratic regime, good governance, and legitimacy Rothstein (2009:323). The correct application of the accountability instrument ideally leads to mutual control of institutions, while too weak or too emphasized accountability between institutions may influence the doctrine of separation of powers negatively.

European Integration process:

- influences to a great extent the institutional reforms in the Central and Eastern European (CEE) member states;
- “administrative reform in CEE countries involves nothing less than the definitions of a new concept of statehood” (Vidlakova 2001:106)
- An important remark of the CEE countries is to what extent the reforms were only formally consolidated, while behavior adoption was lacking before their accession in the EU (Dimitrova 2005:89). The trade-off of EU membership for a proven track record of domestic public reforms delivered not only the instant demanded results, but also provided “social learning” for the new democracies (Schimmelfennig & Knobel 2005:2).
- In some cases, a phenomenon of backsliding from reforms has been identified among the new member states from Central and Eastern Europe (Schimmelfennig et. al 2015:21)
- The CVM monitoring mechanisms over Bulgaria and Romania could be categorized as a unique instrument for continuity of the European integration process. Informally, the monitoring over Bulgaria and Romania is a trade-off of successful judicial reform implementation for the membership of both countries in the Eurozone and Schengen.

Rule of law

- UN definition - “a principle of governance in which all persons, institutions, and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights and standards” (Fitschen 2008:3)

Appendix 9: Coding of the CVM reports 2010-2017

EN

EN

EN



EUROPEAN COMMISSION

Brussels, 20.7.2010
COM(2010) 400 final

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

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

{SEC(2010) 948}

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

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

1. INTRODUCTION

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

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

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

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

¹ Commission Decision 2006/929/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform, the fight against corruption and the fight against organised crime (OJ L 354, 14.12.2006, p. 58).

² The report is based on regular input received from the Bulgarian authorities notably in response to detailed questionnaires from the Commission. The Commission has been assisted in its work by experts and has drawn on documentation and input provided by a variety of sources. The accompanying staff working paper sets out the Commission's detailed assessment of progress in each of the benchmarks set by the decision on the CVM.

2. STATE OF THE REFORM PROCESS IN BULGARIA

Achievements

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

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

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

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

Reform of the Judiciary

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

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

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

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

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

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

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

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

Fight against Organised Crime

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

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

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

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

Fight against Corruption

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

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

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

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

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

³ During the period August 2009 - May 2010, Bulgaria reports that, in the framework of the central administration, 185 signals were filed under the law for the prevention and detection of the conflict of interest and 198 inspections were carried out. In 33 cases disciplinary sanctions were imposed and penal orders were issued against 7 individuals.

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

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

3. CONCLUSIONS

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

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

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

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

4. RECOMMENDATIONS

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

Recommendations regarding the Reform of the Judiciary

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

- (1) ^{1.2} 1.1 Implement the new judicial strategy in order to achieve a profound reform of the judiciary. Adopt and implement changes to the Judicial Systems Act that aim at improving training, appraisal and appointment within the judiciary and ^{1.3} to strengthen the accountability and efficiency of the Supreme Judicial ^{1.4} Council. Strengthen the accountability of the judiciary through a strict application of all legal and disciplinary means to sanction corruption and trade in influence.
- (2) ^{1.5} 1.5 Improve judicial practice within the prosecution and the courts through a detailed analysis of shortcomings, in cooperation with foreign experts. ^{1.6} 1.6 Develop manuals of best practice, training programmes and coaching schemes for specific cases and introduce ^{1.7} systematic management supervision in courts and prosecutors offices. Promote specific training and the specialisation of police services, prosecutors and judges to enhance their expertise and effectiveness in pursuing complex cases in particular regarding economic and financial crime and organised crime. ^{1.8}
- (3) ^{1.9} 1.9 Pursue work on a new Penal Code in the light of the new Concept of Penal Policy adopted by the Government on 23 June 2010, which contributes to judicial efficiency through i.e. a decriminalisation of obsolete and petty ^{1.10} offences. Continue monitoring the implementation of the new procedure ^{1.11} codes and consider further improvements. Pursue the creation of a medical inspection agency to improve the quality and expediency of medical certificates requested by court.

Recommendations regarding the Fight against Organised Crime

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

- (4) ^{2.1} 2.1 Strengthen the capacity of the joint teams on organised crime, extend their competence to all organised crime cases and associate CEPACA to assure the freezing and forfeiture of relevant assets during the investigative phase according to operational requirements.
- (5) ^{2.2} 2.2 Pursue the reform of police in order to create a competent criminal police force able to apply best practices of other Member States.

- (6) ^{2.4} 2.3 Strengthen further asset forfeiture legislation following the principle of "non-conviction based civil confiscation" and recommendations by the Council of Europe's Venice Commission, in particular to ensure the application of law while respecting fundamental rights and freedoms. Consider a right of initiative for the Commission for the forfeiture of Criminal Assets (CEPACA) to initiate proceedings to secure and forfeit assets, introduce rules to secure assets early in the investigative phase in cooperation with the prosecution and extend the group of related persons to better target criminal activity through forfeiture.

Recommendations regarding the Fight against Corruption

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

- (7) ^{3.2} 3.1 Improve judicial practice in high-level fraud and corruption cases in line with best practice in other Member States. Apply a comprehensive and pro-active investigative strategy which systematically investigates links between related cases, aspects of organised crime and links to administrative authorities. In order to step up the fight against high-level corruption, Bulgaria should apply legal possibilities for detention in serious cases more strictly and improve the protection of the witnesses in line with best practice in other Member States. ^{3.3}
- (8) ^{3.5} 3.4 Strengthen the law on the prevention of conflicts of interest, notably through an authority with a pro-active mandate in charge of identifying and sanctioning conflict of interest. Accelerate the implementation of the action plan to implement the National Anti-Corruption Strategy.
- (9) ^{3.7} 3.6 Perform a continuous risk assessment regarding the implementation of public procurement legislation and target prevention and control activities accordingly in a pro-active and result-oriented manner. Strengthen the capacity of the competent administrative authorities to perform ex-ante and ex-post checks and strengthen the capacity of its help desk where contracting ~~3.8 authorities can seek advice~~ → Ensure that all existing sanctions for infringements of public procurement rules against individuals, including disciplinary measures, are fully implemented to strengthen deterrence.
- (10) ^{3.10} 3.9 Encourage cooperation between procurement authorities to regroup tenders with a view to pool expertise and create economies of scale. Strengthen the training efforts for officials of the competent authorities in order to identify and prevent conflict of interest and other important irregularities in public ~~3.11 procurement~~ → Develop and apply best practice of systematic cooperation between competent administrative authorities with judicial authorities.



EUROPEAN COMMISSION

Brussels, 20.7.2011
COM(2011) 459 final

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

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

{SEC(2011) 967 final}

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

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

1. INTRODUCTION

The Co-operation and Verification Mechanism¹ (CVM) was established on the accession of Bulgaria to the EU to help Bulgaria put in place an impartial, independent and effective judicial and administrative system. Changing the legal and judicial system to further align it with other Member States is a national task. It requires the government to prepare and propose the key framework laws, the Parliament to adopt them and the judiciary to change its procedures and practise to implement them as intended. Since 2007 the CVM has played a supportive role in helping Bulgaria put in place the structures of a modern judicial system. At times the CVM has been contested and criticised by one or other element of this necessary national consensus but today it is widely acknowledged that it has helped promote change in a positive direction. The Bulgarian Government has shown determination and commitment in driving the reform process. In five years the emphasis has shifted from the preparation and adoption of laws to their implementation. The elements of the legal framework needed for the reform are now largely in place, even if not complete. As will be seen from this report the next necessary steps in this process should focus on implementation by the judiciary and the police of the new laws.

This report is the fifth annual report since the CVM was set up.² In summer 2012, five years after the inception of the CVM, the Commission will make an overall assessment of Bulgaria's progress under the CVM since accession, and will make appropriate proposals in the light of this assessment. The present report includes a number of specific recommendations to help Bulgaria to prepare for this overall assessment.

¹ Commission Decision 2006/929/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform, the fight against corruption and the fight against organised crime (OJ L 354, 14.12.2006, p. 58).

² The report is based on regular input received from the Bulgarian authorities notably in response to detailed questionnaires from the Commission. The Commission has been assisted in its work by independent experts and has drawn on documentation and input provided by a variety of sources. The accompanying supporting document sets out the Commission's detailed assessment of progress in each of the benchmarks set by the decision on the CVM.

2. STATE OF THE REFORM PROCESS IN BULGARIA

Achievements and Challenges

Since the Commission's last report in July 2010, Bulgaria strengthened the Supreme Judicial Council and improved rules for the appointment, professional training, appraisals and promotions of judges. Bulgaria took steps to improve protection against conflict of interest. Reform of police investigations was started and a decision to establish a special court for organised crime cases was taken. A new law on asset forfeiture was presented to Parliament but was rejected by it on 8 July. Amendments^{1.9} to the Act on Public Procurement have been prepared. First results of amendments to the Penal Procedure Code became available in spring 2011 and the effects of monitoring of high level cases by the Supreme Judicial Council are visible. Several organised crime and corruption cases have reached verdicts in court. At the same time, an increased number of indictments in cases related to organised crime and fraud with EU funds have been achieved.

- 1.4 However, the Commission's assessment also points to important challenges. Since last summer, a number of acquittals in cases involving high-level corruption, fraud and organised crime have exposed serious deficiencies in judicial practice in Bulgaria.^{1.5, 1.3} These deficiencies have not been properly analysed or followed up by the leadership of the judiciary, the Supreme Judicial Council, the General Prosecutor and the President of the Supreme Court of Cassation.^{1.2} Although the revised Judicial System Act adopted in December strengthens the judiciary's accountability, the law has not yet been implemented as intended. The quality and transparency of several important appointments within the judiciary since the beginning of this year have been questioned, leading to unprecedented public protests and a debate on possible constitutional amendments. In addition, allegations of corruption within the judiciary are still not pursued in a systematic way as recommended by the Commission.

Overall, the Commission finds that the Bulgarian Government has shown sustained political will and commitment to pursue its reform strategy. This commitment will have to be sustained in all areas where laws have been improved and new structures have been created. A stronger engagement by professional associations of magistrates and civil society is also supported by increased public demand for an irreversible reform process. But the leadership of the judiciary has yet to show a real commitment to thorough judicial reform as slow progress is not just the result of shortcomings in judicial practice and in the Penal Code.

Reform of the Judiciary

- 1.2 With amendments to the *Judicial System Act* in December, Bulgaria created the legal basis for important structural improvements within the judicial system. The amendments improve procedures for appointments, training and appraisal and strengthen integrity.^{1.8} These improvements must be considered an important step to deliver on two of the long-term objectives of Bulgaria's justice reform strategy: improving accountability and increasing professionalism within the judiciary.
- 1.8 Considerable efforts will be required in the following period to implement these new legal provisions. More specialised training is needed. It should focus in particular on improving the investigative capacity needed to effectively tackle corruption and

organised crime, notably as regards complex economic and financial investigations. Overall, the Supreme Judicial Council will need to show a strong commitment to reform by translating the new law into practice in order to effectively strengthen the management of judicial bodies, notably in terms of allocation of workload, in close cooperation with the Ministry of Justice, professional association and civil society.

1.2 *Judicial appointments* still lack the necessary level of transparency and credibility. An important senior appointment by the Supreme Judicial Council in November 2010 raised concerns as regards the lack of transparency and competitive character. The entry into force of the newly amended provisions of the Judicial Systems Act in January 2011, has unfortunately not yet improved the situation as regards senior appointments, which have been still carried out under the old rules and lacked real assessment of the professional qualifications, managerial skills and personal integrity of candidates. Furthermore, a recent nomination was followed by allegations of conflict of interest and procedural irregularities in an ongoing trial handled by the successful candidate. As a protest, two members of the Supreme Judicial Council resigned and criticised the appointment decisions as pre-determined. The subsequent mobilisation of professional associations of magistrates and civil society calling for reform of the Supreme Judicial Council sends an important signal of support for judicial reform. Recommendations by civil society to hold public debates and announce the names of candidates at an earlier stage are laudable. The appointment of highly competent and motivated magistrates of unquestionable integrity via transparent procedures, in particular for the new specialised court for organised crime, is indispensable to successfully implement judicial reform.

1.3, 1.4 *The accountability of the judiciary* remains an area of serious concern. Since the Commission's last annual assessment, several new disciplinary cases have been opened and two magistrates have been excluded from the judiciary. At the same time, allegations against magistrates are not always systematically investigated by the judicial inspectorate and some disciplinary sanctions appear lenient. Criminal investigations against magistrates are still not systematically launched by the prosecution upon allegations of corruption. The decision of the Supreme Judicial Council in June to involve a magistrate with a disciplinary record in the recruitment panel for the new specialised criminal court raises serious concerns. Overall, there is a lack of consistent disciplinary practice. These problems remain a major factor undermining public trust in the judiciary.

1.5 *Improving judicial practice* remains the main challenge for the Bulgarian judiciary. Amendments to the Penal Procedure Code in spring 2010 and a strict monitoring of high-level cases by the Supreme Judicial Council has shown positive results in some cases. In the last reporting period, 9 of the cases monitored by the Commission have been decided by court, including four with final decisions.

However, despite some individual actions, the judiciary did not engage in a serious effort to address the Commission's recommendations in this area. Shortcomings in judicial practice have not been systematically analysed and addressed.

1.8 comprehensive training programmes and coaching schemes have not been launched. The generally passive attitude of the judiciary's leadership, the Supreme Judicial Council, the General Prosecutor and the President of the Supreme Cassation Court towards considerable shortcomings in judicial practice raise serious concerns. There is a need to improve judicial practice and reform the management, structures and

cooperation between the judiciary and other investigative bodies, including the police. The judiciary and the Government, in association with civil society, should cooperate to identify and overcome the existing shortcomings and bottlenecks, while fully respecting the independence of the judiciary |

Fight against Organised Crime

- 2.2 Since the last annual report of the Commission, Bulgaria has pursued *police reform*. A reorganisation of the competent police directorates led to an integration of operative and investigative police work and to a substantial increase in the number of police investigators | Bulgaria should continue its efforts for police reform and link it to a wider reform of pre-trial investigations. This will require establishing effective operational cooperation with the prosecution and other authorities, the application of the principle of joint teams in all serious crime cases and investment in equipment and specialised training.
- 2.2 In spite of persevering police actions to tackle organised crime, the overall *results* need to be significantly improved | Although the joint team on organised crime achieved several indictments related to important organised crime-groups and some convictions have been rendered, other important cases have been concluded with acquittals since the Commission's last annual report. | In appeal, severe detention sentences have been pronounced but not yet enforced in one emblematic organised crime case. Weaknesses exist in the collection of evidence, the protection of witnesses as well as in investigative strategies, comprehensive financial investigations and the securing of assets. The General Prosecutor should systematically analyse the reasons for acquittals in high level cases, make recommendations for the handling of future cases when shortcomings in the procedure have been identified and appeal the acquittal decisions when it appears that the Courts did not properly assess the evidence provided. |
- Since the Commission's last annual report, Bulgaria decided to reform the judicial structures that deal with organised crime cases. A *specialised criminal court and prosecution office* will be established by January 2012. In the preparation for the setting up of the specialised structure, it will be important to secure its effectiveness and independence. In particular, the court's attribution of cases must be balanced with its staff capacity in order to allow for swift and effective investigations, prosecution and sentencing of organised crime cases. The court must receive experienced staff with undisputable integrity and professional record. The concept of joint teams should be preserved at the level of the prosecution. |
- 2.3 Since the Commission's last annual report, the Bulgarian authorities pursued plans to strengthen *asset forfeiture* following recommendations by the Commission: A new legislative act was prepared in cooperation with the Council of Europe, but was rejected by Parliament. The proposal foresees the forfeiture of assets independent of a criminal conviction. It also foresees ex-officio asset verification of senior officials and politicians. Bulgaria needs to pursue urgently the adoption of this asset forfeiture legislation, despite recent setbacks in Parliament. | Other weaknesses of asset forfeiture must still be addressed: Assets must be identified and secured at early stages of investigations before they can be hidden or moved. For this purpose, efficient cooperation must be established between the asset forfeiture commission,

financial institutions, administrative authorities and the prosecution including the joint teams.

Fight against Corruption

The *fight against high-level corruption* has not yet led to convincing results. There have been very few final and enforced verdicts in this area and there are no indications of active targeting of high-level corruption.

3.1 Since last summer, two suspended sentences were pronounced in cases of high-level fraud and corruption. Two cases against former ministers finished with an acquittal. Two other cases involving a former minister and a high public official have met difficulties and delays in court.³ Appeals in two cases involving fraud of EU funds and money laundering, reported last year, remain pending in court with little movement. A number of cases involving EU funds were terminated by the prosecution despite indications of fraud provided by OLAF and the judicial authorities of another Member State. Since the Commission's last annual report, Bulgaria registered acquittals in a number of important fraud and corruption cases. A Member of Parliament has been acquitted of conflict of interest charges and a former director of a Paying Agency for EU funds has been acquitted of abuse in office and concluding unfavourable contracts in three separate cases. The reasons for such acquittals should be carefully analysed by the General Prosecutor and corrective measures should be taken where appropriate. This should include recommendations for the handling of future cases when shortcomings in the procedure have been identified or appeal when it appears that the Courts did not properly assess the evidence provided by the prosecution. |

3.1 The analysis of some of these cases by the Commission and independent experts demonstrated serious weaknesses in *judicial and investigative practice*. | These weaknesses mainly concern the collection of evidence, the protection of witnesses and the general lack of investigative strategies, comprehensive financial investigations and securing of assets. Coordination within the prosecution and between the prosecution and the police should be improved. | These weaknesses are compounded by an out-dated Penal Code. Court practice is permissive and excessively cautious, overly attentive to procedures at the expense of delivering justice. While the revision of the *Penal Code* is advancing, immediate corrective measures, such as the use of interpretative rulings by the Supreme Court of Cassation or legislative amendments should be considered, since the new Penal Code cannot be expected to enter into force before late 2013. 3.2,3.3

3.4 In November 2010, Bulgaria adopted a strengthened law on *conflict of interest*. Delays in the nomination of the members of the dedicated commission created by the law and in the set-up of its administration have led to an interruption in the follow-up of signals of conflict of interest since the first quarter of 2011. As a consequence, allegations of conflict of interest were not followed up in an important case involving a senior magistrate in June. The commission in charge of conflict of interest was established in June 2011 although premises and staff still need to be found and rules

³ One case involving a previous director of a state agency was returned to the Prosecution in June 2010 and retried after a new judge was appointed to the case, witness statements were withdrawn in another case involving a previous minister.

of procedure need to be developed. In this context, concerns must be raised regarding weaknesses in *asset declarations and verifications* of politicians, magistrates and senior civil servants. Currently, false declarations are not effectively sanctioned and discrepancies are not followed-up. Following the recent amendments to the law on the trade register, which aim to strengthen data protection, the new procedures should be implemented to preserve transparency of information on companies.

- 3.2, 3.5, 3.7 Bulgaria continues to implement an *integrated strategy* to prevent and sanction corruption and organised crime and took a number of measures in this framework. At the same time, the 2010 action plan focusing on tackling organised crime has not been fully implemented and has not been updated in 2011. This makes implementation and coordination more difficult. A comprehensive project to analyse and design anti-corruption measures in all areas of the administration launched in early 2010, has not yet delivered tangible results or a timetable for implementation.
- 3.9,3.11 Bulgaria should consider establishing a set of concrete targets for the fight against corruption and organised crime for the different institutions involved in the implementation of the Integrated Strategy. Bulgaria should also involve external experts and civil society in the evaluation of the results of the Integrated Strategy.

Responding to the Council of Europe's Group of States against Corruption (GRECO) recommendations on transparency in political party funding, Bulgaria included 11 out of 16 recommendations in the new Electoral Code adopted in January 2011. The first test case of implementation of the Electoral Code will be in the forthcoming Presidential and local elections.

- 3.6,3.7, 3.8,3.10 → Since the Commission's last annual report, Bulgaria has prepared a number of changes to the *Public Procurement Law* which *inter alia* aims at simplifying and speeding-up public procurement procedures. Bulgaria also intends to amend the law on the Public Financial Inspections Agency in order to allow for ex-officio checks of public tenders and develop checks based on risk assessment. These legal improvements are welcome. However, the main challenge in the field of public procurement remains a substantial improvement in administrative capacity and in the quality of administrative action.

3. CONCLUSIONS

Since the Commission's last assessment in July 2010, the Bulgarian Government has shown determination and commitment in driving the reform process. It continued to reform the judicial system, strengthened legislation on conflict of interest and started a structural reform within the police and the criminal court system. Continuous commitment over the next period will be necessary to implement these reforms and to achieve factual improvements regarding appointments, appraisals and skills within the judiciary and to set up efficient structures to deal with organised crime cases. The adoption of the new law on asset forfeiture will be an important deliverable to improve the protection against organised crime and corruption.

There is an urgent need for considerable improvements in accountability and professional practice within the judiciary and the investigative authorities in order to achieve convincing results in the fight against corruption and organised crime. As a

matter of national priority, Bulgaria should urgently pursue its judicial reform strategy and take further steps towards a fundamental reform of the judicial system.

4. RECOMMENDATIONS

The Commission invites Bulgaria to take action in the following areas in the light of its assessment of progress achieved in Bulgaria since July 2010. These recommendations should help Bulgaria to focus its efforts in preparing for the Commission's overall assessment of progress in Bulgaria under the CVM in summer 2012.

1. Reform of the judicial system

- (a) ^{1.1} Establish proposals for a reform of the Supreme Judicial Council, the Supreme Cassation Prosecution Office and the Prosecution in general regarding structures, legal attributions, composition, appointments and internal organisation;
- (b) ^{1.2} Implement these proposals through administrative measures and legislative amendments.

2. Transparency and accountability of the judiciary

- (c) ^{1.3} Demonstrate a track record in judicial appointments and appraisals, including appointments to the Supreme Judicial Council, which fully respect the principles of transparency, independence, integrity and professional merit;
- (d) ^{1.4} Demonstrate a track record of disciplinary and criminal follow-up to corruption and malpractice within the judiciary;
- (e) ^{1.5} Ensure complete electronic access to court verdicts and motivations and a ^{1.6} strict application of the principle of random allocation of court cases.

3. Judicial practice in criminal cases

- (f) ^{1.7} Analyse in cooperation with international experts the organisational structures and practice of investigative authorities, the prosecution (including the joint teams) and courts to enhance the effectiveness of the investigation and trial of high level cases; ~~improve the cooperation among judicial authorities and with the relevant administrative bodies;~~ ^{1.8}
- (g) ^{1.9} Adopt and implement a detailed action plan to correct shortcomings in structures, management, staffing, training, cooperation and professional practice in cooperation with international experts and civil society and ^{1.10} create a joint monitoring group for its implementation;
- (h) ^{1.11} Systematically request interpretative rulings by the Supreme Court of Cassation in areas of inconsistent jurisprudence and improve the track record of the court in this area.

4. Fight against organised crime

- (i) ^{2.1} Allocate appropriate resources and staff and properly define the scope and internal organisation of the specialised court and prosecution office for organised crime in order to assure an effective judicial treatment of the most important cases;
- (j) ^{2.2} Continue the reform of the police, ^{2.3} by improving capacity, skills and equipment of police investigators and addressing shortcomings regarding the integrity and independence of police action, evidence gathering and witness protection;
- (k) ^{2.4} Improve the overall coordination of activities to fight organised crime and corruption through the implementation of detailed action plans and monitoring mechanism in both areas in cooperation with civil society.

5. Asset forfeiture

- (l) ^{2.5} Adopt legislation providing for non-conviction based confiscation and ex-officio verification of assets of senior officials, magistrates and politicians and ^{2.6} demonstrate a track record in this area;
- (m) ^{2.7} Establish efficient cooperation between the asset forfeiture commission, financial institutions, administrative authorities and the prosecution including the joint teams and ^{2.8} develop a track record in securing assets upon the launch of investigations;

6. Fight against corruption

- (n) ^{3.1} Establish and train networks of specialised prosecutors and investigators in economic and financial crime in cooperation with foreign experts, ^{3.2} involve them systematically in all cases related to economic and financial crime, corruption, fraud and money laundering and ^{3.3} ensure through common trainings and seminars that these prosecutors have the same understanding of the standard of proof regarding these cases as the judges;
- (o) ^{3.4} Assure the application of comprehensive and pro-active investigative strategies by the prosecution, the linking of related cases and systematic financial investigation;
- (p) ^{3.5} Amend the Penal Code in order to facilitate the legal follow-up to economic and financial crime and abuse of office;
- (q) ^{3.6} Demonstrate a convincing track record of sanctions under the revised law on conflict of interest.

7. Preventing corruption

- (r) ^{3.7} Demonstrate concrete results in the implementation of a comprehensive project ("Borkor") to analyse and design anti-corruption measures;

- (s)3.8 Revise the asset declaration and verification system turning it into an effective tool to detect illicit enrichment;
- (t) 3.9 Implement all GRECO recommendations with regard to transparency of financing for political parties
- (u)3.10 Strengthen the administrative capacity of competent authorities in the area of public procurement to advise contracting authorities and verify public tenders ex-ante and ex-post following risk assessments;
- (v)3.11 Apply equal rules for conflicts of interest and incompatibility to public employees whether they are permanent officials or recruited under individual service contracts.



EUROPEAN COMMISSION

Brussels, 18.7.2012
COM(2012) 411 final

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

On Progress in Bulgaria under the Cooperation and Verification Mechanism

{SWD(2012) 232 final}

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

On Progress in Bulgaria under the Cooperation and Verification Mechanism

I. The Cooperation and Verification Mechanism: Supporting Bulgaria in Justice Reform, the Fight against Corruption and the Fight against Organised Crime

In the run-up to the accession of Bulgaria to the EU in 2007, it was agreed that further work was needed in key areas to address shortcomings in judicial reform, the fight against corruption, and tackling organised crime. This led to the establishment of a framework to support Bulgaria and to monitor progress in these areas, the Cooperation and Verification Mechanism (CVM).¹ Six benchmarks were established, covering the independence and accountability of the judicial system, its transparency and efficiency; the pursuit of high-level corruption, as well as corruption throughout the public sector; and the fight against organised crime. The Decision set up regular reporting from the Commission, and provided that the mechanism will continue until the objectives of the CVM are met and all six benchmarks are satisfactorily fulfilled.²

Five years on, this report assesses whether the objectives of the CVM have been fulfilled. This assessment is the fruit of analysis as set out in the technical report accompanying this report, taking stock of what has been achieved so far and what remains to be accomplished. It looks at the work of the past five years, the legislation and the instruments which have been put in place and the results which have followed. Over this period, there have been times when progress has accelerated; others when there have been setbacks. Cooperation has been active at some stages, whereas at other times the CVM has been resented and resisted. Overall, the Commission is convinced that the CVM has made a major contribution to reform in Bulgaria. This report considers in particular the sustainability and irreversibility of the reform process, including whether ownership is sufficiently embedded to maintain the direction of reform.

Today's European Union is highly interdependent. The rule of law is one of the fundamental values of the EU and there is a strong common interest in it which mirrors the interest of Bulgarian public opinion in these issues.³ Eurobarometer polling has shown that 96% of Bulgarians consider corruption and organised crime to be an important issue for their country, and 92% have the same response over shortcomings in the judicial system. The same poll also

¹ Conclusions of the Council of Ministers, 17 October 2006 (13339/06); 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 crime, 13 December 2006 (C (2006) 6570 final)

² It also provided for the possibility of a safeguard mechanism, which has not had to be invoked.

³ The Conclusions of the European Council of 28 and 29 June include a commitment by the EU within the Compact for Growth and Jobs to tackle delays in judicial systems as part of the modernisation of public administrations (European Council Conclusions 29 June 2012, page 8).

concluded that 76% of Bulgarians considered that the EU should have a role in tackling these issues.⁴

The CVM does not ask Bulgaria to achieve higher standards than exist in other Member States. Its target is to help Bulgaria achieve standards comparable to other Member States, an objective supported by 78% of Bulgarians.⁵ For the purpose of assessing what has been achieved by Bulgaria since accession, the situation in other Member States is an important factor. The Commission uses in this report points of reference and comparative indicators where they are available.⁶ To compare progress in Bulgaria with the situation in other Member States, the Commission also drew upon senior experts from key professions dealing with these issues.⁷

- 3.3 Since 2007, the EU budget has made some €41m available to support judicial reform in Bulgaria through the Structural Funds. By mid-2012, 25 projects for a budget of €13.6m have been agreed in the areas of training, human resource development, capacity building and technical assistance. At the same time, several Member States have supported Bulgaria with bilateral projects in all areas of judicial reform including police reform, the fight against corruption and the fight against organised crime.⁸ |

II. Analysis of progress under the CVM 2007-2012

The Commission's overall assessment of progress under the CVM since Bulgaria's accession shows important progress in the basic legislative framework. At key moments, the Bulgarian government has shown strong political will to achieve deep and lasting reform. The challenge now is to fill some key strategic gaps, and to ensure effective implementation. The resolve in Bulgarian society to deliver the reforms overseen by the CVM has been variable: a more consistent implementation is needed to join together disparate actions. This more consistent direction of reforms would be the best indicator of the sustainability and irreversibility of the process.

Since 2007, Bulgaria has put in place a series of important legal and Constitutional reforms. Though incomplete, these have set up important and sometimes innovative structures, in particular to encourage specialisation in tackling the problems faced. Key institutions like the Supreme Judicial Council (SJC) and its inspectorate have taken up their functions. There has been an important investment in the structures to fight organised crime leading to the creation of specialised bodies at the level of the judiciary and police, as well as major steps to improve the legal framework for asset forfeiture and successful cooperation with other Member States.

However, the potential of this framework has not yet been used to the full. The Supreme Judicial Council has been given wide-ranging powers to manage and lead the judiciary. These powers have not been used to govern the judicial profession effectively, on the basis of merit and integrity, or to drive the consistency and independence of justice on which public confidence depends.

⁴ Flash Eurobarometer poll conducted by the Commission in Bulgaria in May 2012 (Flash Eurobarometer 351 "The Cooperation and Verification Mechanism for Bulgaria and Romania" at: http://ec.europa.eu/public_opinion/index_en.htm).

⁵ Flash Eurobarometer 351

⁶ Points of reference include the work of the Council of Europe, the OECD and UN agencies.

⁷ Experts used in 2012 included senior practitioners from France, Germany, Ireland, Poland, Spain, Slovenia and the United Kingdom.

⁸ Technical report, page 36.

There remains a lack of direction in policy which has held back progress. Many institutions have taken useful steps. But the limited scale of these measures inside such institutions, and the lack of a coordinated approach, suggests that questions remain about the direction of reform. Over the five years of the CVM, different governments and Parliaments have given different emphasis to these issues, and variable levels of commitment to results. An action plan for the reform of the judiciary was adopted in 2010. Fundamental principles such as the independence of the judiciary have not always been respected to the full. The lack of a consistent trend means that the reform process has not built the momentum needed to become an accepted part of Bulgaria's development.

This conclusion is reinforced by the fact that many important steps seem to have been taken primarily as the result of external pressure. The CVM itself has been central to this process – and is recognised as such by Bulgarian public opinion.⁹ It has helped to maintain the direction of reform at moments of pressure and to encourage changes which require the courage to challenge vested interests. The fact that external pressure is still necessary raises questions about the sustainability and irreversibility of change.

Ownership and implementation are therefore the key elements in the fulfilment of the CVM benchmarks. They determine the sustainability and irreversibility of reform. The appointment and work of the new Supreme Judicial Council and of the new General Prosecutor will be one of the indicators of the sustainability of reforms.

II.1 Judicial Reform 2007-2012

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 penal 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

Upon accession, Bulgaria committed to increase the independence, accountability and integrity of the judiciary and to ensure a more efficient, consistent and transparent judicial process. Such comprehensive reform objectives required legislative changes, a reform of judicial structures and staffing, and improvements to judicial procedures and judicial practice. They also required some changes in attitude amongst magistrates, and other actors in the judicial system. This combination implied an engagement by all powers of the state: by Parliament, the executive and the judiciary, with the support of civil society.

⁹ These conclusions are supported by public perception. 71% of respondents of a Flash Eurobarometer poll conducted in Bulgaria believe that EU action through the CVM has had a positive impact in addressing shortcomings in the judicial system. 67% share this view regarding corruption, and 65% concerning organised crime. At the same time, a majority believes that the situation in these areas has stayed the same or has deteriorated in the last five years. (Flash Eurobarometer 351).

Since 2007, Bulgaria has put in place a number of important building blocks to deliver on its commitments with the EU. The immediate aftermath of accession saw an important series of steps, with Constitutional amendments, a new Judicial Systems Act (JSA), a new Civil Procedure Code, new Administrative procedure code and amendments to the Penal Procedure Code. The first year of accession also saw the creation of new judicial institutions. An independent Judicial Inspectorate was created and a new Supreme Judicial Council (SJC) took office, with wide-ranging responsibilities for the management of the judicial system.¹⁰ These responsibilities included human resource management of the judiciary, including appointments, promotions, appraisals and staff allocation. The Council was also given disciplinary responsibility and therefore the task to safeguard the accountability and integrity of the judiciary and to ensure that judicial practice meets high professional standards.¹¹ With these attributions, the Council became the main actor in implementing judicial reform.

1.1 Bulgaria has achieved results in implementing this new legal and institutional framework. For the first time, independent controls of courts and prosecutors offices have been carried out, recommendations regarding court management and judicial practice have been issued and a more robust approach has been taken to disciplinary activity. In addition, Bulgaria has improved procedural codes in all three branches of law and started to improve judicial practice.

However, these efforts have not yet led to significant improvements in judicial accountability and efficiency. Legal proceedings are often of an excessive duration.¹² Disciplinary practice shows inconsistencies, and in many important cases has either not been able to conclude, or has not reached dissuasive results. Judicial appraisals, promotions and appointments are not yet transparent and do not follow objective and merit-based criteria. There is as yet no comprehensive human resources policy which can balance staff needs and workload. Measures to improve judicial practice often appear superficial and have not yet had a concrete effect on results in important cases. Questions remain about judicial independence.

Some of these weaknesses can be traced to failings in application of the law, but they also reflect important structural, procedural and organisational weaknesses within the Supreme Judicial Council and the prosecution. The upcoming elections to the Council this autumn, and the election of a new General Prosecutor and of a new President of the Supreme Court of Cassation, are crucial for Bulgaria to demonstrate its resolve to maintain the path of judicial reform.

The potential exists to use the structures put in place for the judicial system to drive reform, to address a lack of public confidence in the judiciary and to establish a system based on effective and accountable governance. This could deliver a system with the right balance between efficiency, accountability, integrity and independence. However, it requires a higher

¹⁰ The Supreme Judicial Council is structured according to the Constitution (Technical Report page 4, footnote 6).

¹¹ The SJC is assisted in these areas by the Judicial Inspection, by court presidents and by the Bulgarian judicial training institution, the National Institute for Justice.

¹² Statistics of the ECHR show that Bulgaria counts the highest number of ECHR judgements among any EU Member State which are pending execution. For a large majority, these judgements concern the excessive length of criminal proceedings and the absence of an effective remedy. Other elements include ineffective investigations and an excessive use of firearms by police. (Council of Europe: Supervision of the Execution of Judgements and Decisions of the ECHR, Annual Report 2011 at: http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2011_en.pdf)

level of commitment by the Supreme Judicial Council and the prosecution, strong enough to challenge well-rooted vested interests.

The engagement of civil society and professional associations of magistrates for judicial reform is an important achievement since 2007. The Bulgarian authorities should make better use of these resources, engage in more intense cooperation with foreign partners and bring all key players together in a common commitment to reform.

Independence, accountability and integrity of the judiciary

1.1,1.2 Constitutional amendments of February 2007 set the framework for judicial independence in Bulgaria. The Constitution gives the judicial system considerable managerial autonomy. However, it also gives a strong role to political institutions - half the elected members of the Supreme Judicial Council (SJC), and all judicial inspectors, are elected by Parliament¹³ – a source of criticism by the Venice Commission of the Council of Europe.¹⁴ Lay judges can have a decisive influence on decisions in court, but are nominated by local political forces.¹⁵ CVM reports have also pointed to the issue of merit-based appointments and appraisals.¹⁶ |

1.3 These concerns have been confirmed, as a number of key judicial appointments by Parliament and by the SJC have lacked transparency and objectivity and have been marred by allegations of political influence.¹⁷ Independence has also come in question following a series of direct political criticisms of individual judges - the dismissal from the judiciary of the President of the Union of Judges by the SJC raises concerns in this context.¹⁸ The Council has not taken clear action to protect judicial independence in these cases. The overall impression is of a failure to respect the separation of the powers of the state which has direct consequences for public confidence in the judiciary. |

1.2 The same Constitutional amendments of 2007 and the adoption of a revised Judicial Systems Act in the same year also created the basis for a proper policy of integrity and accountability for the judicial system. The immunity of magistrates was restricted to the execution of professional duties and an independent judicial inspectorate was created. In 2009, Bulgaria adopted an ethical code for the magistracy and created a central integrity committee within the SJC¹⁹. Legal amendments in 2010 made integrity assessments a compulsory step in career

¹³ The members of the Parliamentary quota of the SJC are elected by simple majority whereas inspectors are elected by a majority of two-thirds.

¹⁴ See Technical Report page 5 and footnote 7.

¹⁵ See Technical Report page 18

¹⁶ Most recently, COM(2011)459 final, page 8.

¹⁷ The Commission's reports under the CVM of 20 July 2011 (COM(2011)459 final, page 4) and 8 February 2012 (COM(2012)57 final, page 2) raised concerns on the transparency and objectivity of senior judicial nominations in this context (see Technical Report pages 6 and 14)

¹⁸ Following to accusations of influence and bias in organised crime cases by a member of government, judges of Sofia City Court appealed to the SJC in February to protect judicial independence and establish the facts in this case. The accused judge also filed a court case for slander. The judge has subsequently been dismissed from the judiciary by the SJC on 12 July for delaying the motives in a court case. This led to walk-outs and protests by several courts including by a large number of judges from the Supreme Court of Cassation.

¹⁹ However, independent experts consulted by the Commission expressed concern at the lack of separation of roles inside the Council (Technical Report page 13, footnote 49),

development and promotion within the judiciary and set up local structures for integrity and appraisal. The result was the first real disciplinary activity within the Bulgarian judiciary.²⁰

- 1.2 Most of these disciplinary cases have been initiated by controls made by the inspectorate, which started its operational activities in 2008. The inspectorate has also actively represented its views on disciplinary issues within the SJC and was given the right to appeal disciplinary decisions in 2009. It makes detailed recommendations to court presidents. The control activity of the inspectorate represents a positive contribution to improving judicial discipline and accountability as such activities had not existed before.²¹ At the same time, the work of the inspectorate has not been directed at promoting solutions to the systematic shortcomings in accountability and judicial practice. Examples include the absence of inspectorate recommendations in areas like the random allocation system, or the correction of important and systematic shortcomings in judicial practice.²²
- 1.4 Disciplinary activity since 2007 shows a certain leniency and a reticence to address serious cases, in particular in relation to integrity. Two emblematic cases of alleged trade in influence amongst the judiciary were only pursued after major public pressure.²³ Successful challenges to disciplinary rulings in the Supreme Administrative Court point to weaknesses in the jurisprudence of the Court, in the disciplinary procedures of the SJC or in law: such shortcomings should be analysed and corrected. So too should the lack of criminal follow-up, as the prosecution did not systematically investigate magistrates involved in these cases. This links to the overall poor results of the judiciary in pursuing cases of corruption within its own ranks.²⁴
- 1.3 Overall, disciplinary jurisprudence itself has not been consistent. Bulgaria has also been unable to properly introduce integrity into the system of judicial promotions and appraisals, despite amendments to the Judicial Systems Act of 2010. Integrity verifications have been formalistic and with little preventive effect, sometimes relying on NGOs to put relevant information in the public domain. Various senior appointments during this period lacked sufficient transparency and continue to be marred by accusations of political influence and shortcomings in integrity.²⁵ The inability of the judicial leadership to define and implement a

²⁰ There has been little disciplinary activity prior to 2007 and to the creation of an independent inspectorate. Overall, the SJC determined 179 disciplinary cases between October 2007 and December 2011. The number of sanctions increased from 15 in 2008 and 24 in 2009 to 34 in 2010 and decreased again to 13 in 2011.

²¹ The inspectorate carries out regular and ad-hoc controls of the management of local courts and prosecutors offices, it followed up on complaints and also investigated particular issues such as case delays. By 2011, the inspectorate had carried out a full assessment of all judicial districts.

²² See Technical Report, page 7.

²³ All disciplinary sanctions have been cancelled in one of these two cases by the Supreme Administrative Court. See Technical Report page 14-15.

²⁴ This was highlighted in several CVM reports, including COM(2011)459final, page 4 and COM(2012)57final, page 2-3.

²⁵ Integrity issues were raised at the occasion of appointments of chairs to several senior courts, to the Inspectorate of the SJC and regarding some members of the SJC. (Technical Report, page 6 and 14 and COM(2011)459final, page 4.

proper anti-corruption strategy²⁶ alienated parts of the judiciary and can be seen to contribute to the low-level of public trust in this area.²⁷ |

Efficiency of the judicial process

The Supreme Judicial Council is responsible for the human resources policy of the judiciary. This includes initial recruitment, the provision of training through the National Institute of Justice, regular appraisals, promotions and appointments to senior judicial positions. Legal amendments in 2010 gave the SJC the role of assessing workload, amending areas of jurisdiction, reallocating resources and if necessary closing down courts. Consequently, the Council has all relevant powers to properly manage human resources and judicial structures for the benefit of judicial efficiency.

1.9.1.10 Looking back at the period since 2007, a number of difficulties can be highlighted in the way the SJC has discharged its responsibilities in this area. First, the Council has been unable to properly translate the objectives of the revised Judicial Systems Act into practice regarding promotions. The system as it is practiced does not ensure a career development of magistrates according to professional merit, as well as a proper consideration for issues of integrity. Although new appraisal criteria were defined in the law, these have not been used to properly reflect differences in performance.²⁸ The weaknesses of the appraisal system also affect promotion procedures, and have led to frequent challenges of promotion decisions in court.²⁹ |

Promotions and initial recruitments did not follow a coherent and predictable schedule,³⁰ based on an assessment of staff needs and on a strategy to satisfy them. Between 2009 and 2011, no promotion decisions were taken. The consequent high number of vacancies in some courts was filled through secondments – a procedure outside the promotion system, reliant solely on agreement between court presidents.³¹

There are important differences in workload between courts in Sofia and other courts in the country.³² These workload disparities have led to serious delays in a number of courts, particularly in issuing motivations of judicial decisions. These delays in publishing motivations are a real hindrance for the efficiency of the judicial process. They also affect judicial independence: as high workload in many courts often leads to delays in issuing

²⁶ For example, tackling shortcomings in the random allocation system of courts, where verification by the inspectorate has so far not led to concrete corrective action (see Technical Report page 7 and page 19).

²⁷ Bulgarians have the most negative perception regarding the prevalence of corruption in the judicial sector of any Member State. In September 2011, 76% of all respondents in Bulgaria believed that corruption is widespread within the judicial sector. This perception has however slightly improved since 2009. (Special Eurobarometer no. 374 on corruption perception in the EU published in February 2012)

²⁸ See Technical Report page 13. For example, the SJC has acknowledged that appraisals carried out in 2011 marked 98% of all magistrates as "very good".

²⁹ A promotion decision of the SJC was nullified by the Supreme Administrative Court in May as the consideration of academic results of the candidate by the SJC in this context was considered inappropriate.

³⁰ See Technical Report page 13, footnote 46.

³¹ De facto, secondments equal promotions and mostly concern courts and prosecutors offices in Sofia. In 2011, the total number of seconded judges and prosecutors amounted to 265 compared to 294 positions offered for promotion and transfer in the same year.

³² According to estimates by practitioners, workload at Sofia City Court is eight times higher than at other courts of first instance, the situation at Sofia Regional Court is considered worse. Reallocations of positions remained modest with 20 to 30 transfers on average by year (Technical report, page 14). No decisions to close entire courts and reallocate staff have yet been taken.

motivations, a large number of judges are in technical infraction. Professional associations have raised concerns that this opens the door to subjective treatment, arguing that some of their members have been sanctioned, while late motivations in other cases have been tolerated by the judicial inspection.³³

Other important conditions for a more efficient and consistent judicial process are efficient procedures and professional practice among police, prosecution and courts. Since 2007, Bulgaria has improved all three procedural codes, covering criminal, civil and administrative law.³⁴ As a result, this allowed the police to improve investigative practice and has facilitated the use of evidence in court. It also allowed courts to appoint reserve defence counsels to reduce the risk of delays and allowed the prosecution to appeal court decisions to send back cases for further investigation. Bulgaria also started to work on a new Penal Code in 2010 as the current Code is outdated and ill-suited to tackling many modern crimes, including corruption, abuse of office and organised crime.³⁵ Work on the Penal Code has proceeded at an uneven pace and the initial target to submit a first draft for public discussion in early 2013 has been postponed.

3.3 Weaknesses in judicial and investigative practice, in particular in relation to cases involving high-level corruption and serious organised crime, have been highlighted by the Commission since 2008.³⁶ Bulgaria initially responded to these concerns by introducing the monitoring of a number of cases of public interest by the Supreme Judicial Council, through training activities and with controls by the inspectorate to establish whether procedural rules had been respected by judges. The reform of penal procedures in 2010 was also accompanied by a structural re-organisation of police investigation, the extension of investigative tasks to a much larger group of police officers, and the provision of training and equipment for this purpose.

1.7, 1.9, 1.10 These measures contributed to the acceleration in court of some cases but had little effect on the most important cases of high-level corruption and organised crime monitored by the Commission. As a result of a detailed analysis of some key cases, the July 2011 CVM report recommended a comprehensive analysis of organisational structures and judicial procedures and the implementation of an action plan in cooperation with international experts and monitored together with civil society.³⁷ This was in particular directed at the need to see the different institutions as part of a continuum, rather than separate bodies pursuing their own strategies. In response, Bulgaria took a number of structural and organisational decisions involving the prosecution and its cooperation with other key bodies. These measures have not yet led to perceptible improvements in the results of police and the judiciary regarding cases of high-level corruption and organised crime (see below). In addition, law enforcement authorities and the judiciary have not yet engaged in a comprehensive and independent assessment of the weaknesses of the existing structures and procedures. Consequently, the potential impact of measures taken by Bulgaria in this context since last summer is yet to be seen. |

³³ A case cited in this context is summarised in footnote 18.

³⁴ A new Civil Procedure Code was adopted in July 2007, the Administrative Procedure Code was amended in 2007 and 2011 and the Penal Procedure Code was amended in 2010. See Technical Report pages 10-12.

³⁵ See Technical Report, page 9.

³⁶ See Technical Report, page 16.

³⁷ COM(2012)459final, page 8, recommendation f and g.

1.11 In this context, it is important to stress the importance of judicial consistency. A recent consultation within the judiciary exposed stark disagreement among judges on the conditions for the application of preliminary detention of defendants in serious criminal cases. Disagreement in such important areas raises substantial concerns, and points to shortcomings in the pursuit of consistency by the judicial authorities, with the Supreme Court of Cassation (SCC) the most important player in this area. A proactive strategy by the SCC to identify and address inconsistent interpretation of the law in all relevant areas could bring major benefits, in particular in support of Bulgaria's fight against organised crime and corruption.³⁸ In addition, Bulgaria has not yet achieved a full publication of court rulings and motivations in a unified format. |

Reform of the Judicial System

1.1-1.2 The shortcomings in accountability of the judiciary and in efficiency of the judicial process must be linked to the key institutions that drive progress in this area, in particular the Supreme Judicial Council and the prosecution. For these reasons, the Commission has recommended a comprehensive reform of these institutions, assessing and improving organisational structures and professional practice regarding serious criminal cases.³⁹ Although some limited action has been taken at the level of the prosecution,⁴⁰ these recommendations are essentially still pending.

The reform of the SJC has been in particular focus as the mandate of the current Council draws to a close. This focus on the Council was intensified when two members resigned in 2011 in disappointment over the Council's incapacity to deliver tangible improvements in judicial accountability and integrity, and shortcomings in transparency within its internal organisation. In the election to replace these posts, a number of courts refused to be involved, considering that the current Council had lost the legitimacy to represent the judiciary. |

This debate led to reflections by the Ministry of Justice on reforming the elections to the Council, and a variety of contributions from within the judiciary and civil society to promote fundamental reform of the way the Council is organised and elected.⁴¹ Some of the concerns raised in this context were confirmed by experts consulted by the Commission.⁴²

³⁸ The SCC issued only five interpretative rulings concerning organised crime and corruption offences between 2007 and 2011.

³⁹ These recommendations were made by the Commission under points 1 and 3 on page 8 of the CVM report adopted on 20 July 2011 (COM(2011)459).

⁴⁰ For example, the prosecution created two new departments for combating financial crime and a department for juvenile justice. Bulgaria still has to take measures to strengthen the internal independence of prosecutors in order to ensure independent, objective and effective investigations. In particular, Bulgaria needs to address the absence in Bulgarian law of sufficient guarantees for an independent investigation into offences of which the Chief Public Prosecutor or other high-ranking officials close to him may be suspected (ECHR 1108/02 Kolevi, judgment of 05/11/2009, final on 05/02/2010).

⁴¹ Proposals for a comprehensive reform of the SJC were made to the Minister of Justice in February 2012 by a coalition of the most important professional organisations and NGOs active in the area of judicial reform. See Technical report page 16.

⁴² Experts notably highlighted the lack of formal separation within the Council between chapters of prosecutors and judges. This issue has previously been underlined by opinions of the Council of Europe's Venice Commission, as has the strong political role in the appointments.

The elections to the new Council this autumn are an important opportunity to strengthen its accountability and legitimacy among the judiciary and the public. They should be a starting point for a more fundamental reform towards a Council better able to fulfil its Constitutional role. For these reasons, the Commission recommended to the Bulgarian authorities that the introduction of direct elections in the judicial chapter would be an important step to address the shortcomings of the system today. Although the Bulgarian government endorsed direct elections to the SJC in principle, it considered that this was impossible to organise properly this autumn. Amendments to the Judicial Systems Act adopted in June include an important step forward in the transparency of the upcoming election procedure, for both the parliamentary and the judicial chapters. However, the judicial chapter will still be elected through the indirect election model, so the SJC will have to wait another five years before benefitting from recourse to direct elections.⁴³ First reports suggest that though the transparency requirements are proving a step forward in the process, postponing the use of direct elections for this year has led to inconsistent procedures and a dominant role for Court Presidents in the choice of delegates.

The upcoming elections still provide an opportunity to choose SJC members committed to a more active role for the Council in its next mandate. Both Parliament and the judiciary can focus their deliberations on criteria such as professional and educational qualification, integrity and a vision for the future. Transparency should mean an opportunity for the candidates to be scrutinised by civil society and Parliament and the judiciary should be ready to be accountable for their choices.

1.1.1.9 To contribute to the success of the Council's next mandate, it will be important to improve the Council's structure, procedures and organisation. The new leadership of the Council can take a fresh look at the role of the Council on the basis of a comprehensive analysis of the Council's current mandate. The ideas put forward by professional associations and civil society at the beginning of this year can offer inspiration for the new Council. An early test will be the upcoming elections of Prosecutor General and Chair of the Supreme Court of Cassation. The new Council could choose to make the elections for these most important judicial positions in the country emblematic of a new approach, with open and transparent proceedings, clear criteria and a real competition.

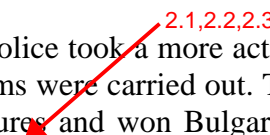
II.2 Fight against Organised Crime 2007-2012

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

Upon accession, Bulgaria committed to demonstrate convincing results in the fight against organised crime. This involves demonstrating the capacity of law enforcement authorities and the judiciary to successfully investigate, prosecute and try important organised crime cases so as to achieve effective dissuasiveness. Key issues include systematic asset seizures and confiscation, the improvement of professional practice among police, prosecution and courts

⁴³ Candidacies will be published two months before the election date and public hearings of all candidates will be organised to allow for public scrutiny. An indirect election with a doubled number of delegates will be organised this autumn. Direct election is foreseen for the next Council elections in 2017.

and the establishment of effective structures and efficient cooperation between police, prosecution and other administrative authorities.

2.2  Activity against organised crime intensified in 2010 when police took a more active role, and a number of long-overdue procedural and institutional reforms were carried out. These efforts have led to a more solid institutional set-up, better procedures and won Bulgaria trust with law enforcement authorities in other EU Member States.⁴⁴ The resources devoted to police investigations have seen significant increases.⁴⁵ However, convincing results are still missing at both the pre-trial and trial phases to tackle effectively this form of criminality. There are still many unsolved and delayed cases in this area. Organised crime is still described by independent observers as a fundamental challenge for the state and the society,⁴⁶ a view shared by public opinion.⁴⁷

2.1 The institutional framework for the fight against organised crime has been adjusted several times since 2007.⁴⁸ There has been an overall trend towards more specialisation, more training and more careful security vetting.⁴⁹ Specialised joint teams for organised crime cases within the prosecution were created at the level of five district courts in 2010, and in 2012 a new specialised central prosecution office for organised crime and a new specialised court started its work.⁵⁰ This approach is in line with recommendations in successive CVM reports.⁵¹

These new specialised structures at the level of police, prosecution and court illustrate a commitment to adapting structures to tackle organised crime. However, so far, they have not yet been able to prove their effectiveness in the successful investigation, prosecution and trial of important cases. With very few exceptions, the specialised court has decided so far only minor cases as the underlying legislation does not allow the court to prioritise on the most important cases.⁵² This is accentuated by the staffing constraints on both the prosecution and the court. Another important weakness of the law is that it does not allow the court to pursue corruption offences which are in reality often linked to organised crime. Together with the general strengthening of penal procedures and the reform of police investigation, these new structures and reforms are a clear demonstration of Bulgaria's interest to achieve a step-change in the fight against organised crime.

⁴⁴ Europol has noted improvements in the cooperation of Bulgaria with law enforcement institutions in other EU Member States which had led to various successful joint operations.

⁴⁵ Police investigators have increased from 2000 in 2010 to 6000 in 2011 and should reach 8000 in total. (SEC(2011)967final, page 18).

⁴⁶ Europol considers organised crime in Bulgaria as unique in the EU to the extent that it exercises considerable influence over the economy which is a platform to influence the political process and state institutions. The annual turnover of the twelve most important organised crime activities in Bulgaria is estimated at 1.8 BEUR or 4.8% of GDP annually. (Serious and Organised Crime Threat Assessment 2010-2011. Centre for the Study of Democracy, Sofia. April 2012, p.5) Europol also notes that the number of cases initiated in Bulgaria, while on the rise, is still low compared to the scale of organised crime.

⁴⁷ 96% of respondents in a Flash Eurobarometer conducted in Bulgaria in May 2012 considered organised crime an important problem. (Flash Eurobarometer 351)

⁴⁸ Technical Report page 31.

⁴⁹ The overall strengthening of police investigation in 2010 has also had a positive effect on the capacity of police in this area.

⁵⁰ Technical Report page 32.

⁵¹ COM(2009)402final, page 7; COM(2010)400final, page 8; COM(2011)459final, page 9.

⁵² The definition of organised crime in the Bulgarian Penal Code is criminal offences committed by three or more individuals.

Better results in the forfeiture of assets are an important element to the dissuasiveness of the fight against organised crime and also the fight against corruption. The first years after accession saw little progress in this area, with few assets secured and forfeited in important organised crime and high-level corruption cases. The year 2011 saw a significant increase in the amounts of forfeited assets in Bulgaria and a more proactive and rigorous approach by the asset forfeiture commission under a new director. His resignation in 2012, on the grounds of insufficient political support, cast doubt on the sustainability of this improvement and pointed to wider obstacles to effective asset forfeiture.⁵³

2.5-2.8 To improve effective asset forfeiture, a new asset forfeiture act was adopted by Parliament in May.⁵⁴ This law offers for the first time the possibility to confiscate illegal assets through a procedure in civil courts which does not require a prior conviction, but can be launched upon the initiation of judicial investigations for a number of serious crimes and upon certain administrative infringements. With the adoption of this law, which required a particular effort by the government in Parliament, Bulgaria responded positively to longstanding recommendations by the international community and many Bulgarian practitioners. The Commission and Member States provided encouragement and support for this approach.⁵⁵ The law does not reflect all recommendations made by CVM reports in this context⁵⁶ and experts have highlighted other potential shortcomings.⁵⁷ In order to allow the new asset forfeiture act to achieve a real dissuasive effect, a systematic scrutiny of assets in all relevant cases and better inter-institutional cooperation will be necessary.^{2.7} This will require that the prosecution systematically associates the asset forfeiture commission, early enough during an investigation to prevent the disappearance of assets. Administrative control authorities will also have to set up close cooperation with the asset forfeiture commission to identify and profile relevant cases, as the commission lacks ex-officio powers to act on its own initiative. Consistency of court jurisprudence, in particular regarding the shift of the burden of proof^{2.9} foreseen in the new law will be another important element to determine its effectiveness. It will also be important to assure the independence and efficiency of the future asset forfeiture commission which will be created under the new law, notably through the appointment of competent and politically independent members in a transparent and objective process.⁵⁸

Although Bulgaria invested considerably to improve the institutional and legal framework for the fight against organised crime since 2010, results have been limited: Few important organised crime cases have received sentences⁵⁹ and there have been several acquittals in important cases where evidence in public domain raised expectations of convictions.⁶⁰ Serious concerns must be raised regarding the poor results in uncovering contract killings: Of 33 contract killings monitored by the Commission since 2006, only four court cases have started,

⁵³ Technical Report, page 34.

⁵⁴ A Constitutional challenge was registered in the beginning of July.

⁵⁵ After a first failure in Parliament in July 2011 and the Commission's recommendations to return to the law in two consecutive CVM reports, several Member States ambassadors intervened publicly in support of the law in May and the Commission advised on some aspects of the law.

⁵⁶ Missing in particular are asset control of senior officials and politicians and an ex-officio right for the asset forfeiture commission.

⁵⁷ Technical Report, page 35.

⁵⁸ Members of the new commission will be elected by Parliament, Government and the President.

⁵⁹ Notable exceptions are the cases of Dimitar Zhelyazhkov, and Plamen Galev and Angel Hristov.

⁶⁰ Since last July, four important cases have been finally acquitted by the Supreme Court of Cassation: The case of the so-called "crocodile gang", the case of the "Margin brothers", the case of Ilian Varsanov and the case of Dimitar Vuchev. Acquittals have furthermore been referenced in COM(2011)459final, page 5.

even if a number of investigations are still under way.⁶¹ A number of new contract killings have taken place this year. In this context it is important to mention that the Commission regularly receives complaints from Bulgarian citizens and foreign investors about judicial inaction and alleged collusion with organised crime on local level.⁶² More progress can be seen in areas linked to Bulgaria's cooperation with other Member States. This has led to a number of steps to specifically address crimes with a cross-border dimension, such as trafficking in drugs.⁶³

2.4 The weak results overall in the follow-up to individual cases cannot be attributed to a specific institution. Analysis shows that weaknesses are to be found at all stages of the investigative and judicial process among police, prosecution and courts.⁶⁴ Some of these weaknesses are of systematic character, notably the fragmentation of investigations among several bodies and shortcomings in cooperation, weaknesses in the use of evidence and specific shortcomings in area like witness protection and economic and financial analysis.⁶⁵ Bulgaria needs clear and effective procedures and practices and better tools for cooperation⁶⁶ to succeed in important organised crime cases. A comprehensive and independent assessment of case failures, with the support of EU partners, and corrective measures in the form of an action plan, seems the clearest way to make progress. |

Systemic failures in law enforcement were recently demonstrated after two prominent convicts escaped enforcement of their prison sentence. The Bulgarian authorities failed to apprehend some of the most senior criminals of the country after an announced verdict was handed down by court. This must be seen as a major failure of the system.

II.3 Fight against Corruption 2007-2012

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

Upon accession, the CVM set out how Bulgaria was expected to demonstrate better results in the fight against corruption. This involved demonstrating the capacity of law enforcement authorities and of the judiciary to successfully investigate, prosecute and try high-level corruption cases and to investigate inexplicable wealth. Key tools include a system of asset control for high-level public officials, measures to fight corruption in law enforcement,

⁶¹ It is generally accepted that there have been some 150 or so contract killings over the last 10 years, very few of which have been uncovered and sanctioned.

⁶² This concerns in particular the Black Sea region.

⁶³ An important organised crime figure has been arrested in May and will be extradited for trial in another EU Member State. A recent large seizure of drugs was the result of cooperation between Bulgaria, several other Member States, and Europol.

⁶⁴ See Technical Report page 30.

⁶⁵ There is no information on assets secured or confiscated in relation to cases raised by the new specialised prosecution office for organised crime. An important money laundering case has been recently initiated concerning Plamen Galev and Angel Hristov.

⁶⁶ Proposals made by experts on the basis of practice in other Member States have included regular reporting by senior management in prosecution and police, and a central register for bank accounts to facilitate financial investigation.

prosecution, at borders and other parts of the public sector, and specific measures in the areas of conflicts of interest and public procurement.

Since 2007, Bulgaria has developed a comprehensive administrative framework and prevention measures to combat corruption. Risk assessment tools are available and specific methodologies have been implemented for key areas such as asset declarations and conflict of interest. Reforms among border police and customs have reduced corruption opportunities in these areas. However, implementation has remained patchy. Setbacks have come in areas like the 2009 amnesty act.⁶⁷ In addition, the Commission's recommendation to turn the asset verification system into an effective tool to detect illegal enrichment has not yet been followed.⁶⁸

In their analysis of the Bulgarian anti-corruption framework, experts consulted by the Commission highlighted some general weaknesses that inhibit progress in this area. Bulgaria lacks independent institutions in the area of anti-corruption with the authority and the obligation to make proposals and to drive action.⁶⁹ This limits their freedom of action to intervene in a pro-active way and to deliver independent monitoring. As a result, many administrative activities in this area tend to be reactive and to focus on formal compliance alone. The lack of sanctioning rights in some areas, and the absence of effective sanctions in areas where these rights exist, is illustrative of how difficult it is for this action to gain traction.⁷⁰

In order to take a step change in its fight against corruption in the next period, Bulgaria should consider establishing an independent body to coordinate and assist monitoring in this area. In this context, it would also be appropriate to carry out an independent impact evaluation of Bulgaria's national strategy for the fight against corruption and organised crime and to establish a new strategy with clearer indicators and benchmarks of achievement on this basis.

The scale of concern about corruption in Bulgaria is substantial: 96% of Bulgarians perceive corruption as an important problem and 68% consider the situation in this area unchanged or worse than in 2007.⁷¹ Public perceptions will only change when determined action has been seen to be taken in the fight against corruption.

High-level corruption

The response of the judiciary and law enforcement regarding cases of corruption and in particular cases of high-level corruption involving senior government officials and politicians has been a focus of the CVM since 2007. Bulgaria has developed specialisation in this area. Further to recommendations by the Commission⁷², in 2009 Bulgaria created a joint team for the investigation and prosecution of fraud with EU funds and strengthened its legal

⁶⁷ The amnesty act of 2009 led to 458 discontinued cases including abuse of office and misuse of public funds.

⁶⁸ COM(2011)459 final, page 10.

⁶⁹ Except for the National Audit Office, all authorities in this area are subordinated to the executive.

⁷⁰ The National Audit Office and the Conflict of Interest Commission cannot sanction if cooperation is refused. Inspectorates have the right to sanction non-compliance with corruption prevention rules but in reality have not exercised this right.

⁷¹ Flash Eurobarometer 351 of July 2012.

⁷² In 2009, the Commission recommended Bulgaria to set-up specialised structures for prosecuting and judging high-level corruption and organised crime cases. (COM(2009)402final, page7.

framework.⁷³ Some other high-level corruption cases were treated by joint teams focusing on organised crime, which were created at the same time. Following further recommendations in CVM reports⁷⁴, in 2012 Bulgaria created a dedicated joint team to focus on high-level corruption and reorganised the joint team on EU fraud, extending its remit to several other areas of fraud with public funds.

The results of these specialised structures are mixed. Although the creation of the joint team on EU fraud initially led to an increase in cases and court, case numbers decreased again in 2011⁷⁵ and the vast majority of these cases were of minor importance. In addition, the Commission's analysis showed a large number of unexplained dismissals and unsuccessful cases.⁷⁶

The results of the judiciary regarding other corruption cases show a similar picture: Although case numbers increased in 2009 and 2010, there was a significant drop in 2011.⁷⁷ In addition, there are very few high-level cases that reach court and many of those cases progress only very slowly in trial, with a disproportionately high number of acquittals.⁷⁸ Investigations into alleged corruption and abuse of office by magistrates have received a particularly weak response from the judiciary.⁷⁹

In this context, particular concerns must be expressed as to continuous delays and postponements at appeal court level in two emblematic cases regarding fraud with EU funds, where long prison sentences were handed down by court in first instance in March and October 2010. No satisfactory explanation has been found why the available procedural possibilities to accelerate these emblematic cases have not been actively pursued by the judiciary.⁸⁰ The disappointing results at both the pre-trial and trial phases in the pursuit of high-level corruption can be largely attributed to systematic weaknesses that affect judicial efficiency in other areas – such as the legal framework, court jurisprudence, and the practice of prosecution and administrative control authorities. They have been set out by the Commission in 2011⁸¹ and also find many echoes in an analysis carried out by the prosecution services in 2012. The remedial measures implemented by the prosecution⁸² demonstrate an

⁷³ Amendments to the Penal Code in May 2008 allowed for the admittance in court of evidence provided by the European Anti-Fraud Office OLAF.

⁷⁴ COM(2011)459final, page 8-9.

⁷⁵ Convictions in EU fraud cases rose from none in 2007 steadily to a high of 243 convictions in 2010 and decreased again to 159 in 2011. All indictments for EU fraud registered in 2011 were discontinued as criminal cases and turned into administrative infringements. (COM(2012)57final, page 6).

⁷⁶ In its reports of July 2011 and February 2012, the Commission points to a large number of discontinued cases where related aspects were prosecuted in another Member State (COM(2011)459final, page 6; COM(2012)57final, page 6).

⁷⁷ Newly initiated pre-trial investigations for corruption offences: 512 in 2007, 490 in 2008, 595 in 2009, 684 in 2010 and 522 in 2011.

⁷⁸ Since the Commission's last analysis in July 2011, verdicts have been achieved in five high-level cases, two of them final. Final convictions for prison sentences were pronounced in two cases concerning a former Member of Parliament and a former director of a state-owned enterprise, the execution of one sentence was suspended. During the same period, ten cases were acquitted involving three former ministers, one former deputy minister and other senior officials, managers of state-owned enterprises and businessmen.

⁷⁹ See above page 7.

⁸⁰ In both cases, a variety of delays mean that first instance convictions delivered in 2010 have barely progressed in appeal. (Technical Report, page 20, footnote 80).

⁸¹ Technical CVM Report of 20 July 2011 (SEC(2011)967 final), page 12.

⁸² See Technical report page 16-17.

increasing understanding within the judiciary that substantial change in professional practice and organisation will be needed to improve the results of Bulgaria in the fight against high-level corruption.

These measures should be embedded in an overall legal and institutional effort in Bulgaria to improve the way corruption cases are brought to justice, as recommended under the CVM in 2011.⁸³ This will require coordinated action in several areas. Firstly, Bulgaria should consider legal amendments to facilitate the prosecution of corruption offences by the judiciary.⁸⁴

- 3.4 Secondly, administrative control authorities should establish a pro-active attitude to identify cases and effective means of cooperation with the judiciary. Thirdly, police investigators and prosecutors need to develop the capacity to analyse complex economic and financial data.
- 3.1 Finally, the prosecution also needs to be able to properly plan and steer complex investigations to successful closure and the court system needs to improve the ability of judges to appreciate economic and financial evidence, align jurisprudence and encourage dissuasive sanctions through cassation. In this context, it will be important to establish a close operational cooperation between the specialised joint team against corruption and the specialised prosecution office for organised crime.

Despite the various legal and procedural instruments developed to address high-level corruption, the continuing difficulties of such cases in court raises questions about the capacity and resolve of the judiciary. High-level corruption cases typically involve influential public personalities; they are therefore a test for the capacity and independence of the

- 3.6 Bulgarian judicial system. As corruption and organised crime are often linked, detailed financial investigations are an important part of any investigation in this area and of particular importance to uncover links between organised crime and politics. These aspects have not received appropriate attention in Bulgaria. It will also be important to work closely with the asset forfeiture commission and other administrative control authorities in order to carry through an efficient pursuit of high-level corruption cases with dissuasive results.

Corruption in public administration

The efforts of law enforcement institutions in the fight against corruption need to be complemented by effective administrative action to identify transgressions of rules, to apply sanctions and to develop preventive measures. Since 2007, Bulgaria has developed a comprehensive administrative framework in this area. In particular, Bulgaria created a high-level coordination body for the fight against corruption under the Council of Ministers to supervise the implementation of Bulgaria's strategy and action plans in this area. Two new administrative bodies were created in 2010, a commission for the prevention of conflicts of interest, and a horizontal body to promote the fight against corruption. In addition, administrative inspectorates in each branch of government activity have been tasked to develop and monitor prevention activities and risk assessment tools and are also asked to apply disciplinary sanctions if required. This framework is completed by the National Audit office which is in charge of asset control of public officials.

With the help of this comprehensive administrative framework, Bulgaria has been able to register a number of achievements in preventing and sanctioning corruption since 2007. Risk

⁸³ For this purpose, the Commission recommended that Bulgaria undertake a comprehensive audit of judicial practice, procedures and organisation and establish a detailed action plan together with international experts. (COM(2011)459 final, recommendations under points 3 and 6, pages 8-9)

⁸⁴ See Technical report page 9.

assessment tools and codes of ethics have been developed and implemented in most areas of government, a system of regular declarations for conflict of interest, incompatibilities and assets for public officials has been set up and some institutions such as customs, tax authorities and border police carried out a structural reform, with particular attention to integrity and corruption prevention.

However, there are also a number of ^{3.8}important shortcomings which Bulgaria should correct in order to make a step change in dissuading corruption and to improve the degree of trust Bulgarians have in their state institutions. The system of asset control whereby the National Audit Office collects and publishes asset declarations is a useful contribution to transparency, but the verification of declarations falls short and the system offers no possibility to detect illicit enrichment. Few cases of concrete follow-up of inconsistencies in declarations by other authorities have been reported.⁸⁵ The recommendation by the Commission to include asset verification in the new law on asset forfeiture has not been followed.⁸⁶ The fact that few of these cases are ever investigated strongly suggests that there is a gap here, and part of the administrative machine needs to have explicit responsibility for proactively pursuing illicit enrichment.!

Bulgaria adopted a law on conflicts of interest in 2009 and set up an administrative authority to establish and sanction conflicts of interest.⁸⁷ The establishment of a dedicated commission to establish conflicts of interest and to suggest sanctions has led to an impressive increase of public signals on conflicts of interest and a number of decisions, but so far only one case has been finalised.⁸⁸ The assessment of the Commission's first 15 months of operation shows a new authority that has taken up its challenge and started work quickly, but which has not yet been able to prove itself in convincing decisions in important cases.⁸⁹ Questions must also be raised regarding the effectiveness of the law on conflicts of interest. The Commission's decisions can be appealed at two instances before the courts and any subsequent administrative sanction can also be appealed at two instances. As a result of this cumbersome two-tier procedure, the Commission has been able to issue altogether so far only five penal orders.⁹⁰ The Commission needs to demonstrate its ability to deliver sound judgement in

⁸⁵ Declarations are automatically checked by an IT programme against some other available data, such as tax declarations, but there is no risk profiling, no access to banking data, no comparison to declarations of previous years and therefore no possibility to follow-up on inexplicable wealth.

⁸⁶ The Commission recommended Bulgaria to "adopt legislation providing for non-conviction based confiscation and ex-officio verification of assets of senior officials, magistrates and politicians and demonstrate a track record in this area" (COM(2011) 459 final, page 9)

⁸⁷ Bulgaria adopted a law in 2009 and then established the Commission for Prevention and Ascertainment of Conflict of Interest (CPACI) in 2011, after a suspension of EU funds in summer 2008 which was motivated in particular by several cases of conflict of interest and a lack of protection of EU funds in this area. (Technical Report, page 27; see also COM(2008)496final "Report on the Management of EU Funds in Bulgaria").

⁸⁸ See Technical Report page 27.

⁸⁹ Recent cases which have been publicly questioned involve the previous chairman of the Asset Forfeiture Commission and the former chairman and a former member of the Commission for Consumer Protection.

⁹⁰ Other weaknesses highlighted by experts notably include the inability to pursue anonymous signals and to apply administrative sanctions in cases incorrect declarations are submitted (see Technical report page 27).

sensitive cases. Recommendations by the Commission to apply conflict of interest rules to individual service contracts have not yet been followed.⁹¹

- 3.7 Bulgaria implements a methodology on corruption risk assessment across the executive under the authority of the General Inspectorate of the Council of Ministers. This methodology can be considered a useful tool for corruption prevention. However, its application is not mandatory and the capacity of the General Inspectorate to follow up on implementation is limited. In addition, corruption risk assessment is only mandatory for the executive branch⁹² and disciplinary sanctions have so far not been applied in cases where the requirements were not respected. A new structure to assess corruption risks across the Bulgarian institutional framework ("Borkor") is yet to become operational. To have added value, it would need to become a strong central institution to coordinate the fight against corruption, with authority to assess the plans of other institutions, to make a risk assessment of declarations on conflict of interest, or to act as a secretariat for an independent monitoring process. |

Public Procurement

- 3.10 Weaknesses in the implementation of Public Procurement legislation are an important source of corruption. They also undermine the effective use of EU funds and, in a general sense, lead to a lower quality in the delivery of public goods and the waste of public money. Audits and assessment by various Commission services have identified substantial risks and shortcomings in this area.

3.11 Since 2007, Bulgaria has made efforts to improve its legal framework and administrative action regarding public procurement. Bulgaria reformed its public procurement-related legislation with the aim to simplify the latter and to strengthen some administrative controls in order to comply with recommendations by the Commission.⁹³ The Public Financial Inspections Agency (PFIA) and the Court of Auditors received powers to undertake ex-officio checks and the requirement on the Public Procurement Agency (PPA) to check tenders before they are published was extended. Efforts have been made to improve the expertise of the judiciary, including through specialisation.

However, these efforts have not yet led to the expected results. The complaints received by the Commission concerning the Bulgarian public procurement system continue to grow,⁹⁴ and there are clear cases of serious violations of EU procurement rules. Although additional staff has been made available this year,⁹⁵ the resources devoted to helping contracting authorities are still insufficient. It will be important for Bulgaria to implement new control procedures effectively. Giving the PPA right to perform ex-officio checks would send an important message that a more pro-active risk-based approach is expected from all control bodies. |

III. Next Steps

⁹¹ (COM(2011)459 final, recommendation v, page 10) Individual service contracts are currently based on the law on obligations and contracts and therefore escape labour legislation and its provisions on conflict of interest and incompatibilities.

⁹² Corruption risk assessment is not compulsory for Parliament, the Judiciary, local self-government, public agencies, public institutes and public utilities and funds.

⁹³ COM(2011)459final, page 10.

⁹⁴ In the area of public procurement, the Commission received 4 complaints over the course of 2008 and 2009 and 26 complaints over the course of 2010 and 2011.

⁹⁵ The Public Procurement Agency has received 10 additional posts this year, mainly to carry-out additional ex-ante control functions.

The Commission's assessment shows the progress that Bulgaria has made in the five years since its accession to the EU. The CVM has made a positive contribution to this progress. The Commission considers that Bulgaria is on its way to attain the objectives of the CVM, provided it steps up the reform process. Deepening reforms will need a stronger ownership of reform, particularly in the leadership of the judiciary. It will also need a clear common direction by the authorities, and a comprehensive approach to implementing change, joining the work of different institutions together more effectively than in the past. This implies a stronger effort to demonstrate, that integrity is valued and that corruption and organised crime is effectively punished. The CVM should continue, in order to lend its support to these efforts and to keep up the momentum of change towards a sustainable and irreversible reform process – a process sufficiently strong that the external intervention of the CVM is no longer needed.

The past five years have shown that Bulgaria can take major strides when the political direction is clear. It has put many of the right tools in place. The next phase will be to use these tools in order to drive and implement reform. This will bring closer the fulfilment of the CVM requirements, as well as being a demonstration of commitment to the Bulgarian people. All Member States have both obligations and opportunities within the area of freedom, security and justice, and the Commission looks forward to Bulgaria completing the particular process of the CVM and addressing these issues on the same basis as other Member States.

Recognising that Bulgaria now needs to implement what has been decided, avoiding any steps backward and demonstrating a strong track record, the Commission has decided to make its next assessment at the end of 2013. This will allow the time required to assess tangible results. The Commission will also end the practice of issuing mid term stock taking reports. However, the Commission will monitor progress closely over this period, with regular missions, as well as frequent dialogue with the Bulgarian authorities and with other Member States.

IV. Recommendations

To maintain progress, the Commission invites Bulgaria to take action in the following areas, on the basis of recommendations designed to help Bulgaria to focus its efforts in preparing for the Commission's next assessment of progress under the CVM at the end of 2013.

1. Reform of the judicial system
 - 1.1 – Renew the Supreme Judicial Council with a mandate to undertake fundamental reform.
 - 1.2 – Establish and implement a medium-term human resource strategy for the judiciary, based on an analysis of needs and workload, with the changes in the structure of courts, recruitment and training.
 - 1.3 – A new General Prosecutor should have a mandate to reform the prosecution in structure, procedures and organisation on the basis of an independent functional audit and in cooperation with external experts.
 - 1.4 – Set a target for the completion of work on the new Penal Code, and for its implementation.
 - 1.5 – Ensure the open involvement of all significant NGOs and professional organisations in defining and monitoring strategies for reform.

2. Independence, accountability and integrity of the judiciary
 - 1.6 – Focus the work of the Inspectorate on integrity and judicial efficiency. Define a single, effective system of random allocation of cases for use nationwide. 1.7
 - 1.8 – Ensure that the election of the General Prosecutor gives an example of a transparent, competitive process based on criteria of integrity and effectiveness.
 - 1.9 – Make transparency, objectivity and integrity the top priority in appraisals, promotions, appointments and disciplinary decisions for the judiciary.

3. Efficiency of the judicial process
 - 1.10 – Establish a strategy for reducing the backlogs in publishing motivations for cases and analyse how to remedy this problem.
 - 1.11 – Close loopholes in the effective implementation of court decisions, such as absconding to evade prison sentences or failure to apply financial sanctions defined in court.
 - 1.12 – Adopt a strategy to improve legal consistency, including a proactive strategy by the Supreme Court of Cassation to identify and rule on areas of disagreement.

4. Fight against organised crime
 - 2.1 – Ensure that the new Asset Forfeiture Commission is appointed on the grounds of integrity, that other authorities, notably the prosecution, fully cooperate with its work; and that the Supreme Court of Cassation rules swiftly to preserve its authority if necessary;
 - 2.2 – Carry out an independent analysis of case failures covering weaknesses in both investigation and prosecution including witness protection, economic and financial analysis, collection of evidence by police and cooperation between the judiciary and the executive.
 - 2.3 – On this basis, remedy shortcomings in structure, management, staffing, training, cooperation and professional practice.

5. Fight against corruption
 - 3.1 – Use experience from past cases to improve the performance of police, the prosecution and courts.
 - 3.2 – Carry out an independent impact evaluation of Bulgaria's National Anti-Corruption Strategy. Entrust a single institution with the task to coordinate the fight against corruption, to assist and coordinate the efforts in different sectors, report on the results of the anti-corruption strategy in all public bodies, and support a new independent monitoring system involving civil society. 3.3

- 3.4 – Amend the law on conflicts of interest to allow dissuasive sanctions to be effectively applied.^{3.5} Revise the asset declaration and verification system turning it into an effective instrument to detect illicit enrichment.



Brussels, 22.1.2014
COM(2014) 36 final

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

{SWD(2014) 36 final}

1. INTRODUCTION

In 2012, the fifth year of the Cooperation and Verification Mechanism (CVM), the Commission decided to produce a longer-term assessment to give a full picture of progress. This assessment was published in July 2012.¹ It showed important progress in the adaptation of the basic legislative and institutional framework, but also some important remaining gaps as well as a need for effective and consistent implementation of the reforms. There were still considerable challenges to be tackled. In this context it was decided to take a longer period before the next report (18 months) see how the reforms already implemented by Bulgaria were taking root and to give time to assess the degree of sustainability before the next assessment. The 2012 report, its methodology and conclusions were also endorsed in conclusions by the Council of Ministers.²

This report assesses the progress made by Bulgaria in the core CVM areas of judicial reform, anti-corruption work, and the fight against organised crime. These are issues at the heart of the modernisation of Bulgarian society: for reform to succeed, it needs a consistent and coherent approach based on a broad consensus in Bulgarian society. The fact that the period covered by this report was characterised by three different governments has not helped to build this consensus, though events have also illustrated a widespread public aspiration for reform.

The Commission believes that the monitoring process of the CVM, the opportunities provided by EU funds and the constructive engagement of the Commission and many Member States continues to be a valuable support to reform in Bulgaria. The next formal report will come in around one year's time.

2. STATE OF THE REFORM PROCESS IN BULGARIA

2.1 *Reform of the judiciary*

Independence, Integrity and Accountability

Public confidence in the Bulgarian judiciary is not high.³ CVM reports have pointed to ways to improve this confidence, through a professional approach to managing the system to insulating judicial appointments and decisions from political influence.⁴

Some significant steps have been taken since July 2012. The procedures for nominating senior magistrates have become more public and there has been a more sustained effort to tackle some of the management issues facing the judiciary, such as workload imbalances. Some serious problems have been acknowledged as requiring action, such as the need to protect the system for allocating cases from manipulation. In the second half of 2013, there were no frontal attacks from the executive on the judiciary.⁵ Nevertheless, as also highlighted in previous reports, concerns persist about the independence of the judiciary in Bulgaria.

¹ COM(2012) 411 final

² 24 September 2012

³ See the latest figures provided by the World Economic Forum <http://reports.weforum.org/the-global-competitiveness-report-2013-2014/>

⁴ For example, COM(2012) 411, pp 6-8

⁵ For example, the practice of naming police operations after judges who had failed to impose detention measures on arrested suspects was terminated.

1.1.1.9 In July 2012, the Commission expressed a strong hope that the future management of the Supreme Judicial Council (SJC) would position it as a key institution to drive progress in the reform of the judiciary. Reforms in 2012 introduced more public election procedures for the SJC. However, the conduct of the election for the SJC in autumn 2012 did not convincingly demonstrate an open contest with professional merit and integrity to the fore. The proceedings to elect the parliamentary quota, while more open than in the past,⁶ suggested a significant party political influence on the process. The election of the judicial quota suffered from the decision not to allow for direct elections by judges.⁷ This put much influence in the hands of the existing court leadership, limiting the opportunities for a fresh start. |

1.5 The SJC has identified its priorities more clearly than in the past. It has also made efforts to open up, with more outreach and with the establishment of a Civic Council to bring advice from civil society to the SJC, comprised of key NGOs as well as professional organisations. A vigorous civil society in this area was identified in the July 2012 report as an important step forward for Bulgaria.⁸ However, its real influence on policy remains unclear and a clearer procedure for consulting the Civic Council and explaining when its recommendations are not followed would increase the effectiveness of the Civic Council. In general, the SJC should take further steps in the direction of transparency. |

1.2 The SJC has taken some steps towards managerial reform. On workload and reallocation of resources, a practical approach seems to be making some progress. In other areas, such as objective appraisal and promotion procedures or introducing more consistency into disciplinary proceedings, concrete steps so far are few.⁹ The ethics committee could be expected to act as a champion of integrity, but the SJC has not positioned itself to make integrity a major priority.¹⁰ As such it finds it difficult to dispel continued concerns about political influence over its decision-making. |

The result is that the SJC is today not widely regarded as an autonomous and independent authority able to effectively defend the judiciary's independence vis-à-vis the executive and parliamentary branches of government. The onus for defending the independence of the judiciary, or for scrutinising whether politically-sensitive cases are handled objectively,¹¹ often seems to fall on civil society. The SJC should acknowledge this as a major priority and put in place transparent procedures for a consistent handling of issues as they arise. This also suggests the need for a more consistent policy towards the media.

1.2 One of the main areas influencing public perceptions of law enforcement and justice is appointments. These have acted as a media and political focus. Concerns about important public appointments being decided in an intransparent way and involving strong economic and political interest groups was further strengthened by several high-profile appointments in the course of the past year. Concrete examples were the failed appointments to the constitutional court and the state agency for national security (SANS).¹² In both cases, the candidates eventually had to withdraw, but both left a legacy of concern about how the system runs. These were only the most emblematic cases. In other cases the outcomes were

⁶ Technical report p. 2.

⁷ COM(2012) 411 final, ref

⁸ COM(2012) 411 final, p. 6.

⁹ Technical report pp. 13-14.

¹⁰ Technical report pp. 11-12.

¹¹ Current cases involving allegations of wiretapping and ballot rigging will provide a test in this respect

¹² Technical report pp. 4 and 25.

less contested, but the process still left a picture of intransparent decision-shaping having more influence than formal procedures, despite the improvements in transparency.¹³ /

- 1.6 Such cases illustrate that while transparent procedures are important for the proper functioning of public institutions, formal rules are not always sufficient. In order to build trust in its institutions, Bulgaria needs to develop a track record of allowing decisions concerning appointments, including to high-level offices to be based on a real competition between candidates in accordance with the clear standards of merit and integrity underlined in past CVM reports.¹⁴ An important test case will be the upcoming nomination and election of the Chief Inspector of the Judicial Inspectorate. Delays have given the impression that the key factor is an inability to agree on a candidate in advance, whilst this kind of position should be filled following an open process designed to appoint a highly skilled professional who can show and apply full objectivity. The election of the President of the Supreme Court of Cassation will also be an important appointment later in 2014.

An important element in the protection of judicial accountability and integrity is the disciplinary procedures applied to magistrates. This needs systematic criteria with the goal of consistency in disciplinary action.¹⁵ When there are no clear standards for the assessment of individual cases, the process becomes open to arbitrary decisions. The fact that the Supreme Administrative Court has frequently reversed SJC decisions also suggests either an inconsistency or a lack of common interpretation of the rules. A systematic approach to disciplinary action is a key element of judiciary independence and integrity, as arbitrary decisions in this area tend to create the basis for – real or perceived – undue pressure on magistrates.

The new unit set up to investigate crimes committed by magistrates will be responsible for a particularly sensitive area. If it can establish a track record of objectivity and effectiveness, this could be an important addition to the efforts to promote integrity. However, the abuses identified by the current prosecution leadership in the previous Prosecution Inspectorate also illustrate the risks of self-contained bodies within the prosecution.¹⁶ The implementation and application of clear, transparent and accountable procedures are essential to offset this risk.

Legal Framework

- 1.4 Current discussions on the reform of the Penal Code aim to bring the long-standing discussions on a first draft to a conclusion and a proposal has been presented to Parliament in January. The new code should bring important improvements. However, it should be noted that whilst a reform of the – regularly amended – 1968 Penal Code will be helpful, it needs to be part of a wider approach to criminal justice and be thoroughly discussed with practitioners and the civil society. In the areas covered by the CVM, it will be important to identify and explain provisions designed to improve the fight against corruption and organised crime, but it will also be important to see how the changes can be combined with a better managed judicial and law enforcement system. This may require changes to the Criminal Procedure Code. At the same time, the need for legislative changes should not hold

¹³ Technical report p. 5.

¹⁴ There are internationally recognised standards, such as those from the European Network of Councils for the Judiciary:

http://encj.net/images/stories/pdf/GA/Dublin/encj_dublin_declaration_def_dclaration_de_dublin_recj_def.pdf

¹⁵ In regard to appraisals and promotions disciplinary proceedings are sometimes taken into account during promotion exercises and sometimes are not.

¹⁶ Technical report p. 10.

back useful practical and organisational steps that can be taken in the short term independently of the new law. An important element in this process should be the conclusions of an analysis of unsuccessful cases recommended by the Commission,¹⁷ as well as other analyses of issues like delays in criminal proceedings (see below). |

Strategic framework for judicial reform

As well as the SJC, the other key player in setting a tone of reform for the judicial system is the Ministry of Justice. With changes in Ministerial leadership and a parliamentary arithmetic which now makes legislative change difficult, it has been difficult for the Ministry to provide the perspective needed, though the championing of areas like e-justice may reap dividends in the future. If given real ownership, the current efforts to update the longer-term strategy for judicial reform could act as a useful focus.

The Minister of Justice has asked leading NGOs to help analyse the state of play of the reform of the judiciary to date. The idea is to build upon the 2010 strategy, which has only been implemented in part, and to cover a variety of issues including rebalancing resources to needs, integrity issues, harmonisation of court management practice, and the role of administrative heads. This analysis was due to be ready in the autumn 2013 but has been delayed. It is supposed to be adopted in 2014 after consultation of the relevant stakeholders and should cover a 7 year period to implement reforms, partly to align the timespan with programming of support under the EU structural funds. It is important that the strategy is subject to wide consultation, including civil society and professional organisations, but then is adopted as an agreed roadmap by the government and the SJC, to ensure a maximum of ownership.

Efficiency of the judicial and law enforcement system

The first steps are being taken to address difficult issues of workload and the redistribution of resources amongst courts and prosecution offices. This may encounter some resistance from certain concerned parties, but as long as it can be shown to be based on objective and transparent criteria, it will also act as a demonstration that the judicial leadership can address sensitive questions. Together with the launching of stalled competitions, this should now be resulting in some real improvements.¹⁸ The work undertaken in the SJC on developing methodological guidelines to address workload imbalance should also offer a good basis for the future. A fair distribution of workload will not only make for a more efficient system which better serves the Bulgarian public – it will also have consequences for disciplinary proceedings. At present, the reality of widespread delays can too easily be used for disciplinary cases – often on an inconsistent basis – whilst responsibility for the problem may rather lie with the judicial leadership and administrative heads. |

1.11

- 1.7 On case allocation, the SJC intends to install a centralised system for keeping track of random case allocation in all courts, to address concerns that the current system can be manipulated.¹⁹ It is welcome that the existence of a problem has now been acknowledged. A permanent system should benefit from outside expertise and the involvement of stakeholders and civil society if it is to restore confidence. It is also important to have common implementing rules, so that all parties know how the system is translated into practice and can query any instances where rules seem not to have been respected. |

¹⁷ COM(2012) 411 final, p. 21.

¹⁸ Technical report p. 14.

¹⁹ Technical report p. 6-7.

Another important part of the management of the judicial system is the Inspectorate attached to the Supreme Judicial Council. As noted in past CVM reports,²⁰ the Inspectorate could be a valuable tool for driving a more rigorous management approach and for targeting identified shortcomings, re-orientating its work from a formal to a qualitative approach to inspections. Currently the Inspectorate will analyse statistics on the compliance with deadlines or check the application of random case allocation, but it rarely checks the quality of case files nor does it take into account workload issues in a systematic manner. As a consequence, the conclusions reached by the inspectorate in an area like random allocation do not seem to address the issues in full. In addition, issues related to the integrity or ethical behaviour of magistrates are not dealt with by the Inspectorate, as the Inspectorate considers that they fall outside the remit of its competence. These factors limit the Inspectorate's impact in terms of addressing the wider shortcomings affecting the judicial system in Bulgaria.²¹

An example where management has taken a more systematic approach is in the prosecution.²² The audit undertaken by the Prosecutor General and the subsequent action plan provides a clear and often frank analysis of shortcomings, and seeks to identify specific remedies. If implemented successfully, it could yield significant results, while also illustrating that extra resources are not always needed to galvanise change. Whilst such a process in the prosecution cannot be automatically replicated in the judiciary, given its less hierarchical management, it provides an example in terms of willingness to address problems and be specific as to intended solutions. It would however be useful to apply more transparency to the process, to ensure that accountability for its implementation can be effective. Reform in the prosecution also needs to go forward in the context of the wider judicial reform strategy – problems like addressing difficulties with the use of expertise in court need a common approach from the prosecution and the SJC. Issues like performance assessments could also be taken forward in a way which ensures a consistent approach for judges and prosecutors.

More generally, the Ministry of Interior has undergone a number of significant reforms to focus on its core purpose of law enforcement and to redeploy staff from administrative to operational functions. The problematic practice of donations to the Ministry, which had been restricted to public authorities and companies, has reportedly been stopped. At the same time, the Ministry has to face challenges such as appropriate handling of demonstrations and pressure on the borders.

2.2 Corruption

- 3.2 Widespread corruption is perceived as a major problem and poses a significant challenge for the Bulgarian authorities.²³ It has clear consequences for the willingness of businesses to invest in Bulgaria.²⁴ An anti-corruption strategy was adopted by the previous government in 2010 and it is now being updated – it could usefully involve independent outside expertise in this work. Overall, the results of previous efforts have been very limited. The general image

²⁰ COM(2012) 411 final, p. 7 and 21.

²¹ Technical report p. 11.

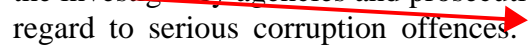
²² Technical report p. 9.

²³ Center for the Study of Democracy, Corruption and anti-corruption in Bulgaria (2012-2013), Policy Brief No. 43, November 2013. According to the Corruption Perceptions Index 2013 published by Transparency International, Bulgaria ranks second highest among the EU Member States with regard to the perceived level of corruption. (<http://www.transparency.org/cpi2013>)

²⁴ The 2013 Global Competitiveness Report lists corruption as the most problematic factor for doing business in Bulgaria. http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf p. 138.

is that of a weak and uncoordinated response to what is a systemic problem throughout the public administration. Shortcomings identified in previous CVM report remain.²⁵ |

A number of institutional changes have been made over the past years, but there is a tendency for these initiatives to run into problems or simply show no visible results. For example, the Conflict of Interest Commission, which could have played a crucial role in targeting irregular practices at all levels in the public sector, has instead been caught up in a serious scandal involving suspicions of strong political influence. The anti-corruption project BORKOR, which was promoted as a major instrument to identify and address corruption risks, still shows no concrete results, in spite of the resources which have been devoted to the project. In the area of public procurement, a complex and ever changing legislative framework has made it even more difficult to create a culture of objectivity and rigour. Some business voices are losing confidence that a tide of manipulation of tenders can be stemmed.²⁶

There are however also some positive developments. Since 2007 the internal inspectorates of the state administration working under the guidance of the Inspectorate General under the Prime Minister's Office have been strengthened. They have the potential to play an important role in detecting and preventing irregularities as well as in presenting proposals for further improvements in the anti-corruption system. The practice of establishing joint teams between ~~3.3 the investigatory agencies and prosecution~~ should also lead to a more effective response with regard to serious corruption offences.  It remains the case that anti-corruption efforts are diffuse, with no single corruption authority given the authority, and the autonomy, to drive change. The Inspectorate General could act as a nucleus for this work, but is at present on too small a scale to have a great impact. |

3.1 Experience suggests however that of central importance to the credibility of anti-corruption action is the successful pursuit of high level corruption, so that transgressions are seen to be brought to justice. The lack of a track record of success in pursuing high-level corruption cases remains an obstacle to persuading the Bulgarian public that a serious effort is under way to address the problem. |

2.3 Organised crime

2.1, 2.2, 2.3 Similarly, the lack of overall progress on emblematic organised crime cases has inevitable consequences for perceptions about the fight against organised crime. A number of high-profile cases have been dropped, while for other serious crimes, such as contract killings, no indictments have been made after several years of investigation.

The fact that high-profile organised crime figures were able to escape from justice on the eve of a final verdict in July 2012 was a source of widespread concern:²⁷ but the fact that nobody was willing to take responsibility for this, and that no steps have been taken to guarantee that this could not happen again, is an even stronger reflection on the difficulties of the system to address the problems.²⁸ |

The main measure taken by the new government has been the strengthening of the state agency for national security (SANS), which will now not only be dealing with espionage and counter-intelligence, but also with organised crime and a variety of other crimes considered to be significant enough to affect state security. This includes the transfer of the special

²⁵ COM(2012) 411 final pp. 14.

²⁶ Direct contacts between the Commission and business organisations.

²⁷ The fact that an asset forfeiture case against the same group has now stalled has reinforced this concern.

²⁸ Indeed, a comparable case concerning a defendant convicted of a double murder took place in December 2013.

police units on organised crime (GDBOP) to the security services (SANS). This has caused some disturbances in the operation of the services concerned and it is important to ensure that this effect is only transitional. More significantly, the manner in which the decision was taken, with no consultation or justification at the time, caused significant reputational damage to the services as well as the new government, which can only be redressed by the services showing that the change brings improved operational results. As discussed above, in this case the general image of a reform prematurely implemented was further compounded by the controversy over the appointment of the new head of the security agency.

A key issue is also the division of labour with the Ministry of Interior. For example, SANS will deal with the production of drugs and international drugs trafficking, whereas the police will deal with other drug related crimes. SANS will deal with high-level corruption, the police with all other forms of corruption. Sometimes cases may need to be reattributed in the course of the investigation.

SANS and the Prosecution have formed specialised teams to deal with corruption, trafficking, and financial crimes.²⁹

Whilst this reorganisation could bring some positive developments, notably by having a more integrated approach given the links between corruption and organised crime, the new agency will have to establish a strong track record if it is to dispel the negative impression created by the controversial atmosphere of its creation. Particular attention needs to be given to cooperation with law enforcement services in other Member States.³⁰

- 2.2 More generally, CVM reports had recommended a comprehensive analysis of why cases in the past had stalled or were unsuccessful, involving all the relevant government and judicial authorities.³¹ Perceived problems like the use of expert evidence in court, insufficient witness protection and problems with evidence need to be looked at from the perspective of the police investigation, the prosecution and the trial phase if improvements are to follow. Progress on this analysis has been slow and a lack of coordination and to some extent of ownership is suggested by parallel initiatives by the Prosecution and the SJC.³² Open discussions with stakeholders and civil society, followed by a clear action plan, is needed to restore momentum to this process.

Asset forfeiture is a key tool to deprive organised crime groups of their illegal revenues. The new leadership of the asset forfeiture commission (CEPACA) seems to have delivered a modest increase in forfeited assets. However, the new law, albeit having improved some aspects, also included some parliamentary amendments which created new stumbling blocks, in particular a very high unjustified wealth threshold for the agency (CEPACA) – to intervene ex-officio. Some question marks therefore remain with regard to the new legal set-up and its impact on the ability of the CEPACA to act effectively.³³

Likewise, the specialised prosecution and courts still need to establish a track record of effectively tackling important cases. There remains a concern that some aspects of the design are hampering their effectiveness, particularly a lack of authority to prioritise which leaves the institutions burdened with minor cases. The lack of technical expertise is also often

²⁹ In addition to the unit on crimes concerning the magistracy noted above

³⁰ A particular problem concerns the admissibility in some jurisdictions of evidence gathered by security services

³¹ COM(2012) 411 final, p. 14 and 21.

³² Technical report p. 24.

³³ Technical report p. 25-26.

flagged by the specialised prosecution as a serious operational problem, and the increasing importance of financial investigation in organised crime makes this of particular importance.

3. CONCLUSION AND RECOMMENDATIONS

Since the Commission's last report in July 2012 Bulgaria has taken a few steps forward. There has been some degree of improvements in appointment procedures, some useful managerial steps by the Prosecutor General and some progress by the Supreme Judicial Council on the workload issue.

However, overall progress has been not yet sufficient, and fragile. Public confidence is conditioned largely by key moments when decisions or events are of sufficient importance to warrant more general interest. Most such events over the last 18 months – a period during which Bulgaria has had three different governments – have been the source of concern rather than reassurance, with appointments having to be aborted due to integrity issues, the escape from justice of convicted leaders of organised crime and a succession of revelations about political influence on the judicial system. There remain very few cases where crimes of corruption or organised crime have been brought to conclusion in court.

There are voices in favour of reform in Bulgaria, frustrated by the slow pace of change, which deserve encouragement. To progress more quickly towards the CVM benchmarks, the Bulgarian authorities need to work with them and to provide leadership based on a vision centred in core principles like the rule of law and the independence of the judiciary. This would imply a political commitment to a long-term strategy for reform as well as concrete and practical measures in the short term to bring the process forward.

The Commission invites Bulgaria to take action in the following areas:

1. *Independence, accountability and integrity of the judiciary*

The rules governing appointments should be applied with clarity and transparency. A series of cases where professionalism and integrity are clearly the main drivers in an appointment process will be needed to restore public confidence, particularly in the case of the most senior appointments. In this area Bulgaria should:

- 1.1 • Establish a set of objective standards^{1.2} for appraisals and promotions, focusing on merit, integrity and transparency, and put in place a system to monitor and evaluate the application of those standards in current practice, accounting for the specifics of the functions of judges, prosecutors and investigators. In both steps, involve the professional associations and other relevant stakeholders.
- 1.3 • Develop a consistent practice within the SJC of applying objective standards of merit, integrity and transparency to appointments, including for high-level offices.
- 1.4 • Provide guarantees for the integrity and transparency of the system of case allocation throughout the judiciary, with a system of random allocation checked by independent experts to ensure that administrative heads are fully accountable for all decisions to diverge from the system. Common rules for applying the system are needed and should apply to all courts.
- 1.5 • Re-direct the work of the Inspectorate of the SJC to act in a proactive manner to promote integrity and judicial efficiency.

- 1.6 • Establish a clear procedure for the SJC to react publicly in cases of political interference in the judiciary and prosecution.

2. *Reform of the Judicial System*

The updated strategy on judicial reform should be used to give a direction and momentum to reform. In this area Bulgaria should:

- 1.7 • Implement the action plan for the prosecution within the proposed timeline. Embed the action plan in the broader reform of the judiciary. In the meantime, in the SJC, take concrete measures to address the problem of uneven workload between courts and magistrates in an objective manner.
- 1.9 • The strategy should include an annual progress report from the SJC on judicial reform measures and goals for the coming year so as to add to the transparency of the process.
- 1.10 • Set a target for the completion of work on the new Penal Code, and for its implementation.
- 1.11 • Ensure the open involvement of all significant NGOs and professional organisations in defining and monitoring strategies for reform.

3. *Efficiency of the judicial system*

The issues of workload imbalances and distribution of resources should continue to be addressed as well as issues like appraisals and promotions taking full account of integrity. In addition, in this area Bulgaria should:

- 1.12 • Establish clear procedures, standards and penalties to ensure consistent disciplinary rulings. These should serve as the basis for a consistent approach by administrative heads.
- 1.13 • Make fully public the functional audit of the prosecution offices conducted by the Prosecutor General as well as the action plan and undertake a public consultation on the action plan.
- 1.14 • Close loopholes in the effective implementation of court decisions, such as absconding to evade prison sentences or failure to apply financial sanctions defined in court.
- 1.15 • Make concrete progress on E-justice as a means to improve the efficiency, transparency and consistency of the judicial process in the short- to medium-term as well as in the long-term perspective.

4. *Corruption*

Tackling corruption requires a sustained and consistent effort on prevention, but also on pursuing transgressions and showing that wrongdoing results in sanctions. In this area Bulgaria should:

- 3.1 • Entrust a single institution with the task to coordinate the fight against corruption, to assist and coordinate the efforts in different sectors.
- 3.2 • Review and update the national anti-corruption strategy in consultation with civil society organisations, with a standard model of public administration having internal inspectorates with independence, transparency and accountability.

- 3.3 • Take steps to reduce the risk of corruption in public procurement procedures by making them simpler and more transparent.
- 3.4 • Review the procedures on conflicts of interest so as to ensure their effectiveness and impartiality as well as the credibility of the sanctioning mechanism.

5. *Organised crime*

Successful investigation and sanctioning of organised crime will always remain the most effective way to make progress, so progress on emblematic cases remains of central importance. In this area Bulgaria should:

- 2.1 • Prepare and implement an action plan, drawing on the long-awaited independent and comprehensive analysis of case failures, with a timetable for concrete measures to address all aspects and all stages of the law enforcement and judicial system.
- 2.2 • Specifically address the problem of high-level defendants absconding before a final court decision, with a clear assignment of the responsibility for any failings.
- 2.3 • Develop a clear policy governing the relationship of the State Agency for National Security (SANS) with bodies dealing with organised crime in other Member States, with specific operating procedures with those bodies to ensure that cooperation is maintained and improved.
- 2.4 • Provide that the Specialised Court for Organised Crime and the attached Prosecutor's Office can concentrate on high-profile cases.
- 2.5 • Ensure the necessary cooperation between the Asset Forfeiture Commission and the relevant law enforcement institutions! Carry out an independent evaluation of the new law on asset forfeiture and its impact by summer 2014.

2.6



Brussels, 28.1.2015
COM(2015) 36 final

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

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

{SWD(2015) 9 final}

1. INTRODUCTION

The Cooperation and Verification Mechanism (CVM) was set up at the accession of Bulgaria to the European Union in 2007.¹ It was agreed that further work was needed in key areas to address shortcomings in judicial reform, the fight against corruption, and tackling organised crime. Since then CVM reports have charted the progress made by Bulgaria and have sought to help focus the efforts of the Bulgarian authorities through specific recommendations.

The CVM has played an important role in the consolidation of the rule of law in Bulgaria as a key facet of European integration. Monitoring by the Commission and cooperating with the work of the Bulgarian authorities to promote reform has had a concrete impact on the pace and scale of reform. The Commission's conclusions and the methodology of the CVM have consistently enjoyed the strong support of the Council,² as well as benefiting from cooperation and input from many Member States.

This report summarises the steps taken over the past year and provides recommendations for the next steps. It is the result of a careful process of analysis by the Commission, drawing on inputs from the Bulgarian authorities, civil society and other stakeholders. The Commission was able to draw on the specific support of experts from the magistracy in other Member States to offer a practitioner's point of view.

The political uncertainties of the past year in Bulgaria have not offered a stable platform for action. This report will point to a number of areas where problems have been acknowledged and where solutions are starting to be identified. These will need to take root for the sustainability of change to be shown. Bulgaria can also do more to collect (and publish) data on the judiciary and law enforcement.

The extent of the challenge has been illustrated by opinion polling of Bulgarians themselves. A Eurobarometer taken in the autumn of 2014 showed a strong consensus in Bulgarian society that judicial reform, the fight against corruption and tackling organised crime were important problems for Bulgaria. The results also showed a concern amongst Bulgarians that the situation had deteriorated, though with hope that this trend might reverse and with strong support for an EU role in addressing these issues, and for EU action to continue until Bulgaria had reached a standard comparable to other Member States.³ These attitudes underline that continuation of the reforms is crucial for the quality of life of citizens, both because of the impact of corruption and organised crime on the Bulgarian economy and because of the importance of the rule of law for a functioning and free society.

The CVM is designed to monitor longer-term trends rather than take a snapshot of the situation at a particular moment. However, this report seeks to take into account the perspectives put in place by the government which took office in November 2014 and to identify some key landmarks which can illuminate the progress of these policies in the future. In this way, the Commission hopes this report will help in building a new consensus to accelerate reform in Bulgaria. The recommendations set out in this report, well-targeted EU

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

² Council conclusions on previous reports: http://ec.europa.eu/cvm/key_documents_en.htm

³ Flash Eurobarometer 406

funds and the engagement of other Member States⁴ together show how the EU stands ready to support a renewed effort.

2. STATE OF THE REFORM PROCESS IN BULGARIA

2.1 Reform of the judiciary

Independence, accountability and integrity of the judiciary

1.1,1.2, 1.3 The Supreme Judicial Council (SJC) has wide-ranging powers to manage and organise the Bulgarian judicial system. The 2014 CVM report noted that despite some important steps in terms of managerial reform, the SJC was not widely regarded as "an autonomous and independent authority able to effectively defend the judiciary's independence vis-à-vis the executive and parliamentary branches of government".⁵ The work of the SJC in 2014 has continued to be subject to controversy, with several incidents in relation to appointments, dismissals or the control of the application by courts of the system of random allocation of cases. In addition to this, tensions between the SJC and its Civic Council, set up to represent civil society, have developed over time, with claims on the part of civil society actors that their views are not being adequately taken into account. Several organisations, including the largest judges' association, have left the Civic Council as a result. Perhaps partly in reaction, the SJC has developed its communication strategy and has taken some further steps in terms of transparency.⁶

One issue raised by stakeholders linked to independence is the management of the two branches of the magistracy by their peers. Different Member States have different degrees of autonomy for judges and prosecutors within judicial councils. This has become an area of debate in Bulgaria, with several calls for separate chambers within the SJC to determine career and disciplinary decisions concerning judges and prosecutors, with more horizontal issues being dealt with in plenary. The underlying reason for such calls is the different organisational structures and roles of judges and prosecutors, but also the fact that decision making on appointments and disciplinary matters could be used by one constituency of the SJC to pressurise the other.

This idea of a change of the SJC structure has been taken over in the new proposal for a judicial reform strategy adopted by the Bulgarian government and the Parliament.⁷ The SJC, without fully opposing the change, has raised feasibility concerns, considering it would require a change of the Constitution, and could not be enacted through a legislative amendment of the Judicial System Act. In addition, the reform strategy touches upon wider issues such as the election of SJC members. Previous CVM reports have already made recommendations which would hold good for the SJC's next elections, to increase transparency and address integrity in the selection procedure, including through "one judge one vote" for the judicial quota of members of the Council.⁸ The new strategy also raises the

⁴ Some Member States provide technical assistance to Bulgaria in CVM-relevant areas.

⁵ COM(2014) 36 final, p.3

⁶ Technical report section 2.1

⁷ Reports suggest however that this issue was questioned in Parliament on 21 January 2015.

⁸ COM (2012) 411 final, p.11.

issue of reducing the power of court presidents, raised in the past as an important issue for the independence of individual judges.

- 1.1-1.2 The importance of more transparency and objectivity in judicial appointments has been a consistent theme in CVM reports.⁹ Although some of the peaks of controversy seen in 2012-13 were avoided in 2014, the question of high level appointments within the magistracy has remained problematic. In particular, the election of the President of the Supreme Court of Cassation (SCC) was postponed on several occasions, despite the fact that candidates with good credentials had applied – with solid experience in the SCC itself – and amidst controversy over the voting system.^{1.7} Nominations of administrative heads of other courts raised concerns about the openness and merit-based nature of the selection procedure. In addition to this, questions submitted to the SJC by NGOs concerning integrity issues of certain candidates do not always seem to have been addressed, even though the SJC carries out a formal integrity check of all candidates – an important part of the procedure since it can lead to a negative opinion.^{1.6} Some procedural improvements have taken place which could lead to greater transparency in the procedures, such as in particular the introduction of a possibility for the judges at the SCC to organise a hearing of the candidates for President of the Court. Such new procedural options can both enhance the credibility of appointments and improve the ownership of rank and file judges in the process. |
- 1.5 A key actor in promoting integrity and efficiency within the judiciary has always been the Judicial Inspectorate. The election of its Chief Inspector, after a long vacancy of the position, was considered as a test case by the January 2014 CVM Report.¹⁰ The election has so far not yet taken place. The procedure in Spring 2014 attracted candidates who seemed well qualified for the post, but a lengthy process meant that Parliament did not reach the stage of a vote. As a result, the Inspectorate has remained without the strong independent leadership foreseen in the Constitution. This will remain an important test case in 2015 of the ability of the Bulgarian institutions to carry out transparent and merit-based appointments to high-level offices in the judiciary.¹¹ |
- 1.4 Another recommendation of the 2014 Report¹² was a thorough and independent analysis of the system of random allocation of cases, to ensure it is secure, and that administrative heads of courts are made to account in full for any decision not to use random allocation. The SJC has taken some steps to analyse potential vulnerabilities and drew up plans to modernise the system in the context of a longer term e-Justice project. The allocations can now be collected centrally, facilitating checks. However, this interim solution does not appear to have improved security. Specific shortcomings identified in a March 2013 audit of the Supreme Administrative Court and the Sofia City Court were not followed up. As a result, a series of scandals concerning case allocation in the Sofia City Court broke out in autumn 2014.¹³ These problems were not identified by the SJC – the issues had to be raised by outside actors. |

⁹ See for example COM (2012) 411 final, p.6 and COM (2014) 36 final, p. 9.

¹⁰ COM (2014) 36 final, p.4.

¹¹ The National Assembly has re-started the procedure with a deadline for nomination of candidates on 30 January 2015.

¹² See Recommendation p. 9 of COM (2014) 36 final.

¹³ Notably in relation to the allocation of bankruptcy procedures in two emblematic cases. See technical report section 4.1.

Whilst delays in the preparations for a longer-term solution are unfortunate, the more important issue is the reaction to evidence of transgressions. The reaction of the SJC in autumn 2014 suggested that this is a low priority for the Council, in spite of the potential for criminal as well as disciplinary offences. It seems likely that the reputation of the judiciary in Bulgaria will continue to be damaged until a fully secure system is in place. Using external IT security expertise to test the new system would help to reassure that this is on the right track.¹⁴

Reform strategies for the judicial system

Steps have been taken by the Ministry of Justice with first the roadmap for addressing the 2014 CVM recommendations (although its current status and deadlines are to be clarified) and then in the autumn with the presentation of a long awaited judicial reform strategy.¹⁵ This comprehensive document would replace the 2010 strategy, which has been only partially implemented. The Strategy was adopted by Decision of the Council of Ministers on 17 December 2014 and broadly endorsed by Parliament on 21 January 2015.¹⁶

Consensus and ownership has been pursued by encouraging a debate on the text.¹⁷ The Prosecutor-General and the SJC have reacted in detail. The text includes many elements called for by civil society and professional organisations,¹⁸ and indeed points raised by previous CVM reports. Its goals are to ensure the good governance of the judicial authorities and improve human resource aspects, but also more broadly to modernise criminal policy and improve the protection of fundamental rights. The strategy has introduced a degree of clarity and urgency into the debate on judicial reform – this will now need to be carried through into implementation.

- 1.7 From the side of the prosecution, there has been significant progress with the implementation of the action plan put forward by the Prosecutor-General in 2013. Partly sparked by the judicial reform strategy, the Prosecutor-General also made new proposals in November 2014 for the decentralisation of the prosecution and for providing additional guarantees of non-interference in the work of prosecutors.¹⁹
- 1.10 Work on a new criminal code has progressed, but still lacks a consensus. Experts and practitioners have expressed divergent views about whether a complete rewrite is needed, or just amendments – and about the overall rationale. The current intention seems to be to follow a two track approach, with a first stage consisting of swift amendment of parts of the criminal code (and possibly of the criminal procedure code) on certain more urgent issues, including provisions related to the fight against corruption and organised crime. In a second stage and on the basis of thorough impact assessment and public consultation, the need for a new

¹⁴ This could be expected to be a good area for the support of EU funds.

¹⁵ Available on the website of the Ministry of Justice (in Bulgarian): <http://mjs.bg/107/>

¹⁶ It appears that some elements of the strategy were questioned in Parliament.

¹⁷ Under the interim government in October 2014, the text was put forward as a draft.

¹⁸ See most notably the above-mentioned proposals for a division of the SJC into chambers for decisions concerning appointments and disciplinary matters.

¹⁹ The concrete proposals presented by the Prosecutor-General, aiming at a more decentralised, transparent and accountable prosecution office, could also be considered in the context of broader changes to the Criminal Procedure Code and the Judicial Systems Act.

criminal code would be determined. This could be part of a broader reflection on future criminal policies, which needs time in order to build consensus.²⁰ |

Efficiency of the judicial system

- 1.8 Work has continued within the SJC on a methodology for the assessment of the workload of magistrates and judicial bodies.²¹ One of the goals is to set up rules on how to measure and allocate workload, taking into account the complexity as well as the scale of cases. Differences in the workload today are seen as a significant cause of inefficiency in the system. All regional courts will be reviewed, taking into account socio-economic as well as demographic factors and the imperative of guaranteeing access to justice, with a view to presenting a proposal for a new judicial map for the regional courts before the end of 2015. There have already been concrete steps taken in rationalising military courts. A solid methodology would offer the right basis to assess whether it is justified to close down courts with very little workload (or instituting a system of "mobile courts"), while redistributing resources towards other overburdened courts. Work on a broader reform of the judicial map is likely to take longer, notably as the SJC would need to coordinate with a wider range of stakeholders,²² even if the final decision rests with the SJC. |

In terms of broader human resource management, appraisal and promotion systems as well as the quality of training are key factors. Here the Government's judicial reform strategy sets out some elements for future improvements. The National Institute of Justice continues to develop its repertoire of training for judges.²³

- 1.12 Disciplinary action has been another area highlighted in CVM reports. Problems have included a lack of consistency (and clear standards to deliver this), with a high proportion of decisions being overturned in appeal. The SJC has recently adopted some steps including general guidelines in this area, though this does not appear to have been based on a clear analysis of shortcomings. It is too early to say if the measures taken will be sufficient to avoid continued controversy over disciplinary proceedings in the future. |
- 1.14 Another issue which CVM reports have urged to address is the effective implementation of court judgements and notably the problem of convicted criminals having been able to escape justice and abscond. Some work has been done, and some managerial steps followed through an interagency action plan for 2014. However, the response of the authorities continues to lack conviction. The issue has not been looked at comprehensively, so it is difficult to assess the extent to which one-off measures (such as the use of electronic monitoring) will fill the gaps.²⁴ |

²⁰ The preparations that have been ongoing since 2009 in this area should provide a rich basis in terms of analytical input.

²¹ Partly in response to CVM recommendations (see for example COM(2014) 36 final, p.10), the analytical work which is currently being carried out within the SJC could also further improve the basis for assessments, for example by better accounting for workload and developing a clearer basis for the regular appraisal of magistrates.

²² There are implications for the territorial organisation of other public services.

²³ Technical report, section 4.2.

²⁴ See technical report, section 6.2.

2.2 Corruption

Corruption remains a serious issue in Bulgaria. In the recent Eurobarometer survey, almost all respondents identified corruption (97%) as an important problem.²⁵

- 3.1 It has been a long standing recommendation of the CVM that Bulgaria reviews and updates its national anti-corruption strategy.²⁶ The first informal results of a recent evaluation of the impact over past years of the Bulgarian anti-corruption strategy, carried out by the Bulgarian authorities, appears to constitute an important contribution in terms of an honest assessment of the shortcomings of the strategy. These include a piecemeal approach, the insufficient use of risk assessments, and an absence of monitoring and evaluation. Though ministerial inspectorates have developed a culture of improved control, the absence of a centralised structure or common benchmarks results in different ministerial inspectorates acting in an uncoordinated way. Arrangements at local level seem to show major gaps. As for the structure assigned by Bulgaria to perform risk analysis (BORKOR), this does not seem to have delivered results in proportion to its costs, and in any event can only be seen as providing analytical input. This body is not designed to provide political direction.²⁷

This assessment of the shortcomings of the current anti-corruption system could be the starting point of a long-awaited reform. A consultation of all stakeholders would allow experience to be taken into account and build ownership for the exercise. Civil society has developed useful experience in the field of anti-corruption, which should be used to the full. |

- 3.2 Preventive measures seem in their infancy in most cases. Some lessons have been learned in particular areas,²⁸ but these reflect piecemeal efforts. There is no evidence of a structure to exchange best practice or to give credit to successes. The public administration does not have a comprehensive system of compulsory monitoring of anti-corruption activities and reporting to a central point. |
- 3.3 As set out in successive CVM reports, public procurement is a high risk area in terms of corruption. Systems to check the procedures can be strengthened, in line with the recent strategy for the Bulgarian public procurement system which has been developed in response to recommendations from the Commission services. |
- 3.4 Regarding conflicts of interest and illicit enrichment, the Commission on the Prevention and the Ascertainment of Conflicts of Interest (CPACI) has been awaiting legislative changes as well as nominations at managerial level. Both are important to the effective operation of the Commission,²⁹ and the forced resignation of the former Chairman following evidence of trading in influence³⁰ would suggest there is a degree of urgency to put the Commission back on a sound footing. However, these decisions have now been pending throughout 2014. This is the responsibility of Parliament, and the delays run the risk of increasing the impression

²⁵ Flash Eurobarometer 406

²⁶ Similarly, the EU Anti-Corruption Report 2014 highlighted a number of challenges in Bulgaria (COM (2014) 38 final). Corruption (as well as judicial independence) are also noted as challenges for Bulgaria in the 2014 country specific recommendations in the context of the European Semester of economic policy coordination. (OJ 2014/C 247/02).

²⁷ COM(2014) 36 final, p. 7; technical report section 5.4.

²⁸ Such as avoiding the handling of cash by customs officers and border guards, or rotating staff.

²⁹ Technical report section 5.4.

³⁰ This has been the subject of criminal proceedings.

that decisions where integrity concerns should predominate are being taken on political grounds. In terms of corruption prevention, a better use might be made of asset declarations submitted by public officials in terms of identifying risk areas and possible cases of illicit enrichment.³¹

Effective prosecution and final convictions are central to the credibility of any anti-corruption strategy. There are so far very few final convictions in cases involving substantial corruption, despite the scale of the problem.³¹ Positive steps have been taken in the General Prosecution to prioritise corruption, and there has been an increase in the number of cases initiated and the speed with which they progress. A few of these cases concern individuals in high-level positions. As in the case of organised crime, monitoring of the evolution of corruption cases at court level is essential to identify aspects of court practice which can be manipulated to delay the course of justice. Cases sometimes appear to stall for a substantial amount of time at court level before being sent back to the prosecution with a short deadline to perform supplementary tasks.

A small specialised structure has been put in place by the Prosecution, staffed by prosecutors and investigators from the State Agency for National Security (SANS), to more effectively investigate corruption in the public administration. The unit has so far mostly been targeting cases of local corruption, which could not be handled at local level given local relationships and pressures. The model of specialised structures to fight corruption appears to have seen some early results, but the test will come with more high level cases and a development of operational capacities. It will also be important that structural changes to SANS do not undermine the effectiveness of this work.

Another problem appears to lie with deficiencies in rules in the Criminal Code to fight corruption, and in particular "high-level corruption", trading in influence and the differentiation of active and passive corruption. There seems to be an acute need to modernise the Code in this area, which could benefit from rapid amendments, in parallel to a broader reflection on criminal policy and a new code.

2.3 Organised crime

Organised crime remains a problem in Bulgaria. This is recognised in public attitudes,³² and high-profile recent cases of public shootings and the murder of a witness have provided a clear reminder of the severity of the situation. Whilst the number of cases initiated by the prosecution seems to have increased substantially in 2014, the number of cases that have reached final conclusion remains low.³³ Authorities working in this area have reported to the Commission concerns over pressures at local level hampering effective investigation of crime and corruption. The intimidation of witnesses remains a serious problem, and there may be ways to encourage witnesses to accept more readily witness protection programmes.³⁴

³¹ SANS' report on its activities for 2014 was able to point to much more activity on organised crime than on anti-corruption.

³² It is perceived as an important problem by 96% of Bulgarian citizen surveyed in the recent Flash Eurobarometer 406.

³³ Technical report section 6.1.

³⁴ In a recent case of the murder of a witness in an emblematic case, the witness has declined to participate in a witness protection programme.

2.1,2.4 The specialised prosecution and court put in place two years ago are slowly starting to yield some results, with a few final convictions, and some evidence of swifter procedures. But their action remains hindered by an unfocussed attribution of tasks and very formalistic provisions of the Criminal Procedure Code. The Prosecutor-General made proposals in November to address some of these issues. |

2.5 Despite substantial efforts, asset forfeiture and confiscation still do not seem sufficiently targeted against organised crime groups. Interim freezing measures are ordered by the Prosecution when urgent and passed on to the Assets Forfeiture Commission. This Commission continues to achieve significant results, in spite of a burdensome legal framework. The last CVM report noted question marks with regard to the new legal framework for asset forfeiture³⁵ – these issues remain outstanding. |

The Ministry of Interior has own capacities for forensic, DNA, ballistic and graphology, but other fields of expertise require using experts accredited to courts, raising questions of availability, competence, costs and – possibly – impartiality. Bulgaria does not have a bureau of experts or similar mechanism. Observers have raised this issue as one potential reason for the failure of cases to progress in court.³⁶

2.3 The new Bulgarian government has announced its intention to remove the investigation of organised crime from the mandate of the SANS, reversing the controversial merger of the former police directorate on organised crime – GDBOP – with SANS in 2013.³⁷ The previous reform in this area resulted in several months of operational disruption in organised crime cases, including in cooperation with other Member States' security services. Concerns have been expressed that a new reorganisation of the services responsible for investigating organised crime risks similar disruption, but the government has made clear that it is conscious of this risk and will take measures to facilitate the transition. |

3. CONCLUSIONS AND RECOMMENDATIONS

Since the Commission's last report in January 2014, progress in terms of addressing judicial reform and making concrete advances on corruption and organised crime has been slow. The fact that the period covered by this report saw three different governments and a deadlocked parliamentary situation has clearly contributed to a lack of resolve to reform. However, the foundation stone for taking reform forward is to acknowledge the problems and identify measures to remedy them. The current government has taken an important step by adopting a judicial reform strategy with an impressive level of precision. There are also indications that the forthcoming analysis of the existing anti-corruption measures will provide a helpful input to reflections on a future strategy. The next phase would be to show that reform is genuinely a political priority by rapidly taking these frameworks forward, building consensus and identifying precise actions with specific milestones – and then to ensure their implementation. This would require a further change in political culture, and a real sense that these issues are at the top of the agenda.

³⁵ COM (2014) 35 final, p.8

³⁶ Technical report section 6.1.

³⁷ COM (2014) 35 final, p.8

Some of the key institutions have continued to develop managerial changes which should support the effort to carry reform through into change on the ground. In addition to accelerating reform in line with the strategy, more systematic and professional gathering of data, and more transparency about putting information in the public domain, would also help build confidence in the professionalism and commitment of the authorities.

The credibility of progress will also depend on the reaction to specific controversies and on progress in respect of specific cases. Past CVM reports have noted how public scepticism about reform has been fuelled by controversy in areas like transparency and merit in judicial appointments, or the reaction to transgressions like the absconding of convicted criminals or evident failures in random case allocation. The Bulgarian authorities' reactions in such cases continue to lack conviction, fuelling doubts about judicial independence. It remains the case that the number of final court judgments on high-level corruption and organised crime cases is very low. These shortcomings in terms of the key measures of change also lie at the heart of Bulgarians' scepticism about reform so far, as shown by opinion polling.³⁸

The Commission invites Bulgaria to take action in the following areas:

1. Independence, accountability and integrity of the judiciary

The judicial reform strategy includes many proposals designed to address weaknesses in this area. Such measures need to be backed up with an awareness that the credibility of the system relies on the authorities showing a determination to maximise objectivity and to ensure that transgressions are handled robustly.

- 1.1 • Pursue reform of the organisation of the SJC, involving the professional associations and other relevant stakeholders, including looking ahead to procedures for the next elections to the SJC which will deliver an SJC which can command confidence;
- 1.2 • Apply objective standards of merit, integrity and transparency to appointments within the judiciary, including for high level offices, and make these appointments in a timely manner. Integrity issues are of particular importance and those responsible for appointments have to show that any questions have been followed up;
- 1.3 • Swiftly resolve the impasse on the nomination for the post of Chief Inspector;
- 1.4 • Improve rapidly the security of the system of random allocation of cases and accelerate ongoing work on its modernisation; perform rigorous and impartial investigations into all cases where suspicions of possible tampering with the system are raised.

2. Reform of the Judicial System

The judicial reform strategy constitutes a solid basis for future action and the debate it has sparked has shown bodies like the General Prosecution making a constructive response.

- 1.6 • Implement the new judicial strategy as adopted by the government, as well as the detailed ideas proposed by the prosecution;
- 1.7 • Address the critical areas in the criminal code which need urgent improvement to improve the fight against corruption and organised crime;
- 1.8 • Agree on a detailed timeframe for longer term reflection on the fundamental goals of a new criminal code.

³⁸

Flash Eurobarometer 406.

3. Efficiency of the judicial system

The Supreme Judicial Council has been taking some important managerial steps which now need to be followed through.

- 1.9 • Complete the methodology for the assessment of workload of magistrates and courts and consult all key stakeholders to offer an objective basis for the reform of the judicial map (if necessary, disassociating the courts from other public service maps);
- 1.10 • Enforce clear procedures and standards for penalties to ensure consistent disciplinary rulings;
- 1.11 • Implement work to close loopholes in the effective implementation of court decisions, such as absconding to evade prison sentences or failure to apply financial sanctions defined in court.
- 1.12 • Make concrete progress on e-justice as a mean to improve the judicial process.

4. Corruption

The forthcoming evaluation of Bulgaria's anti-corruption strategy should provide a useful analysis of the challenges facing Bulgaria. It can help both in defining a new strategy and in starting concrete steps to begin to tackle the problems, both in terms of prevention and effective prosecution.

- 3.1 • Entrust a single institution with the authority and autonomy ^{3.2} needed to coordinate and control the enforcement of the anti-corruption activities; create a uniform set of minimum standards for the public sector in terms of control bodies, risk assessment and reporting obligations;
- 3.3 • Put in place a solid national anti-corruption strategy, starting with publication of the analysis of the shortcomings of the current strategy;
- 3.4 • Ensure a determined follow-up to the public procurement strategy adopted in July 2014;
- 3.5 • Finalise the nomination procedures for the remaining members of the CPACI and the legislative changes to the conflicts of interest law;
- 3.6 • Assess how the system of assets declarations can be put to a better use (such as targeting checks through risk assessment);
- 3.7 • Reinforce the capacity of the prosecution to pursue high-level corruption cases;
- 3.8 • Monitor the progress of high level corruption cases and define and take steps to avoid the exploitation of procedural loopholes to delay the process of justice.

5. Organised crime

It remains the case that the large number of outstanding cases and the few examples of progress cast a shadow over work to address organised crime and to improve the professionalism of law enforcement in this area.

- 2.1 • Create the necessary conditions for the Specialised Court for Organised Crime and the attached Prosecutor's Office to be able to concentrate on high profile, complex cases;
- 2.2 • Monitor the progress of high level organised crime cases and define and take steps to avoid the exploitation of procedural loopholes to delay the process of justice;

- 2.3 • Ensure that necessary safeguards are taken to prevent high-level defendants absconding from justice or managing to hide criminally acquired property before a final court decision, with a clear assignment of the responsibility for any failings;
- 2.4 • Ensure that any changes to the structures involved in the investigation of organised crime are carried out in such a manner as to ensure operational continuity.



Brussels, 27.1.2016
COM(2016) 40 final

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

on Progress in Bulgaria under the Co-operation and Verification mechanism

{SWD(2016) 15 final}

1. INTRODUCTION

The Cooperation and Verification Mechanism (CVM) was set up at the accession of Bulgaria to the European Union in 2007. It was agreed that further work was needed in key areas to address shortcomings in judicial reform, the fight against corruption, and tackling organised crime. Since then CVM reports have charted the progress made by Bulgaria and have sought to help focus the efforts of the Bulgarian authorities through specific recommendations. The Commission's reports,¹ and the conclusions of the Council of Ministers,² have mapped developments in Bulgaria and made recommendations for the future. This report summarises the steps taken over the past year and provides recommendations for the next steps. It is the result of a careful process of analysis by the Commission, drawing on close cooperation with the Bulgarian authorities, civil society and other stakeholders. The Commission was also able to draw on the specific support of experts from the magistracy in other Member States to offer a practitioner's point of view.

The 2015 CVM report described progress over the previous year as slow, and the Council conclusions called upon Bulgaria to "consolidate its political resolve to bring about reforms and make tangible progress"³. But the report also noted a number of areas where problems had been acknowledged and where solutions were starting to be identified. This resulted in two comprehensive reform strategies being launched, focusing on judicial reform and the fight against corruption. These two strategies provided the background for many of the defining moments of 2015 and will continue to be important points of reference for 2016. The key tests of progress will be to translate the commitments contained in these strategies into concrete results. The handling of difficult cases and of obstacles in the path of reform is a determining factor in building the confidence of Bulgarian citizens and EU partners. It is also a central factor in determining the extent to which reform has started to take root. This is necessary to establish the sustainable change which is the underlying goal of the process.

The Commission will continue to support Bulgarian efforts to achieve the CVM objectives. Assistance is already provided to Bulgaria in many areas under the European Structural and Investment Funds.⁴ In addition, the Commission has in 2015 established a new instrument in the form of a Structural Reform Support Service (SRSS) dedicated to providing technical assistance to the reform efforts of EU Member States in a broad range of areas. Other assistance is also being provided from Member States and by international organisations, often in tandem with Bulgarian civil society. Such involvement is part of an open and democratic society and can be a major support to the Bulgarian reform effort. The Commission welcomes that Bulgaria has indicated an interest in drawing on further technical assistance, as stated by the Bulgarian Prime Minister,⁵ and encourages Bulgaria to make full use of all the available possibilities.

¹ Past reports can be found at http://ec.europa.eu/cvm/progress_reports_en.htm.

² Most recently, Council conclusions adopted 17 March 2015.

³ 7281/15, p. 3. http://ec.europa.eu/cvm/key_documents_en.htm

⁴ During the 2007-2013 programming period €51 million was allocated under Operational Programme for Administrative Capacity to calls for applications from the judiciary, of which only €25 million was contracted, due to a lack of uptake in the courts and prosecution offices. Under the new programming period 2014-2020 a priority axis for the judiciary has been included with an allocation of €30.1 million.

⁵ Statement in the margins of the European Council on 17 December 2015.

2. STATE OF THE REFORM PROCESS IN BULGARIA

2.1 Reform of the judiciary

Independence, accountability and integrity of the judiciary

- 1.1 The 2015 CVM report already noted that the judicial reform strategy provides a comprehensive and detailed blueprint for the coming years. Following endorsement by the Bulgarian National Assembly in January 2015, the government initiated concrete follow-up in a number of areas within the direct authority of the Ministry of Justice. However, the issue that came to be identified in the public debate in 2015 as the most significant test for the strategy was the reform of the Supreme Judicial Council (SJC). The SJC is the key institution governing the Bulgarian judiciary. It has wide-ranging powers over the appointment, appraisal, promotion, and disciplining of judges and prosecutors, as well as managing the budget of the judiciary. It also acts as the voice of the judiciary towards society and therefore has a central role in shaping public attitudes towards the judiciary as a whole. Public confidence in the judiciary remains low.⁶

The functioning of the SJC is therefore of key importance. A particular issue inherent in the current structure is that decisions on personnel and disciplinary matters for judges and prosecutors are made in a single structure. While no single authoritative model exists for the make-up of judicial councils, it has become clear that both judges and prosecutors consider it inappropriate that these decisions are being taken by mixed groups of SJC judges and prosecutors. In the Bulgarian context, with a large number of political appointees in the SJC, the current model gives rise to particular concerns about judicial independence and the possibility of pressure being exerted on judges. This was the background for the proposal in the reform strategy to establish two separate colleges within the SJC to deal with personnel matters for the two arms of the magistracy.

Following extensive debate it was concluded in spring that some of the proposed changes necessitated amendments to the Constitution. Such amendments were adopted by the National Assembly in December 2015. While these amendments included some significant changes from the text originally proposed by the government,⁷ their adoption still represents an important step towards a reform of the SJC. In addition to the creation of two decision-making chambers inside the SJC, the powers of the judicial inspectorate (ISJC) to investigate conflicts of interest and illicit enrichment among magistrates will be strengthened.⁸ The next step will be to implement the reform via legislative amendments to the Judicial Systems Act.

⁶ The low public confidence in the judiciary is confirmed by opinion polls and surveys. A large majority of Bulgarians (96% in 2014) consider shortcomings in the judiciary to constitute an important problem (Flash Eurobarometer 406, January 2015, p. 9); See also World Justice Project *Rule of Law Index 2015* (p. 70): http://worldjusticeproject.org/sites/default/files/roli_2015_0.pdf and the World Economic Forum *Global Competitiveness Report*, p. 124-125 <http://www.weforum.org/reports/global-competitiveness-report-2015-2016>.

⁷ A last minute reallocation of one member in the quota of parliamentary nominees from the prosecutorial to the judicial chamber prompted the resignation of the Minister of Justice and protests from the main professional association of judges. This was seen as strengthening political influence in the judges' chamber of the SJC, while at the same time diminishing the accountability of the Public Prosecutor's Office.

⁸ In addition, the requirement for secret voting on personnel matters in the SJC was ended and a two-thirds majority rule was introduced for the election of the members of the parliamentary quota.

A legislative package was prepared and presented for public consultation by the government in spring 2015, but has been awaiting the outcome of the debate on the Constitution.⁹

1.2,1.3 Previous CVM reports have noted persistent concerns about the ability of the SJC to fulfil its
1.4 role as guardian of judicial independence and integrity. Controversies have revolved around issues such as non-transparent procedures for judicial appointments, inconsistent practices in disciplinary proceedings, and a lack of follow-up to concerns about potential manipulation of the random allocation of cases in courts. To this has been added controversy about political influence in the SJC. In 2015 the picture in regard to these issues has been mixed. At the beginning of the year, the SJC appointed a new chair of the Supreme Court of Cassation. The new chair has been prepared to speak out in support of reform and seems to command respect within the judiciary.¹⁰ A new management of the Sofia City Court was also appointed in spring, after the previous leadership had to step down amidst the scandals surrounding the court.¹¹ However, other appointment decisions of the SJC continued to raise concerns about lack of transparency and possible undue influence. The position of President of the Sofia Court of Appeal has now been vacant for almost two years: although a judge applied for the post who enjoyed the explicit support of judges at the court, the SJC did not secure the required majority.¹² Clear criteria for assessing appointments do not exist, opening the door to doubts about the objectivity of appointment procedures. |

1.5 Serious allegations of corruption and trading of influence in the judiciary have only been followed up after internal and external pressure, with the authorities unable or unwilling to initiate pro-active investigations. The irregularities discovered at the Sofia City Court towards the end of 2014 were highlighted in the last CVM report, where it was noted that the initial response of the SJC indicated that this was considered as a low priority for the Council. |¹³ The SJC did launch a process to improve the application of random allocation of cases in Bulgarian courts, putting in place a new centralised IT system for the entire judiciary in October 2015, which should help to address a recurrent issue raised in previous CVM reports. However, the SJC showed a reluctance to react to the allegations of serious wrongdoing by key judges in the Sofia City Court.¹⁴ Disciplinary action came only much later, after several cases had had to be taken forward by the Minister of Justice.¹⁵ |

In the autumn of 2015, media reported about an alleged taped conversation between two of the main figures involved in the irregularities discovered at the Sofia City Court,¹⁶ adding further elements to the existing controversy. After repeated calls for an independent investigation,¹⁷ the SJC and the prosecution announced investigations into the contents of the

⁹ As a consequence, other important changes have also been held up (see below).

¹⁰ When the SJC Ethics Committee was considering disciplinary proceedings against President Panov after a speech critical of the lack of support for judicial reform, well over 200 judges signed a letter in his support.

¹¹ The involvement of the new President of the Supreme Court of Cassation facilitated this process.

¹² The latest procedure in December 2015 was marked by an intervention from the Bulgarian Union of Judges criticising public statements on the candidate at political level. This also called attention to several other recent decisions of the SJC which they considered were problematic.

¹³ COM (2015) 36 final, p.4-5.

¹⁴ The two main figures are no longer serving as judges at the Court.

¹⁵ These events once again raised concerns with regard to the lack of clear standards in disciplinary decisions of the SJC.

¹⁶ The former chair of the Sofia City Court and one other judge, both now under criminal investigation.

¹⁷ Among others, the Union of Judges, the Minister of Justice, and the Chair of the Supreme Court of Cassation, called for an independent investigation to be launched.

tapes.¹⁸ It will be important for the credibility of the process that all steps are taken to ensure that investigation takes place in a transparent and impartial manner.¹⁹

- 1.3 After a gap of several years, the National Assembly elected a new Chief Inspector in spring 2015. The different steps of the procedure were set out more transparently and involved an invitation for civil society to suggest candidates. This approach was also taken up in the subsequent procedure to elect the new college of inspectors, launched in the autumn and still ongoing.²⁰ This procedure will be of particular importance, given the stronger future role for the inspectorate in addressing integrity issues and signs of corruption within the judiciary. It will be important to ensure that the inspectorate is equipped with the resources it needs to fulfil this role effectively.

Reform of the legal framework

- 1.6 The ongoing reform of the SJC is only one element, albeit an important one, of Bulgaria's new judicial reform strategy. The strategy is a comprehensive document containing a wide range of objectives, many of which require legal amendments. As noted above, a package of amendments to the Judicial System Act has been prepared and should now be ready to move forward swiftly in the National Assembly. It contains amendments in a variety of areas to improve different aspects of the management of the judicial system. Many of the proposals go in the direction of empowering rank and file magistrates, with a view to improving transparency and independence. Other amendments are meant to implement improvements identified in the regulation of career paths or the rules on professional training for magistrates. Others provide amendments necessary for the introduction of new technologies to improve transparency, quality and efficiency (e-justice). In the course of the year, these proposals have already been the subject of widespread debate within the judiciary. The ability of Bulgaria to move ahead with the adoption of these changes will be a key test in 2016.²¹
- 1.7,1.8 Another area where legislative amendments are in preparation concerns the criminal code and the criminal procedure code. Past CVM reports have noted the risk that a fundamental debate on reforming the codes for the long term has risked holding up more urgent and targeted changes.²² The criminal code has been the subject of recurrent attempts at reform by successive governments over the past five years, an objective which has so far been elusive.²³ In 2015 the government launched a new reflection process on a broader criminal policy reform.²⁴ These reflections aim at a comprehensive reform, which will require careful analysis and preparation, involving broad consultation within the judiciary and legal professions. In

¹⁸ On 14 January the SJC closed its enquiry, however, under controversial circumstances. The process was criticised in an open letter of the association of judges for lack of transparency.

¹⁹ A particular issue in this context concerns aggressive and polarising campaigns by some media, often targeting individual figures in the magistracy. Unbalanced media coverage in the course of disciplinary or criminal investigations presents additional challenges for judicial authorities.

²⁰ 20 candidates were nominated for the ten posts, several of which have been put forward from within the judiciary or from professional associations. The final election at the National Assembly is still to take place.

²¹ The newly created Council for the implementation of the judicial reform strategy should provide a useful forum for bringing forward this and other initiatives as well as for monitoring progress on the many different aspects of the judicial reform strategy.

²² COM (2015) 36, p. 10.

²³ A draft reform of the criminal code prepared by a previous government in 2014 was not successful, as it did not meet expectations and the National Assembly was dissolved shortly after its presentation.

²⁴ The government's judicial reform strategy foresees a wider criminal policy reform, and work is ongoing on this under the Ministry of Justice.

the meantime, however, the Bulgarian authorities have acknowledged a need to move ahead more swiftly with a limited set of targeted amendments, notably to address problems causing delays in criminal proceedings and to facilitate the prosecution of corruption crimes. Some amendments have already been adopted to address key shortcomings, but still need to prove their effects in practice.²⁵ /

Quality and efficiency of the judiciary

The key determining factor for the quality and efficiency of the judiciary must be the extent to which justice is served by the system as a whole – whether citizens can rely on the justice system to deliver fair redress, whether the perpetrators of crime are effectively prosecuted and justice is done and seen to be done in accordance with the law.²⁶ Such concerns were underlined this year when the European Court of Human Rights observed that "it had already, in over 45 judgments against Bulgaria, found that the authorities had failed to comply with their obligation to carry out an effective investigation and considered that these recurrent shortcomings disclosed the existence of a systemic problem".²⁷ Whilst this is clearly an issue for law enforcement as a whole, it is clear that problems remain in the prosecution and the judiciary.

- 1.9 The day-to-day management of the judiciary is the responsibility of the Supreme Judicial Council (SJC), including issues such as appointments, appraisals, training, disciplinary action, and management of the relative workload between magistrates and judicial authorities. Past CVM reports have highlighted the uneven workload between courts as an issue in terms of the quality and efficiency of the judicial process, as well as possibly the independence of judges.²⁸ High workload affects in particular the larger courts, especially those in Sofia, whilst the workload in other courts is low. In 2015, as in previous years, the SJC has attempted to address the imbalances in workload between courts by opening new posts in more overloaded courts while closing posts in others with less workload. However, this approach has so far had only a marginal impact. A more comprehensive solution has been awaiting the development of harmonised workload standards as well as a broader socio-economic analysis of the regional courts, both carried out by a sub-committee of the SJC. This analytical work reached its conclusion in 2015 and the results should now provide the basis for a more systematic management of staff resources, and perhaps also for a redrawing of the organisation of courts. The intention of the SJC is, as a first step, to present proposals on the structure of regional courts for public consultations in 2016. The new harmonised workload standards should also give the SJC the data to streamline other parts of the system, including the district or appeal courts and the administrative courts. Even without such reforms, the standards should already provide a better starting point for managing the distribution of staff resources between the /

²⁵ See below page 9 on absconding from justice, and Technical report, sections 3.2 and 6.2.

²⁶ It is for example significant that in some cross-border criminal cases, progress in Bulgaria seems much slower than in other Member States.

²⁷ *Systemic problem of ineffectiveness of investigations in Bulgaria* [ECHR 070 \(2015\)](#)

²⁸ High workload exposes judges to disciplinary action if they struggle to meet agreed deadlines. This gives rise to concern about independence in an environment where the standards for disciplinary actions are sometimes perceived as unclear.

different parts of the system. Such decisions, while often sensitive, should help to improve overall quality and efficiency in an environment of scarce resources.²⁹

1.12 More generally, it will be necessary to follow up on the judicial reform strategy through managerial decisions in a number of areas. A particularly important example, where legislative and managerial decisions need to go hand in hand, concerns the introduction of e-justice. It will be crucial to develop a capacity to manage the complex managerial and technical processes required to ensure proper implementation of e-justice, including in areas such as data protection and security. |

1.10 Disciplinary proceedings constitute another area where the workload standards could prove useful, in particular as a means of establishing a more objective basis for penalties in cases concerning non-compliance with procedural deadlines.³⁰ However, the problems in this area are more deep-rooted, with a general perception among magistrates that the decisions of the SJC are neither transparent nor objective. This could be addressed by establishing clear standards for disciplinary proceedings and penalties and by more systematic communication, explaining how individual decisions relate to general standards. The lack of clear disciplinary standards is particularly problematic when proceedings refer to breaches of the ethics code or acts undermining the prestige of the judiciary,³¹ where the exact scope of disciplinary liability is unclear. In such cases there is a risk of arbitrary decisions leading to a chilling effect on magistrates speaking out in public on legitimate subjects. |

1.6
3.7 The prosecution office plays a crucial role within the overall judicial system. The government's judicial reform strategy sets out the goal of a wider reform of the prosecution office, based on independent analysis. Key objectives would include instilling a stronger sense of initiative and responsibility through a less hierarchical culture and strengthening accountability and public trust in the prosecution as a whole. Such a reform would build on steps already taken in recent years and the planned reform of the Bulgarian criminal policy. The need for deeper reform of the prosecution is borne out by the continued lack of a solid track record in high-level cases on corruption and organised crime³² and also remains a recurrent theme of debate among independent observers in Bulgaria. CVM reports have repeatedly recommended that an objective analysis of where concrete high-level cases have not been successfully concluded would be the best way to identify clear steps for the future. |

2.2 Corruption

The fourth and fifth benchmarks for Bulgaria under the CVM concern the need for effective measures against corruption, including high-level corruption as well as corruption more generally in public institutions. Bulgaria consistently ranks among the EU Member States with the highest perceived level of corruption, and corruption is considered to be one of the most important barriers to doing business in Bulgaria.³³ Previous CVM reports have pointed

²⁹ Recent tensions over the size of the budget for the judiciary have brought this issue to the fore, with the Ministry of Finance only accepting an increase in the budget for 2016 against the promise that measures would be taken to improve budgetary performance in future years.

³⁰ Many proceedings relate to delays in carrying out mandatory procedural steps. An often raised counter-argument in such cases has referred to the heavy workload.

³¹ These are disciplinary offences under Article 307 of the Judicial Systems Act.

³² In some instances there appears to have been reluctance on the part of the prosecution to take forward investigations, including in cases linked to EU funds. (Technical report p. 24-25.)

³³ Technical report, p.18.

3.1

to shortcomings in past efforts in this area.³⁴ The institutions which have been set up to fight corruption have been characterised as fragmented, uncoordinated, and unequal to the challenge. |

3.3 In 2015 these problems were finally acknowledged by the Bulgarian authorities, as the government adopted a new comprehensive national strategy to fight corruption. The strategy constitutes an important step forward as it contains a clear analysis of the challenges and proposes a set of concrete measures to address the problems identified. The challenge will now be to ensure its implementation.³⁵ The national coordination council which has been set up is designed to coordinate efforts and monitor progress. However, it remains a policy level institution and will need political backing at the highest level and the support of efficient operational structures in order to ensure success. | The level of political support for a new approach was called into question by the failure of the government's proposal for a new anti-corruption law to pass the first reading in the National Assembly in September 2015. The draft law was designed to back up the approach with a sound institutional basis: it provides for the establishment of a unified anti-corruption authority, charged with the control of conflicts of interest and property declarations of high-ranking officials and investigations into possible corruption and illicit enrichment.³⁶ In addition, the draft law included a reform of the regime for the control of conflicts of interests and private property of public officials. |

The rejection of this draft law in September came as a surprise to the government and led to a further postponement of its main initiative to target corruption among high-level public officials. Much of the debate concerned the issue of the use of anonymous signals, with a confusion between the ability to receive anonymous signals, and the need for evidence used in court to be clearly identified. While the government has vowed to push ahead with the law in 2016, its initial failure raised concerns about the degree of consensus behind the need to address high-level corruption and to pursue the new anti-corruption strategy. The resubmission and adoption of this law as well as the subsequent establishment of the new institution will be a key test of Bulgaria's resolve in 2016.

3.2,3.3, 3.4 As part of its anti-corruption strategy, the Bulgarian government has launched a number of other initiatives targeting corruption more generally throughout the public administration. These include a reform of the administrative inspectorates, measures to improve the public procurement system, and the preparation of sectorial anti-corruption plans containing preventive measures in a number of specific sectors considered to be of high-risk of 'low-

³⁴ Shortcomings in the implementation of the previous Bulgarian anti-corruption strategy have been underlined in an evaluation which was carried out by the Bulgarian authorities and finalised in early 2015. See COM (2015) 36, p. 7.

³⁵ Lack of political follow-up and monitoring of the implementation was identified as one of the problems affecting anti-corruption policy in the past.

³⁶ The new institution would be working closely with the asset forfeiture commission and the prosecution office but would also have independent administrative investigatory powers. In addition, it would be able to ensure a more systematic response to corruption allegations by incorporating in a single institution the functions of three existing institutions, the conflict of interest commission, the anti-corruption centre (BORKOR) and parts of the national audit office in charge of checking private property declarations.

level' corruption.³⁷ These measures will need continued follow-up, in the first instance where changes to the legislation are needed.³⁸ |

3.7,3.8 Finally, Bulgaria needs to establish a track-record of successful investigation and prosecution of cases of high-level corruption, leading to final convictions in court. The prosecutor's office has been pursuing a pragmatic approach to enhancing capacity through organisational changes and closer cooperation with other relevant services. The latest step in this strategy was the establishment in April of a strengthened inter-agency unit attached to the Sofia City Prosecutor's Office dedicated to the investigation and prosecution of high-level corruption.³⁹ There are indications that this closer cooperation between services in a specialised structure is beginning to make a positive contribution. A number of cases have been brought to court.⁴⁰ More cases are under investigation. However, the assessment of Bulgaria's efforts in tackling high-level corruption cases will depend on final court decisions being concluded and enforced. So far the outcome remains limited in terms of final convictions in high-level corruption cases.⁴¹ |

2.3 Organised crime

2.1,2.2 The sixth CVM benchmark concerns the fight against organised crime. In 2012 Bulgaria established a specialised court and prosecutor's office for organised crime, which now begins to produce some results in terms of cases being brought to court as well as a number of convictions. However, cases involving serious organised crime continue to be hampered by complex provisions and formalistic criminal procedures.⁴² | There remain indications of serious intimidation of witnesses, undermining cases. Bulgaria still needs to establish a solid track record showing that final court decisions are reached and enforced in cases involving serious organised crime. Recently, the severity of the challenge has once again been underlined by several murders with apparent links to organised crime. A large number of contract killings over recent years remain unsolved.⁴³ |

2.4 In 2015 Bulgaria amended its procedural code to address problems identified in previous CVM reports with regard to criminals absconding and the specialised prosecutor's office being burdened with minor cases not linked to organised crime. It is still too early to assess the impact of these amendments. On the issue of criminal absconding, new problems have been identified, this time of a more organisational character, and work is ongoing to address these. |

³⁷ Such efforts are moving forward in the Ministry of Interior, where they are being implemented in the context of a more general reform of that ministry.

³⁸ Draft amendments to the law on public administration have reportedly been prepared concerning the inspectorates but not yet submitted to the National Assembly for adoption.

³⁹ This unit builds on two pre-existing units which were established in 2013 and 2014 respectively to investigate crimes committed by magistrates and local corruption.

⁴⁰ Including cases concerning higher ranking officials such as magistrates and mayors.

⁴¹ There has been a tendency of high-profile cases involving initial charges of serious wrongdoing being subsequently overturned or delayed in the courts or terminated by the prosecution, citing lack of sufficient evidence or procedural issues.

⁴² Some work is ongoing to identify possible solutions to these problems, which may involve legislative amendment. This is addressed in section 2.1 above.

⁴³ A recent murder of a businessman sparked a strongly-worded open letter from the Confederation of Employers and Industrialists in Bulgaria: <http://krib.bg/bg/news/Otvoreno-pismo-na-KRIB-do-Ministara-natreshnite-raboti/>

Bulgaria also amended the law on confiscation of criminal assets in 2012. As cases under the old law are being concluded and replaced by new cases, experience with the new law has resulted in the identification of a series of problems, which necessitate legislative change. The asset forfeiture commission has prepared detailed proposals to address the problems, which deserve early consideration by the National Assembly.

The specialised investigatory service dealing with organised crime was transferred back to the Ministry of Interior at the beginning of 2015, after having been located at the State Agency for National Security (SANS) since 2013. This time the transfer was better organised than in 2013 but nevertheless still resulted in a certain amount of disruption. It will be important now that the organised crime directorate is given the stability and resources it needs to do its work. A number of legal issues have been identified in the law which implemented the transfer, in particular in regard to the legal definition of the competencies of the organised crime directorate, which seem to constitute an unnecessary restriction on its actions.

3. CONCLUSIONS AND RECOMMENDATIONS

In 2015 Bulgaria took some important steps to put reform back on the agenda, following a period in which political instability appeared to be stalling progress. The two strategies on the judicial reform and the fight against corruption represent a detailed blueprint for action. But it is clear that the translation of these strategies into concrete and tangible progress will be a major challenge for 2016. A number of initiatives have been taken, and some of these have seen some concrete progress. In December Bulgaria amended its Constitution. While the amendments included some significant changes from the text originally proposed, their adoption still represents an important step towards a reform of the Supreme Judicial Council. It now needs to be followed up, so that the full range of changes contained in the judicial reform strategy become law. Other initiatives have faced setbacks, most notably the anti-corruption strategy, with the draft law intended to put in place a new unified anti-corruption authority rejected in the National Assembly. The government has announced its intention to resubmit the proposal in an amended form, but the rejection underlined a lack of political consensus behind the reform process.

The slow progress in high-level corruption or organised crime cases and the uncertain reaction and follow-up to specific controversies such as the one surrounding the Sofia City Court in 2014 continues to erode public confidence in the ability of the Bulgarian authorities to deliver justice. The systemic problem identified by the European Court of Human Rights in terms of Bulgaria's obligation to carry out effective investigation of wrongdoing echoes a series of CVM reports, and there remains a lack of determination in the Bulgarian authorities' reactions to these shortcomings. Many of the recommendations in the 2015 CVM report remain valid.

In regard to judicial independence, it has been encouraging to see Bulgarian judges speaking out in public to support the reform of the judiciary. This is a healthy sign of a new more confident culture developing among Bulgarian magistrates. Some concrete elements of progress have also been achieved in regard to the management of the judiciary. However, in key areas of judicial governance the efforts of the Bulgarian institutions still lack determination.

The Commission looks forward to continuing to work closely with Bulgaria to secure the CVM's objectives and invites Bulgaria to take action in the following areas:

1. Independence, accountability and integrity of the judiciary

Bulgaria has opened the way to a reform of the Supreme Judicial Council (SJC) and a strengthening of the judicial inspectorate. Now these commitments need to be implemented. It will also be important to build on the steps taken to improve the credibility around random case allocation and appointments.

- 1.1 • Implement the reform of the SJC through the necessary amendments to the Judicial System Act.
- 1.2 • Swiftly provide the Judicial Inspectorate (ISJC) with the legal authority and material resources to fulfil its new role in safeguarding integrity and fighting corruption within the judicial system.
- 1.3 • Establish a capacity within the SJC and the ISJC to monitor the application and security of the new system for the random allocation of cases in courts. These institutions must be transparent about the outcome of inspections and the follow-up to problems identified.
- 1.4 • Develop a track record within the SJC of transparent and consistent decision-making with regard to appointment decisions, applying clear standards of merit and integrity, while making such decisions in a timely manner.
- 1.5 • Provide the conditions for an impartial investigation into the different allegations of high level corruption within the Sofia City Court, in particular with regard to possible systemic implications, including possible comparable practices in other courts.

2. Reform of the judicial system

A comprehensive package of amendments to the Judicial Systems Act has been prepared by the Ministry of Justice and widely debated in the judiciary in the course of 2015, aiming at the implementation of the government's judicial reform strategy. The long-standing recommendation for a modernisation of the Bulgarian criminal codes also remains relevant.

- 1.6 • Enact amendments to the Judicial Systems Act in line with the government's judicial reform strategy, including reforms to give more say to individual judges and prosecutors, and ensure their implementation in close consultation with the judicial authorities.
- 1.7 • Prepare a set of targeted amendments to address key problems in criminal procedures, in particular problems affecting complex cases involving corruption or organised crime.
- 1.8 • Adopt a comprehensive reform of criminal policy in line with the ideas set out in the judicial reform strategy.

3. Standards in the judiciary

Bulgaria should move ahead in 2016 with reforms in key parts of its judiciary, including appropriate changes in the judicial map to improve overall quality and efficiency, implementation of e-justice, clear standards for disciplinary proceedings, and a continued reform of the prosecution office.

- 1.9 • Adopt a reform of the judicial map for the regional courts and present a roadmap for a more general rationalisation of the courts at all levels to improve overall quality and efficiency, including the reallocation of resources where appropriate in light of an overall analysis of workload in courts.
- 1.10 • Establish a clear timetable for the implementation of e-justice and put in place the necessary capacity to monitor and steer its implementation.
- 1.11 • Develop a practice of motivating disciplinary decisions in accordance with clear and objective standards and principles. Conduct an independent assessment of disciplinary practice under the current SJC since 2012.
- 1.13 • Launch an independent analysis of the prosecutor's office as set out in the government's judicial reform strategy, taking into account the reform measures already implemented.

4. Corruption

Initiatives in this area should focus on the implementation of the new national anti-corruption strategy adopted in spring 2015. A major priority should be the swift re-consideration by the National Assembly of the government's proposals for a new anti-corruption law, taking into account any specific concerns but ensuring the main elements in line with the intentions as set out in the anti-corruption strategy.

- 3.1 • Adopt a new anti-corruption law in line with the anti-corruption strategy, including the establishment of a unified authority with a strong independent mandate to fight high-level corruption. Ensure the swift establishment of the new institution and provide it with the required resources.
- 3.3 • Adopt amendments to the law on public administration to enhance the powers and independence of the internal inspectorates and establish a uniform set of minimum standards for the public sector in terms of risk assessment and reporting obligations.
- 3.5 • Provide the public procurement agency with the legal authority and organisational capacity to perform risk-based, in-depth checks on public procurement procedures.
- 3.6 • Continue the efforts to address low-level corruption in the Ministry of Interior. Launch similar efforts in other risk sectors within the public administration.
- 3.7 • Monitor the progress of criminal cases involving allegations of high-level corruption, including the pre-trial and trial phase and implement measures to address the problems identified.

5. Organised crime

Bulgaria still needs to establish a solid track record on securing final conviction in court in relation to serious organised crime cases. It will be important to ensure that the legal and institutional conditions are in place to allow law enforcement and the judiciary to work effectively.

- 2.1 • Monitor the progress of criminal cases involving serious organised crime, including the pre-trial and trial phase as well as the enforcement of sentences and implement measures to address the problems identified.
- 2.2 • Swiftly address the legal problems identified in regard to the competence and functioning of the organised crime directorate within the Ministry of Interior and provide the directorate with the organisational stability it needs to carry out its work.
- 2.3 • Amend the law on criminal asset forfeiture to allow asset forfeiture commission to work effectively.



Brussels, 25.1.2017
COM(2017) 43 final

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

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

{SWD(2017) 24 final}

1. INTRODUCTION

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

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

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

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

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

In this respect it is important to be clear about the scope of the CVM. The Decisions establishing the CVM set out the parameters of the CVM's scope on judicial reform and the

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

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

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

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

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

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

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

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

As well as looking at progress on the recommendations made in the 2016 CVM report, this section makes an overall assessment of ten years of reforms. The most relevant developments and results are set out in detail in the accompanying technical report⁶. The six benchmarks can be assessed individually, but there are interconnections among them. The assessment of progress has involved looking at the structural conditions (such as laws, institutions, and

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

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

⁶ SWD (2017)24.

resources); at the results and track record; and at whether progress can be considered irreversible. It should also be noted that since the time when the CVM benchmarks were agreed, there have been major developments in the case-law of the European Court of Human Rights, international standards and best practices, and comparative information on national justice systems in the EU, which have guided the Bulgarian authorities in their reforms and also help to give an objective and comparable measure of the development of the Bulgarian judicial system and fight against corruption and organised crime within the remit of the six benchmarks.

2.1 Judicial reform

Independence and accountability of the judiciary

1.1,1.2, 1.3,1.4 The first benchmark relates to the reform of the judiciary, focusing on establishing a stable constitutional framework for an *independent and accountable judicial system*. Over the past ten years, Bulgaria has twice amended its Constitution, improving the functioning of the Supreme Judicial Council (SJC) and putting in place an Inspectorate to the Supreme Judicial Council (ISJC) to promote good management of judicial bodies and uphold integrity standards in the magistracy. The first changes took place shortly after accession. Further significant reforms were carried out with constitutional amendments adopted by the National Assembly in December 2015. In particular, these created separate chambers in the SJC for prosecutors and judges, while also improving the transparency of decision-making on personnel-related issues and in the election of SJC members, and strengthening the role of the inspectorate to the SJC in regard to integrity of magistrates. Some of these changes – such as the "one magistrate, one vote" principle in elections to the SJC – followed up on previous CVM reports. The translation of these latest changes into law was finalised in the course of 2016, so implementation needs to be completed before the full impact can be seen. So far it is clear that the reform of the Council has led to greater transparency in its decision-making, and increased democratisation will also feed into the elections to the Council in 2017. However, continued tension among members of the Council, amidst allegations of a lack of objectivity in key decisions, has remained a concern. 1.5 The belated and incomplete follow-up to the situation discovered at the Sofia City Court towards the end of 2014 was highlighted in the two last CVM reports and has further fuelled allegations of undue influence within the SJC. Overall, Bulgaria has made substantial progress on Benchmark One, but still needs to show a track record in terms of implementation of the latest constitutional changes. |

The legal framework

The second benchmark focusses on the legal framework in terms of *key legislation affecting the judicial system and judicial procedures*. Substantial developments have taken place over the last ten years, notably in relation to the Judicial Systems Act and in the improvement of civil procedures. Wide-ranging changes to the Judicial Systems Act were enacted in 2016, following up on the comprehensive judicial reform strategy developed by the government and endorsed in the National Assembly in 2015. These amendments, which were carried through in close consultation with stakeholders and professions⁷, seek to improve the legislation in a number of areas, ranging from the career development for magistrates to the internal governance of courts. Together with earlier reforms, these changes represent a significant further step in the reform of the Bulgarian judiciary.

1.7,1.8 In the area of criminal procedures, developments have been less marked, and important challenges still remain to be addressed. In spite of important improvements in the years

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

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

- 1.6 The criminal code has also been identified as a source of problems in the prosecution of serious crimes and it has been the subject of continued discussion under successive governments.⁸ In 2015 the government launched a new reflection process on a broader criminal policy reform, which was taken forward in 2016 with a technical assistance project involving independent experts. This aimed at a comprehensive reform, which will require careful analysis and preparation, involving broad consultation within the judiciary and legal professions. It seems evident that any general reform of the criminal code would be a long-term process. Nevertheless, such a process would not rule out more immediate changes which could have a positive impact in regard to the prosecution of corruption or organised crime. Overall, Bulgaria has made some progress on Benchmark Two, but important issues are still outstanding, notably in terms of addressing formalistic criminal procedures and improving the legal framework for the investigation and prosecution of corruption and organised crime. |
- 3.7

Continued reform of the judiciary

- 1.3 The third benchmark focuses on the reform of the judiciary to improve its *professionalism, accountability, and efficiency*. The ten years' perspective has clearly shown the difficulty of progressing if judges or prosecutors do not share a consensus. Over the years, there have been major improvements in various areas, including training of magistrates, the random allocation of cases within courts, and the analysis of workload of judicial bodies and individual magistrates. Steps have also been taken in areas like e-justice. The willingness of magistrates – as well as civil society – to speak out in support of reform has been a key factor in facilitating this progress. However, it has proved difficult to take decisions in sensitive areas like the restructuring of courts and prosecutors' offices as part of an overall reform of the judicial map. Whilst sensible managerial decisions – such as reallocating positions year by year – have gone some way to mitigate such gaps, the Supreme Judicial Council has not been able or willing to drive reform ahead in such areas. This has contributed to a workload imbalance for the larger courts in the country, with a negative impact on the overall performance of the Bulgarian judiciary. At the same time, there has been little progress in establishing fairness and transparency in the disciplinary proceedings of the Supreme Judicial Council. |
- 1.10 1.9 1.11
- 1.13 The reform of the prosecution service is another area which has proven highly sensitive and complex in Bulgaria. The Bulgarian Prosecutor's Office forms part of the judiciary and is independent of the executive power. At the same time, it plays a central role not only in criminal procedures but also in monitoring the administration more generally. This lack of distinction between its functions and the executive tends to exacerbate suspicions of undue influence and criticisms of a lack of overall accountability of the prosecution. In addition to the heated debate over what is seen by critics as an overly powerful prosecution service, the prosecution is also at the centre of the debate over Bulgaria's continued lack of a convincing track record of convictions in cases concerning high-level corruption or serious organised crime. Over the past ten years, the prosecution service has seen several rounds of

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

reorganisation as well as legislative and other measures to improve its effectiveness. Nevertheless, in spite of these efforts, the results show that significant challenges remain.⁹ This was the background for the Bulgarian decision in 2016 to request the assistance of the SRSS and experts from a number of other Member States in a project to present an independent analysis of the Bulgarian prosecution service. It adds to previous analysis carried out over the years. Bulgaria still needs to draw the conclusions from all these analyses and chart a way forward on this important issue. Overall, though Bulgaria has again made some progress on Benchmark Three, important challenges still remain to be addressed. |

2.2 Corruption

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

3.4,3.3 The overall institutional set-up to fight corruption in Bulgaria remains fragmented and therefore largely ineffective. As a consequence, generalised problems of corruption at lower levels in the public administration also remain a challenge.¹⁴ The government's 2015 anti-corruption strategy provided valuable analysis of the problems. However, the implementation

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

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

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

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

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

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

of this strategy is still only at an early stage.¹⁵ Overall, Bulgaria's progress on Benchmarks Four and Five has been limited, with major challenges still outstanding in regard to the institutional and legal framework as well as the establishment of a track record.

2.3 Organised crime

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

3. KEY REMAINING STEPS

Overall, the ten years perspective shows that successive governments and the judicial institutions have made important efforts. There have been important legislative and institutional developments, notably on the judicial side. However, effective progress in carrying this through to a track record has been slower than expected when the CVM was launched, with cases of reluctance to follow up on CVM recommendations for the institutions to work together to identify common shortcomings and apply common solutions. Reform needs to be continued and internal structures strengthened to ensure the satisfactory and irreversible fulfilment of the benchmarks. This section therefore aims to set out the remaining steps needed to ensure that the objectives of the CVM are reached.

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

3.1 Judicial reform

Independence and accountability of the judiciary

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

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

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

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

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

The Inspectorate of the Supreme Judicial Council (ISJC) has contributed to the accountability and efficiency of the Bulgarian judiciary through its regular inspections and reports. However,

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

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

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

The legal framework

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

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

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

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

Addressing the complex challenges affecting criminal procedures in Bulgaria will require efforts and prioritisation by the new Bulgarian authorities. However, the preparatory work already initiated as well as input from technical assistance projects, including the recently finalised project coordinated by the Commission's Structural Reform Support Service (SRSS), provides a good basis. Implementing the recommendations of these various studies should allow Bulgaria to effectively address issues both under Benchmark Two as well as several issues under other Benchmarks, in particular those related to the fight against corruption and organised crime.

Continued reform of the judiciary

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

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

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

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

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

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

In May 2016, the Prosecutor General commissioned a study to analyse the judgments of the European Court of Human Rights finding that Bulgarian authorities had failed to comply with their obligation to carry out an effective investigation¹⁷ and to propose remedies wherever the

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

violations remain relevant. The analysis was completed in November 2016 and makes a number of valuable recommendations.

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

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

3.2 Corruption

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

High-level corruption

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

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

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

Bulgaria's reporting of new cases under investigation and sent to court has progressed. However, ultimately any assessment of track record in tackling high-level corruption depends on final court decisions being concluded and enforced, given the pattern of high-level cases rarely ending in successful convictions. Showing to the public that transgressions can be identified and that the perpetrators are effectively brought to justice will be the strongest evidence for the success of the anti-corruption efforts. Bulgaria still needs to show such a track record in terms of final results. Useful analytical work has been carried out in 2016 in various forms, including via an analysis of past corruption cases by the Prosecutor's Office, which can be taken as a basis for further concrete measures.

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

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

Corruption at local level and the borders

- 2.3 Wider efforts to address corruption at lower levels are needed in particular in terms of measures to enhance prevention, which should be introduced in combination with wider efforts to increase transparency and professionalism in the public administration. Public procurement is widely recognised as a particular risk area for corruption. Bulgaria has made progress on the implementation of the public procurement strategy since its adoption in 2014, including through the introduction of risk based, in-depth *ex ante* checks. Now it needs to show a track record of effective follow-up on these checks and introduce effective sanctions for any irregularities. |
- 3.5 • **Recommendation:** Carry out an external review of the *ex ante* checks of public procurement procedures and their follow-up, including *ex post* checks, as well as on cases of conflicts of interest or corruption discovered and remedial measures taken to address identified shortcomings.
- 2.2 The Ministry of Interior has put in place a range of concrete anti-corruption preventive measures (notably with the traffic and border police) in the context of a broader reform of the Ministry. These measures should be continued and continuously followed up. In addition, plans to extend these efforts to other ministries should be stepped up. |
- 3.6 • **Recommendation:** Put in place risk-based measures to address low-level corruption in high risk sectors within the public administration, taking inspiration from what has been done in the Ministry of Interior. Continue the efforts in the Ministry of Interior.
- 3.7 • **Recommendation:** Establish a mechanism for public reporting on the implementation of the national anti-corruption strategy covering the remaining duration of the Strategy's implementation.

3.3 Organised crime

The sixth CVM benchmark concerns the fight against organised crime. Analysis of the developments over the last ten years points to an evolution of organised crime, which has become more fragmented, versatile and diversified, developing towards legal businesses, as well as becoming less openly violent. Many Bulgarian interlocutors consider that Benchmark Six – as it has been agreed ten years ago – is therefore becoming less relevant, given that the

crime picture is changing into something which is more comparable to that of some other Member States. However, Bulgaria needs to show it has a functioning system to fight organised crime by establishing a track record showing that final court decisions in cases involving serious organised crime are reached and enforced.

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

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

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

- 2.1 • **Recommendation:** Establish a mechanism for public reporting on progress in high-level cases which are in the public domain. General Prosecution to report – whilst respecting the presumption of innocence – on investigations and indictments. Supreme Court of Cassation and Ministry of Justice to report on convictions as well as the enforcement of sentences.
- 2.3 Concerning asset forfeiture, amendments to the law on confiscation of criminal assets have been tabled in order to remedy a series of problems (lowering of the threshold for unjustified wealth for example). However, those have not yet been adopted by the National Assembly. The Illegal Asset Forfeiture Commission nonetheless continues to produce solid results. However, its future as an independent structure remains unclear given pending proposals for its merging into the future unified anti-corruption authority.
- 2.2 • **Recommendation:** adopt the necessary amendments to the law on confiscation of criminal assets and ensure the Illegal Asset Forfeiture Commission continues to operate independently and efficiently.

4. CONCLUSION

The Commission's 2015 and 2016 CVM reports were able to acknowledge important steps taken by the Bulgarian authorities to put the reform process back on the agenda. During 2016 Bulgaria made additional significant progress in the implementation of the judicial reform strategy, while implementation of the national anti-corruption strategy still remains in an early stage. More generally, over the past ten years, overall progress has not been as fast as hoped

for and a number of significant challenges remain to be addressed. The new government will need to drive reform forward to secure irreversible results. Therefore, this report cannot conclude that the benchmarks are at this stage satisfactorily fulfilled. However it is possible to identify a limited number of key recommendations to lead to the provisional closing of individual benchmarks, and then the conclusion of the CVM process.

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



Brussels, 15.11.2017
COM(2017) 750 final

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

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

{SWD(2017) 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.

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

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

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.

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.

1.1 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

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.

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.*

1.1 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 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. |

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.

- 1.2 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.
- 1.3 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.

- 1.4 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 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

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.

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.

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.

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.

- 1.2 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. |
- 1.6 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. |
- 1.7.1.8 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 – 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

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.

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>

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.*

3.1 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 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. |

3.2 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. |

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

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.

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.

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.

3.5The 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

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.

Bulgarian authorities are reportedly envisaging having an external contractor to carry out such a review in 2018.²⁷ |

3.3.3.6 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. |

3.4.3.7 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.*

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.

2.1 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

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

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. |

2.2 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.