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COMMISSION STAFF WORKING DOCUMENT

BULGARIA : Technical Report

Accompanying the document

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

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

{COM(2016) 40 final}

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

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

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

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

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

I INTRODUCTION

This report presents the information on which the Commission has based its assessment of Bulgaria's progress under the Cooperation and Verification Mechanism (CVM) since the last report of 28 January 2015. Its content reflects the ongoing monitoring of developments in Bulgaria over the past year by the Commission and draws upon information provided by the national executive and judicial authorities, civil society organisations, international institutions, and other Member States, as well as independent observers and experts. The Commission relies on the constructive cooperation of the Bulgarian authorities who provide a broad range of detailed information both in written form and in meetings during the regular visits of Commission services and national experts to Bulgaria. Independent experts from other Member States have provided valuable input to the analysis in the context of an expert mission to Bulgaria in September 2015. In addition to regular technical missions by Commission services, the Commission maintains a regular presence in Bulgaria via its representation in Sofia.¹ The information contained in this report remains the responsibility of the Commission services.

The CVM is not only about monitoring of progress. The Commission also assists the Bulgarian authorities in their efforts. In particular, assistance is provided to Bulgaria in many areas under the European Structural and Investment Funds. During the 2007-2013 programming period €51 million were allocated to calls for applications from the judiciary under Operational Programme for Administrative Capacity. Due to the budgetary restrictions and changing priorities, only around 25 million euro has been contracted and 18 million euro has finally been disbursed. Under the new programming period 2014-2020 a specific priority axis for the judiciary has been included in the new Operational Programme for Good Governance with an allocation of €30.1 million euro.

The report is structured in accordance with the main areas covered by the CVM: judicial independence and accountability; reform of the legal framework; quality and efficiency of the judiciary; the fight against corruption (both high-level and more generally); and the fight against organised crime.

II INDEPENDENCE AND ACCOUNTABILITY OF THE JUDICIARY

Judicial independence is one of the cornerstones of a democratic society based on the rule of law. Impartial courts provide the assurance for citizens and businesses that they can call upon the State to protect and enforce their legitimate interests through a fair and transparent legal process. Magistrates should be able to make decisions solely on the basis of the law with impartiality and independence, free from undue interference by outside interests. At the same time, the judiciary needs to be accountable to society. Arbitrary decisions reflecting personal interest or bias need to be kept in check through appropriate procedures. Illegalities and corruption should be addressed via appropriate preventive and restrictive measures. Decisions such as appointments to key judicial offices and the allocation of cases to individual magistrates should be made in an open and transparent manner.

In its 2015 CVM report the Commission recommended Bulgaria to pursue a reform of the organisation of the Supreme Judicial Council (SJC), to apply objective standards of merit, integrity and transparency to appointments within the judiciary and make these in a timely manner, to swiftly elect a new chief judicial inspector, to improve the security of the system for random allocation of cases in courts, and to perform rigorous and impartial investigations into all cases where suspicions of possible tampering with the system had been raised.

2.1. Reform of the key judicial institutions

In Bulgaria the central institution entrusted with the governance of the judiciary is the Supreme Judicial Council (SJC).² In addition, the Bulgarian Constitution also provides for an independent

¹ A CVM Resident Adviser is stationed in the Representation in Sofia.

² The SJC consists of 25 members, 11 elected by the National Assembly, 11 elected by the different branches of the judiciary (6 judges, 4 prosecutors and 1 investigating magistrate) as well as three *ex officio* members

judicial inspectorate within the SJC, which reports to the SJC but is directly elected by the National Assembly.³ Both institutions were the object of new reform proposals in 2015, flowing from a judicial reform strategy adopted by the incoming Bulgarian government at the end of 2014. Endorsed by the National Assembly before the last CVM report in January 2015, this strategy provides a comprehensive blueprint for the reform of the Bulgarian judiciary. A key element of the strategy is a reform of the SJC aiming at the creation of two separate chambers to deal with staff matters - appointments, promotions and disciplinary proceedings - respectively for judges and prosecutors/investigators. These reform ideas are in part a response to long-standing concerns that the current SJC structure does not effectively protect judicial independence in the Bulgarian context, due to the proportion of political nominees, and that representatives of the prosecutor's office could influence decisions regarding judges and vice versa.⁴ They also reflect a desire to conform to international standards as set out by the Venice Commission (see below). The proposed solution was to restructure the SJC in such a manner that the decisions on career and disciplinary matters concerning judges would be taken by a college composed of a majority of judges elected by judges, whereas decisions concerning prosecutors and investigating magistrates would be taken by a college of prosecutors and investigating magistrates.⁵

Initially it was expected that the reform would be carried out through legislative amendments to the Judicial System Act. However, in April the government concluded that Constitutional amendments were needed. Draft amendments were introduced for debate in the National Assembly in July following a compromise among political formations (given the enhanced majorities needed for Constitutional change). Prior to this, several proposals for change had been promoted by different political formations and also debated widely in the different branches of the judiciary.⁶ The package of draft amendments included the establishment of separate chambers to deal with personnel matters for judges and prosecutors and set out the detailed division of competences between the plenary and the chambers.⁷ In addition, the draft amendments envisaged a strengthening of the judicial inspectorate, which would be given competences to check the integrity and conflicts of interests of magistrates, including the verification of their property declarations.

At first reading in early September the draft amendments were supported by a total of 184 out of 240 members of the National Assembly. This would have allowed moving quickly to a second reading.⁸

(the Presidents of the Supreme Court of Cassation and the Supreme Administrative Court, and the Prosecutor General). It has wide-ranging powers to set up and close down courts and prosecution offices, appoint and promote magistrates, carry out disciplinary proceedings, manage the budget of the entire judiciary, etc. (*Constitution of the Republic of Bulgaria*, Article 130a.)

³ The ISJC consists of a chief inspector and ten inspectors and is assisted by technical staff. The inspectors are elected by 2/3 majority in the National Assembly for a four year term (five years for the chief inspector). It has responsibility for examining the operation of the judicial authorities, without prejudice to judicial independence, and approaching other state bodies, including the competent judicial bodies, with alerts, proposals and reports. It presents an annual report to the SJC on the operation of the judicial authorities. (*Constitution*, Article 132a.)

⁴ See previous reports in 2014 (COM(2014) 36 final, p.3) and 2015 (COM(2015) 36 final, p.3).

⁵ *Updated strategy to continue the reform of the judicial system* adopted by decision of the Council of Ministers on 17 December 2014.

⁶ A separate issue of debate was the possible need to convene a Grand National Assembly, a somewhat complex procedure. Changes to the Constitution can be adopted by the ordinary National Assembly provided they do not fall within the scope of issues reserved for a Grand National Assembly – such as, notably, changes to modify the form of state organisation and the form of government. This debate may have contributed to limiting the extent of the amendments proposed.

⁷ Notably the separate chambers should be responsible for appointments for all magistrates except for the Prosecutor General and the chairs of the two supreme courts, who will still be appointed by the President of the Republic on a proposal of the plenary of the SJC.

⁸ Constitutional amendments require a three-quarters majority among the members of the National Assembly (180 votes) in three separate readings. If they are carried by a majority of two-thirds (160 votes), a new hearing can be scheduled after two months. (*Constitution*, Articles 153-158.)

Nevertheless, it was decided to postpone the second reading until after the local elections of 25 October. The Constitutional Court was also consulted between the first and second reading, but decided that the request was inadmissible, as it did not find it had competence to pronounce itself on draft amendments which had not yet been formally adopted. Meanwhile, the National Assembly also requested an opinion of the Venice Commission of the Council of Europe on the proposed amendments. The opinion, published in October 2015, was supportive, but concluded that the proposed reforms did not go deep enough.⁹ It reiterated that the Venice Commission favours systems of Supreme Judicial Council composition with a substantial element or a majority of members elected by the judiciary itself. The opinion also referred to a recommendation of the Council of Europe's committee of ministers stating that not less than half of the members of such councils for the judiciary should be judges chosen by their peers.

The issue of how to allocate the parliamentary quota between the judges' and the prosecutors' chambers turned out to be a key issue in the National Assembly. The proposed amendments set out how the current 25 posts in the SJC were to be divided between the two chambers. This solution was dictated by the desire to ensure that the amendments could be adopted at National Assembly level,¹⁰ but it also created a certain zero-sum logic opposing the interests of judges and prosecutors in regard to the distribution of the 11-member parliamentary quota. The initial proposal was for the judges' chamber to consist of the two Supreme Court presidents and six judges elected by their peers, in addition to five members from the parliamentary quota. The prosecutorial chamber would consist of the Prosecutor General, four prosecutors and one investigating magistrate elected by their peers, and six members from the parliamentary quota. The logic of this distribution was that it observed the principle that judges elected by judges should outnumber political appointees in the body dealing with personnel matters for judges. As the overall distribution of seats between the political and judicial quota was considered to be beyond debate, this would automatically require a higher number of political nominees in the prosecutorial chamber. Furthermore, given the highly centralised structure of the prosecution service in Bulgaria, proponents of the amendment argued that a stronger representation of politically appointed members in the prosecutorial college could be helpful in terms of opening up the prosecution to accountability towards the wider society. Nevertheless, the proposal created a strong reaction from the Prosecutor General, on the grounds that the proposed distribution risked exposing the prosecution to political interference.

The issue came to a head during a second reading vote at the National Assembly on 9 December where a decision was taken in favour of the position of the Prosecutor General. An amendment tabled during the committee stage was adopted moving one member of the parliamentary quota from the prosecutorial chamber to the judges' chamber. This prompted the resignation of the Minister of Justice, who took it as a sign of lack of willingness on the part of the parliamentary majority to protect judicial independence and carry through with the reform of the judiciary. The President of Bulgaria reacted by calling for a deep and comprehensive reform of the judiciary, building further on the adopted

⁹ On the core issue of the structure of the SJC, the Venice Commission generally supports the establishment of the separate chambers for judges and prosecutors. However, the opinion states that the reform could go even further by introducing a qualified majority requirement for the election of the parliamentary quota, reconsidering the division of competencies between the plenum and the two chambers (giving the two chambers rather than the plenary the competence to nominate the supreme court chairs and the Prosecutor General and to dismiss SJC members on disciplinary grounds), abolishing secret voting on personnel matters such as disciplinary decisions, and providing conditions, through specific election rules, for a proportional and fair representation in the SJC chambers of all levels of courts/prosecution offices. Some of these suggestions were taken on board in the final outcome. The Venice Commission also notes that for a well-balanced SJC, the members to be elected by Parliament should include qualified lawyers belonging to other professional categories (such as law professors, defence lawyers) and representatives of civil society. (Venice Commission Opinion N° 816 / 2015: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)022-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)022-e))

¹⁰ There seems to be a broad perception that changing the overall make-up of the SJC would require the adoption by a National Grand Assembly, which is a more complex procedure (see above).

amendments to the Constitution. A number of judges, including notably the Chair of the Supreme Court of Cassation, also came out in public protest against the amendment of the original proposals.¹¹

Apart from this issue, the second reading vote confirmed the remaining elements of the original package, including the establishment of the two separate chambers and the strengthening of the judicial inspectorate. Furthermore, additional proposals for amendments tabled during the committee stage to abolish the requirement for secret voting on personnel matters and to require a two-thirds majority in the National Assembly for the election of the parliamentary quota of the SJC were also adopted.¹² Finally, an amendment was adopted to clarify that the sitting SJC will stay for the remainder of its term, which ends in autumn 2017.

The amendments in their modified form were passed at the second reading with well over the three-quarters majority required and were duly endorsed at third reading one week later on 16 December 2015.¹³

2.2. High level appointments in the judiciary

A recurrent theme in past CVM reports has been the need for more transparency and more merit-based decision-making in appointments to high judicial offices. Over the past year a number of appointments have taken place to key positions within the judiciary, such as the election of new Presidents of the Supreme Court of Cassation and of the Sofia City Court. The Sofia City Court was embroiled in a series of scandals in 2014 involving allegations of systemic corruption, leading to the dismissal of its management. The election of the chair of the Supreme Court of Cassation had been postponed several times in 2014 due to the failure of any of the candidates to obtain the necessary majority in the SJC and amidst concerns about possible indications of political influence on the procedure.¹⁴ The two posts have now been filled, and the new incumbents seem to command general respect among their peers within the judiciary.

However, in the case of the Sofia Appellate Court, the SJC successively failed to elect a President, most recently in December 2015. A candidate supported by judges from the court stood for election but failed to receive the required majority in the SJC, which recalled the situation at the Supreme Court of Cassation in 2014.¹⁵ This Court has now been without a regular President since spring 2014. Considering the importance of the function of court President in Bulgaria, the absence of a President with an independent mandate in this key court represents a significant gap. Together with previous examples of similar stalemates regarding appointments to key offices, it also provides an example of the difficulties faced by the SJC in fulfilling its responsibility as overall manager of the Bulgarian judiciary.

Finally, after long delays, the National Assembly elected a new chief inspector for the Inspectorate of the SJC. The predecessor's term of office had ended in 2012 and though the incumbent continued on a provisional basis for some months after the expiry of her mandate, the inspectorate had been without an elected head since October 2013, with the National Assembly not reaching a two-thirds majority

¹¹ Press reports between the two votes of 9 and 16 December. Both the President of the Republic and the President of the Supreme Court of Cassation made statements in the context of the 135th anniversary of the Supreme Court on 11 December 2015. The Association of Judges also issued a statement in connection with the vote on the constitutional amendments:

<http://www.judgesbg.org/en/library/papers/item/1078-open-letter-in-relation-to-the-vote-by-the-national-assembly-on-09-12-2015-for-the-law-for-amendment-and-annexation-of-the-constitution-of-the-republic-of-bulgaria.html>

¹² These amendments went in the direction of recommendations contained in the Venice Commission opinion.

¹³ In the third reading, the total package is endorsed or rejected.

¹⁴ The postponements took place in the context of a caretaker government and general elections. See COM(2015) 36 final, p.4.

¹⁵ Moreover, in this case public statements at political level had indicated a negative preference with regard to the candidate in question. (12 December 2015 on Darik Radio.)

during a period of significant political instability. The election of the new chief inspector in April 2015 followed what turned out to be a relatively open and transparent procedure, with the contest essentially being between two candidates put forward by the judges' profession itself and subsequently nominated by members of the National Assembly.¹⁶

The next step will be the election of the remaining ten members of the inspectorate, whose term expires at the end of 2015. Under the judicial reform strategy and the constitutional amendments, the inspectorate should be entrusted with additional powers in regard to checking of conflicts of interest and the asset declarations of magistrates. This gives further attention to the extent to which transparent and merit-based selection procedures are used. The new tasks will also require a wider range of expertise among the inspectors, while also ensuring a balance among the different fields of work of the inspectorate and, in particular, to include sufficient expertise within civil and commercial law fields in addition to criminal law, to have a strong representation of judges in addition to prosecutors, and to include representatives from all levels of jurisdiction including the Supreme Court level.¹⁷

Representatives of the National Assembly explained to the Commission¹⁸ that it would follow a similar procedure as for the chief inspector, having extended the deadline for nominations in order to allow for civil society and professional organisations to forward candidates for nomination. Twenty candidates compete for the ten available posts. Two have been put forward by professional organisations (a judge and a prosecutor) and six have been proposed by the general assembly of the Supreme Court of Cassation. The vote on the new college of inspectors is expected to take place in early 2016.

2.3. Random case allocation

Over the years, the allocation of cases within courts has been a regular concern in CVM reports.¹⁹ Case allocation has become an emblematic issue in terms of protecting the system from potential abuse. Arbitrariness in this process can create opportunities for pressure to be exerted on particular judges within courts and to allocate cases to certain judges according to ulterior motives. In Bulgaria precedents of judicial corruption and concerns over political interference in the judiciary has further accentuated this issue. IT tools have been in place in Bulgarian courts as a concrete means of executing random allocation. However, the operation of these systems has been the subject of constant contention on the part of civil society organisations, professional associations and other observers. Concerns about the possible manipulation of the allocation process to direct certain cases to particular judges have been a regular feature of the debate. Different systems were in place in different courts, and initially there were no common guidelines for their use, so different practices created loopholes for exceptions to be made from random allocation. While the judicial inspectorate carried out checks during its inspections, it did not have the technical expertise to perform a proper evaluation of the operation of the IT software. Nevertheless, these checks did sometimes identify irregularities and confirmed that possibilities existed to circumvent the software.

Past CVM reports have repeatedly recommended to the SJC to improve the system for random case allocation. In 2013 a project was launched under the EU Operational Programme for Administrative Capacity (OPAC) to develop a new centralised software solution, checked by independent experts, as a basis for a secure and transparent random allocation process. This system was to form part of the wider e-justice programme. Also, in 2014, the SJC introduced an interim solution whereby the local IT systems should be linked up to a central server at the SJC, to which all decisions on the allocation of

¹⁶ The same two candidates had been put forward also in the context of a previous procedure in spring 2014, but this procedure was eventually aborted amidst the dissolution of parliament and the failure of the outgoing parliament to put the vote on the agenda.

¹⁷ In response to the draft constitutional amendments the inspectorate has reportedly submitted some draft proposals to the National Assembly aiming to further enhance the structures and independence of the inspectorate. (Meeting with judicial inspectorate; Sofia, 4 December 2015.)

¹⁸ Meeting with legal affairs committee of the National Assembly, 2 December 2015.

¹⁹ See previous reports and in particular the specific recommendation on p.10 of COM (2015) 36 final.

cases should be reported on an ongoing basis. The SJC also adopted common guidelines on the application of the random allocation principles, which were to be implemented in the courts. However, the implementation of these measures was slow and still subject to a certain amount of local variation, pending the introduction of the centralised system.²⁰ Moreover the OPAC project which was supposed to develop the centralised case allocation system experienced significant delays and was eventually scrapped in December 2014.²¹

In the meantime, the issue came to the fore of the agenda again in late 2014 when scandals erupted simultaneously around the allocation of two high profile insolvency cases in the Sofia City Court.²² The Court had already been the subject of criticism in an audit in spring 2013, which had not been followed up.²³ Judges from the Court, as well as from other Sofia courts, came out publically calling for the management of the Sofia City Court to be held accountable. Faced with the allegations of manipulation of the random allocation system within the Sofia City Court, the SJC was initially slow to react but eventually carried out an inspection.²⁴ The check revealed signs of serious mismanagement, including problems with uneven workload, a large number of seconded judges, and irregularities in the allocation of cases. The check also confirmed that the random allocation system could be circumvented.²⁵ On this basis, a number of recommendations were made by the SJC to the management. However, the SJC was unwilling to initiate disciplinary proceedings against those responsible for the failings.²⁶ Meanwhile, however, a separate investigation led to the dismissal of the Court chair in February 2015 in connection with charges of unlawful granting of special surveillance warrants targeting internal databases of the Ministry of Interior (the 'Worms' affair). Criminal proceedings have also subsequently been launched on several accounts against one other implicated judge.

The controversy in the Sofia City Court was thrown into sharp relief in late autumn 2015 when private recordings appeared in the public domain purportedly featuring the former Court chair and the other implicated judge engaged in a conversation in February 2015 on a possible dismissal of the Court chair by the SJC, including comments on positions of key players in the magistracy and the executive on this issue, and other matters related to the management of the judiciary. Knowledge of the contents of the recordings was denied by the Court chair but confirmed by the other judge who also has made public statements pointing to the existence of a network of corrupt practices in and through the Sofia City Court. Investigations were eventually launched by both the SJC and the Prosecution Office into the contents of the tapes, albeit once again only after a certain delay (one explanation initially given was the view that since the recordings were illegal they could not form the basis of an investigation).²⁷

²⁰ Checks by the judicial inspectorate reportedly corrected divergent practices in some cases.

²¹ Experts advised the SJC that it would be difficult to complete the project before the eligibility period for funding under the European funds expired at the end of 2015. Reportedly the project had been delayed due to problems with the tendering procedure in Bulgaria.

²² One of the cases also involved allegations of illegal measures directed by the court against subsidiaries of a large European company, prompting a public intervention from an embassy. The other case concerned the fourth largest bank in Bulgaria, for which separate criminal investigations were also launched amidst allegations of large scale fraud and possible criminal failures in the supervisory authorities.

²³ COM(2015) 36, p. 4.

²⁴ SWD(2015) 9, p. 11.

²⁵ Many of the findings echoed the outcome of checks performed earlier by members of the SJC, the ISJC and key NGOs in 2013.

²⁶ This led to the unprecedented initiative of the Minister of Justice to launch several motions for such proceedings in 2015 and even appealing the SJC decisions refusing such proceedings to the Supreme Administrative Court. Decisions to institute disciplinary proceedings against the chair and one other judge involved were taken only late in 2015.

²⁷ In light of the public controversy which emerged in Bulgaria in late autumn 2015 around allegations of misdeeds in the Sofia City Court, the Commission reminded the Bulgarian authorities of the CVM benchmark to "Conduct and report on professional, non-partisan investigations into allegations of high-level corruption." While it is not the role of the Commission to enter into discussions on how Member States

However, on 14 January the SJC decided to close its enquiry into the recordings following a process which was criticised by the largest Bulgarian professional association of judges as lacking in transparency.²⁸

A new Chair and deputy chairs were appointed to the Sofia City Court in April 2015²⁹ and reportedly have taken steps to improve the situation in the court, including through measures to enforce the rules on random allocation of cases, address the problems of uneven workload, secure the IT system,³⁰ tighten the rules for secondment of judges and improve the general management of the court and judges' compliance with procedural deadlines.³¹ In addition, rules concerning requests for special surveillance warrants have been clarified as a response to the 'Worms' affair. Reportedly there has been a marked, positive change of culture at the court with the new leadership in the direction of greater transparency, for example through inclusion of the general assembly of judges in decision-making.³²

On a more general level, the revelation of irregularities at the Sofia City Court has prompted the SJC to produce a centralised case allocation system for the entire court system, as originally envisaged. Preparations for the new system were launched in December 2014 and it became operational on 1 October 2015. In the new system the case allocation is carried out within a central server located at the SJC. The allocations are made by authorised personnel in the individual courts, who log into the system via a secure connection, using a personal electronic ID. The results of the allocations are instantly made available for consultation by the public on a dedicated website. To ensure traceability, all interventions in the system are automatically recorded and tied to the user profile of the person carrying out the intervention.³³ The SJC reports that the system should also be able to take into account the need for an even distribution of workload between judges in individual courts by drawing on information on the number of files already allocated to each judge.³⁴ This aspect appears not yet effective as problems with uneven allocation of cases are reported. However, according to the Bulgarian authorities, these problems should be temporary. Once fully in place, it will be important to closely monitor its application on an ongoing basis in individual courts so as to make sure that any problems or loopholes are detected and addressed.³⁵

should organise independent investigations into individual alleged cases, the benchmark entails that, as part of its monitoring work, the Commission should report on Bulgaria's efforts to follow up on such allegations.

²⁸ The decision was taken in the context of some controversial circumstances and prompted an open letter of the Association of Judges addressed to the European Commission, in which the association laments the general lack of progress on judicial reform. <http://www.judgesbg.org/en/library/papers/item/1098-open-letter-to-the-european-commission-regarding-the-latest-developments-in-bulgaria's-progress.html>

²⁹ At the initiative of the then newly elected president of the Supreme Court of Cassation, an interim leadership had already been put in place in February with a temporary chair, a judge from the SCC. This prevented a leadership vacuum at a critical moment and allowed corrective measures to be taken without awaiting the appointment of a permanent leadership.

³⁰ Reportedly it was revealed during the checks that the IT system was managed by an outside service provider and not properly controlled by the court's own IT staff.

³¹ By September, eight disciplinary proceedings had been initiated on the initiative of the new chair to address the most serious cases of lack of compliance with deadlines, which had not been the subject of follow-up under the previous management.

³² Meeting with Sofia City court judges; 29 September, 2015.

³³ Information received from the SJC, September 2015.

³⁴ At a later stage the system could also take into account the complexity of cases, relying on the application of common workload standards, see further below.

³⁵ This includes the issue of IT security but also local administrative practices, where past experience shows that 'exceptional' arrangements may appear at local level. Reportedly it is envisaged, in the context of rolling out e-justice, to enhance the analytical capacity of the SJC and the judicial inspectorate in the area of IT security.

III LEGAL FRAMEWORK

As part of its accession to the EU, Bulgaria amended its Judicial System Act and procedural codes with the aim of enhancing the transparency and efficiency of the judicial process. Under the CVM, Bulgaria has monitored the application of the legislation on an on-going basis to identify and address remaining challenges. However, a number of issues identified in past CVM reports remain. In the area of criminal law, successive governments have been working to prepare a comprehensive reform of the criminal code and criminal procedure code, although so far with only limited results. Further work is now ongoing to prepare amendments to these laws. In the context of the government's judicial reform strategy, comprehensive changes are also in preparation in regard to the Judicial System Act. These have been held up by the constitutional reform process to which some of the proposals are closely connected, but are expected to be brought forward by the government in early 2016. In January the Bulgarian government established a Council for the implementation of the judicial reform strategy composed of representatives from both the executive and judicial branches of government as well as civil society and academia.³⁶ Established under the Council of Ministers and with the Ministry of Justice providing its secretariat, this new institution will play an important role in overseeing the implementation of the overall strategy, in particular elements which require cooperation between the executive and judicial authorities, including preparation and implementation of legislative changes.

The 2015 CVM report recommended that Bulgaria should implement the new judicial reform strategy, address critical areas in the criminal code to improve the fight against corruption and organised crime, and agree on a detailed timeframe for longer term reflection on the fundamental goals of a new criminal code.

3.1. Judicial System Act

The judicial reform strategy adopted by the Bulgarian government in December 2014 and endorsed by Parliament in January 2015 sets out a comprehensive agenda for the reform of the Bulgarian judiciary. Many priorities of the strategy necessitate amendments to the legislative framework. At the beginning of 2015 the government therefore initiated a broad consultation process involving the various branches of the judiciary and other stakeholders in the preparation of amendments to the Judicial System Act in line with the objectives set out in the judicial reform strategy. A concrete draft was submitted for public consultation in May. In the meantime, however, the government had announced its intention to propose amendments to the Constitution concerning the structure of the SJC and competences of the judicial inspectorate. As the outcome of the constitutional changes were to be determining for the eventual shape of the provisions in the Judicial System Act on these matters, the government decided to postpone the formal submission of these legislative changes to the National Assembly. This postponement concerned not only the parts with links to the constitutional amendments but the entire project. The reform of the Judicial System Act therefore remained on the drawing board. However, the consultations with stakeholders continued with the aim of being able to very quickly introduce the reform proposal for adoption at the National Assembly once clarity had been obtained on the constitutional amendments.

The draft law submitted for public consultation in May contains a number of additional changes, besides the implementing provisions on the reform of the SJC and the role of the judicial inspectorate. Many of the proposals go in the direction of empowering judges in the management of the judiciary, thus broadening responsibility and improving transparency. Proposals in this direction include provisions for the direct election of members of the SJC from the judicial quota by their peers on a one-judge-one-vote principle, for changes to the procedure for the appointment of court presidents, and for setting up standing committees of acting magistrates to assist the SJC in matters of career

³⁶ *Cabinet Sets Up Council for Judicial Reform Strategy* BTA News Agency, 13 January 2013 <http://www.bta.bg/en/c/DF/id/1249854>

development and disciplinary proceedings.³⁷ Court presidents would be elected by assemblies of judges of the relevant jurisdiction. Moreover, the general assembly of the relevant court would be allowed to bring forward candidates for consideration. Other draft amendments would aim to clarify and streamline the rules on professional training of magistrates and on disciplinary proceedings.³⁸ The draft contains new provisions on internships and qualification exams for prospective lawyers, linked with a wider reform of the framework regarding education in law. Stricter rules are envisaged on secondments, so as to address the risk of these being used to circumvent the ordinary career paths of magistrates, as well as to restrict the possibilities for direct appointment into the judiciary of lawyers with other experience, especially at higher level courts.³⁹ Other proposals aim to safeguard the operational autonomy of prosecutors when supervising individual cases.⁴⁰ The draft act also addresses changes for the implementation of e-justice throughout the Bulgarian judiciary.⁴¹

The proposed reform of the Judicial System Act continues to be the subject of debate within the judiciary and it is to be expected that the final outcome will be shaped by these debates as well as by the recently adopted outcome of the constitutional reform process. It therefore remains to be seen when these proposals will be submitted to the National Assembly and what shape they will take at the end of the legislative process.

3.2. Criminal procedure and the penal code

Delays in criminal proceedings and the failure of major cases involving organised crime and corruption have been a recurrent point of concern in CVM reports and have been the subject of several expert analyses, action plans and interagency taskforces over the years. The current criminal procedure code is only about ten years old, but many of its provisions were carried over from the previous code and long-standing criticism from practitioners about outdated provisions and exaggeratedly formalistic procedures has not been addressed. Amongst these long-standing criticisms against the current code is the complexity of the rules relating to the gathering and the admissibility of evidence at the stages of the initial investigation, the pre-trial procedure and the trial phase. The result is a procedure which is both formalistic and also very slow. Moreover, the procedures tend to be strictly interpreted, leaving little room for interpretation. This formalistic framework creates problems in complex cases, such as cases involving organised crime, where there are multiple defendants, numerous witnesses and large amounts of evidence.

While a comprehensive reform of the criminal procedural framework does not appear to be on the agenda, the Bulgarian authorities – in line with CVM recommendations – are monitoring the application of the law on an ongoing basis with a view to identifying problems and prepare targeted amendments to address shortcomings. For example, it has been noted that, at several stages of the trial phase, the judge has far-reaching powers to return the case to the prosecutor if minor formal errors occur during the pre-trial procedure or in the official indictment.⁴² The same applies to referrals from appeal to first instance. This has been a frequent source of delays in criminal proceedings. Reportedly, possible solutions to this issue are currently being discussed in the context of a taskforce involving the prosecution and the Supreme Court of Cassation, set up on the initiative of the Legal Affairs committee of the National Assembly.⁴³ Amendments of the criminal procedure code were enacted in May 2015 following technical proposals submitted for the consideration of the National Assembly by

³⁷ It is envisaged that these committees would be composed of magistrates from the supreme courts and supreme prosecutorial and investigatory authorities on a rotation basis.

³⁸ The amendments would introduce an explicit requirement for the motivation of disciplinary decisions.

³⁹ Currently 20 per cent of appointments should be filled with such outside candidates, who are not required to follow the ordinary initial training required of junior magistrates. Proposals include allowing some discretion in this, limiting the practice to lower level courts, and introducing some additional training requirements.

⁴⁰ Some amendments have already been introduced in the criminal procedure code to this effect, see below.

⁴¹ See section IV below for more information on this.

⁴² See the Bulgarian criminal procedure code, Articles 249 and 288.

⁴³ Meeting with the Prosecutor's office; Sofia, 2 December 2015.

the public prosecutor's office, to address a number of specific issues highlighted in past CVM reports.⁴⁴

Reportedly the government is also preparing new proposals for amending the penal code.⁴⁵ These proposals would aim to clarify the hierarchy of offences in the code, where the way that sanctions for different offences have been defined over the years has not always resulted in a logical relationship between less and more severe offences. The system of criminal sanctions would be reassessed, a process which requires careful preparation. In addition, it is envisaged that administrative penal provisions will in the future cover some of the less severe infractions so as to reserve criminal sanctions for more serious offences. Furthermore, a working group has been set up under the Ministry of Justice to develop more concrete proposals concerning the definition of some specific offences which are currently not well covered by the law.⁴⁶

It should be noted that some targeted amendments have been adopted recently aiming to address recommendations of the Council of Europe with regard to the adaptation of corruption offences in line with international standards.⁴⁷ Earlier in the year amendments were also adopted to align the Bulgarian legislation to European commitments in the area of terrorist offences as well as in relation to the smuggling of human beings.

IV QUALITY AND EFFICIENCY OF THE JUDICIARY

The third CVM benchmark calls upon Bulgaria to continue the reform of the judiciary in order to enhance its professionalism, quality and efficiency. This recognises the fact that judicial reform is about more than constitutional and legislative rules. In addition, one of the management tasks of the judicial institutions is to make sure that the resources that are invested in them result in an efficient and high-quality service for the users of the system.

The central institution responsible for the management of the judiciary in Bulgaria is the Supreme Judicial Council (SJC). It has wide-ranging powers to decide on day-to-day personnel decisions such as appointment or promotion of judges and prosecutors or their dismissal as a result of disciplinary proceedings. Furthermore, it is responsible for the overall management of the courts and prosecution offices, through the implementation of the budget⁴⁸ and – within the limits of the law - the definition of the geographic structure of judicial authorities' responsibilities.⁴⁹ In particular the latter is inevitably sensitive and subject to strong political, economic and social interests.

⁴⁴ For further details, see section VI below.

⁴⁵ A comprehensive reform of the Bulgarian penal code has been on the agenda for years. According to experts and practitioners the existing code is very complex, lacks internal coherence and needs to be updated in the light of the development of new types of crime. Following several years of preparation a previous government presented a reform proposal to the National Assembly in early 2014. However, following general elections later that year, the penal code was taken back on the drawing board by the new government for further consideration.

⁴⁶ Possible examples include fraud schemes to take over or drain the assets of companies or public procurement fraud schemes. This work could also involve possible changes in the areas of civil, commercial and public procurement law.

⁴⁷ The Anti-corruption committee of the Council of Europe (GRECO) in a report from 2014 identified some specific shortcomings in the Bulgarian legal framework for the countering of corruption, in particular in relation to the provisions of the criminal code with regard to cases of active bribery in the public sector as well as active and passive trading in influence where the advantage is not given to the particular official but to a third party. (See *Second compliance report on Bulgaria*, GRECO, 2014.)

⁴⁸ The overall size of the budget is determined by the legislator, but its implementation is entrusted to the SJC.

⁴⁹ The Constitution and the Judicial Systems Act define the basic parameters of the judicial system, including the number of instances, the link between prosecution offices and courts, the existence of a national investigation service, the two supreme courts and the prosecution. However, within these parameters, the SJC has wide-ranging powers to define the number of courts at each level and allocate staff resources among them.

A number of areas have been the subject of Commission recommendations in past CVM reports, essentially related to on the one hand the management of human resources within the judiciary and on the other the structural conditions within which they are employed. The former concerns issues such as the system for appointment and promotion of magistrates, their training, appraisal, and the definition of common workload standards. It also includes the issue of inspections and disciplinary action. The latter relates to wider issues such as a possible reform of the structure of the judicial map and managing the introduction of new electronic tools to improve efficiency, quality and transparency (e-justice). Finally the public prosecution office is part of the judiciary and has a number of organisational challenges of its own.

The 2015 CVM report recommended Bulgaria to complete the methodology for the assessment of workload of magistrates and courts as a basis for a reform of the judicial map, to enforce clear procedures and standards for disciplinary proceedings, and to make concrete progress on e-justice.

4.1. Human resource management

The good management of human resources is a key element in a properly functioning judiciary. In Bulgaria this is essentially within the remit of the SJC. A number of working groups within this institution have been preparing initiatives to improve aspects of human resource management in various fields.

Since 2013 the SJC has held regular competitions for the appointment of magistrates. Before this time there were several years without competitions, which led to a widespread practice of using long-term secondments as a substitute. Secondments can be controversial due to the discretionary role of court chairs in such decisions, seen by critics as a potential source of dependencies and conflicting loyalties within courts.⁵⁰ Secondments are however still widely used in some courts. One reason for this appears to be the complicated procedures for filling vacancies through competitions.

The SJC has carried out an evaluation of competition procedures resulting in a number of procedural issues being identified, which tend to cause delays in the completion of competitions as well as in the subsequent taking office of successful candidates. Some of the issues have been addressed via implementing decisions and guidelines complementing the legislation in areas where legal gaps were identified. Others would be subject to further discussions.

In the area of appointments and career development, a working group under the SJC has prepared proposals for improvements which have been submitted for the consideration of the Ministry of Justice and National Assembly in the context of the judicial reform strategy. One of these proposals, which is being considered in the context of the government's proposals on the Judicial System Act, aims to limit direct appointments of senior lawyers to judicial offices to first instance courts and reducing the required share of such appointments below the current 20 per cent.⁵¹ Another proposal aims to simplify the rules for magistrates moving 'horizontally' at their own request between court districts without applying for a higher rank. Currently there is a requirement to go through a competition, which is a cumbersome procedure and apparently is one of the factors leading courts to choose secondment as an easier alternative.

In the area of appraisals and promotions concrete proposals for legislative amendments were also submitted by the SJC to the Ministry of Justice for consideration in connection with the reform and further discussions are reportedly planned in this area. Finally, work has also been ongoing within the

⁵⁰ As mentioned in past CVM reports for Bulgaria (SWD (2014) 36 final, p. 14), for several years the lack of regular appointment competitions led to the establishment of a culture of using long-term secondments as a more convenient means of ensuring mobility of judges.

⁵¹ See above.

SJC to improve the procedural rules for the local ethics commissions, which can play an important role in regard to appointment and promotion decisions.⁵²

Workload standards

The allocation of workload between magistrates has been a recurrent issue of past reports touching upon many different aspects of judicial management. In this area the SJC has been conducting a larger project to develop workload standards for judges and prosecutors, which will serve as a basis for assessing the workload of individual magistrates, while taking account not only of the number but also the complexity of cases. This process has been a long and complex one in particular with regard to the standards to be applied to judges, which has included several stages: identification of types of cases⁵³, a survey among judges throughout the judiciary to assess the workload associated with particular types of cases, and a follow-up where focus groups consisting of experienced judges screened the results and made final adjustments. The process was finally completed in 2015 with a comprehensive set of workload standards submitted for endorsement of the SJC.⁵⁴

A future application of the new workload standards could have beneficial impact in a number of areas, including the system for the random allocation of cases to individual judges and prosecutors, and for appraisals and promotions, as well as for the overall distribution of resources between court districts and jurisdictions. However, the concrete results in these various areas are yet to be realised and will depend on further measures to be taken.

Training of magistrates

Training is another area of key importance for the quality of the judicial process. This is largely within the remit of the National Institute of Justice (NIJ), a specialised establishment entrusted with the obligatory induction training of new judicial recruits as well as continuous training of magistrates throughout the judiciary.⁵⁵ As also noted in previous CVM reports, the fact that the institute has to rely to a large extent on external funding, due to limited allocation from the national budget, constitutes a potential source of uncertainty in the management of the activities of the institute.⁵⁶ Nevertheless, the institute has a strong track record in supplying training of good quality, including continued training for practicing magistrates.

4.2. Inspections and disciplinary proceedings

Past CVM reports have noted disciplinary proceedings as an area where controversy has surrounded the practices of the SJC.⁵⁷ This has been related to the absence of clear standards and criteria for disciplinary decisions and fuelled by a high number of concrete decisions being overturned on appeal at the Supreme Administrative Court. The number of appeals of SJC decisions remained high in 2015. Moreover, the problems identified in the Sofia City Court towards the end of 2014 once again raised the issue of the disciplinary practice of the SJC, as the Council initially did not decide to launch disciplinary proceedings related to the findings. This prompted several official proposals for such proceedings by the Minister of Justice, followed by appeals to the Supreme Administrative Court

⁵² Information provided by the SJC, December 2015.

⁵³ Reportedly the methodology covers more than 300 summary categories of cases dealt with in different types of courts, except for the supreme courts.

⁵⁴ The workload standard for prosecutors has already been completed at the beginning of the year, based on a simpler methodology, and is in use in the prosecutor's office.

⁵⁵ The NIJ retains a certain degree of operational autonomy, required to ensure a professional management of its activities, but reports to a governing board with representation of the SJC, the Ministry of Justice, the two supreme courts and the prosecutor's office.

⁵⁶ Reportedly, the legally required basic training of junior magistrates is covered by the state budget, whereas continued training needs to be financed by other means, which includes a high proportion of EU funds and contributions from other international donors.

⁵⁷ See COM (2015) 36, p. 6.

when these proposals were rejected at the SJC. Disciplinary proceedings were eventually launched in the autumn of 2015 against the key magistrates involved.⁵⁸ The SJC has been working to develop a more coherent practice with regard to disciplinary decisions. At the end of 2014 it adopted a set of unified guidelines for its work on disciplinary proceedings. In addition to defining a set of core principles, the guidelines are mostly procedural in nature, supplementing the provisions in statutory law in order to reduce possible sources of procedural uncertainty.⁵⁹ It is to be noted, however, that guidelines do not have the force of law.⁶⁰

The guidelines provide a detailed description of types of procedural infringements, but do not provide similar clarification with regard to breaches linked to unethical conduct or integrity issues. Neither do they set out any standards for the types of sanctions which might be expected for different kinds of disciplinary violations, which is therefore left to the discretion of the SJC, under the control of the Supreme Administrative Court.⁶¹ Decisions of the Supreme Administrative Court to reject SJC decisions often relate to the type of sanction applied. In this respect a debate has arisen about the role of the Supreme Administrative Court in such cases. Currently, the court sends these cases back for a new decision of the SJC. However, the question has been raised whether it would also be able to modify the decision of the SJC. This would considerably reduce the length of the overall procedure. On the other hand, it could also raise important questions in regard to the remit of competence of the court to act as a disciplinary authority.⁶²

The judicial inspectorate (ISJC) plays a central role in regard to upholding procedural standards in the judiciary and will in future also be given a wider role in regard to integrity and ethics. In 2015 the inspectorate continued its monitoring of the various judicial bodies, through planned, ad hoc and 'thematic' inspections. As a result of its inspections the ISJC may refer individual cases of breaches to the heads of the respective judicial authority or to the SJC for disciplinary follow-up or to the prosecution for criminal investigation. It appears that the ISJC has recently taken a more active role in initiating disciplinary cases.⁶³ Separately, the ethics committee of the SJC currently is competent to carry out inspections in relation to ethical standards and integrity. These can be launched *ex officio* and may also lead to disciplinary proceedings.

4.3. Judicial map and e-justice

The allocation of resources among judicial authorities is an ongoing source of tension within the Bulgarian judiciary as well as between the judiciary and the budgetary authority. A recurrent theme in

⁵⁸ Another appeal was launched by the Minister of Justice against the refusal to initiate disciplinary proceedings against a high-level investigating magistrate, where the SJC decided instead to grant his resignation, hence barring disciplinary action. In January 2016 the Supreme Administrative Court decided to annul this decision. The ruling can be appealed by the SJC, in which case the Supreme Administrative Court will decide in a panel of five members.

⁵⁹ For example, the guidelines state that SJC members who have filed a proposal for disciplinary action against a magistrate can themselves participate in the respective disciplinary panel as well as in the final plenary vote on a disciplinary decision. This aspect of the SJC's disciplinary activity has been raised as an issue in the past by experts and observers on the basis that it could be seen to be in conflict with fundamental principles of legal process (separation between judge and jury). On the other hand, it is notable that when it comes to the judicial inspectorate the guidelines exclude it from participating in the deliberations on cases where it has made the proposal. (*Disciplinary Rules of the SJC*, English version provided to the Commission by the SJC, September 2015.)

⁶⁰ Some draft amendments to the law on disciplinary issues are in preparation in the context of the judicial reform strategy.

⁶¹ Measures have been taken to provide more clarity. An analysis of past disciplinary practice was carried out in 2013. A searchable database on disciplinary decisions has been set up. Meetings are held with the Supreme Administrative Court (SAC) and the judicial inspectorate to discuss disciplinary practice. These should help the SJC align its decisions with past case law of the SAC and establish clearer standards for the sanctions to be applied in various types of cases.

⁶² Meeting with the Supreme Administrative Court; September, 2015.

⁶³ In addition, court chairs have also become more active in 2015.

past CVM reports has been the need for a rebalancing of the workload, which varies significantly between courts.⁶⁴ For a number of reasons, workload per judge is higher in the courts of the larger cities, which creates problems in terms of expediency of procedures as well as possible pressure on judges. The problem is particularly pronounced in the courts of the capital city of Sofia.

For a number of years the SJC has pursued a policy of gradually redistributing posts among court districts in favour of those which have the greatest workload per magistrate, including the main courts in Sofia. This effort was continued in 2015 with the reallocation of a total of 90 positions for judges and prosecutors.⁶⁵ This policy should help improve the situation in the most heavily burdened courts over time, though it appears that the disparities remain very significant. In the future, the new workload standards developed by the SJC may provide a basis for further fine-tuning such decisions through the creation of a more accurate picture of relative workload in the various courts.

While clearly useful, however, reallocation of staff positions may not on its own constitute a sufficiently effective solution to the resource issues facing the Bulgarian judiciary. First of all, allocation of additional staff creates a need for extra office space, computers etc., which may be difficult to meet if premises are already fully utilised. Secondly, a mechanical redistribution of posts only contributes to evening out workload but does not necessarily improve overall efficiency.⁶⁶ The longer term measures therefore needs to be accompanied by broader reforms to modernise the judicial system. In this regard, developments are in preparation on two main fronts: reform of the judicial map and the introduction of e-justice.

Judicial map

The judicial map refers to the structure of court districts and jurisdictional boundaries among judicial authorities throughout the territory of the country. Due to various demographic, economic, social and technological developments the demand for courts in various locations changes over time, creating a need for adjustments in the judicial map over time.⁶⁷ Such changes naturally require careful deliberation and analysis, to ensure that they reflect the realities on the ground, and meet the expected result. This can also prove politically sensitive. Within the SJC, preparations for a fundamental reorganisation of the judicial map have been ongoing for some time, in the form of a comprehensive analysis to determine the criteria to be applied in a possible future reform. The focus of the analysis has until now been limited to the regional courts, while the remaining system has been set aside for consideration at a later stage. Bulgaria currently has 113 regional courts, 28 district courts, 28 administrative courts, and five appellate regions, in addition to the Sofia City court and appellate court, the three military courts and the military appellate court, the specialised court and appellate court for organised crime, and the two supreme courts for, respectively, cassation and administrative justice. A recent study of the World Bank⁶⁸ indicates that significant efficiency gains could potentially be achieved at several levels within the system, as various courts have a low workload, a picture which is regularly confirmed in conversations with experts and practitioners in Bulgaria.

At the current stage, the SJC has finalised the analysis that would form the basis of the reform of the regional courts. A report has been adopted setting out fundamental criteria which would underpin the

⁶⁴ COM(2015) 36, p. 6.

⁶⁵ Information provided by the SJC, December 2015.

⁶⁶ This issue came to the fore in the context of the annual budget for 2016 where the SJC argued that, with the current number of posts, the judiciary had for years not received the required funds to provide the salaries to which magistrates were entitled, whereas the government insisted on the need to curtail overall expenditure. The compromise reached was that efforts should be made to improve efficiency of the overall system, while an additional budget allocation would be made in 2016. Meetings in Sofia, December 2015.

⁶⁷ That is, for example, by reducing the number of court districts as well as by redefining the geographical areas of responsibility of competences between courts.

⁶⁸ *Bulgaria – judicial performance, caseload and expenditure review (2008-2014)*, World Bank, November 2015.

reform.⁶⁹ On the basis of these criteria, concrete proposals have been elaborated within the five appellate regions to serve as a basis for consultations among relevant stakeholders. This is expected to be followed by broader public consultations in 2016 before finally leading to a decision of the SJC on a proposal for a new judicial map for the regional courts. A parallel process is ongoing with regard to analysis of the regional prosecutor's offices, also leading to a concrete mapping of the need for these offices. According to law, the location of courts and prosecution offices needs to coincide, but based on demand there may be discrepancies in the needs for the two sides of the judiciary. In the end the SJC will be able to rely on both analyses in combination to make an informed decision, in accordance with the law.⁷⁰

It remains to be seen what will be the outcome of this process regarding the regional courts and if it will be decided to proceed with reforms in the other parts of the judiciary, such as the district, appeal or administrative courts.⁷¹

E-justice

The introduction of modern IT tools provides a means of improving efficiency as well as of enhancing transparency and the quality of the services provided by the judiciary to citizens, business and society at large. In Bulgaria, preparations for the introduction of e-justice started with partial support from EU funds under the programming period 2007-2013⁷² and is planned to continue in the coming years with funding from the new programming period until 2020.⁷³ These preparations are taking place in the context of a wider strategy for introduction of e-government in Bulgaria. It is a complex process involving many interlinked actions to be carried out at technical, administrative and legislative level. Legislative changes to provide the basis for electronic communication between courts and parties and other necessary changes to enable e-justice to move ahead were prepared under a previous government in spring 2014, but were not adopted due to the dissolution of the National Assembly in July 2014. Under the current government these draft amendments have now been included in the judicial reform strategy, where they form part of the proposed reform of the Judicial Systems Act.

In parallel with the legislative process, technical preparations have continued within the SJC for the establishment of a unified electronic portal for the judiciary, providing access to case files, uniform interfaces for courts, and electronic summoning of parties in court proceedings. The portal should also include a module enabling direct elections to the SJC by all magistrates, which is meant to come into use for the appointment of the SJC due to take place in autumn 2017. As mentioned earlier, a separate project was implemented in 2015 for the establishment of a centralised system for the random allocation of cases. At the level of individual courts, the situation differs between courts. Some are relatively advanced in implementing electronic case handling, whereas others are further behind. Finally, in the implementation of e-justice in the judiciary, concerns will inevitably arise with regard to data security, necessitating a capacity for monitoring and control at the level of the SJC and/or the judicial inspectorate.

4.4. Reform of the prosecution service

In Bulgaria the public prosecutor's office is an integral part of the judiciary and it is therefore not possible to consider the quality and efficiency of the judiciary without also touching upon the

⁶⁹ The criteria include issues such as the number of judges in the court, the demographic basis, the access to public transport and IT (e-justice), and exceptional situations (e.g. mountainous regions).

⁷⁰ In addition, there is a certain link to the map of regional public administration, where some services are linked to the courts. However, a reform of the regional administration does not currently seem to be on the political agenda.

⁷¹ A partial reform was already completed of the military courts in 2014, reducing their number from 5 to 3, underlining the fact that the extent of analytical preparation needed for reforms varies in the different parts of the system.

⁷² Operational Programme Administrative Capacity 2007-2013 (OPAC).

⁷³ Operational Programme for Good Governance 2014-2020 (OPGG).

prosecution. This is reflected in the Bulgarian government's judicial reform strategy, which includes an objective of an 'effective prosecution service', which includes the development of a new organisational model in the context of a reformed SJC and a new penal policy and aiming at several objectives, such as instilling greater initiative and responsibility in the individual administrative heads in the system of prosecution and investigation, promoting greater specialisation through the formation of interdepartmental teams to handle complicated cases, strengthening the accountability and public trust in the prosecution, and exploring the status of prosecutors and the factors that restrain their professional independence and motivation.⁷⁴ Follow-up on this point of the strategy is still pending.⁷⁵

A general reorganisation of the prosecutor's office was carried out on the basis of a functional review from 2013 to early 2015. Amendments to the criminal procedure code in spring 2015 also modified some key provisions to enhance the safeguards for the autonomy of individual prosecutors.⁷⁶ However, a need for further reform of the prosecution, in particular to address its highly centralised structure, seems to be reflected in general views among observers and experts and is also borne out by independent surveys of prosecutors' attitudes.⁷⁷

Linked to the prosecution is also the National Investigation Service (NIS). Composed of investigating magistrates, this service also forms part of the judiciary. In organisational terms it is attached to the public prosecution offices and ultimately works under the general guidance of the prosecution. It is responsible for the investigation of certain categories of cases, including for example cases involving persons with immunities and particularly complex cases involving high-level corruption specifically assigned by the public prosecutor's office. Several interlocutors have regularly noted that this service has a low workload.⁷⁸ The approach to this service has changed over the years, first aiming to reduce its size to the extent possible, within the limits allowed by the Constitution, but then later changing course by adding additional tasks to it in order to be able to better draw on the resource that it represents. The judicial reform strategy includes the objective of finding a lasting solution to the status of the investigation service in the context of the elaboration of an overall penal policy and rationalisation of the investigatory services.

V COMBATTING CORRUPTION

The fourth and fifth CVM benchmarks for Bulgaria focus on the fight against corruption, including professional and non-partisan investigations into allegations of high-level corruption and measures to prevent and fight corruption at all levels. Available surveys indicate that corruption continues to be an important problem in Bulgaria, affecting the trust of citizens in public institutions and of investors in the Bulgarian economy. In international surveys Bulgaria consistently ranks among the EU Member States with the highest level of perceived corruption.⁷⁹ Businesses consider corruption to be among the most important challenges when doing business in the country.⁸⁰

In the years following accession to the EU Bulgaria took a number of legislative steps and established a set of institutions to address the problems. However, the current institutional set up remains

⁷⁴ *Updated strategy to continue the reform of the judicial system*; December, 2014, Strategic goal 4.

⁷⁵ Information received from the Bulgarian authorities, December 2015.

⁷⁶ Similar amendments have been proposed to reflect this in the Judicial Systems Act.

⁷⁷ See e.g. the 2014 survey of 450 prosecutors in *Attitudes of Prosecutors for Reforms in Prosecution and Criminal Proceedings* by Global Metrics Ltd. and the Bulgarian Institute for Legal Initiatives (BILI). Concern with regard to the highly centralised structure and hierarchical culture of the prosecutor's office in terms of its possible impact on operational efficiency has been a recurrent theme in meetings with a variety of interlocutors and experts consulted by the Commission services.

⁷⁸ See also *Bulgaria – judicial performance, caseload and expenditure review (2008-2014)*, World Bank, November 2015.

⁷⁹ See e.g. the World Bank's *Worldwide Governance Indicators*; Transparency International's *Corruption Perceptions Index*; or the World Justice Project's *Rule of Law Index 2015*, p. 25.

⁸⁰ See *Global Competitiveness Report 2014-2015*, World Economic Forum, 2015, pp. 136.

fragmented and largely ineffective. Key institutions have been the subject of serious scandals.⁸¹ Others have not been able to play the transformative role originally expected of them.⁸² In general, institutions are seen as working as separate entities without forming part of an integrated anti-corruption system.⁸³ The existing institutions continue their work within their respective remits of responsibility, but the shortcomings identified in previous reports remain pertinent.⁸⁴ As mentioned in the January 2015 CVM report a comprehensive evaluation of the previous Bulgarian anti-corruption strategy was conducted in 2014, which appeared to provide a thorough and robust assessment of past failings.⁸⁵ In early 2015 the Bulgarian government took this evaluation as a basis for establishing a new forward-looking anti-corruption strategy for the coming years.

The 2015 CVM report recommended Bulgaria to entrust a single institution with the authority and autonomy to coordinate and control the enforcement of the anti-corruption activities, to create minimum standards for the public sector in terms of internal control bodies, to put in place a solid anti-corruption strategy, to ensure follow-up to the public procurement strategy adopted in 2014, to finalise the pending nomination procedures and needed legislative reforms in regard to the conflict of interest commission, to assess how the system of asset declarations could be put to better use, to reinforce the capacity of the prosecution to pursue high-level cases, and to monitor the progress of high level corruption cases and take steps to avoid the exploitation of procedural loopholes.

The new Bulgarian anti-corruption strategy was adopted by the government in early April 2015.⁸⁶ It is a comprehensive document presenting a succinct set of priorities and measures within six priority areas: 1) a more effective institutional set-up, 2) high-level corruption, 3) political corruption, 4) corruption in the judiciary and law enforcement, 5) low-level/every-day corruption, and 6) changing public attitudes. Within each priority the document sets out concrete actions and measures. Among other initiatives, the strategy introduces some important institutional innovations, such as a national anti-corruption coordination council, to provide political support and follow-up to the strategy, and a unified anti-corruption authority focusing on high-level corruption.⁸⁷ The new strategy created a certain momentum in the first half of 2015. However, towards the summer this momentum appeared to diminish and an important setback occurred in September, with the National Assembly's rejection of a

⁸¹ The commission on prevention and ascertainment of conflicts of interests was marred by a major scandal in 2013 where its chairman was placed under investigation for abuse of office amidst allegations of political influence on investigations. He was later convicted in a criminal trial. Now more than 2½ years later, the conflict of interest commission is still working in a reduced format with only three out of five members and without an elected chair, as the National Assembly has not so far elected a replacement.

⁸² Large scale funds have been invested in the so-called BORKOR project, without much apparent impact. Recently, the Commission has been informed of some concrete results of this project, including useful input to the preparations of a more effective system of public procurement in the healthcare sector. However, this does not change the overall impression that, in relation to the investment made in terms of financing and human resources, the concrete impact of this institution has been limited in terms of preventing corruption.

⁸³ For example, the National Audit Office checks asset declarations of high-ranking officials against various data bases, but no institution is charged with a systematic follow-up to identify and investigate possible cases of illicit enrichment.

⁸⁴ See e.g. SWD (2015) 9, pp. 20-24.

⁸⁵ See COM (2015) 36, p. 7. The study was carried out under the authority of the General Inspectorate with the Council of Ministers and funded by the Operational Programme Administrative Capacity (OPAC).

⁸⁶ See the *National Strategy for Prevention and Combating corruption in the Republic of Bulgaria 2015-2020*, April 2015.

⁸⁷ Other important elements of the strategy include a specialised unit in the prosecution for the investigation of high-level corruption cases, enhancing the powers and independence of the inspectorates in the public administration, expanding the powers of the asset forfeiture commission, enhancing capacity for preliminary control of public procurement procedures, reform of conflict of interest and asset declarations, better rules on whistle-blower protection, amendments to the electoral code and law on political parties to prevent electoral corruption, introduction of integrity checks for officials in certain positions, various preventive actions in regard to low-level corruption including sectorial anticorruption plans for high-risk sectors, and awareness campaigns focusing on changing attitudes and making the public sensitive to signs of corruption. Some of these elements form part of the anti-corruption law presented by the government (see below).

new draft anti-corruption law, which notably was intended to provide the legal basis for the new unified anti-corruption authority. The result was a significant delay of this key element of the government's new anti-corruption strategy.⁸⁸

5.1. Overall coordination of the anti-corruption effort

The new anti-corruption strategy establishes a new national coordination council for anti-corruption policy. The coordination council brings together high-level representatives of the key relevant ministries (justice, interior, economy and finance), the ISJC, the public prosecutor's office, the state agency for national security (SANS) as well as the General Inspectorate of the Council of Ministers. It is chaired by a Deputy Prime Minister⁸⁹ and the General Inspectorate of the Council of Ministers provides its secretariat. The ombudsman as well as the chairpersons of the public order and parliamentary ethics committees of the National Assembly may participate as observers, and various institutions and experts may also be invited to its meetings. A civic council is associated to its work with representatives of civil society associations, which may also attend meetings of the coordination council.

The main tasks of the national coordination council are to develop strategy, set priorities, launch initiatives, and monitor progress in the implementation of the anti-corruption strategy. It is a political level body and is not therefore meant to be directly involved in the concrete activities of the various institutions active in the prevention or investigation of corruption. Its purpose is rather a response to past problems of anti-corruption strategies suffering from a lack of systematic political attention and follow-up, issues that the council is meant to prevent from reappearing in the context of the new strategy.

The council was established before the summer and has held a number of meetings. So far it appears to have been successful in providing a forum for a general discussion of concrete initiatives to be pursued in the context of the anti-corruption strategy. In the future it could provide an important forum for monitoring and evaluating progress. Whether it will also be effective in pushing forward the necessary reforms at political level remains to be seen. As shown by the initial failure of the government's anti-corruption law, progress at this level ultimately requires a broader political commitment.

5.2. Prevention and detection of high-level corruption

Among the key measures proposed in the new anti-corruption strategy is the establishment of a new unified authority for the prevention and detection of corruption among high-level officials. The new anti-corruption authority would incorporate the existing conflict of interest commission, the anti-corruption centre (BORKOR), and part of the National Audit Office currently dealing with the verification of asset declarations of high-level officials. The new institution would be an independent agency with reinforced investigative powers. In addition to being in charge of checking conflicts of interest and asset declarations for around 7000 high-level officials,⁹⁰ it would carry out inspections and follow up on signals. It would have access to public registers as well as banking and tax information. It would be competent to impose administrative fines as well as to refer cases to the prosecution and the Asset Forfeiture Commission for further investigation.

Legislative proposals for setting up the new authority were presented in spring 2015. In addition to establishing the new institution, the draft law also includes a revision of the existing legislation on

⁸⁸ The government seems to remain determined to reintroduce the draft legislation in the National Assembly in early 2016, but the eventual outcome is uncertain.

⁸⁹ To provide further weight to the objective of overall coordination the deputy Prime Minister has also been given the title of anti-corruption coordinator. Deputy chair is the Minister of Justice.

⁹⁰ This would represent a change in regard to conflicts of interest, where the existing conflict of interest commission is in principle competent for all public officials.

conflicts of interest and the monitoring of the property status of high-level officials.⁹¹ Originally the aim was to have the legislation adopted before the summer of 2015, which could have allowed for the new institution to be operational by early 2016.⁹² However, certain elements of the new anti-corruption authority proved divisive in the National Assembly and the vote was postponed until September, where it eventually failed to gather the required majority among the deputies.

The two main issues of controversy concerned on the one hand the ability of the new agency to rely on anonymous signals and on the other hand the procedure for appointing the head of the agency. The issue of anonymous signals has a difficult history in Bulgaria,⁹³ though the debate seemed to conflate the question of taking into account anonymous leads on the one hand and considering them as admissible evidence on the other. The appointment of the head of the new institution referred to concerns about the need to ensure political independence and impartiality in the new institution. The government proposal envisaged the appointment of the head of the agency by the President on a proposal of the Council of Ministers. According to critics, however, this process would give too much say to the executive branch and risk politicising the activities of the agency. These issues were the subject of important debate in the National Assembly, but, the total rejection of the legislative proposal at first reading nevertheless came as a major surprise.⁹⁴ The draft law had reportedly been debated and given provisional support within no less than four parliamentary committees.⁹⁵ According to the parliamentary procedures substantial elements of legislative proposals can be amended prior to their final adoption during the second reading, which could have allowed for problematic issues to be addressed.

The rejection of the law at first reading resulted in a significant delay in carrying the legislation forward. According to the rules of procedure a failure in the first reading bars the government from reintroducing a similar legislative proposal for three months, in this case effectively postponing any new legislative initiative until December 2015. Eventually, the government decided to continue its consultations with the various political forces in the National Assembly in order to prepare the ground for a new revised proposal prior to its official adoption by the Council of Ministers. A revised draft is expected early in 2016.

5.3. Preventing corruption at all levels in the public administration

While the new unified anti-corruption authority would be competent in regard to high-level officials, the rest of the public administration would continue to be under the control of the inspectorates and regular audit institutions. Relying on the existing institutional set-up the issues identified in past CVM reports in regard to the general systems for the assessment of conflicts of interest and checking of asset declarations largely remain unchanged.⁹⁶ However, under the new anti-corruption strategy a number of new initiatives are in the pipeline to address corruption more generally within the public administration, including low level corruption. In particular, three strands of work seem to be in

⁹¹ On the latter issue the draft law aims to modernise the system of property and conflicts of interest declarations, expanding their scope to address practices used to circumvent the existing regime and facilitating full checks on actual property of the inspected persons. While the new institution would only be responsible for high-ranking officials, other public officials would be the responsibility of their respective institutions, relying for example on the internal inspectorates to check conflicts of interest.

⁹² There would be a need to get the financing in place, to procure the IT systems, and carry out integrity tests for the officials. Even if existing staff would be allowed to work in the new institution, this would be subject to a vetting procedure for all staff. EU funds were being considered to fund the procurement of IT.

⁹³ Partly due to the association of this concept with the use of 'informers' during communist times.

⁹⁴ The rejection was followed by public statements regretting the outcome not only by the responsible minister, but also by civil society organisations and even by a broad coalition of foreign diplomatic representations in Sofia.

⁹⁵ Including the committees for anti-corruption, legal, budgetary and regional affairs.

⁹⁶ Draft legislative amendments to the current conflict of interest law, which had been under consideration during the previous parliament, were scrapped after the presentation of the new anti-corruption law was presented by the government.

progress in this area: reform of the administrative inspectorates, introduction of sectorial anti-corruption strategies, and reform of public procurement.

Public inspectorates

The inspectorates are a key part of the prevention against corruption in the public administration. In charge of the internal control, it is essential that they function in an independent and professional way in line with a set of common methodological principles. Currently they in principle all work under the guidance of the General Inspectorate under the Council of Ministers. However, the latter does not have any binding powers over the individual inspectorates and can for example not insist that all follow common methodological guidelines. Rather, the sectorial inspectorates work under the authority of the respective minister.⁹⁷

In order to address these issues, one of the objectives set out in the anti-corruption strategy is to strengthen the inspectorates. Draft amendments to the Law on Public Administration have reportedly been prepared by the General Inspectorate aiming to enhance the capacity and independence of the inspectorates. The changes would clarify the legal basis of the inspectorates by clearly delineating administrative control from other control activities, by providing a basis for establishing the structure and number of inspectorates and for adoption of common rules and procedures for their operations, and by strengthening the leading role of the General Inspectorate, including by giving it a competence to conduct evaluations of the activities of other inspectorates. The draft amendments were presented to the anti-corruption coordination council in June and are currently awaiting adoption at the Council of Ministers, after which they would need to be adopted by the National Assembly. These changes have a close link to the new anti-corruption law, as it is here proposed that the inspectorates will in future be responsible for checking the conflict of interest and personal asset declarations of lower ranking officials and following up on any indications of possible corruption.

Sectorial anti-corruption plans

As part of the anti-corruption strategy the Bulgarian authorities envisage to put in place detailed plans to counter corruption in different sectors of the public administration through preventive measures. These sectorial anti-corruption strategies would cover high-risk sectors and contain very concrete measures specifically tailored to address low-level corruption in each sector. The development of sectorial action plans require a combination of very good knowledge of the individual sectors concerned, from the perspective of both employees and end users of the services provided, notably to identify the corruption risks. Outside expertise can be necessary to help in the formulation of measures and control of their implementation. Exchange of best practice amongst different administrations is also necessary, although there is no one-size-fits-all solution which can be applied across the board. An in-depth knowledge of the organisation and work practices concerned is essential, as the problems can often best be solved through redesigning the organisation of tasks and procedures.

The first actions have been launched within the Ministry of Interior, in the context of a wider reform of that ministry launched by the government in 2015. The measures introduced or considered range from use of cameras in traffic police vehicles,⁹⁸ over the introduction of integrity checks for

⁹⁷ This is seen as increasing the risk of fragmentation as well as raising questions of political interference in the work of the inspectorates.

⁹⁸ The experience with traffic police is a good illustration of the complexity of addressing low level corruption. The traffic police are seen as one of the services mostly affected by bribes in Bulgaria. To address this issue the government as a first step installed a number of cameras in traffic police cars. However, it appeared that this was only the first level at which bribes could be paid. First, the fines are set as a separate step within the administration. Second, there was also a possibility to intervene at the level of the transfer of records of unpaid fines to the NRA. At each level of the chain there is a risk of corruption and hence a potential need for controls. One possible remedy would be simplification of processes and introduction of IT tools to manage key functions, hence in practice implying a broader reform of the administration of traffic fines.

personnel,⁹⁹ to a more systematic follow-up on conflicts of interest and asset declarations for Ministry of Interior officials in managerial positions.¹⁰⁰ A separate issue concerns the control over sensitive data, where reportedly very little control has been exerted over the use of such data within the ministry in the past. Two new units have now been created to manage information security and the use of internal data bases. More generally, the reform involves the separation of administrative services in a new entity and the introduction of electronic services¹⁰¹ as well as modernisation of the police force.¹⁰² Finally, in regard to the management of the external borders, the Bulgarian authorities have reacted to the recent increase in migration pressures by tightening controls and preventive measures within the border police to deter and detect any corrupt practices.¹⁰³ This involves measures such as rotation of officials through randomised assignments as well as implementation of risk based checks.

The sectorial measures under way in the Ministry of Interior represent a model for the containment of low-level corruption which is planned to be rolled out more widely in the Bulgarian public administration, targeting areas where particular risks of corruption have been identified. Sectorial plans have so far been prepared for the National Revenue Agency, the healthcare system, the agricultural administration, and the ministries of transport and energy.¹⁰⁴ The results of these plans will depend to a large extent on their concrete implementation and follow-up within the relevant ministries.

Public procurement strategy

Public procurement is generally recognised as a high-risk area for corruption. The Bulgarian public procurement system has been characterised by complex and changing legislation, a lack of administrative capacity at different levels, and low trust in the legality of procedures, which end up in lengthy appeals. In 2014 Bulgaria responded to these challenges with the adoption of a comprehensive strategy and roadmap for the improvement of the public procurement system over the coming years.¹⁰⁵ In the anti-corruption strategy, furthermore, the Bulgarian government has committed itself to enhancing the capacity for preliminary controls of public procurement through the development of internal control systems.

In 2015 the government has targeted several measures in this area, including draft amendments to the public procurement act currently under consideration in the National Assembly. These amendments, and the subsequent implementing regulations, are expected to lead to greater legal certainty, since they

⁹⁹ This seems to depend in part on legislative changes. Also, a model for the performance of integrity checks had to be developed, suitable for the Bulgarian context. The model chosen reportedly focuses primarily on compliance with administrative rules and guidelines, but if in the course of the check the official demands a bribe a criminal case is opened against the official.

¹⁰⁰ A model for this is in preparation in a project financed by EU funds but is expected to be ready towards the end of 2016 at the earliest.

¹⁰¹ Administrative services constitute another high-risk area. A draft law has been submitted to the National Assembly to pave the way for this.

¹⁰² The current structure is very complex following a long history of piecemeal changes. The aim is that the police structures should be streamlined and separated out from the general administration.

¹⁰³ According to the Bulgarian authorities the migration pressure has been associated with increased corruption risks, apparently also linked to organised crime. This is also considered a potential security risk in light of several recorded cases of prospective 'foreign fighters' having been caught transiting through Bulgarian territory. A large scale anti-corruption raid took place at the Kapitan Andreevo border crossing on 13 December 2015, resulting in the arrest of 33 customs officials.

¹⁰⁴ These plans include measures such as rotation of employees, implementation of integrity checks, awareness-raising in the target population for the relevant services and tightened financial control.

¹⁰⁵ *National Strategy for Development of the Public procurement sector in Bulgaria over the Period 2014-2020*, 2014. Bulgaria has also been required to set up an action plan more specifically targeting compliance with EU rules, as the existing system was not assessed to meet the *ex-ante* conditions for the use of EU funds in the 2014-2020 programming period. In the new EU funds regulations for that period, expenditures under the European Structural and Investment Funds (ESIFs) have been made conditional on compliance with a set of pre-established criteria, including minimum requirements for public procurement. Where shortcomings are identified, the Member States are required to put in place an action plan and implement it by the end of 2016.

would codify and simplify the existing rules. One objective of the proposals is also to give the public procurement agency strengthened powers to monitor public procurement procedures.¹⁰⁶ Other measures would aim to improve the coordination between the various agencies involved in ex ante and ex post controls and to increase professionalisation of the administrative bodies involved in public procurement. Preparations are also ongoing for the completion of e-procurement, and the introduction of centralised purchasing platforms is under consideration.¹⁰⁷

5.4. Addressing high-level corruption through the criminal justice system

Past CVM reports have noted very little progress in Bulgaria with regard to the investigation of high-level corruption. For evaluating the track record of Bulgaria in tackling high level corruption cases, there is a need that final court decisions are rendered and enforced. Information on investigation, indictment and first instance court decision is of course useful to form a view on the activity of the different actors. However, the CVM needs to assess the overall performance of the system in effectively tackling high level corruption. So it is the entirety of the law enforcement and judicial chain that has to deliver concrete results.

In 2015 the overall picture from earlier years remains essentially unchanged.¹⁰⁸ Some cases involving high-ranking figures have resulted in final conviction, but the number remains very limited (and with a significant number of suspended sentences also reducing the deterrent effect).¹⁰⁹ There have been several high-profile cases of initial convictions being reversed on appeal or charges being withdrawn by the prosecution in cases where initially there were allegations of serious wrong-doing.¹¹⁰ At the same time, new high-level cases have appeared which will test the capacity of the Bulgarian judicial institutions to deliver an effective investigations and prosecution.¹¹¹ Compared with other Member States, OLAF has a relatively high number of on-going investigations where Bulgaria is the country involved and EU funds are concerned.¹¹² Moreover, OLAF is monitoring a high number of cases

¹⁰⁶ In the past the *ex-ante* checks conducted by the public procurement agency have been criticised as too superficial, reflecting partly a lack of resources to check all procedures in depth and partly limitations on its legal competence. A solution to this would be the introduction of much more comprehensive check on a smaller sample of procedures, selected on the basis of a systematic risk assessment.

¹⁰⁷ If appropriately developed, such centralisation may increase professionalism and facilitate measures to address shortcomings. It is applicable in particular in regard to areas with recurrent procurement, allowing for standardisation of purchasing decisions.

¹⁰⁸ The January 2015 CVM report noted that although there seemed to have been an increase in the overall number of investigations in progress in 2014, results remained scarce in terms of final convictions. COM (2015) 36, p. 8.

¹⁰⁹ These include the former chair of the conflict of interest commission who was given a 3-year suspended sentence for malfeasance in office, a former regional governor who was also given 3-year suspended for corruption, a former mayor sentenced to 3 years and 4 years in a low-security facility for respectively bribery and malfeasance in office, and a former prosecutor sentenced to 3 ½ years in a low-security facility for exerting pressure on a colleague to terminate a case without charges. More general figures provided by the Bulgarian prosecutor's office indicate that there were 22 and 12 enforced prison sentences for corruption related crimes in 2014 and 2015 respectively. The figures provided do not allow for an assessment of the severity of the sentences for 2014 or 2015. Data for earlier years indicate that out of 26 and 9 cases of enforced prison sentences respectively in 2012 and 2013 8 and 2 concerned sentences of more than 3 years of prison (typically between 3 and 5 years). The numbers for suspended sentence are generally higher than for enforced sentences: 143 cases in 2014 and 105 in 2015. There seems to have been an increase compared to earlier years. In general, it should be noted that figures for 2015 cover only the first 9 months of the year.

¹¹⁰ These include several cases of very high-ranking politicians or former politicians.

¹¹¹ The handling of criminal proceedings concerning irregularities in the country's fourth largest bank and the banking supervisory authorities discovered in 2014 will be a particularly complex test case in this respect.

¹¹² The cases are mainly related to possible corruption, irregularities and fraud with public procurement carried out by certain municipal authorities acting as beneficiaries, and to the existence of conflict of interest.

where the investigative phase has been closed but where judicial recommendations for actions have been addressed to the national judicial authorities.¹¹³

In the context of the preparations for the anti-corruption strategy, the Bulgarian authorities reportedly considered a number of ways in which the prosecution of high-level corruption could be improved, based on experiences in other EU Member States. Eventually it was decided to avoid major institutional innovations and instead to proceed on the basis of a closer cooperation between key institutions already responsible for tackling corruption.¹¹⁴ This took the form of a new specialised anti-corruption unit, formally established in April 2015. Incorporating two pre-existing units, established respectively in 2013 and 2014, dealing with magistrates and local corruption, the new unit is meant to focus more of its attention on high-level corruption. Organisationally situated within the Sofia City Prosecutor's office, it includes officials of the Ministry of Interior and agents of the State Agency for National Security (SANS). While it works under the overall supervision and control of the prosecutor's office, it is physically situated at the premises of SANS. SANS has the premises and equipment for interrogation of witnesses as well as of access to the use of special investigatory means (SIMs). SANS agents also participate in the investigatory work, providing intelligence. The Ministry of Interior on the other hand provides the police powers (detaining suspects etc.).

The Ministry of Interior's participation is a new element which follows from the reorganisation of the investigatory services in early 2015, where criminal investigatory powers were removed from the SANS.¹¹⁵ Following the reorganisation, all cases concerning organised crime have also been transferred to the specialised prosecution and the organised crime directorate in the Ministry of Interior. Within the anti-corruption unit, staff from all the involved services work in teams focusing on specific cases, thus ensuring that all the information and competences are concentrated in one place while access to information remains restricted to a small group of people on a need to know basis. Prosecutors are supervising the work of the teams. Staff of the unit has been significantly reinforced compared with the two pre-existing units investigating magistrates and local corruption.¹¹⁶

One advantage cited for the new set-up should be the national scope of operations of the specialised unit. This avoids potential local dependencies and pressures, which in the past has been known to obstruct investigations into corruption allegations. Another advantage is the close cooperation between prosecutors and investigators within the unit, which allows for a more team-based and specialised approach, while providing stronger safeguards against the risk of leakage of information.¹¹⁷ The authorities consider that this model of specialised cooperation between services has shown some success in regard to investigations into cases of serious corruption. A number of cases have been

¹¹³ OLAF reports that it sometimes appears unclear why the judicial authorities did not initiate, or discontinued, judicial procedures. This problem is further underlined by the existence of parallel cases in other Member States, where sentences have already been handed down or police raids and arrests have been undertaken.

¹¹⁴ Notably it was decided not to propose the creation of a specialised prosecution office for high-level corruption. Some of the arguments behind this decision seem to have been, first, that it is very complex under Bulgarian law to establish separate prosecution offices, second, that high level corruption is already to a large extent the responsibility of the Sofia City prosecutor's office, and third, that pragmatic cooperation between key institutions along the lines of measures already initiated held out the prospect of achieving results in the near future without a need for legislative changes.

¹¹⁵ Such powers were conferred on SANS as part of the previous reform in 2013 when the organised crime directorate was moved from the Ministry of Interior to SANS. However, this reform was reversed in early 2015 under the new government.

¹¹⁶ In practice, the two pre-existing units continue to function within the new unit, ensuring operational continuity.

¹¹⁷ This has proven particularly important in cases involving magistrates. As people tend to know each other within the judiciary, it is difficult in the context of the normal prosecution offices to ensure that information about an ongoing case does not come to the attention of the person under investigation.

brought to court, including several cases against magistrates and former local politicians. More cases are under investigation.¹¹⁸

It remains to be seen whether the new unit will be able to scale up its operations over the coming months and if it will also be able to conduct larger scale investigations into organised corruption schemes involving larger networks of perpetrators.¹¹⁹ In addition, the assessment of Bulgaria's response to high-level corruption will also depend on the judicial follow-up on such cases and the ability of Bulgaria to achieve final conviction of the offenders in court.

VI TACKLING ORGANISED CRIME

The sixth benchmark under the CVM for Bulgaria focuses on the capacity of Bulgarian judicial institutions to effectively fight organised crime. Past CVM reports have noted major problems in this area, where it has been difficult to identify significant results in terms of final convictions in high-level cases. In response to these challenges, a specialised prosecution office and court were established in 2012 specifically dedicated to cases involving organised crime. However, the specialised prosecution also is dependent on the broader legal set-up. The heavy and very formalistic legal framework in Bulgaria creates a certain number of challenges in the prosecution of complex organised crime cases. The interaction between the different services has been frequently noted as an area where improvements are needed.

For Bulgaria to establish a track-record in the tackling of organised crime cases, there is a need that final court decisions are rendered and enforced to show that the system in its entirety is capable of tackling the problem and that there is a deterrent effect.¹²⁰ This can only be the case when custodial sentences are served and criminal assets effectively confiscated. An issue noted in the past concerns convicted criminals who escape justice and abscond before a court sentence ordering custody is rendered and/or enforced. Here some action has been taken and more is in preparation. In respect to the confiscation of illicit assets, a new law was adopted in 2012, which introduced some improvements to the legal framework on illegal asset forfeiture while apparently also creating some new challenges.

The January 2015 CVM report recommended Bulgaria to create the conditions for the specialised court and prosecution office to focus on high-level complex cases, to monitor the progress of high-level organised crime cases and take steps to avoid the exploitation of procedural loopholes, to introduce safeguards to prevent convicted criminals from absconding and facilitate confiscation of criminal assets, and to ensure that changes in the investigatory services responsible for organised crime would be carried out in a manner to ensure operational continuity.

6.1. Specialised court and prosecution

The specialised prosecutor's office and court were established in early 2012 to create the basis of a more focused investigation and prosecution of organised crime. An advantage of these specialised institutions is that they cover the entire territory of the country. For the prosecutor's office this gives a more comprehensive picture of organised criminal activity, allowing it to better link cases in different regions and over time. Another advantage is to create some distance from local pressures. Some

¹¹⁸ Information from the public prosecutor's office.

¹¹⁹ In addition to focusing on individual cases involving single perpetrators, a particular advantage of a specialised unit should be to enable broader investigations into networks of persons involved in systemic corruption in order to identify the people at the centre of such networks.

¹²⁰ Evidently, this requires investigations which are carried out thoroughly and independently as well as indictments which have been properly prepared and are convincing in court.

organised criminal groups have reportedly been able to work with relative impunity due to their ability to exert pressure within local judicial and law enforcement institutions.¹²¹

The first years were marked to a certain extent by procedural and organisational issues, with issues regarding the definition of competencies and a need to build up capacity for handling complex cases. Some of these specific issues seem now to have been addressed. However, challenges remain in regard to the broader legal framework.¹²²

Due to the formal definition of its remit of competences, the specialised prosecution seems in the past to have been burdened with cases not properly linked to organised crime, including minor cases involving members of the staff of the Ministry of Interior or employees of security firms. Such minor cases have reportedly taken up a large share of available staff resources. With amendments to the criminal procedure code in spring 2015, the competence of the specialised court and prosecution in regard to such minor cases was dropped, which should help focus attention towards cases involving serious organised crime.¹²³ Regardless of legal provisions, the capacity to focus on the most complex crime cases is not only a matter of legal competence but is also a question of day-to-day prioritisation of available resources.

In the first years the specialised prosecutor's office also encountered challenges in dealing with cases of economic crime, such as tax offences, which are often very complex and require specialised financial expertise. The specialised prosecutor's office is seeking to address this issue with the setting up in April 2015 of a special tax crimes unit working closely with the National Revenue Agency.

In terms of track record, there are indications that the specialised institutions have started producing some results. There has reportedly been a rising trend in the number of indictments brought to court and sentences pronounced, as well as a reduction in the number of acquittals. However, it continues to be the case that very limited results have been achieved in terms of final convictions in high-level cases. A significant number of cases are pending on appeal or are still in the pre-trial or trial phase. In quite some cases plea bargain agreements have been concluded with the defendants, resulting in suspended or relatively short prison sentences (less than 3 years).¹²⁴ It remains to be seen whether the positive trends observed so far in the direction of a gradually more effective specialised prosecution will continue in the coming years to finally yield significant results in the fight against serious organised crime and bringing to justice high-level criminal figures.

Over the years since its accession to the EU Bulgaria has seen a change in the nature of organised crime. The traditional hierarchical criminal organisations vying for control of specific territories have to some extent been replaced by looser networks working across borders. These developments are partly linked to general factors influencing the risks and opportunities facing organised crime groups, which are naturally focusing on the most lucrative forms of criminal activity carrying the lowest risk.

¹²¹ The authorities report that special measures sometimes have to be taken to address the potential risk of local law enforcement and judicial institutions leaking information to organised crime groups in ongoing cases. (Meeting with the specialised prosecution and court; Sofia, 3 December 2015.)

¹²² In discussions with the Commission, prosecutors have complained in particular that cases are often repeatedly sent back to the prosecution for further checks or remanded to the lower court for formal reasons on appeal, creating an impression that criminals may effectively avoid justice by indefinitely extending the duration of trials at the courts. Judges on the other hand have highlighted the poor quality of indictments prepared. Restrictions on the use of experts in court have also been mentioned by authorities as an issue hampering effectiveness of investigations and court procedures.

¹²³ Meanwhile, other amendments have extended the competence of the specialised court to cases involving crimes against the state and legal order (terrorist offences). There have as yet been no specific cases in this field, but the prosecution office is currently a specialised team to deal with such cases.

¹²⁴ Based on information supplied by Bulgarian specialised prosecutor's office; December 2015. The general trends in indictments etc. are based on overall figures, which do not allow for an assessment of the severity of the crimes concerned.

Organised crime is therefore arguably less visible today than a few years ago.¹²⁵ Organised crime groups reportedly remain active in a number of fields, including facilitation of irregular migration, VAT and excise fraud, public procurement fraud, trafficking in human beings and drugs, smuggling of cigarettes, credit card fraud, etc.

6.2. Investigative services

Bulgaria has a complex set up of several criminal investigative services with competencies in different areas, including organised crime.¹²⁶ The central axis dealing with organised crime consists of the specialised prosecutor's office and the Central Directorate for the Combatting of Organised Crime (CDCOC) within the Ministry of Interior. The latter was in 2013 moved to the State Agency for National Security as part of a major reorganisation of the investigative services. However, the current government decided to move it back again to the Ministry of Interior. The transfer of these competences in 2015 from SANS to the Ministry of Interior was better prepared than the transfer in the other direction in 2013. A notable difference was that case officers were automatically assigned to stay on the cases, whereas in the previous reorganisation this was not the case. As a result, while there still appears to have been a certain amount of disruption during the transition until summer 2015 as well as a significant reduction in staff¹²⁷, the reorganisation now seems to have been completed.

Other organisational measures have also been taken by the new government to improve the fight against organised crime. Notably, customs officials have been vested with police powers in certain cases and the National Revenue Agency has been given administrative investigative powers to prevent and tackle tax evasion and fraud. A new anti-trafficking and contraband taskforce has been established, pooling together the resources of the relevant law enforcement institutions in a single unit to improve coordination.¹²⁸ Bulgaria is cooperating with law enforcement of other countries to address cross-border crime and is understood to be active in Europol in regard to several priority areas.¹²⁹ The Bulgarian authorities also report a range of training measures undertaken to improve the analytical capacity of the police. A notable example of this is the establishment of a centre for the training of forensic experts at the Ministry of Interior Academy, with the aim of enhancing capacity in areas such as DNA analysis, analysis of documents, and ballistics.¹³⁰

¹²⁵ Some observers indicate that old structures remain under the surface and can be easily reactivated, as also indicated by some recent events, including several murders and deaths with possible links to organised crime, and a grenade attack against an armoured vehicle in Sofia in October 2015.

¹²⁶ In addition to the Ministry of Interior in charge of the police, there is a National Investigative Service which officially forms part of the judiciary and has competences for example over cases against immunity holders and in cases specifically assigned to them by the prosecutor's office because they are of particular complexity. Finally, the State Agency for National Security also plays a role in regard to high-level corruption.

¹²⁷ The prosecutor's office has complained about lack of new serious crime cases being submitted in 2015. Besides the temporary impact of the reorganisation, another factor could be the impact of a significant reduction in staff, as the new directorate for organised crime has seen its staff reduced by almost 40 per cent compared to the previous situation. While the Ministry of Interior seems to agree that a certain slowdown can be discerned in the first half of the year, they maintain that the directorate is now fully functional and has indeed submitted a higher number of cases during the autumn of 2015 than in the previous year.

¹²⁸ The *Anti-smuggling Interdepartmental Coordination Center and Control of High Risk Goods and Cargos* is established within the specialised directorate for organised crime (CDCOC), its main purpose being to ensure coordination and interaction of anti-smuggling actions among relevant authorities, including the various police departments, national revenue agency, customs, and the state agency for national security (SANS).

¹²⁹ Europol reports good cooperation with the Bulgarian authorities when requested to assist in regard to concrete international investigations. Several large scale operations have taken place with the involvement of Bulgarian authorities, for example in the area of credit card fraud (skimming). (Meeting with Europol; The Hague, 27 November 2015.)

¹³⁰ The aim is to train 100 forensic experts over the coming three years. (Documentation received from the Bulgarian Ministry of Interior in October 2015.)

In spite of the improvements made in these and other areas, a number of challenges continue to hamper progress in organised crime cases. Reference has already been made to problems encountered during trial in complex criminal cases due to formalistic criminal procedures. Some of these problems also relate to the investigation phase. Where formal requirements sometimes seem limiting, such rules often reflect concerns for legitimate rights of defendants and suspects. However, the overall effect seems to be that of a rather strict environment for the completion of criminal investigations, especially when dealing with complex cases such as cases involving organised crime.¹³¹

Some additional legal obstacles seem to have appeared in connection with the latest reorganisation in 2015, due to unintended consequences of the legal set-up. The new Ministry of Interior Act approved by the Parliament assigns competence to the organised crime directorate only for criminal cases for which there is an established link to organised crime and prevents it from taking responsibility for investigation of less serious crimes. Until a clear link between individual crimes and an organised criminal group has been established, the investigation falls instead under the mandate of the national police. In principle, this is not unusual. A clear link between simple crimes and major and serious crimes or trafficking is rarely evident at the very beginning of an investigation. In Bulgaria and almost anywhere else, the first steps of investigation are performed by the local or uniform police and then specialised departments take over the investigation when major criminal patterns become visible. However, what is a simple mechanism for a better organisation of tasks for many law enforcement agencies in EU appears to be a legal constraint in Bulgaria, having an impact, for example, on the possibilities to apply special investigative means.¹³²

Draft legislative amendments to address the issue have been prepared by the Ministry of Interior and submitted to the National Assembly. These would allow the organised crime directorate to obtain permission to use special investigative means as long as 'reasonable grounds' can be shown to exist for suspecting involvement of organised crime. The proposed amendments reportedly also aim to address a number of other issues which have appeared in regard to the competencies of the specialised organised crime directorate.¹³³

Beyond legislative changes, it remains to be seen whether the new version of the organised crime directorate will be able to build on its assigned resources in cooperation with other relevant services to bring about a significant improvement in the investigation, prosecution and bringing to justice of organised criminal groups in Bulgaria. The cooperation between the organised crime directorate and the specialised prosecution is central to the overall performance of the system. While the investigations are carried out by the investigating police officers, the prosecutors play an important role in guiding the investigation. To improve this cooperation Bulgarian authorities have in

¹³¹ Some concrete examples raised by experts concern the time limits for the formal investigation and implementing special investigative measures, respectively in Article 234 and Article 175 of the criminal procedure code, which appear to be rather strict when applied to cases of serious organised crime. A ruling of the Constitutional Court from spring 2015 regarding the time limits of the administrative inquiries performed before the pre-trial investigation de facto eliminated any deadline for such activities. This ruling widens the possibilities for the investigative bodies to gather criminal intelligence but does not solve the issue of strict time limits applicable to the formal investigation, due to limitations to the evidential value of information gathered outside the formal investigation.

¹³² While the organised crime directorate may get involved in the investigations as such, problems arise in relation to the preparation of evidence to be used in court. The Bulgarian authorities have explained that the logic of the provision as it currently stands was to avoid a situation where CDCOC would end up being burdened with a large number of minor cases, rather than focus on serious organised crime cases. However, the interpretation of the courts turned out to be more restrictive than expected, resulting in rejections of requests for the application of special investigative means, which is how the issue has come to attention.

¹³³ One such issue concerns certain types of crime (corruption, money laundering, cybercrime) which are very often linked to the activities of organised criminal groups, but for which it is very difficult to prove the direct participation of those involved in the group. Another issue concerns facilitation of irregular migration, where the specialised organised crime directorate appears not to have been provided with explicit competence. Smuggling of migrants is a lucrative area where Bulgarian organised criminal groups reportedly are involved.

cooperation with the National Institute for Justice developed joint training for prosecutors and investigating police officers. There is also already a practice of establishing joint investigating teams between the various law enforcement, judicial and administrative authorities. An important aspect of this cooperation concerns the effective follow-up on criminal investigations and the timely launch of procedures for the freezing of criminal assets in connection with criminal investigations.

6.3. Implementation of convictions and confiscation of illicit assets

The follow up on criminal investigations and convictions is as important as the investigation and trial itself. This involves questions such as the timely launch of procedures to secure the illicit assets obtained through crime and ensuring the criminals are taken into custody and prevented from absconding.¹³⁴ In May 2015 the National Assembly adopted a package of amendments to the criminal procedure code and other related codes. One of the main objectives of these amendments was to improve the legislation to avoid the risk of convicts absconding. In particular, rules were strengthened in regard to the presence of defendants at the final court hearings, the ability of the court to tighten remand measures during appeal, and the introduction of additional safeguards in the form of measures to control the whereabouts of defendants during trial, for example through electronic monitoring. It is as yet too early to assess the impact of these improvements.

The authorities report that the legislative changes do not capture all aspects of the issues identified and that additional organisational measures are therefore under discussion to address the problems. Some of these essentially concern outdated procedures restricting the use of modern means of communication between different authorities within the judiciary and law enforcement. For example, one problem concerns the procedure for the Supreme Court of Cassation to communicate the outcome of a court decision to the prosecution. According to the law, the courts are obliged to publish their rulings on the internet, which is done immediately. At the same time, however, there are different rules prescribing the transfer of the case back to the first instance court and for the latter to prepare the documentation for the implementation of the ruling and inform the prosecutor's office. This process currently can take a number of days, leaving time for convicted criminals to go into hiding.¹³⁵ Other organisational issues under discussion, according to the authorities, concern the communication between the prosecution office and the Ministry of Justice with regard to the launch of a search whenever defendants are not found at their address, which reportedly still often takes place by physical mail.

Confiscation of the proceeds of crime is another very important issue in criminal proceedings, requiring law enforcement to take appropriate action early on in relation to a criminal investigation, to prevent criminal from hiding away assets, in addition to effective rules for securing the assets in court. The system for confiscation of illegally acquired assets is based on a law from 2012, although cases initiated before the enactment of the new law continue to follow the previous rules. The new law provides for civil confiscation of assets, which was an important step forward.¹³⁶ However, some of the other elements of the law appear to represent a step backwards compared to the previous legislation. As for the track record on confiscation of assets in 2015, CIAF reports an increase in the

¹³⁴ The latter has been identified as an important issue in Bulgaria. See recommendation in the January 2015 CVM report (COM (2015) 36, p. 12).

¹³⁵ At the first instance and appeal courts, the recent amendments to the procedural code provide for the defendant to be present in the final hearing, thus enabling the immediate detention in case of a conviction. Similar provisions were also proposed for the Supreme Court, but these were rejected by the legislator, where rulings are therefore still taken in absentia.

¹³⁶ However, the Commission on Illegal Asset Forfeiture reports that this concept is not always properly understood by the courts and that they have identified cases where the courts released assets frozen under the provisions on civil confiscation due to an acquittal in a criminal procedure. This appears to be an issue where additional awareness raising activities within the judiciary would seem to be warranted. (Meeting with the Commission on Illegal Asset Forfeiture; December 2015.)

number of cases leading to confiscation, albeit with a downward trend in the amounts concerned, with the exception of a single case which is expected to concern a very substantial amount of assets.¹³⁷

As new cases have started to enter the system and experience has been gathered applying the new rules, the Commission on Illegal Asset Forfeiture (CIAF) has identified a number of shortcomings in the legislation. On this basis it has prepared a set of concrete proposals for amendments to the law, which have been submitted to the National Assembly. The proposed changes concern, among other issues, the threshold for the CIAF to start proceedings¹³⁸, the burden of proof¹³⁹, and the obligation for CIAF to investigate minor cases.¹⁴⁰ It remains to be seen if these draft amendments will be taken up by the legislator.

¹³⁷ The total amount forfeited was set to fall from approximately EUR 6.5 million in 2014 to less than EUR 3 million in 2015. However, the single case mentioned could reportedly lead to the confiscation of several hundred million euros. (Meeting with CIAF; Sofia, 4 December 2015.)

¹³⁸ In the 2012 law, the threshold for the required discrepancy in assets was increased to 125,000 euro, which is rather high in the Bulgarian context.

¹³⁹ Under the current law the burden of proof is always with the authorities, even in cases involving very serious organised crime and where a proper tax declaration is lacking.

¹⁴⁰ CIAF reports that it is burdened with a high number of very minor criminal cases submitted to it by the prosecution. According to the current law, there is no threshold under which the commission can decide not to investigate the case.