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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 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 six months in Bulgaria under the CVM. It focuses on Bulgaria's response to the Commission's recommendations and does not contain a full assessment on progress achieved. The update is limited to measures that have either been completed or where their finalisation can be expected shortly.

The last progress report adopted by the Commission on 20 July 2010 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 2011.

2. JUDICIAL REFORM AND THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME: SUMMARY OF DEVELOPMENTS

Since the Commission's last report, Bulgaria continued legal reform and adopted important amendments to the Judicial Systems Act. These amendments provide the legal basis to further implement the judicial reform strategy, to strengthen the accountability and management powers of the Supreme Judicial Council and to improve the system of appointments, professional training, appraisal and promotions in the judiciary. During this period, the Supreme Judicial Council has developed a better disciplinary track record. In one important appointment decision however, the Council did not demonstrate the necessary commitment to accountability and transparency.

In the last six months, Bulgaria decided to create a specialised court for cases related to organised crime. The structural reform of the customs agency continued and an ambitious anti-corruption project started. Bulgaria also adopted amendments to strengthen the law on Conflict of Interest which establishes an independent body to identify and sanction conflict of interest in a pro-active manner.

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).

During this period, courts registered an increased number of indictments and verdicts in high-level corruption cases.

3. OUTLOOK

Since the Commission's last assessment, Bulgaria has maintained its commitment to continue to implement its judicial reform strategy through a detailed action plan.

In order to maintain its momentum of reform, Bulgaria should continue to focus on the national judicial reform strategy and pursue a thorough reform of the judicial system and of the police. This requires steps to further improve judicial practice and a continued improvement of the way the judiciary, police and other investigative bodies are structured, managed and cooperate.

Until the Commission's next assessment in summer 2011, Bulgaria should also focus on the adoption of an effective law on asset forfeiture, the establishment of an authority to identify and sanction conflicts of interest and on the track record in corruption cases and organised crime.

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

4. UPDATE ON THE STATE OF PLAY

Reform of the Judiciary

On 22 December 2010, in response to recommendations by the Commission, the Bulgarian Parliament adopted amendments to the *Judicial System Act (JSA)* which improve internal management within the judiciary and strengthen the role of the Supreme Judicial Council (SJC).² The amendments propose new procedures for appointments and appraisals, strengthen training and integrity and create new rights and obligations for the Superior Judicial Council to appraise workload and reallocate staff. The amendments introduce a functional separation between appraisals of prosecutors and judges and a decentralised appraisal system. Integrity will be considered in appraisals throughout the magistrates' career. Oversight and guidelines by the Supreme Judicial Council as well as an active role of the administrative heads will play an important role to achieve a uniform application of appraisal criteria. The SJC received supplementary powers in evaluating the workload of courts, deciding on personnel schemes of courts, on closing down and opening new courts and adjusting areas of jurisdiction. Specific provisions aim to enhance transparency and protect against conflict of interest in the SJC's decision-making process. The National Institute of Justice adopted a two-year programme for training of magistrates which is based on the priorities and the aims of Bulgaria's judicial reform strategy.

² The amendments to the Judicial System Act entered into force on 4 January 2011.

Work on a new *Penal Code*, which is considered necessary for a thorough reform of penal policy, continued with a consultation of stakeholders on the draft core provisions. The final draft of the new *Penal Code* is expected by end 2011.

Further *disciplinary sanctions* were taken in the last six months against magistrates involved in important cases of trade in influence and corruption within the judiciary. In follow-up to a case regarding trade in influence within the judiciary, the Supreme Judicial Council decided to exclude from the judiciary another former member of the SJC. In a follow-up to another case regarding trade in influence in the acquisition of real-estate, the Supreme Judicial Council decided to dismiss the chair of one Appellate Court for 'damaging the image of the judiciary', four other disciplinary cases are pending. The Prosecution has not pursued criminal investigations against any magistrate involved in these cases.

As to the *nomination of the Chair of the Supreme Administrative Court* in November, public concerns were raised regarding the accountability and transparency of senior judicial appointments. The reform of appointments within the judiciary laid down in the recent amendments to the Judicial Systems Act requires an unequivocal commitment by the Supreme Judicial Council to guarantee the independence and quality of appointments.

A systematic *publication of court decisions* has not yet been achieved. In some cases, the delivery of motivations for court decisions has seen considerable delays; this applies in particular to important cases.

A provisional version of the *Unified Crime Information System* has been implemented at the Supreme Cassation Prosecution Office. EU funds will be used to extend the system to cover all prosecutors' offices, courts and police.

The *Inspectorate to the Supreme Judicial Council* continued to carry out thematic and scheduled inspections with a view to completing the review of the judicial bodies in all the five appellate regions. A system of inspections, recommendations and follow-up checks has been set-up and close coordination between the inspectorate and the Supreme Judicial Council in disciplinary matters is established. An overall disciplinary effect of inspections regarding celerity, transparency and alignment of practice is reported. A more targeted contribution of the inspectorate to address systematic shortcomings in judicial practice in particular in high-level cases and to inform a structural reform of the judicial system remains to be implemented.

Bulgaria took steps to address the Commission's recommendations regarding *judicial practice*, such as training and the publication of guidelines and best practices. In November, an NGO presented recommendations following an analysis of shortcomings in judicial practice in eighteen important cases. The Supreme Judicial Council introduced a requirement for heads of appeal courts to report on progress in cases of high public interest. This had reportedly led to improvements in the scheduling of court hearings and in the summoning of witnesses. In addition, the introduction of a new standard for medical certificates and the creation of a Medical Executive Agency have reportedly reduced abuse regarding medical certificates in court. During 2011, the Supreme Cassation Prosecution Office intends to introduce a specific supervision scheme for cases of high public interest.

Fight against Organised Crime

In the last six months, Bulgaria continued an active policy to tackle organised crime through police raids and arrests. These activities have lead as yet to few indictments.

In December 2010 and January 2011, the Bulgarian Parliament adopted legislation to establish a *specialised criminal court and a special prosecutor's office attached in charge of organised crime cases*, which is expected to be operational by August this year.³ These structures are designed to improve the celerity and consistency of cases related to organised crime, which pose particular challenges to the judicial system. However, efforts need to be made across the judiciary to introduce specialisation and an improvement of professional practices, in particular regarding economic and financial crime. The Commission has recommended in this area a closer cooperation between the judiciary, administrative bodies and police and to strengthen the capacity of joint teams.

Bulgaria took steps to improve the efficiency of *police investigation* by merging the department of pre-trial proceedings with the criminal police department. During the last six months, police received a number of training sessions on the recent amendments to the Penal Procedure Code and the specific responsibilities of police at pre-trial stage. However, the collection and administration of evidence by police requires further improvement.

Since the Commission's last report, Bulgaria pursued the strengthening of the legal framework on *asset forfeiture*. The Draft of the Illegal Assets Forfeiture Act was coordinated with the Venice Commission (the Council of Europe's advisory body on constitutional matters). It is important that the final version of the new law while respecting fundamental rights, allows for the possibility to include the principle of "non-conviction based confiscation" as well as for the follow-up of anonymous signals. The law should also transpose in an effective way the applicable EU acquis regarding extended confiscation.⁴ The law will require a close and effective cooperation between the commission in charge of applying the law on forfeiture and other authorities, in particular the prosecution.

Fight against Corruption

In the past six months, two important verdicts and several indictments have been pronounced in cases related to high-level corruption.⁵ During the same period, Bulgaria registered a number of *acquittals* regarding some emblematic cases of high level corruption, conflict of interest, fraud and organised crime which have all been appealed by the prosecution in the public interest.⁶

³ Amendments were made to the Judicial System Act and to the Penal Procedure Code.

⁴ Council Framework Decision 2005/212/JHA.

⁵ Verdicts in first instance were passed against a former director at the National Revenue Agency for malfeasance in office and against a businessman for embezzlement. A former Minister of Social Affairs and a former Minister of Health have been indicted respectively for embezzlement and prejudice to the state budget.

⁶ In high-level cases involving fraud, corruption or conflict of interest were acquitted: a previous Minister of Defence, a previous Deputy Minister of the Interior, a previous director of the State Fund for Agriculture, the chairman of a political party represented in Parliament. One acquittal in a case involving conflict of interest has been confirmed in appeal by the Supreme Administrative Court.

The recommendations of the Commission regarding the need to improve *judicial practice* remain valid. The Commission recommends in particular to apply a comprehensive and pro-active investigative strategy which systematically explores possible links between related cases, aspects of organised crime and possible links to administrative authorities. Given the importance of professional economic and financial investigation for all cases related to high-level corruption, fraud and organised crime, networks of specialised prosecutors and judges trained in international best practices should be created in cooperation with international experts.

In response to a recommendation by the Commission, Bulgaria strengthened its *law on prevention and sanctioning of conflict of interest*. The amendments adopted by Parliament in November foresee the creation of a body with a pro-active mandate to identify and sanction conflicts of interest at all levels of the administration. The law includes safeguards to ensure the independence of the new body, notably through a balanced appointment procedure. The legal exclusion to follow-up anonymous signals may weaken the new set-up. In this context it is important that the identity of whistle-blowers is protected in a credible way.

The Bulgarian *Customs Agency* continued a comprehensive structural reform which had also involved a general assessment of staff following criteria of competence and integrity. There have been an important number of redundancies in this service. To fight internal corruption, a joint inspectorate with the Ministry of Finance and the National Revenue Agency has been set up. Information systems and intelligence between the National Revenue Agency and the Customs Agency are exchanged and joint teams continue to carry-out checks. It is important that the reform of the customs agency continues to strengthen the independence and efficiency of its investigations. Cooperation with police services and the prosecution should be further strengthened. In this context, a stronger investigative role for customs officials has been discussed.

As part of the Strategy against Corruption and Organised Crime, Bulgaria started to implement a *large scale anti-corruption project (BORKOR)* in December. With considerable investment in financial and human resources⁷, a new central unit will be set-up by mid 2011 with the task of increasing transparency and addressing corruption within the public administration at all levels. The new body will not replace existing structures set-up to prevent and sanction corruption, but assess the current legal and institutional environment for its effectiveness and suggest improvements where necessary.

In response to the Commission's recommendations regarding *improvements to the public procurement system*, Bulgaria set up a working group which proposed amendments to the public procurement legislation to government in December. The concept paper presented by the working group offers a number of proposals to simplify the legal and procedural framework as well as to improve the remedies mechanisms.

⁷ In 2011, Bulgaria has made available EUR 4 million for this project. The central unit in charge of the Borkor project will employ 40 permanent staff.

Following the *publication of wiretapped recordings* in the beginning of the year, some public concerns were raised regarding the application and control of the use of special investigative means. The competent authorities have launched an investigation, currently under way. Under Bulgarian law, special investigative means are an important investigative tool and may only be used in connection with serious crime and upon the authorisation of a judge. The rules provide for close cooperation between services to ensure that the results of wiretaps are immediately reported to the prosecution and that their confidentiality is protected. The procedure is furthermore supervised by a special Parliamentary sub-committee. It is important that Bulgaria ensures strict respect of the rule of law regarding the application of special investigative means.

The recommendations of reports on Bulgaria adopted by GRECO in October regarding the *criminalisation of corruption* and regarding the *financing of political parties and election campaigns* should receive follow-up by Bulgaria. As regards the criminalisation of corruption, the report recommends strengthening the Bulgarian Penal Code in a number of areas. These include the criminalisation of corruption in the case of benefit for a third party or the acquiring of either material or non-material advantages linked to corruption and the reconsideration of the exemption from punishment in cases of active regret.