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

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

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1. INTRODUCTION –

When Bulgaria entered the EU on 1 January 2007, a *Co-operation and Verification Mechanism (hereafter CVM)*¹ was set up to help Bulgaria remedy certain shortcomings in the areas of judicial reform, the fight against corruption and organised crime and to monitor progress in these areas through periodical reports.

The present report is an interim report providing a technical update on significant developments having occurred during the last 6 months in Bulgaria under the CVM. It does not contain an assessment on progress achieved.

The last progress report adopted by the Commission on 22 July 2009 and its recommendations remain the point of reference for the assessment of progress achieved against the benchmarks and the identification of the remaining challenges. The Commission will provide its next assessment in summer 2010.

2. JUDICIAL REFORM AND THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME: STATE OF PLAY

During the last six months, Bulgaria has initiated several concrete proposals for reform which respond to recommendations made by the Commission: A partial revision of the Penal Procedure Code is currently under Parliamentary discussion and work is ongoing on a substantial reform of the Criminal Assets Forfeiture Act and on a revision of the Conflicts of Interest Law. Bulgaria also decided to strengthen the structures of the prosecution in the fight against serious crime by using joint investigation teams for some priority cases involving high-level corruption and organised crime. In addition, Bulgaria launched a structural reform of the National Revenue Agency and of the National Customs Agency and started to work on a comprehensive strategy to fight corruption and organised crime.

At the same time, the Inspectorate to the Supreme Judicial Council continued its good track record and the Supreme Judicial Council (SJC) pursued the monitoring of cases of high public interest.

However, the judiciary continued to produce only few results in cases involving high-level corruption and organised crime and a further street killing occurred in January 2010. Allegations of serious corruption related to senior appointments in the judiciary involving members of the SJC still need to be fully examined. A quicker and more complete administrative follow-up to the Commission's concerns regarding irregularities, conflict of interest and fraud in the implementation of EU funds needs to be implemented before the next assessment.

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

3. OUTLOOK

In the last six months, Bulgaria has launched a number of important initiatives which show will for reform.

These efforts are laudable. Although their merit can only be assessed in the light of their effective contribution to the fight against corruption and organised crime once they are implemented, Bulgaria's recent efforts demonstrate a growing recognition that substantial and far-reaching reforms are required.

In order to achieve practical and measurable results in a significant number, Bulgaria should extend further its reform efforts. Reforms recommended by the Commission in July 2009 should become a matter of national priority and must be launched in more areas to achieve a profound reform of the judiciary.

The Commission will continue to support Bulgaria in this endeavour and provide its next in-depth assessment of progress by summer this year.

4. TECHNICAL UPDATE ON BENCHMARKS

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

The Inspectorate to the Supreme Judicial Council (SJC) continued to register a good track record of inspections. The Inspectorate has conducted scheduled inspections of the whole Bulgarian judicial system with the exception of the Sofia Appellate Region's civil branch. Although the Inspectorate's recommendations to courts and prosecutors' offices had not been consistently followed in all cases, the Inspectorate reported that the inspections produced overall a visible preventive effect among the magistrates.

The newly established joint working group of the SJC and the Inspectorate should contribute to the unification of disciplinary practice, assist in targeting inspections and in the application of inspection findings by the SJC to appraisal and appointment procedures. Current practice shows that sanctions imposed by the SJC are often lenient. Some cases have also been dismissed due to the expiry of statutory deadlines.

4.2. **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**

In response to recommendations by the Commission, the government introduced several amendments to the Penal Procedure Code with a view to improving the efficiency and transparency of the judicial process. The debate in Parliament so far has shown that not all amendments may be supported.²

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The amendments extend the admissibility of evidence in court and reduce the formality of judicial procedures. They would include admissibility as evidence in court of statements by police officers, official documents provided by OLAF (European Commission's Anti-Fraud Office) and intelligence gathered through special investigative means before the official opening of a pre-trial case. Other amendments include streamlined procedures for registering indictments, the possibility to assign an attorney to a defendant by court decision, facilitating transfer of cases between judicial districts and a right for the prosecution to appeal the return of cases by court. During second reading on 4 March,

Draft amendments to the Penal Code tabled by the Government aim to strengthen the sanctions for offences such as homicide, abduction and credit fraud.

Bulgaria provides a positive evaluation of the instrument of plea-bargaining which had led to increased judicial efficiency. On the other hand, the application of the expedited procedure had resulted in undue leniency in cases where the indictment was fully sustained by evidence. As a result of the evaluation, the Bulgarian authorities consider excluding some serious criminal offences from the application of the expedited procedure and aiming at limiting the court's ability to deliver judgments under the defined minimum³.

No progress has been reported with procedures to adopt the new draft Statutory Instruments Act which should introduce clear rules for transparency and public debate and codify the different stages of the legislative process.

4.3. 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

Appraisal of magistrates continued to be criticised as most magistrates were receiving the highest rating. In response to a recommendation by the Commission, the SJC adopted an ordinance to improve fairness and objectivity of the annual appraisal exercise.⁴ The Supreme Judicial Council continued the monitoring of cases of high public interest for their celerity at trial stage. Out of fifty such cases, nine cases have reportedly resulted in conviction.⁵ The SJC identified reasons for delays in some cases and issued follow-up recommendations, however, abusive delays in some important cases continued.⁶

During the second half of 2009, allegations of trade in influence and corruption in relation to senior judicial appointments involving members of the SJC were made public. In response to the allegations, the SJC launched formal disciplinary proceedings against a number of magistrates. Two members of the SJC resigned from their posts under public pressure, and returned to the magistracy. Before that, the SJC stated that both members had violated the magistrates' ethical code and requested their resignation. The lack of legal basis reportedly prevented the SJC from taking disciplinary measures against them. As a response, the Minister of Justice

Parliament dismissed the introduction of a possibility for investigating police officers to provide evidence in court and postponed discussion about a possibility to assign an attorney to a defendant by court decision.

³ According to draft proposals for amendment of the Penal Procedure Code, the expedited procedure would not be applied any more for premeditated murder or when an offence is made while under the influence of drugs or alcohol, when a crime is committed by or against a judge, prosecutor or investigative organ, not for kidnappings, human trafficking, drug trafficking, or production or storing of drugs.

⁴ The main changes include a transfer of responsibility for the appraisal of senior magistrates to the central appraisal commission with the Supreme Judicial Council, the creation of two sub-commissions for judges and prosecutors, the requirement to verify 15 randomly selected case files of the candidate for appraisal. In addition, findings of the Inspectorate and sanctions will be taken into account in appraisals.

⁵ Eight out of nine convictions were imposed in the first half of 2009, the last one in July 2009. The level of penalties and whether decisions were enforced was not reported.

⁶ For instance, the following reasons for recurrent delays were registered in a particular case: failure of defendant to appear (three times), absence of defendant through sickness and non-attendance of witnesses (twice).

presented a proposal for an amendment to the Judicial Systems Act which intends to strengthen the disciplinary responsibility of members of the Supreme Judicial Council.⁷

Of at least thirty magistrates allegedly involved, seventeen magistrates resigned over allegations of trade in influence in this case. Disciplinary proceedings were reportedly initiated against all magistrates suspected of trading in influence who applied for administrative positions, no matter whether they have been appointed or not. The SJC's disciplinary proceedings resulted so far in seven demotions. As criminal proceedings were not initiated by the prosecution against any of the magistrates involved, the allegations could not be verified in substance.

After several public signals, the SJC launched an investigation into irregularities at a regional court. The report of the investigation which was adopted by the SJC in February revealed a number of serious shortcomings in the management of court.⁸ Disciplinary and legal follow-up to the findings are pending.

The lack of accountability of the Chief Public Prosecutor was criticised by the European Court of Human Rights.⁹ The ECHR's ruling called on Bulgaria to install appropriate checks and balances among institutions in the judicial system.

4.4. 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

As a follow-up to recommendations of the Commission, Bulgaria has created five additional standing joint teams to address key organised crime cases (see benchmark 6). These teams have also been charged on a pilot basis with the investigation of allegations of fraud and negligence of official duties against three previous ministers and two Members of Parliament. By the beginning of March, altogether six indictments involving two former ministers, two Members of Parliament and one former director of a state agency have been registered.

Bulgaria strengthened the capacity of the joint investigative team for the counteraction of EU fraud. Bulgaria reports that out of 125 cases under investigation by the team in 2009, 108 files were forwarded to court.

As a response to recommendations of the Commission, Bulgaria prepared amendments to the law on the prevention of conflicts of interest with a view to establishing a commission in charge of implementing the law under the supervision of Parliament. It is expected that the establishment of a specialised commission would extend the limited scope of application of the conflict of interest law to other areas, improve its enforcement and increase its effectiveness through the application of sanctions or the forfeiture of assets.

A number of high level corruption cases are currently under investigation. Seven indictments have recently been registered but two important fraud cases before court still encounter severe delays. No convictions in high level corruption cases have been reported since July 2009.

⁷ According to the plans, SJC members who undermine the standing of the judiciary could be subject to a permanent exclusion from positions in the judiciary.

⁸ The report confirms allegations against the head of court regarding conflict of interest and irregularities with the random allocation system of cases.

⁹ Kolevi v. Bulgaria (application no. 1108/02), available at: www.echr.coe.int/ECHR/homepage_en .

Insufficient controls at administrative level to prevent irregularities and detect administrative violations continue to be reported. In many cases, signals reach the judicial authorities before preliminary administrative checks are performed. At the same time, administrative control bodies are not sufficiently pro-active to establish risks and to identify ex-officio possible cases of fraud and corruption. Reforms which should lead to greater accountability and efficiency have been initiated at the National Revenue Agency and at the National Customs Agency.

The implementation of the Law on Prevention and Detection of Conflict of Interests reportedly led to the establishment of forty-seven cases of irregularities since mid 2009. However, the publication of asset declarations of high-level officials, Ministers and Members of Parliament on a dedicated site of the National Audit Office has not been systematically updated nor was any follow-up by the control bodies in charge of verifying the declarations reported. In addition, no follow-up to allegations of conflict of interest among high officials and Members of Parliament by a specially designated parliamentary committee has been reported since December 2009.

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

On 18 November 2009, the Council of Ministers adopted an ambitious strategy to prevent and combat corruption and organized crime, which would be implemented across the whole public sector with the help of an action plan and with foreign assistance.

Bulgaria should increase administrative efforts to prevent irregularities in public procurement and to follow-up concerns in the implementation of EU funds. It will be important that the results of the Parliamentary discussion of amendments to the public procurement law ensure an effective protection against fraud and corruption in public procurement.¹⁰

4.6. 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

In response to a recommendation by the Commission, Bulgaria established five permanent joint investigative teams under the direction of the Supreme Cassation Prosecution Office. These teams are lead by prosecutors and include investigative police officers, investigating magistrates and representatives of the State Agency for National Security (SANS), the latter in particular to collect financial intelligence. The five teams will focus mainly on the investigation of important organised crime cases.¹¹

¹⁰ According to some proposals to amend the public procurement law, irregular public tenders would no longer be cancelled, but subject to payment of a contractual fine of 2% of the value of the contract by the contracting authority.

¹¹ Since mid-2009, Bulgaria restricted the competence of the State Agency for National Security (SANS). Although representatives of SANS participate in the recently established joint teams, responsibility for the investigation of organised crime cases was shifted back to the Ministry of the Interior. On the other hand, SANS will, as reported, keep responsibility for the gathering of intelligence concerning high-level corruption. The Anti-Fraud Co-ordination structure (AFCOS) was also transferred back to the Ministry of Interior from the Ministry of Finance.

In response to another recommendation by the Commission, Bulgaria intends to substantially strengthen the legislation on the forfeiture of criminal assets and the mandate of the Commission for the Forfeiture of Criminal Assets (CEPACA). Amendments include in particular: broadening of the definition of "related persons" whose assets could be seized, giving CEPACA the right to act ex-officio, assessing assets on the basis of their market value and a shift of the burden of proof when assets are suspected to have been acquired illegally. The legal amendments focus on forfeiture by civil courts which would be independent of a specific decision in a criminal case but conditional upon a number of other elements such as specific criminal history. It is expected that the draft will reach Parliament in March following public consultation.

Since mid-2009, Bulgaria carried-out a number of arrests and launched investigations in connection with organised crime groups.

During the same period, two indictments in high-profile cases were filed, one for murder and for setting up an organized crime group and one for tax-evasion. Substantial assets were frozen in the second case.¹²

A possible witness in a high-profile organized crime-case was killed in Sofia on 5 January 2010. Organised crime cases in court have generally shown little development since mid-2009 and no convictions have been reported in this period.

Bulgaria considers strengthening the legal protection against money laundering through amendments to the notary's act which would prohibit cash payment for real estate transfers. The amendments are currently being discussed by Parliament.

¹² In total, Bulgaria reports 29 indictments in relation to organised crime since mid 2009.