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

INTERIM REPORT

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

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1. INTRODUCTION

This interim report provides a technical update on significant developments during the last six months in Bulgaria under the Co-operation and Verification Mechanism ("CVM")¹. The update focuses on measures that have been completed or will be completed shortly, while also identifying actions which remain to be taken.

The recommendations of the last progress report adopted by the Commission on 20 July 2011 are the point of reference for the assessment of progress achieved against the benchmarks and the identification of the remaining challenges. In summer 2012, the Commission will provide an overall assessment of progress in Bulgaria under the CVM since accession.

2. JUDICIAL REFORM AND THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME: SUMMARY OF DEVELOPMENTS IN THE LIGHT OF THE COMMISSION'S RECOMMENDATIONS

Bulgaria's response to the recommendations included in the Commission's last report shows the following main developments. The new specialised court and prosecution office for organised crime have started work, the Commission for the Identification and Forfeiture of Criminal Assets has delivered significant results and the newly established commission to identify and sanction conflicts of interest has taken its first decisions. In addition, Bulgaria initiated measures to improve judicial practice, the organisation of the prosecution and the cooperation between the judiciary, police and other administrative authorities. Further steps in judicial reform have been announced for the coming months.

Developments in Bulgaria over recent months point to a need for stronger action to implement the Commission's recommendations in a number of areas. A law on asset forfeiture now being debated in Parliament needs to be comprehensive, and backed up with strong institutions, if it is to be effective in dissuading organised crime and high-level corruption. An analysis of shortcomings in judicial and investigative practice of important cases related to organised crime and corruption has not yet been undertaken in a comprehensive way. Implementation of the reformed Judicial System Act – designed to apply transparent and objective procedures to judicial

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).

appointments, promotions and appraisals, and to prioritise integrity – has not yet delivered the changes expected. A reform of the election process of the Supreme Judicial Council is needed to enhance the Council's transparency and integrity and as an important step towards a fundamental reform of the judicial system. The track record of decisions and penalties in cases related to high-level corruption, fraud and organised crime under investigation and in court does not yet provide the convincing results needed to provide effective dissuasion.

Further efforts are therefore needed during the coming months in order to demonstrate convincing results and to contribute to the Commission's overall assessment in summer 2012 of progress achieved by Bulgaria under the CVM since its accession to the EU. The Commission will continue to support Bulgaria in this endeavour.

3. UPDATE ON THE STATE OF PLAY

Reform of the Judiciary

In order to implement the reform objectives of the new Judicial System Act, the Commission notably recommended to Bulgaria in its last CVM report to establish a track record in appointments and appraisals respecting transparency, independence, integrity and professional merit. In addition, the Commission recommended that Bulgaria demonstrates a track record in disciplinary and criminal follow-up to corruption and malpractice within the judiciary and to ensure complete electronic access to court verdicts and a strict application of the random allocation of court cases.

Since the Commission's last report, Bulgaria has started to implement provisions of the Judicial System Act concerning the reform of appointments, promotions and appraisals and the strengthening of initial training of magistrates, and took steps towards a better management of workload within the judiciary. During this period, the first appraisals of judges under the new system have been launched and several senior appointments have been made. Local ethics commissions have been created to advise on the integrity of magistrates proposed for appointment, promotion or appraisal. A study to rationalise the workload of magistrates has been launched and rules on entry exams for the National Institute for Justice have been adopted.

Appointing and promoting competent magistrates of high integrity is an important part of judicial reform. Since last summer, several senior judicial appointments made by the Supreme Judicial Council and by Parliament have raised concerns regarding their objectivity, transparency and the thoroughness of the evaluation of the candidates' merit and integrity. Concerns have also been raised regarding the procedures for appraisals. Upcoming appraisals and promotions should demonstrate their capacity to properly reflect differences in performance and to take integrity issues fully into account.

The fight against corruption within the judiciary shows a mixed picture. The ethics commission of the Supreme Judicial Council and the newly established local ethics commissions have not yet been able to deliver proper integrity screening in the context of recent appointments and appraisals. During 2011, six magistrates were

acquitted by court in six cases related to corruption and abuse of office. There are ongoing cases against 28 magistrates in 27 criminal proceedings. Decisions in first or second instance were reached in 13 cases, of which ten led to convictions, six with suspended sentences.

Despite some examples of good practice, court verdicts are not yet systematically published and standards of publication have not been aligned. Bulgaria has announced the adoption of guidelines by the Supreme Judicial Council to address shortcomings in the random allocation of court cases.

In order to improve the management, accountability and efficiency of the judicial system, the Commission recommended to Bulgaria to take further steps towards a fundamental reform of the judicial system, notably by establishing and implementing proposals for reform of the Supreme Judicial Council and the prosecution.

Since the Commission's last report, the General Prosecutor has announced initiatives to promote a further specialisation of the prosecution, such as organisational measures, methodological guidance and software tools. There is a plan to enlarge the mandate of the specialised teams in charge of fraud cases with the involvement of EU funds to criminal offences against the state budget such as tax fraud, and to set up joint teams focused on high-level corruption cases. In addition, the General Prosecutor has established a service for criminological research and access to a register of special investigative means is expected to be extended to all the prosecution offices. The establishment of a unified information system across the prosecution, police and other administrative authorities is still to be put in place. More wide-ranging proposals for the reform of the prosecution are currently being discussed and have been announced for early 2012.

The credibility of the Supreme Judicial Council has been in question over recent months. Following the resignation of two members of the Council in protest at the actions of the Council, the elections for their replacement in September were boycotted by some courts. This prompted a public debate about how to increase the professional capacity and accountability of the Council. This debate on the reform of eligibility and procedures for election to the Supreme Judicial Council needs to be quickly made concrete if reforms are to be in place before the expiry of the current Council's mandate in autumn 2012. The discussions with the relevant stakeholders recently initiated by the Justice Minister should provide a basis for concrete proposals to be made. In the meantime, concrete steps can be taken to improve the accountability of the Supreme Judicial Council, such as an earlier publication of agendas, a systematic opening of committee meetings to the public or to observers from civil society, and the live web-streaming of the Council's meetings.

In order to achieve better results in high-level organised crime and corruption cases, the Commission notably recommended that Bulgaria analyse judicial and investigative practice, adopt and implement detailed action plans and correct shortcomings in cooperation with international experts and civil society.

Since the Commission's last report, several actions have either been taken or prepared in order to respond to the Commission's concerns on judicial and investigative practice. These actions include a report on weaknesses in judicial

practice by the Supreme Court of Cassation, work by the Prosecutor's Office to develop guidelines to analyse acquittals, and inter-agency cooperation agreements between the police and administrative control authorities. A number of training programmes for prosecutors and police investigators have been carried out. In addition, amendments to the Penal Procedure Code have been made in order to limit the number of cassation referrals, and a unit has been set up to identify divergent jurisprudence and to support the interpretative activities of the Supreme Court of Cassation.

These initiatives should be completed by a more comprehensive and systematic analysis of weaknesses in the investigation, prosecution and trial of cases of high public interest. Involving external and independent expertise would allow the measures taken to benefit from best practice and to demonstrate progress through objective indicators.

Fight against Organised Crime

In order to improve the effectiveness of the fight against organised crime, the Commission notably recommended to Bulgaria to properly equip and define the mandate of the new specialised court and prosecution office for organised crime and to continue the reform of police.

Since the Commission's last report, a conviction was pronounced in appeal against defendants in an important organised crime case, who had been acquitted in first instance. A final verdict in cassation is pending. Concerns regarding the absence of effective witness protection have appeared in the same case. Important cases of serious and organised crime are at trial phase. First instance decisions in two other organised crime cases against a number of defendants were delivered in November and December 2011. Other important cases related to organised crime have seen little development in court in recent months. Further improvements in investigative practice, in terms of investigation techniques and in the collection of evidence remain to be demonstrated through enhanced professionalism during police actions, shorter periods of investigation and through final verdicts.

The new specialised courts for organised crime cases of first instance and appeal and the attached prosecution offices became operational at the beginning of January 2012. While the Constitutional Court has recently issued a ruling concerning the scope of competence of the newly created courts, a precise delineation of competence will have to be established through test cases under the guidance of the Supreme Court of Cassation. This may have implications for workload and therefore staffing. A special division of thirty police officers at the central level and twenty investigative police officers across the country has been designated to support the investigations of the specialised prosecution office for organised crime. The impact of these structures on the swift handling of serious crime cases remains to be assessed.

The reform of police investigative practice launched in 2010 has been pursued through further training in recent months². Bulgaria has announced the development of joint methodological guidelines for the police, the prosecution and other administrative bodies concerning the identification and freezing of criminal assets. Further efforts to enhance professional practice will be required in order to demonstrate the impact of reform in terms of a higher number of indictments meeting high professional standards, as well as final court decisions in organised crime cases.

Although donations to police have been limited to public authorities and state-owned companies and are now entered into a public register, the practice of donations to police still raises questions regarding accountability and financial transparency, notably the risk of circumventing public procurement rules.

In order to support the fight against organised crime and corruption, the Commission notably recommended to Bulgaria to adopt stronger asset forfeiture legislation and to improve current practice and results in forfeiting criminal assets.

In 2011, the Commission for the Identification and Forfeiture of Criminal Assets (CEPACA) obtained final court decisions confirming confiscation amounting to close to €5 million. This constitutes a substantial increase compared to previous years. The Commission has been reorganised since a new director was appointed in spring 2011. Closer cooperation with the prosecution has been established in some specific cases; however this cooperation is not yet systematically applied. A new draft law for asset forfeiture was introduced into Parliament in January. The draft law sets out a regime for non-conviction based asset forfeiture. The bill focuses on targeting assets linked to organised crime activity. While the Commission also recommended the inclusion of the power for CEPACA to undertake pro-active asset verification of senior officials and politicians, this aspect does not seem to be pursued. The draft law links investigations by CEPACA to criminal pre-trial proceedings initiated by the prosecution, allowing its work to start earlier than at present but the draft law also excludes the possibility for CEPACA to launch ex-officio checks on the grounds of administrative infringements. It also raises questions about the operational independence of CEPACA. The parliamentary discussions should be an opportunity to strengthen the draft to ensure an asset forfeiture regime which is comprehensive in scope, covers a sufficient timespan to be effective, and is backed up by strong institutions. The real impact of this future law will need to be assessed in terms of a further increase of decisions on confiscated assets and in terms of the independence of CEPACA.

Fight against Corruption

In order to improve the effectiveness of the fight against high-level corruption, the Commission recommended to Bulgaria notably to establish a network of specialised prosecutors, to adopt pro-active investigative strategies and to demonstrate a track record of sanctions for conflict of interest.

² Bulgaria reports that from June to November 2011, a total of 1660 operational police officers were trained in investigative functions. 1149 police investigators underwent training on investigating corruption, economic and organised crime as well as financial investigations.

Since the Commission's last report, one final sentence and two non-final sentences were pronounced in high-level corruption cases against three Members of Parliament and an acquittal in second instance was rendered in a case against a former minister. Six non-final convictions were delivered against sitting and former mayors, four with suspended sentences. Investigations of alleged fraud of EU funds were not pursued by the prosecution, though investigations into related cases based on the same facts continue in another Member State. In all cases related to fraud of EU funds brought to court in 2011, criminal responsibility was replaced by administrative fines. An important case of fraud of EU funds has been delayed in appeal in court for over 18 months. Follow up by the prosecution is awaited in a number of files concerning serious irregularities in the management of EU funds which were forwarded by OLAF in 2010-2011.

The Commission for the prevention and detection of conflict of interest set up in June 2011 is now operational. It has received 146 signals and issued 25 decisions, with conflict of interest established in 12 cases. Its ability to have a dissuasive impact will depend inter alia on the number of cases concluded, its capacity to pursue conflict of interest in a pro-active manner and its ability to deliver sound and well motivated decisions in sensitive cases. Effective measures against conflict of interest also require unitary practice regarding the publication of conflict of interest declarations by different administrative bodies, and a streamlined legal basis for the Conflict of Interest Commission regarding sanctions and statutes of limitation.

The General Prosecutor has committed to set up networks of specialised prosecutors for economic and financial crime by the end of 2011 and to develop methodological instructions for the investigation of complex economic and financial crime, in cooperation with international experts, by April 2012. The Ministry of the Interior and the General Prosecutor intend to develop further joint instructions on the investigation and collection of evidence, and cooperation with the National Revenue Agency is now on a clearer footing. Monthly reports on progress on cases of high public interest are also being drafted. The extent to which these changes carry through into intensified action in such cases will need to be assessed.

Allegations of electoral fraud, following the Presidential and local election of last October are being investigated by the prosecution. Dissuasive sanctions for vote-buying as well as full transparency in political party financing – in line with GRECO recommendations – remain essential for public trust the authorities' ability to fight organised crime and corruption.³

In order to improve the prevention of corruption, the Commission notably recommended to Bulgaria to demonstrate concrete results in a comprehensive anti-corruption project, to improve the system of declaring and verifying assets of public officials and to strengthen administrative capacity in the area of public procurement.

The horizontal anti-corruption project ("Borkor") proposed in the beginning of 2010 has now set up premises and recruited permanent staff. An advisory council is in place, modalities of cooperation with central and local administration have been

³ The final OSCE report on the Bulgarian local and presidential elections can be accessed at <http://www.osce.org/odihr/elections/86893>

defined and a list of tasks and possible legislative proposals has been agreed. It is expected that the project will be operational in mid-2012.

Bulgaria has issued a new instruction on disciplinary action within the Ministry of the Interior and amendments to the Code of Ethics were adopted in December, whose purpose is to counter and prevent corruption by officials working for the Ministry of the Interior. The impact of these measures will need to be demonstrated in practice.

Since the Commission's last report, there have been no concrete developments in the control system of asset declarations of senior civil servants in order to detect and pursue inexplicable wealth. Recent recommendations to address legislative gaps in the protection against corruption by the United Nations Convention against Corruption (UNCAC) should be addressed in the new Penal Code.

Legal amendments in autumn 2011 aimed at strengthening ex-ante and ex-post control in public procurement procedures. The impact of these measures will depend on sufficient administrative capacity and on an effective delineation of competences between the different competent authorities in the area of public procurement and other authorities including implementing authorities under structural funds. The staff capacity of both competent authorities in the area of public procurement has reportedly been strengthened. The impact of these measures will need to be assessed in terms of their practical implementation.