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

on Bulgaria's progress on accompanying measures following Accession

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1. INTRODUCTION

1.1. Context

When Bulgaria entered the EU on 1 January 2007, special provisions were made to facilitate and support its smooth accession while, at the same time, safeguarding the proper functioning of EU policies and institutions.

As required of all Member States, on joining the EU, Bulgaria took on the rights and obligations of membership. As is normal practice, the Commission monitors the application of law (the *acquis communautaire*) to ensure that these obligations are being met.

In addition, in line with the arrangements made for those countries which joined the EU in 2004, provisions were made in the Accession Treaty for safeguards and transitional arrangements (for example, restrictions on free movement of workers, on access to road transport networks; provisions on veterinary, phytosanitary and food safety rules). The Accession Treaty made clear that if there are serious shortcomings in the transposition and implementation of the *acquis* in the economic, internal market and justice and home affairs areas, safeguard measures can be taken¹ for up to three years after accession.

Bulgaria's accession was also accompanied by a set of specific accompanying measures, put in place to prevent or remedy shortcomings in the areas of aviation safety, food safety, agricultural funds and judicial reform, fight against corruption and organised crime. For the latter a Cooperation and Verification Mechanism was established, setting out benchmarks to provide the framework for monitoring progress in this area².

This mechanism was put in place because of the fundamental importance of having a well functioning administrative and judicial system to ensure that Bulgaria would be able to deliver on all the obligations as well as to benefit from the rights of membership. It also reflects the need, inter alia to fight corruption and organised crime. The purpose of the Cooperation and Verification Mechanism is to ensure that measures are taken to provide assurance to Bulgarians and to the other Member States that administrative and judicial decisions and practices in these areas in Bulgaria are in line with the rest of the EU. Progress on judicial reform, fight against corruption and organized crime

¹ Articles 36, 37 and 38 of the Act of Accession.

² Commission Decision 2006/929/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organized crime (OJ L 354, 14.12.2006, p. 56).

will allow Bulgarian citizens and business to enjoy the rights they are due as EU citizens. Without irreversible progress on judicial reform, fight against corruption and organized crime Bulgaria runs the risk of being unable to correctly apply EU law.

The Commission was asked to report on these accompanying measures on a regular basis. In the case of the Cooperation and Verification Mechanism, reports were requested on a six monthly basis, starting in June 2007. This report presents a comprehensive overview of the state of play on the accompanying measures and is the first report on the Cooperation and Verification Mechanism. It looks at all areas in which accompanying measures were put in place focusing on judicial reform and the fight against corruption and organised crime.

1.2. Methodology

This report has been drawn up from an array of information sources. The Bulgarian Government has been a primary source of information. Information and analyses were also received from the EC Representation Office and Member State diplomatic missions in Bulgaria, civil society organisations, associations and expert reports. The Commission organised missions to Bulgaria during April 2007, under the Cooperation and Verification Mechanism. They were supported by individual experts from Member States and Commission services. The purpose was to seek independent assessment of progress. The experts drew up reports which subsequently were transmitted to Bulgaria for correction of any factual inaccuracies.

Bulgaria submitted a first report on progress achieved under the Cooperation and Verification Mechanism on 31 March 2007 and has continued to update the Commission on pertinent developments since then.

2. ACCOMPANYING MEASURES: STATE OF PLAY

Accompanying measures for Bulgaria cover agricultural funding, food safety, air safety, judicial reform and the fight against corruption and organised crime. This chapter briefly examines developments in the first three areas, elements of which are also subject to separate reporting requirements. Progress in the areas of judicial reform and the fight against corruption and organised crime is assessed in Chapter 3.

Further information is provided in annex on the state of play of safeguard clauses and other provisions in these areas. Given the established implementation structures and reporting mechanisms in the agriculture, animal health and food safety and aviation areas, these subjects will not be covered in the future in this horizontal report. If further decisions are needed in these areas they will be taken on an individual basis in accordance with the rules governing these sectors.

2.1. Agricultural funds

For agricultural funds, Member States are obliged to have accredited and efficient paying agencies to ensure the sound management and control of agricultural expenditure. Member States are also required to operate an integrated administration and control system (IACS) for direct payments to farmers and for

parts of rural development expenditures (in order i.a. to avoid fraudulent practices and irregular payments). If Member States fail to operate such control systems properly, the Commission decides ex-post on financial corrections on an annual basis. Given the risk that IACS would not function properly from the point of Bulgarian accession was too high, the Commission established a safeguard mechanism that could be applied to Bulgaria if the elements of IACS (integrated administration and control system) or the other elements necessary to ensure the correct payment are not set-up or are seriously deficient. The safeguard mechanism foresees that IACS related expenditure could be provisionally reduced by 25%. The main concerns related to IACS were the connection between farm register and the LPIS (land parcel identification system), administrative capacity and logistics and the quality of data recorded. An audit mission carried out in June confirmed that Bulgaria has made further progress in implementing different elements of the IACS. However, further efforts and rapid action is required, in particular in order to ensure that the on-the-spot checks are carried out in the coming months in an effective manner. A further audit mission to Bulgaria is scheduled for the last week of June. This audit will check whether the paying agency is properly functioning and will follow-up certain IACS related issues. Based on these audits and on the Ministerial Declaration submitted by the Bulgarian authorities end of March the Commission will assess whether the elements of the IACS have been set up and are operational. Decisions on whether it is necessary to apply safeguard measures (which could potentially entail a reduction in IACS related expenditure) will be taken based on the results of the audit and on the Ministerial declaration submitted by the Bulgarian authorities.

2.2. Aviation Safety

Concerning aviation safety, Bulgaria has verified deficiencies regarding its weak administrative capacity in regulation, supervision and oversight of carriers and organisations involved in the continued airworthiness and maintenance of aeronautical products. Various verification visits since 2005 have shown that Bulgaria was not capable of applying neither Community nor Joint Aviation Authority (JAA) rules on the safety of aeronautical products and maintenance organisations. Nor was Bulgaria able to exercise its supervisory obligations in line with international (ICAO), JAA or EC standards. Consequently safeguards were applied in December 2006. This means that since 1 January 2007 a) Bulgarian carriers do not enjoy the status of community carriers and continue to operate with third country status and b) safety certificates issued by the Bulgarian authorities do not enjoy the benefits of mutual recognition within the EC. However, Bulgaria remains fully bound by all obligations stemming from the relevant Community rules. Bulgaria has started to improve its capacity in safety oversight and took precautionary safeguard measures itself in February 2007, withdrawing the certificate of four cargo carriers, suspending the certificate of a fifth and applying restrictions to a sixth in view of their deficiencies in the area of safety of operations and it deregistered over 160 aircraft as they were not compliant with EC rules.

2.3. Animal Health and Food Safety

In the area of veterinary and animal health, transitional measures concerning swine fever have been taken and eradication plans have been approved. A review of these efforts is planned for September 2007. The Commission has also adopted transitional measures in the meat and milk sectors. Only a limited number of establishments are authorised to send their products to other Member States. Specific measures have been adopted for raw milk.

3. JUDICIAL REFORM AND THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME

3.1. Summary overview

Reform of the judiciary and the fight against corruption and organised crime has been closely monitored under the Cooperation and Verification Mechanism. The follow up provides a summary analysis and a detailed explanation of progress in relation to the benchmarks under the Cooperation and Verification Mechanism. The detailed explanation is structured on actions which were used as indicators of progress towards meeting benchmarks.

Bulgaria has made progress in varying degrees in meeting the benchmarks set out in the Cooperation and Verification Mechanism. It is important to see these benchmarks as representing more than a checklist of individual actions that can be ticked off one by one. They are all interlinked. Progress on one has an impact on others. Each benchmark is a building block in the construction of an independent, impartial judicial and administrative system. Creating and sustaining such a system is a long term process. It involves fundamental changes of a systemic dimension. The benchmarks cannot therefore be taken in isolation. They need to be seen together as part of a broad reform of the areas at stake— for which a long term political commitment is needed. Greater evidence of implementation on the ground is needed in order to demonstrate that change is irreversible.

The Bulgarian Government is committed to judicial reform and cleansing the system of corruption and organised crime. In all areas, the Bulgarian authorities demonstrate good will and determination. They have prepared the necessary draft laws, action plans and programmes. However, the real test can only be met through determined implementation of these actions on the ground every day. There is still a clear weakness in translating these intentions into results. Bulgaria has stepped up efforts at the highest levels in the fight against corruption and organised crime. While recognizing these efforts, much remains to be done. Progress in the short time since the Cooperation and Verification Mechanism was set up is still insufficient.

Deeply rooted problems, notably organised crime and corruption require the irreversible establishment and effective functioning of sustainable structures at investigative and enforcement level capable of sending strong dissuasive signals. In addition, the structural changes which are needed impact on the society at large and require a step change which goes much beyond the mere fulfilment of the benchmarks. This requires a strong long term commitment by Bulgaria and

can only be successful if the strict separation of the executive, legislative and judicial power is respected.

3.2. Assessment

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

Bulgaria adopted constitutional amendments which ensure the independence of the judiciary and provide for the creation of an independent judicial inspectorate to monitor the integrity of the judiciary and follow-up on complaints.

It is too early to assess the effectiveness of these amendments given that the inspectorate has not yet been set up.

Bulgaria has largely met this benchmark by adopting the Constitutional amendment. It will not be possible to assess the effectiveness of the amendment in removing ambiguity regarding the independence and accountability of the judicial system until the full adoption and implementation of the necessary implementing legislation providing for the establishment of the independent judicial inspectorate (see also benchmarks 2 and 3).

Detailed Assessment

- *The National Assembly to adopt amendments to the Bulgarian Constitution*

The Constitutional amendments, which aimed to clarify any ambiguity with regard to possible interference by the Minister of Justice with the independence of the judiciary, were adopted when the necessary $\frac{3}{4}$ majority of the National Assembly passed the 4th amendment to the Constitution on 2 February 2007³.

The Constitutional amendments might, as with any other amendment, be reviewed by the Constitutional Court and legislation and administrative acts pursuant to these Constitutional amendments can be challenged as unconstitutional in the ordinary way.

³ The amendments are as follows. Article 84 has been amended so that the National Assembly receives and adopts the annual reports of the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General, on the enforcement of laws and the activities of each respective judicial institution. These reports are then submitted to the National Assembly by the Supreme Judicial Council (SJC). Under Article 130, the SJC is now explicitly entrusted with power over the appointment, promotion, removal, discipline and qualifications of the judiciary. Article 130a no longer provides for the Ministry of Justice to inspect arrangements regarding the institution, progress and closing of cases. Instead, new Article 132a provides for an independent Inspectorate, within the SJC, to monitor the activity of judicial bodies both proactively and on complaint from citizens, legal entities and state authorities, including members of the judiciary. The effective immunity of the judiciary from legal action has been removed (not related to execution of official duties). Now the judiciary are "immune" only in relation to acts committed in the performance of their official duties, and not for publicly actionable criminal offences committed with intent.

- *The National Assembly to make necessary changes to the Judicial System Act*

The Judicial System Act (JSA) is not yet enacted (see assessment under second bullet point of benchmark 2).

- *The Inspectorate to be set up and functioning, first results to be published and evaluated*

The Inspectorate will be established after the JSA is enacted (see assessment under benchmark 3).

3.2.2. *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*

The first chapters of the new judicial system act were adopted in mid June and hence it is too early to be able to report on its implementation. It would appear to address concerns about the independence and staffing of the Supreme Judicial Council and its inspectorate. Adoption of the civil procedure code is still pending. A monitoring system for the new penal procedure code and the new administrative procedure code has been set up to facilitate uniform application of law. However, there has been no systematic reporting on the findings of this monitoring mechanism.

Overall, Bulgaria has achieved some progress in improving the transparency of the judicial process but more time is needed to be able to assess whether the new laws will have their intended impacts.

Detailed Assessment

- *Adopt the new Civil Procedure Code*

The Civil Procedure Code is not yet enacted.

A draft was approved by the Council of Ministers in May 2006 and submitted to the National Assembly. Some articles are undergoing a second reading. Bulgarian authorities expect the Code to be adopted by the Parliament by the end of July 2007.

- *Adopt the new Judicial System Act reflecting the amendments to the Constitution and the recommendations of the peer review experts*

The JSA is not yet enacted. The Parliament has just approved at second reading the first chapters of the new JSA on 14 June 2007. The text is not available yet.

A working group composed of representatives of the SJC was set up after the adoption of the fourth amendment to the Constitution. The draft JSA it prepared

was approved by the Council of Ministers in March 2007 and passed first reading in National Assembly in April⁴.

Discussions are continuing within the National Assembly but already several prominent Bulgarian magistrates, as well as Twinning project advisers and other experts have voiced concern about several aspects of the current draft:

- the status of the SJC: the recently adopted articles of the JSA establish the SJC as a permanent body;
- Inspectorate to the SJC: an overlap of functions with those of the Inspectorate to the Ministry of Justice exists⁵ and should be avoided;
- the criteria for becoming a judge, prosecutor or investigator do not require candidates to be trained for several months at the National Institute of Justice nor undertake a period with a mentor judge, prosecutor or investigator;
- in cases of promotion, no competitive exams are required to judges, prosecutors or investigators. The assessment/evaluation process is conducted by practicing magistrates - members of the SJC's Committee on Proposals and Assessment of the Quality of Judges', Prosecutors' and Investigators' work.
- equally at concern is the risk that rights and obligations of openness currently provided for both the public to be informed of the work of the judiciary and the obligation imposed on the judiciary to be open, accessible and transparent in their action, could be overrode by the restrictions on access to information about judicial decisions currently authorised by the Ministry of Justice regulations.

These criticisms and concerns raise questions as to whether the partially adopted JSA would fully meet the required judicial system reform and would require further consideration if it is to increase the rule of law and the efficiency and accountability of the judicial system and law enforcement bodies.

- *Establish a monitoring system for all new codes*

⁴ The current draft JSA has 22 parts and runs to 377 articles. It regulates in detail: (a) the status and powers of the SJC; (b) the status and powers of the Inspectorate within the SJC; (c) the status and powers of the Inspectorate, under the supervision of the Ministry of Justice (among their functions are to inspect the activity of the public and private execution agents, to check the judicial administration and to support the Minister of Justice in drafting proposals for interpretative decisions and rulings) (d) the criteria and procedure for assessment of magistrates; (e) the scope of the legal interpretation functions of the Supreme Courts; (f) the functions of the prosecutors' office in compliance with the new Penal Procedure Code; (g) the competition principles in recruitment and appointment procedures for positions in the judicial bodies; (h) the disciplinary responsibility of magistrates, including in the case of a breach of ethic rules.

⁵ In particular, both Inspectorates check the organisation of the court's administrative activity and summarize the information about the cases completed by the judges, prosecutors and investigators (Articles 58(1) and 69(1) of the draft JSA).

Penal Procedure Code (PPC): The monitoring of the impact of the PPC, which entered into force in April 2006, is well established.

Members of the monitoring group are high representatives from the SJC, Supreme Court of Cassation (SCC), Supreme Administrative Court (SAC), other Courts, Public Prosecution Office (PPO), the National Investigation Service (NIS), Ministry of Justice and Ministry of Interior. The group is headed by the deputy Minister of Justice and its deputy chair is the deputy Minister of Interior.

The monitoring group receives information from various sources – heads of regional, district and appellate courts and prosecutors’ offices, the judicial inspectorate and the National Police Service etc. – and has issued seven opinions on the provisions of the PPC since the end of 2006. The aim of these opinions is to contribute to a more uniform judicial practice on penal cases. These opinions are published on the web site of the Ministry of Justice and SJC and are also communicated to practicing magistrates via meetings, conferences, etc.

The assessment by the monitoring group and barristers of the PPC is positive.

Administrative Procedure Code (APC): Monitoring has just begun, as important provisions of the new APC only entered into force on 1 March 2007. The criteria for monitoring the APC have been adopted. These criteria focus on protecting rights, enhancing good governance, and improving the speed and effectiveness of decision-making.

There is not yet a reporting on the results of the monitoring.

Civil Procedure Code (CPC): Monitoring of the CPC awaits enactment of the legislation.

- *Report at regular intervals on the findings of this monitoring process, notably as regards the pre-trial phase, the execution of judgements and sentences*

So far the only material available is in relation to the monitoring of the PPC. The monitoring group of the PPC partially fulfil the reporting obligation. A report of March 2007 entitled “Analysis of the Implementation of the Penal Procedure Code in Respect of the Efficiency of Pre-trial Proceedings” demonstrates that the implementation of the new PPC leads to improvements, particularly with regard to the acceleration of the pre-trial phase. A statistical report covering criminal cases in 2006 has been drawn up. Nevertheless, no systematic regular reporting mechanism on the findings of the monitoring process has been put in place so far.

The monitoring of the CPC awaits enactment of the legislation and the APC one has just begun. Hence, no regular reporting on the findings of those monitoring processes can be reported and progress is limited so far.

- *Amend the relevant codes and legislation if necessary*

The opinions issued by the monitoring group of the *PPC* helped to iron out difficulties and ensure a uniform approach throughout the country. As a follow-up, Bulgarian authorities identified the need for amendments of the PPC in five respects: (1) strengthening police capacity to ensure efficiency and speed in pre-

trial proceedings (2) extending the investigation period from two months to six months, with a possibility for a further extension of six months; (3) allowing a police officer who has investigated a case to testify in court; (4) allowing undercover officers to testify in court by video-conference; (5) removing the need for certified witnesses to participate in carrying out procedural actions on pre-trial proceedings.

In addition to these five issues, another suggested amendment in criminal procedure by Bulgarian authorities concerns the conferral of additional powers to *investigating magistrates (sledovateli)*, now that responsibility for investigating most crime has been transferred to the police investigators. The argument is that these magistrates are a wasted national resource who could usefully be used to investigate business crime, juvenile crime and other specific areas. Bulgaria underlines that this would not amount to a reversal of previous measures since these judicial investigators would only be used for concrete, specific tasks clearly determined and limited in time. The use of former judicial investigators to help the current police investigators could have a positive effect, in particular to reducing the current workload and ensuring that cases are addressed within a reasonable time, provided that it is used as a temporary measure and only in specific, clearly defined cases to avoid the possibility of this leading to a partial reversal of the introduced reforms.

Bulgaria expect amendments to the PPC to be part of the autumn legislative programme of the Parliament

In April, Parliament already conclusively adopted *amendments to the Penal Code*, including increased penalties for certain types of serious crime, which aim to bolster the deterrent function of the penal legislation⁶.

3.2.3. *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*

The judicial inspectorate as key supervisory institution of the integrity of the judiciary still has to be established under the impending Judicial System Act (JSA). Therefore, only limited progress can be reported with respect to achieving better accountability of the judiciary. First steps have been taken by applying the code on ethical behaviour and enforcing disciplinary sanctions for indicted prosecutors. Progress has been made by Bulgaria in terms of the recruitment procedure and performance evaluation of magistrates. These efforts need to be maintained and amplified. The National Justice Institute launched a number of training sessions on the new procedural codes involving an important number of

⁶ In particular, inciting prostitution will be punishable by a term of imprisonment of up to 5 years (previously 3 years) and a fine of BGN 3 000-10 000 (compared to BGN 1 000-3 000). The penalty for such a crime, when ordered by an organised criminal group, or when the victim is a person under 18, or mentally disturbed, or in conditions of dangerous recidivism, is 2-8 years (previously 6 years) with a fine of BGN 5 000-15 000. Causing or inducing a person to use narcotic drugs or similar substances for the purpose of acts of prostitution, under such conditions will be punishable by 10-20 years imprisonment and a fine of BGN 100 000-300 000 (previously 5-15 years and BGN 10 000-35 000).

judges, court clerks and prosecutors. Computer-based random allocation of cases is to become common practice.

Overall, some progress has been achieved in enhancing accountability, professionalism and efficiency of the judiciary in Bulgaria.

Detailed assessment

- Establish a transparent and fully functioning decision making process on disciplinary investigations by the future Inspectorate with the Supreme Judicial Council

In the absence of the Inspectorate under the JSA, no progress can be reported. However, the removal of the constitutional immunity of the judiciary following the adoption of the 4th amendment to the Constitution has facilitated disciplinary action in three recent cases where the Prosecutor General proposed disciplinary measures against top prosecutors. The SJC's decisions to suspend the two arrested prosecutors, against whom penal proceedings on charges of corruption had been initiated, confirm the Prosecutor General's proposals. Following appeals, one case has been considered by the SAC, which confirmed the SJC decision in March 2007.

- Ensure complete and overarching application of the Code of Ethics for magistrates, especially procedures for review, investigation and dismissal/prosecution for violations

The Code of Ethics for Bulgarian Judges, dated 13 December 2003, is a short document of four pages, with seven articles, drawn up by the Bulgarian Association of Judges and approved by the SJC. Breaches by judges and prosecutors which give rise to criminal liability are referred to the Prosecutor General, while sanctions for other breaches are imposed by the Supreme Judicial Council. The machinery of enforcement is still heavily complaint driven although once the Inspectorate is established the essential, proactive arm should be available.

The Code has not been reviewed since then to ensure that it addresses ethical problems arising in practice from its application.

- Monitor the application of the system of competitive examination for recruitment and performance evaluation of magistrates

The Bulgarian report sets out the details of eight competitions and five upcoming ones - some national, including the national competition for appointments to the new Administrative Court. This appears to be a success. Of the new judges a considerable number were recruited from practising lawyers, which indicates the openness of the procedure and also the importance of this avenue for recruitment for the judiciary. Bulgarian authorities indicate that there were only three complaints received from those not appointed.

- Annually publish findings of the evaluation of the reform of the judicial system, in particular on how specific problems related to professionalism; accountability and efficiency have been addressed

The Ministry of Justice has produced a document “Report on the Execution of the Programme for Implementation of the Strategy for Reform of the Bulgarian Judicial System in the Period January 2006 through March 2007” reiterating their commitment to improving the judicial system to make it accessible, transparent and capable of protecting rights⁷.

Assessment of this part of the Benchmark is not conclusive on the sole basis of this document. Notably, it is not possible to confirm whether objectives and priorities have been achieved and whether the principles (transparency, accessibility etc.) detailed, at the outset, will be met.

- Introduce random case handling software in the Prosecution services

Random case allocation to judges by computer is said to be operational in all courts by Bulgaria.

Computer allocation of cases in the prosecution service is currently used in three offices, including the main office in Sofia. Elsewhere allocation of cases to prosecutors is manual. Bulgaria plans to have the computer software installed by the end of 2007 so random allocation in prosecution offices matches that in the courts.

- Enhance the training on the implication of these new laws

The National Justice Institute has carried out an active programme of training on the new laws since December last year.

For the new Civil Procedure Code 19 training sessions took place for a total of 530 judges, court clerks and other participants from all over the country.

For the Administrative Procedure Code the Institute offered 7 training sessions to both newly appointed and experienced judges working in the administrative courts.

The National Institute of Justice also conducted 10 training seminars on the new Penal Procedure Code for 327 judges, prosecutors, investigators and "doznateli". It also held 4 seminars for a total of 67 participants to train the trainers on the new Penal Procedure Code.

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The document contains an explicit statement of principles – the rule of law, independence of the judiciary, protection of individual rights and application of European judicial standards. The document is then divided into eight parts (strengthening the judicial capacity and improvement of the administrative activity of the judiciary; effective involvement of Bulgaria in the EC judicial cooperation; strengthening the capacity of the Supreme Judicial Council for the management of the judicial system etc.) Each part has a short objective and then the rest is divided into short term priorities (until end 2006) and mid-term priorities (until end 2007).

3.2.4. *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*

Several committees attached to the National Assembly, the Council of Ministers and the Supreme Judiciary Council carry the responsibility of the fight against high-level corruption in the Bulgarian public institutions. An implementation programme to fight corruption has been adopted. However, the programme's implementation lacks clear lines of responsibilities and an efficient coordination mechanism. This makes it difficult to sustain action at all levels of the administration and the executive. It remains unclear whether measures to protect potential whistleblowers have been effectively implemented and therefore more legislation is needed. Some progress with investigation on pre-trial level has been achieved - also by the recently formation of independent inspectorates. A system to verify asset declarations of high public officials was set up in January 2007. But, there is little evidence of rigorous and systematic judicial follow-up on allegations of high-level corruption.

Overall, progress achieved in the judicial treatment of high-level corruption cases in Bulgaria is still insufficient.

Detailed assessment

- *Associate Member States' experts to provide assistance and guidance as regards improving the quality of investigations and reporting on this*

Numerous programmes and contacts involving other Member States take place on a continuous basis, including with Twinning project advisers and police liaison officers, who report improvements. It remains to be seen whether this has resulted in an increase of the quality of investigations.

- *Streamline and coordinate the institutional set-up of bodies empowered to fight corruption*

Anti-corruption efforts are coordinated by the “Council of Coordination of the Fight against Corruption”, which was established in April 2006. This Council convenes representatives from the three key anti-corruption bodies: i) the Commission for Counteracting Corruption in the National Assembly; ii) the Anti-Corruption Committee at the Council of Ministers; and iii) the Anti-Corruption Committee of the Supreme Judicial Council. The Parliament's administration supports the Coordination Council organisationally and technically. It meets on a monthly basis to discuss both strategic and operational matters, including specific cases.

In March 2007 a report on the Implementation of the Program to the Strategy for Transparent Management, Prevention and Counteraction Corruption for 2006 was adopted, together with a Strategy Implementation Plan for 2007. It is however difficult to ascertain at this early stage to which extend the coordination has added value to investigations and exactly which results this increased coordination has produced.

Considering the three anti-corruption commissions at the different branches of government (executive, legislative, and judiciary), an Inspectorate General at the Council of Ministers, and inspectorates at the different government ministries and prosecuting authorities, it remains unclear who bears the ultimate operational responsibility for the results of the fight against corruption.

Clear responsibility and coordination between institutions in their efforts to fight corruption is key to effective implementation of anti-corruption policies. There consequently remains a clear need to optimise the work of the different anti-corruption units, particularly in terms of management style and decision-making.

- *Establish administrative arrangements to safeguard whistle-blowers*

A draft whistle-blowing Act, the “Law on the Protection of Workers and Employees Reporting Cases of Abuse of Power and Corruption” has been drafted under the auspices of the Ministry of State Administration and Administrative Reform, with the input of British experts. The law has not yet been tabled for Parliamentary approval, as some of the highest Bulgarian authorities doubt whether the law would have any added value, given that most of the safeguards provided in the law are already provided in other pieces of Bulgarian legislation, such as the Administrative Procedure Code and the Civil Servants Law.

Sustained effective measures to implement the current legislative framework to protect potential whistle-blowers can not be confirmed.

- *Implement fully the legislation on the independence of the inspectorates in the public administration and ensure more pro-activeness in their investigative role*

The “Law for the Administration” provides the legislative framework for the establishment of Inspectorates within the State Administration. Each Ministry is required to establish an Inspectorate, which shall be directly subordinate to the Minister⁸. A General Inspectorate has been established within the Council of Ministers⁹.

In addition to the Inspectorates within each Ministry and the General Inspectorate of the Council of Ministers, the Ministry of State Administration also houses the State Administration Inspectorate Directorate, which inspects and controls matters related to the implementation of the civil service legislation (recruitment, promotion, dismissals, payment, etc. of public officials). To coordinate the Inspectorates established in the Ministries, the General Inspectorate has issued a set of methodological instructions. In a few (3-4) instances, the General

⁸ The Inspectorates have the mandate to: i) analyse the efficiency of the state administration’s activity; ii) examine the observance of internal rules for the organisation; iii) initiate disciplinary proceedings in cases of violations of official duties and of the Code of Conduct for employees of the State Administration; iv) conduct checks of the signals, requests and the complaints against illegal or improper actions or inactions of public employees; v) perform other functions of administrative control.

⁹ The General Inspectorate reports directly to the Prime Minister and has the mandate to: i) coordinate and support the activities of the Inspectorates; ii) suggest instructions on method to the Inspectorates; iii) examine indications of conflict of interest and other violations of official duties; iv) examine indications of corruption within the executive power and civil service; v) perform other functions as determined by the regulations by the Council of Ministers or assigned by the Prime Minister.

Inspectorate has been approached by Ministry Inspectorates to mediate conflicts within a Ministry. In these cases, the General Inspectorate forwards a recommendation to the Minister in question, and according to the General Inspectorates, their recommendations are usually followed. In its report, the Bulgarian Government provided information on the number of checks conducted by the various administrative structures and the number of disciplinary proceedings initiated. Nevertheless, details on the level and positions of those officials against whom disciplinary proceedings have been initiated remain unclear.

The independence of the inspectorates is stipulated in the Law on the administration. Their functions and powers are specified in the Rules of Procedure of the respective administrations. All Ministry Inspectorates report to the Minister and rely on the Ministry for their budgets. The control over the bodies of the executive power (ministers, executive directors of executive agencies, chairpersons of state agencies and commissions, etc.) is exercised by the Chief Inspectorate Directorate, which is directly subordinate to the Prime Minister of the Republic of Bulgaria.

- Report on the implementation of measures taken to prevent and fight influence in the investigation and prosecuting entities, in particular sustain cases of suspension/dismissal/initiation of criminal proceedings against alleged corrupt law enforcement bodies

The Bulgarian authorities claim that a number of both preventive and control measures are being undertaken throughout the Ministries. However, the real impact of the various measures remains to be seen whereas a number of administrative measures have been taken, information on criminal proceedings initiated and concluded could not be verified. From the information provided it is also not clear how many of these cases are attempts to assert influence on corruption investigations and how such cases are handled.

- Ensure the establishment of a credible checking mechanism for asset declarations as well as effective sanctions in case of false or inaccurate declarations

Since January 2007, following amendments to the Law on Publicity of the Property Owned by Persons Occupying High State Positions of September 2006, high level officials are to submit asset declarations by 30 April each year, with an additional month period allowed for the correction of any errors.

The declarations are then reconciled with information held on a register in other authorities such as the Ministries of Finance, Transport, Agriculture and Forestry, Regional Development. The National Audit Office is responsible for the coordination of the asset declarations, the checking against the registers and the imposition of fines for non-compliance. The reconciliation checks must be completed by 31 October each year. Any irregular declaration is to be reported to the National Revenue Agency for inspection. If potential criminal activity is identified consultation of the Prosecutor General takes place. The declarations and any subsequent actions are published on the National Audit Office website.

This mechanism complements the preventive and deterrent elements of the National Anti-corruption Strategy and enables the public to compare declarations with lifestyles. However, the effect of the mechanism cannot be measured until a) all the declarations have been submitted and b) all the declarations are checked and the necessary measures have been taken¹⁰.

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

Bulgaria has successfully stepped up its efforts to curb corruption at some border stations with an increased number of preventive controls and sanctions. The establishment of electronic payment systems and a system of random shifts at some border stations have contributed to a decline of corruption opportunities and to increased revenue. This good practice should be extended to all border stations. Specific training and corruption awareness measures aimed at the local administration coupled with increased administrative transparency and simplification have started to produce results. However, no data on the prosecution of corruption cases at the level of local government was provided. Financial investigations by the National Audit Office have started, but pro-active investigations into inexplicable wealth are not yet common practice.

Overall, substantial progress has been achieved in preventing and fighting corruption at the border and within local government.

Detailed assessment

- Implement disciplinary sanctions and a policy of zero-tolerance, particularly in the Veterinary Service, the customs, the Road Executive Agency and other relevant services

Bulgarian authorities have increased efforts to impose control and apply sanctions in the relevant services and the steady decline in acts of corruption among the Border Police Officers observed in 2006 has been maintained. The ambitious efforts of the Ministry of State Administration and Administrative

¹⁰ So far, 106 out of all the 359 registered political parties and their affiliates submitted their financial reports to the National Audit Office. The 253 parties that failed to submit financial reports lose the right to receive state subsidiary and cannot participate in both national and local elections. The National Audit Office published on 20 April on its Internet site a list of persons who have not submitted initial property declarations after assuming office, as well as a list of persons who have not submitted property declarations upon dismissal, within the legally prescribed terms. 816 assuming office declarations were submitted in the legally prescribed terms. Eight assuming office declarations were not submitted in time (of members of managing and supervisory bodies of political parties) as well as 2 final (when releasing from position) declarations - of investigators. Administrative-penal proceedings have been initiated against the persons who have not submitted their declarations within the legally prescribed terms. The Chairman of the National Audit Office has sent the list of the persons who have not submitted their declarations within the specified terms to the Executive Director of the National Revenue Agency in order to take measures under Tax-Insurance Procedure Code. The deadline for submitting the annual property declarations of persons occupying high state positions expired on 30 April. As of 15 May the National Audit Office has processed 5 515 declarations and notifications. The final number of the processed annual declarations and notifications will be presented when the deadline for changes in the submitted declarations expires.

Reform, regional and local authorities are remarkable in this regards. Apart from inspections through the Inspectorate, the Border Police Directorate General is implementing the rotation principle. The same applies to border veterinary inspectors, the Customs Agency and the National Revenue Agency. Spontaneous inspections are carried out together with inspections following indications of Border checkpoints¹¹; video-cameras have been installed in workplaces, leaflets in English and Bulgarian are disseminated to people entering the country; when necessary, information on the charges for preventive disinfection of motor vehicles is provided at border Veterinary Control Inspection Points; systematic training is organised for newly appointed employees and senior civil servants, as well as psychological surveys to evaluate the risk of corruption, and all detected cases are publicised for future prevention.

While Bulgaria reports that disciplinary measures are applied¹², their impact can not be measured, as information on positions and seniority of the officials involved has not been provided so far by the Bulgarian authorities. Moreover, only a few criminal proceedings have been instigated, and there have been no convictions of corruption related crimes in any of the relevant services.

- Establish electronic payment systems and a system of shifts at random for officers employed at the borders

In July 2006, Bulgaria introduced an electronic payment system on a pilot basis at the Lesovo border checkpoint, with a view to reducing cash payments and corruption risks. This electronic payment system is being extended to all road border checkpoints at the EU external borders. The positive outcomes of electronic payment system at the Lesovo border should hence be generalised to all road borders in order to produce sustained effects.

A system of random allocation of shifts is operational for the border guards. Software for determining shifts of border police officers is also available at some border crossing checkpoints. It remains to be extended to all cross-borders checkpoints.

- Conduct at regular intervals audits and checks, publish the findings and ensure their follow-up

The National Audit Office (NAO), supported by regional and local audit offices (6 territorial branches and 28 offices throughout Bulgaria) conducts financial control of all public entities including the local governments and checks every

¹¹ Statistical evidence concerning the suspicion of corrupt civil servants and the subsequent investigations by the authorities, provided to the expert delegated by the European Commission in April at the border checkpoint, Kapitan Andreevo, suggests improved quality of investigations.

¹² The Bulgarian authorities adopted a report on the implementation of the Strategy for Transparent Governance and for the Prevention and Counteraction of Corruption for 2006, which states that, of the 121 measures listed in the 2006 Action Plan, 94 have been implemented and 27 are still in the process of implementation, expected to be completed by mid-2007. It is not known exactly which measures have and which have not been implemented. The Bulgarian report also states that a plan for the implementation of the Strategy for 2007 has been approved. However, no such document has been officially presented so far.

tender, including subsequent monitoring. The results are regularly published on the internet.

Bulgaria reports that 6 audits are currently in progress since January 2007, and 8 audits are to be concluded by December 2007.

- *Report on investigations into inexplicable wealth*

At present, investigations into inexplicable wealth cannot be instigated unless they are linked to a criminal offence or a substantial 'signal'. A check of bank accounts or tax declarations for this purpose is not allowed without a link to a criminal offence. Investigations into inexplicable wealth therefore do not exist as such and are not registered nor reported by Bulgarian authorities.

3.2.6. *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*

Bulgaria is implementing an updated action plan on organised crime which focuses on judicial enforcement as well as pre-trial sanctions and prevention measures. Judicial cooperation with other Member States in this area is extensive. Bulgaria is also involved in a considerable number of assistance projects covering different aspects of organised and serious crime. However, an evaluation of the impact of the strategy is inconclusive given the absence of a measurement methodology and reliable statistics. Data that would allow the evaluation of the judicial treatment of cases is patchy or inadequate. In addition, legal prosecution of alleged contract killings is still insufficient. Concerns remain also in relation to institutional capacity to pursue the forfeiture and confiscation of criminal assets.

Overall, progress in the fight against serious and organised crime is still insufficient.

Detailed assessment

Information provided by the Bulgarian authorities on the fight against organised crime, although increasing, remains imprecise.

Legal tools for the implementation of the organised crime strategy have been adopted: the Council of Ministers adopted an updated Action Plan on the Fight Against Organised Crime in January 2007, but substantial information on how these are applied is lacking.

- *Associate Member States' experts to provide guidance and assistance as regards improving the quality of investigations and reporting on this*

Successful joint operations have been conducted in the field of organised crime and particularly in countering drug-related crime. Bulgaria reports that since September 2006, 15 joint operations were conducted with the police of Spain, the Netherlands, France, Romania, Portugal and Turkey. Bulgarian authorities report that three organised crime groups responsible for trafficking in women for the purpose of sexual exploitation have been dismantled. Three persons were detained pursuant to a European Arrest Warrant and one European Arrest Warrant was issued by the Bulgarian judicial authorities.

The Bulgarian law-enforcement authorities work jointly with experts from the other EU Member States to combat different aspects of serious and organised crime. Joint projects with Member States, as well as 9 PHARE twinning projects are being implemented. A former Dutch Prosecutor-General is working as an advisor in the office of the Bulgarian Prosecutor General. In April 2007, a French advisor began work at the Ministry of the Interior on strengthening the capacity of the General Police Directorate and improving the activities in the area of combating organised crime.

Specified results have also been reached in the fight against crimes related to abuse of EU funds. Investigations are in progress.

- Hand over an action plan to implement the strategy to fight organised crime and implement it with reports at regular intervals

The updated Action Plan on Combating Organised Crime covering the period up to the end of 2007 is being implemented. Its main objectives are: a) targeting criminal proceedings against leaders of organised crime groups; b) enforcing a pro-active approach in countering organised crime; c) curbing the economic resources of organised crime groups; d) forfeiture of criminal assets.

The Bulgarian authorities refer to significant achievements in implementing the action plan. Nevertheless, assessment of such achievements remains difficult as there are no regular reports relating to the outputs resulting from specific implementation of the actions plan.

- Fully implement relevant legislation on confiscation of assets of criminals

Established by the Law on the Forfeiture of Criminal Assets two years ago, the Commission for the Identification of Criminal Assets, has only recently had the capacity – not yet used in practice - to effectively impose measures to restrain and confiscate criminal assets following referral from the investigators. The Commission can identify criminal assets, impose measures for freezing of assets or launch a court procedure.

The Commission do not have permanent accommodation so far and have 114 vacancies from a staffing complement of 294.

Several cases have been forwarded for Court procedures. Property and money under investigation is frozen for the duration of the investigation, but no final confiscation has, to date, been carried out as the court proceedings are to be finalised first, which can not be expected before 2 to 3 years after the initiation of proceedings.

- Report regularly and audit internally the new and on-going investigations, indictments and convictions

A stable tendency of sustained decrease in crimes against the person is registered by Bulgaria. Nevertheless, statistical information provided by the Bulgarian authorities fails to clearly define the types of crimes perpetrated, for example, in relation to murders – statistics provided mix up domestic murders with those linked to general criminality and/or linked to organised crime, particularly contract killings. Information on the progress of investigations in organised crime cases is lacking. Fine-tuning is needed for proper assessment.

‘Contract killings’ continue to be of great concern, and in particular most recent killings of local politicians since January. To date, no prosecution and conviction has taken place.

Recent scandals involving high-level officials in the executive and judiciary in Bulgaria will be a key test of the efficiency of the mechanisms put in place to investigate and effectively punish related grand-corruption/organised crimes. The recent resignation of a Minister in connection to an on-going investigation on alleged corruption should be considered as a positive sign.

The real tangible measure of success remains the number of successful prosecutions and convictions.

- *Publish the findings of these audits*

No reporting mechanism has been put in place so far.

- *Implement the new legislation to combat money laundering*

The Bulgarian Penal Code was amended in 2006 to clarify that offences committed abroad can constitute relevant predicate crimes for money laundering in Bulgaria and that a previous conviction for the predicate offence is not required to prosecute money laundering. Moreover, the Prosecutor General was given the right to request information to banks without the need to obtain a court order, in cases involving money laundering and organised crime. Other actions are in process to further improve money laundering defenses. These measures will have the potential to further enhance the effectiveness of enforcement.

The Bulgarian authorities report some improvements in this area, mentioning in particular that the Supreme Cassation Prosecutor's Office completed the work on 54 pre-trial proceedings linked to organised crime and money laundering. A further 37 indictments were submitted, 5 convicting sentences for money laundering were delivered and 81 tax audits were completed against members of organised crime groups as well as natural persons and legal entities related to them.

However, it is too early to assess these improvements in concrete terms. They need to be confirmed first. Moreover, additional measures are required or in preparation¹³.

4. FOLLOW UP UNDER THE COOPERATION AND VERIFICATION MECHANISM

Concerning judicial reform and the fight against corruption and organised crime, Bulgaria should continue to move towards meeting the benchmarks and in particular,

¹³ In particular, a draft bill amending the Law on Measures against Money Laundering was approved by the Council of Ministers on 30 November 2006. The draft requires all banks and e-cash companies to provide additional information on operations and transactions where money laundering is suspected. The proposed amendments are designed to align the regulatory framework with the Credit Institutions Act, which became effective on 1 January 2007. The amendments are still under discussion in Parliament. Bulgarian authorities are also working on the transposition of the EU third anti money laundering Directive.

- Extend the monitoring systems for the new Judicial System Act and Procedural Codes following the adoption and implementation of the Judicial System Act and the Civil Procedures Code and report regularly on the results of this monitoring.
- Ensure that the Inspectorates within the Supreme Judicial Council function properly; mainstream pilot activities of computer based random allocation of cases and carry further evaluation activities and training of judges and prosecutors in ethical behaviour.
- Demonstrate results within the anti-corruption framework. Bulgaria should build on progress achieved on the investigative side and strengthen its efforts to increase awareness among the judiciary for the importance of legal finality and dissuasive jurisdiction in cases of high-level corruption. This includes cases in which influential and well-known personalities are indicted.
- Provide independent analysis, a convincing methodology and reliable and targeted statistics to assess whether high level corruption cases, street killings as well organised crime cases are properly investigated and dissuasive judgments are rendered. There should be no let up in prevention and prosecution measures. In addition, progress must be monitored and reported in a comprehensive and conclusive way.
- Strengthen efforts and political commitment to implement the action plan against organised crime and report in a transparent fashion on activities undertaken. Bulgaria should also further deepen its international cooperation in this area.
- In order to achieve the above, strengthen the capacity of the judiciary at all levels, including professionalism, independence, resources and powers.

The Cooperation and Verification Mechanism will continue to be used to monitor progress in Bulgaria. In order to facilitate cooperation and verification, it would be useful for the Bulgarian authorities to prepare an action plan, with milestones, by October 2007 showing how Bulgaria intends to meet the benchmarks. The plan should be based on a coherent strategy in fighting organised crime and corruption and a credible plan to strengthen professionalism, independence, powers and resources of the judiciary. Improved and refined statistics and information systems on corruption and organised crime cases and their follow-up by the judiciary would also facilitate efforts under the Cooperation and Verification Mechanism. It is important that the Bulgarian authorities foster an open dialogue with Bulgarians by enhancing transparency on reforms undertaken under the Cooperation and Verification Mechanism.

4.1. Support

Support will be provided to assist Bulgaria in its efforts to reform the judiciary and combat organised crime and corruption. This will involve focusing and targeting existing EC funding under the different programmes available to Bulgaria on support for institution building and training programmes related to judicial reform and the fight against organised crime.

The European Commission invites the other Member States to step up their assistance and valuable practical support to Bulgaria by cooperating with the Bulgarian authorities in joint investigative teams on corruption and organised crime, sharing financial intelligence and methodologies, seconding experts and advisors to key ministries and bodies (such as the future Inspectorates under the Judicial System Act or the Supreme Judicial Council) and providing high level training to Bulgarian police, customs officers and prosecutors at their national police and customs academies, schools of magistrates or national justice institutes and other centres of excellence for the public service.

The primordial importance of the principle of rule of law for the EU implies that all actors – Commission, Bulgaria and the other Member States- have to cooperate to ensure that Bulgaria is effectively reforming its judiciary and fighting crime and corruption at all levels. By October 2007, the Commission will examine assistance offered from the Member States so as to identify gaps and ensure that a full range of support is provided to Bulgaria.

5. CONCLUSION

In the first six months of accession, Bulgaria has continued to make progress in remedying weaknesses that could prevent an effective application of EU laws, policies and programmes. But, there has not been sufficient time to demonstrate convincing results in key areas. Continued attention will need to be paid to all areas in which accompanying measures are in force. In particular, there is a need to step up efforts in the pursuit of judicial reform and the fight against corruption and organised crime. In the light of the analysis contained in this report, the Commission does not consider that it is warranted at this stage to invoke the safeguard provisions of the Accession Treaty.

The Commission will continue to work in close partnership with Bulgaria to support its efforts meeting the benchmarks under the Cooperation and Verification mechanism. The Decision establishing the Cooperation and Verification Mechanism provides that the Commission report every six months. The Commission will update this report at the beginning of 2008. It will prepare the next detailed report on the Cooperation and Verification Mechanism in mid 2008. In order to provide input for that report, Bulgaria should report to the Commission on further progress achieved by 31 March 2008.

ANNEX

State of play regarding safeguard measures and transitional arrangements applicable on Bulgaria

Economic safeguard clause

Not applied

Internal market safeguard clause

Not applied

Justice and Home affairs safeguard clause

Not applied

Agricultural funds

a) Safeguard measures

Not applied

b) Transitional arrangements

Commission Regulation (EC) No 1423/2006 of 26 September 2006 establishing a mechanism for appropriate measures in the field of agricultural spending in respect of Bulgaria and Romania

Food safety

a) Safeguard measures

Not applied

b) Transitional arrangements

Commission Decision 2006/800/EC of 23 November 2006 approving the plans for the eradication of classical swine fever in feral pigs and the emergency vaccination of those pigs against that disease in Bulgaria

Commission Decision 2006/805/EC of 24 November 2006 concerning animal health control measures relating to classical swine fever in certain Member States (last amended by Commission Decision 2007/152/EC of 6 March 2007)

Commission Decision 2007/16/EC of 22 December 2006 laying down transitional measures for intra-Community trade in semen, ova and embryos of the bovine, porcine, ovine, caprine and equine species obtained in Bulgaria and Romania

Commission Decision 2007/26/EC of 22 December 2006 amending the Appendix to Annex VI to the Act of Accession of Bulgaria and Romania as regards certain milk processing establishments in Bulgaria

Commission Decision 2007/29/EC of 22 December 2006 laying down transitional measures for certain products of animal origin covered by Regulation (EC) No 853/2004 of the

European Parliament and of the Council introduced into Bulgaria and Romania from third countries before 1 January 2007

Commission Decision 2007/30/EC of 22 December 2006 laying down transitional measures for the marketing of certain products of animal origin obtained in Bulgaria and Romania (amended by Commission Decision 2007/264/EC of 25 April 2007)

Commission Decision 2007/31/EC of 22 December 2006 laying down transitional measures as regards the dispatch of certain products of the meat and milk sectors covered by Regulation (EC) No 853/2004 of the European Parliament and of the Council from Bulgaria to other Member States (last amended by Commission Decision 2007/398/EC of 11 June 2007)

Aviation safety

Safeguard measures

Commission Regulation (EC) No 1962/2006 of 21 December 2006 in application of Article 37 of the Act of Accession of Bulgaria to the European Union

In addition Bulgaria imposed itself on 21 February 2007 restrictions on 5 cargo carriers to avoid their consideration in the context of the Community list of banned carriers and withdrew the airworthiness certificates of 160 aircraft not compliant with EC regulations.