



Brussels, 22.10.2019  
COM(2019) 498 final

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

**on Progress in Bulgaria under the Cooperation and Verification Mechanism**

{SWD(2019) 392 final}

## 1. INTRODUCTION

The Cooperation and Verification Mechanism (CVM) was established at the accession of Bulgaria to the European Union in 2007 as a transitional measure to facilitate Bulgaria's continued efforts to reform its judiciary and step up the fight against corruption and organised crime.<sup>1</sup> The CVM represented a joint commitment of the Bulgarian State and of the Union to remedy a number of remaining shortcomings identified at the time of accession, with the CVM to continue until the Commission considered that a number of specified benchmarks were satisfactorily fulfilled.

The CVM has been working since 2007 to encourage and follow the reform process on these issues. In January 2017 the Commission undertook a comprehensive assessment of the progress made by Bulgaria over the ten years since the establishment of the CVM.<sup>2</sup> On this basis, the report set out a clear path towards conclusion of the CVM, based on seventeen key recommendations. Given the progress made, the Commission considered that a follow-up to these seventeen recommendations by Bulgaria would constitute a sufficient condition to close the CVM, unless developments in the meantime were to clearly reverse the course of progress. Many of the recommendations focused on building internal safeguards to ensure the irreversibility of results and to demonstrate that ongoing projects would be continued and progress consolidated, even without the CVM.

Since then, the Commission has carried out two assessments of progress on the implementation of the final key recommendations. In the November 2017 report,<sup>3</sup> the Commission concluded that significant progress had been achieved. While the Commission could not yet determine that any of the benchmarks were satisfactorily fulfilled, it made clear that, with a continued political steer and a determination to advance the reform, Bulgaria should be able to fulfil the remaining outstanding CVM recommendations in the near future. The Council welcomed the significant positive steps made, while noting that much still needed to be done.<sup>4</sup>

In November 2018,<sup>5</sup> the Commission welcomed progress towards swift conclusion of the CVM and concluded that benchmarks one, two and six could be considered provisionally closed. On the remaining three benchmarks, relating to the continued reform of the judiciary and the fight against corruption, further efforts were still needed in order to ensure full implementation of the January 2017 recommendations. The Council took note of the Commission's conclusions and encouraged Bulgaria to build on the positive momentum to consolidate progress in a conclusive and irreversible manner.<sup>6</sup>

This report presents the Commission's assessment of the progress made by Bulgaria in the context of the CVM since November 2018. As in previous years, the assessment is the result of a careful analysis by the Commission, drawing on close cooperation with the Bulgarian authorities as well as on input from civil society and other stakeholders and observers. It also

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<sup>1</sup> 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 (C(2006) 6570); see also conclusions of the Council of Ministers of 17 October 2006 (Council document 13339/06)

<sup>2</sup> *Report on Progress in Bulgaria under the Co-operation and Verification Mechanism*, COM(2017) 43.

<sup>3</sup> *Report on Progress in Bulgaria under the Co-operation and Verification Mechanism*, COM(2017) 750.

<sup>4</sup> Council conclusions on the Cooperation and Verification Mechanism of 12 December 2017 (15587/17).

<sup>5</sup> *Report on Progress in Bulgaria under the Co-operation and Verification Mechanism*, COM(2018) 850 final.

<sup>6</sup> Council conclusions on the Cooperation and Verification Mechanism of 11 December 2018 (15187/18).

takes account of the evolution of the EU's policies and case law in CVM-relevant areas since the establishment of the CVM.

## 2. GENERAL SITUATION

Previous reports have noted that contextual factors – outside the remit of the the CVM but with wider rule of law relevance – may, at times, have a negative impact on the progress of reforms. Such factors have included overall political instability, an unpredictable legislative process, and a media environment recognised as raising serious concerns. In Bulgaria, the period since the report of November 2018 has been characterised by relative political stability, though a particular controversy emerged around allegations concerning the acquisition of properties at below-market prices by high-level officials and politicians.<sup>7</sup>

The November 2017 report also highlighted issues concerning the legislative process, citing the example of the adoption of amendments to the Judicial System Act in summer 2017, which led to concerns among stakeholders and leading to challenges at the Bulgarian Constitutional Court.<sup>8</sup> The need for vigilance concerning impacts on the independence of the judiciary was highlighted.

Independent and pluralistic media are of key importance for democratic debate and should be able to operate free from undue pressure by economic or political interests.<sup>9</sup> Though the media environment is outside the benchmarks of the CVM,<sup>10</sup> its shortcomings continue to impact on the justice system. While fully respecting freedom of expression and the indispensable role of the media in holding authorities to account and informing the public, the Supreme Judicial Council has an important responsibility to speak out in defense of the principle of judicial independence. The stronger policy adopted last year should lead to more action to address misleading coverage in the media or statements by politicians affecting the reputation and the credibility of the justice system as a whole. This includes cases with a pattern of targeted criticism against judges based on the content of their rulings, which could compromise the independence and impartiality of the judicial process.<sup>11</sup>

### *Mechanisms supporting the sustainability of the rule of law*

Another important facet of the underlying environment is the development of a broader rule of law infrastructure at both EU and national level. This is developing in a way which offers new tools to give a momentum to consolidating the rule of law – including the issues covered by the CVM. At EU level, national judicial systems have for several years been looked at in

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<sup>7</sup> The revelations led to the resignation of a number of high-ranking officials and politicians, including the former minister of justice, the head of the anti-corruption agency, and the head of the parliamentary group of the main governing party.

<sup>8</sup> See section 3.1 below.

<sup>9</sup> Reporters Without Borders has found that threats against reporters have now increased to an extent that journalism can be considered dangerous in Bulgaria. In their 2019 Press Freedom Index, Bulgaria retained its 111th position among 180 countries worldwide, consolidating its position as the worst performer within the European Union, following a significant deterioration since 2013: <https://rsf.org/en/bulgaria>. As an example, in September 2019, a surprise dismissal of a news commentator at the national radio raised concerns over its independence from outside pressure, sparking street protests and calls for a parliamentary enquiry. On 27 September the National Assembly decided to set up an ad hoc commission of enquiry to look in to the affair.

<sup>10</sup> Such issues will be within the scope of the future rule of law mechanism.

<sup>11</sup> A parole decision of the Sofia Appeal Court in a highly mediatised case in September 2019 resulted in a combination of commentary and steps taken against the presiding judges. This led to criticism from the Bulgarian Association of Judges about the lack of an effective reaction from the judicial members of the Supreme Judicial Council.

the EU Justice Scoreboard,<sup>12</sup> and, together with the anti-corruption frameworks, under the European Semester of economic policy coordination and structural reform.<sup>13</sup> This will be developed further based on the Commission's Communication of July 2019<sup>14</sup> setting out concrete actions to strengthen the Union's capacity to promote and uphold the rule of law, through promotion of a common rule of law culture, the establishment of a rule of law review cycle to monitor developments in Member States, and an effective response. The Political Guidelines of the next Commission, setting out the intention to put in place a comprehensive rule of law mechanism with an EU-wide scope and objective reporting for all Member States, guarantee continuity in this respect.<sup>15</sup> Beyond the CVM benchmarks, effective judicial protection by independent courts is required by Article 19(1) TEU as a concrete expression of the value of the rule of law, as confirmed by the European Court of Justice's recent case law. The existence of these horizontal processes monitoring the rule of law, including anti-corruption frameworks, in all Member States, and the perspective of their further evolution, underline the specific nature of the CVM as a monitoring process limited both in terms of the Member States concerned, and the issues covered.

The development of reform mechanisms at the national level was also central to the January 2017 recommendations. These underlined the importance of developing mechanisms to internalise monitoring at the national level, embedding it in domestic processes involving not only the authorities, but also civil society. In line with this approach, the November 2018 report underlined that Bulgaria needed to continue to develop a track record of concrete results both under the CVM and in the future, and that continued monitoring by the Bulgarian authorities was an important part of this, also after any closure of the CVM. The report highlighted in particular the importance of transparent reporting and public scrutiny in making domestic monitoring a safeguard to maintain the path of progress and reform.

Bulgaria has already put in place important elements of such domestic monitoring and consultation of stakeholders, including specific consultative councils in the areas of judicial reform and the fight against corruption.<sup>16</sup> In addition, the Bulgarian government recently decided to establish an additional, more comprehensive mechanism for domestic post-monitoring centred in a Coordination and Cooperation Council ('post-monitoring council').<sup>17</sup> The new post-monitoring council will start its work after an end of the CVM, meeting at least every three months.<sup>18</sup> Its co-chairs would be a deputy Prime Minister in charge of judicial reform and the representative of the Supreme Judicial Council.<sup>19</sup> It will be responsible for overseeing the continued progress of reforms and will issue a public report after each meeting,

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<sup>12</sup> [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en)

<sup>13</sup> [https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester\\_en](https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester_en)

<sup>14</sup> *Strengthening the rule of law within the Union - A blueprint for action*, COM/2019/343 final. This will complement the 2014 rule of law framework

<sup>15</sup> *Political guidelines for the next Commission (2019-2024) - "A Union that strives for more: My agenda for Europe"* p. 14-15, see [https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf).

<sup>16</sup> See benchmarks three and five below.

<sup>17</sup> Participation of institutions outside the executive branch will be on a voluntary basis.

<sup>18</sup> The new structure was approved by the government on 18 September, see Council of Ministers, *Decree No. 240 of 24 September 2019 establishing a National Mechanism for Monitoring the fight against corruption and organised crime, judicial reform and the rule of law and a Coordination and Cooperation Council*.

<sup>19</sup> The Minister of Justice will act as deputy chair and the Ministry of Justice as secretariat. The decree also states that the secretariat coordinates wherever there is a need to send information to the European Commission.

as well as an annual report to the government and the Supreme Judicial Council. It will receive information from a broad range of relevant institutions and will also include a civic council with representatives of civil society and professional associations of the judiciary.<sup>20</sup>

This post-monitoring council should monitor and coordinate policies in the area of judicial reform and the fight against corruption and organised crime. As such, it should provide an important overarching framework for authorities and stakeholders to evaluate progress in a transparent manner and to focus attention on remaining challenges. It could also contribute to holding the relevant authorities to account where necessary and appropriate.<sup>21</sup> The Bulgarian authorities have committed at Prime Ministerial level to give the council a particular role so that it acts as an effective tool in monitoring the implementation of reforms and the evolution of track record in the fight against corruption and organised crime, as well as in future policy coordination.

The Commission welcomes this commitment of the Bulgarian authorities to maintain the momentum of reform, in full transparency and with the involvement of civil society, once the CVM ends. The post-monitoring council should be an important interlocutor able to provide input to the developing dialogue on the rule of law at EU level and the future comprehensive rule of law mechanism.

### **3. ASSESSMENT OF PROGRESS ON THE FULFILMENT OF THE CVM BENCHMARKS ON THE BASIS OF THE RECOMMENDATIONS SET OUT IN THE JANUARY 2017 CVM REPORT**

#### **3.1 Benchmarks provisionally closed in the November 2018 report (One, Two, Six)**

##### **Benchmark One: Judicial Independence**

*Recommendation 1: Ensure a transparent election for the future Supreme Judicial Council, with a public hearing in the National Assembly before the election of the members of the parliamentary quota, and giving civil society the possibility to make observations on the candidates.*

*Recommendation 2: Establish a track record of transparent and merit-based appointments to high-level judicial posts, including the upcoming appointment of a new President of the Supreme Administrative Court.*

*Recommendation 3: To improve the practical functioning of the Judicial Inspection and the follow-up by the Supreme Judicial Council to the inspectorate's findings, in particular on integrity issues, consider soliciting external assistance, for example from the Structural Reform Support Service and/or Council of Europe.*

##### **Benchmark Two: Legal Framework**

*Recommendation 4: Adopt amendments to the Criminal Procedure Code and the Criminal Code to improve the legal framework for the prosecution of high-level corruption and serious organised crime.*

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<sup>20</sup> Its members will participate in the meetings of the post-monitoring council as observers and it may give opinions and make proposals.

<sup>21</sup> The decree explicitly states that the council will work in full respect of the separation of powers and judicial independence.

## **Benchmark Six: Organised Crime**

***Recommendation 16:** Establish a mechanism for public reporting on progress in high-level organised crime cases which are in the public domain. General Prosecution to report – whilst respecting the presumption of innocence – on investigations and indictments. Supreme Court of Cassation and Ministry of Justice to report on convictions as well as the enforcement of sentences.*

***Recommendation 17:** Adopt the necessary amendments to the law on confiscation of criminal assets and ensure the Illegal Asset Forfeiture Commission continues to operate independently and efficiently.*

This section covers the three benchmarks that were provisionally closed in November 2018. They concern the reform of the constitutional and legislative framework and the fight against organised crime to answer shortcomings specific to Bulgaria at the time of its accession to the European Union. The provisional closure meant that the Commission considered that the structural and legislative changes made had satisfactorily fulfilled the requirements of the CVM, while monitoring of implementation continued.

Past reports noted the progress of Bulgaria since accession in amending its constitutional and legislative framework to improve safeguards for judicial independence, as well as the transparency and the efficiency of the judicial process. Among the recent improvements, amendments to the constitution in 2015 brought about a reform of the Supreme Judicial Council and a stronger judicial inspectorate. These amendments have now been in place for a number of years and have resulted in a more transparent and accountable process around judicial appointments and integrity.<sup>22</sup> Consequently, the November 2018 report concluded that the two benchmarks related to the constitutional and legal framework could be provisionally closed. Judicial appointments and the functioning of the judicial inspectorate were identified as areas for ongoing monitoring, and certain aspects of the legal environment also remained open for further consideration in the context of other benchmarks.<sup>23</sup>

Since November 2018, the Supreme Judicial Council has continued to perform its responsibilities with regard to judicial appointments. There were some cases of delay due to the failure of the Supreme Judicial Council to find a consensus, for example regarding appointments to certain key posts within the public prosecutor's office. It remains essential that such appointments be carried out in a transparent and merit-based manner and that qualified potential candidates are encouraged to apply, with the certainty that all candidates will be assessed solely on their merits.

An important upcoming appointment is that to the post of Prosecutor General, the term of the incumbent ending in January 2020. The Supreme Judicial Council opened the procedure in June and is expected to nominate a successor on 24 October 2019, who will then have to be confirmed by the President of the Republic.<sup>24</sup> In July 2019 a single candidate was

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<sup>22</sup> In 2017, a new judicial council was elected under the new more transparent procedures and the judicial inspectorate started implementing its new competences in the area of integrity.

<sup>23</sup> This referred specifically to benchmark three on continued judicial reform and benchmark four on the fight against high-level corruption, where legislative action remain relevant in relation to the follow-up to the key issues raised by the Council of Europe and the independent expert analysis of the Bulgarian public prosecutor's office.

<sup>24</sup> The President can reject a candidate once, but cannot block a nominee if put forward a second time by the Supreme Judicial Council.

unanimously supported by the members of the prosecutorial chamber of the Supreme Judicial Council.<sup>25</sup> The candidate has presented his written priorities for the seven-year term. The procedure also provides for a hearing ahead of the nomination, in which questions and concerns of civil society and other stakeholders can be raised. Over the past weeks, a broad debate has taken place in the media, with some stakeholders voicing concerns in relation to the procedure and the candidate.<sup>26</sup> It will be the responsibility of the Supreme Judicial Council to ensure a transparent process and show that concerns raised have been addressed and taken into account by its decision.

Apart from the reform of the Supreme Judicial Council, the other main element of the constitutional amendments of 2015 was a stronger role of the judicial inspectorate in relation to the integrity of magistrates. Following a recommendation of the January 2017 report, the Bulgarian authorities requested assistance from the Commission's Structural Reform Support Service and a project was officially launched in July 2019, with the involvement of the Council of Europe and international experts. The project aims at reviewing the working methods of the judicial inspectorate and providing assistance to the inspectorate to learn from best practices in other Member States. It is expected to be completed in spring 2020.

The broader legislative framework has seen a number of reforms over the years. Recent CVM reports have noted in particular the positive effects of amendments of the Judicial System Act in 2016 and of the criminal procedure code in 2017. The November 2018 report noted that some key aspects of the legislative framework were still under consideration. These concerned in particular issues of effective criminal investigation, including of a Prosecutor General while in office. These issues are closely related to the follow-up on recommendations under benchmarks three and four (see below).<sup>27</sup>

In a separate development, the Constitutional Court ruled in February 2019 that the provisions inserted in 2017 into Article 230 of the Judicial System Act providing for the automatic suspension of magistrates in case of the initiation of a criminal investigation against them, were incompatible with the Bulgarian Constitution.<sup>28</sup> On 20 September 2019, the government submitted draft amendments to bring the law in conformity with the Constitution by repealing these provisions, and committed to pursue its swift adoption in the National Assembly.<sup>29</sup>

Finally, the November 2018 report also provisionally closed benchmark six related to the fight against organised crime, reflecting the positive developments in the institutional environment and track record over the years, in spite of a challenging environment. Developments since November 2018 have not raised new relevant issues.

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<sup>25</sup> Under Bulgarian law, candidates could be presented on the initiative of members of the prosecutorial chamber of the judicial council or of the Minister of Justice. The Minister of Justice had already indicated his intention not to present a candidate.

<sup>26</sup> This also included street protests organised by civil society organisations.

<sup>27</sup> Sections 3.2 and 3.3.

<sup>28</sup> Concerns have been raised that provisions for the automatic suspension of magistrates following the mere initiation of a criminal investigation could risk undermining judicial independence. The Court ruled that the Supreme Judicial Council needs to be able to assess the necessity and proportionality of the suspending measure in each case.

<sup>29</sup> Another important amendment passed in 2017 created a requirement for judges, prosecutors and investigating magistrates to declare their membership of professional associations to the Supreme Judicial Council, which raised concerns over the freedom of association for judges in the Bulgarian context. The draft amendments presented on 20 September also include a repeal of this requirement.

*The analysis of progress over the past year has confirmed the conclusions of November 2018 which led to the provisional closure of these benchmarks. Whilst there are inevitably relevant ongoing issues which will need continued attention from the Bulgarian authorities, the recommendations made in January 2017 have been satisfactorily addressed.*

### **3.2 Benchmark Three: Continued Judicial Reform**

***Recommendation 5:*** Publish a report for public consultation detailing the progress made implementing the national judicial reform strategy and setting out the remaining steps to be taken. Establish a mechanism for continued public reporting of progress for the remaining duration of the strategy's implementation.

***Recommendation 6:*** Address the workload situation in the busiest courts based on the new workload standards, and agree a roadmap for the reform of the judicial map in parallel with the development of e-justice.

***Recommendation 7:*** Establish a roadmap for the implementation of the recommendations of the Structural Reform Support Service report concerning the reform of the Prosecutor's Office and its interactions with other institutions, including a mechanism for the reporting of progress to the wider public.

***Recommendation 8:*** Establish a roadmap for the implementation of the recommendations of the study on ECtHR rulings, including a mechanism for the reporting of progress to the wider public.

The November 2018 report noted significant progress on the four recommendations related to the continuation of judicial reform. However, important developments were still ongoing or required continued monitoring to confirm the assessment of progress.

Since 2017, the government has established a regular cycle of monitoring and reporting on progress in the implementation of the judicial reform strategy. A consultative council for the continuation of the judicial reform, established under the auspices of Ministry of Justice in 2016, plays an important role in this. These processes provide a framework for cooperation with stakeholders on ongoing legislative files and could also be used in the preparation of future updates of the judicial reform strategy. The future post-monitoring council would also play a key role in monitoring progress following an end to the CVM.<sup>30</sup>

One important challenge which will involve an ongoing effort in the coming years is to improve the efficiency and accessibility of the judiciary through the introduction of e-justice and a balanced management of workload across the judiciary. While a comprehensive reform has been subject to several delays over the years, since 2017 the Supreme Judicial Council has taken important steps to address these challenges through a range of measures, and further efforts are ongoing.

Another important challenge subject to ongoing attention is the functioning of the overall system for the investigation and prosecution of high-level corruption. Important progress has been made over the years. Recently these efforts have been informed by an independent analysis of the functioning of the Prosecutor's Office carried out in 2016<sup>31</sup> as well as by

<sup>30</sup> See section 2 above.

<sup>31</sup> The analysis was assisted by the Commission's Structural Reform Support Service and involved senior prosecutors from Germany, France, The Netherlands and Spain. The recommendations of the study served as a basis for a roadmap drawn up by the Bulgarian authorities in 2017.



analysis of case law of the European Court of Human Rights, focussing on issues identified by the Court in 2016 as a systematic problem of ineffective criminal investigations in Bulgaria. This resulted in a number of important steps set out in previous CVM reports. Key points still under consideration include the process for initiating criminal investigations, including the role of preliminary enquiries,<sup>32</sup> and the possible need for judicial review of prosecutorial decisions not to open an investigation.

A particularly sensitive issue concerns the creation of procedures ensuring the independence at all stages of any investigations involving allegations of criminal misconduct by a Prosecutor General while still in office.<sup>33</sup> In June, the Minister of Justice presented draft amendments to the criminal procedures code and to the Judicial System Act, as a basis for public debate with stakeholders on a possible government proposal, setting out a mechanism for initiating criminal proceedings against a sitting Prosecutor General, and also against the Presidents of the Supreme Court of Cassation and of the Supreme Administrative Court.<sup>34</sup>

These draft amendments attracted significant public attention, including by civil society and judicial stakeholders, which raised a number of concerns but also highlighted the importance of open and transparent consultation on such sensitive matters. The debate raised questions about whether the proposed amendments brought sufficient clarity as to how they would ensure an independent investigation of a sitting Prosecutor General.<sup>35</sup> In addition, the envisaged inclusion of the Presidents of the Supreme Court of Cassation and of the Supreme Administrative Court in the scope of the proposed mechanism raised new concerns about a possible risk for judicial independence,<sup>36</sup> particularly given that the requirements of independence are different for prosecutors and judges.<sup>37</sup>

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<sup>32</sup> The preliminary enquiries precede the formal pre-trial phase and aim to assess the existence of sufficient evidence for the initiation of a formal criminal investigation.

<sup>33</sup> The Council of Europe is still monitoring the follow-up by Bulgaria on these issues, many of which were also reflected in the independent analysis of the Prosecutor's Office referred to above. In March 2019, the Council of Europe 'invited the authorities to submit, before 1 October 2019, information on concrete proposals for measures in the above three areas, all of which are essential for upholding of the rule of law, and in this connection encouraged them to cooperate closely with the Secretariat and make use of the expertise available through the Council of Europe' and furthermore instructed its secretariat to prepare a draft interim resolution for examination in December 2019, in the event that no tangible progress is achieved. [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016809372d5](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809372d5)

<sup>34</sup> The draft amendments were presented in a meeting of a working group under the Ministry of Justice, which was extraordinarily web streamed online, and the texts were subsequently made public.

<sup>35</sup> The proposed procedure would require the Supreme Judicial Council to authorise the initiation of a criminal investigation against the chief magistrates in a similar way to the procedure whereby an authorisation of the National Assembly is required for criminal proceedings to be initiated against a Member of Parliament. The plenary of the council would take this decision on a motion of three members of the relevant chamber of the council (the prosecutorial chamber in case of the Prosecutor General) or of the Minister of Justice. The decision would entail the automatic suspension from office and the investigation would be carried out by prosecutors of the specialised prosecutor's office for organised crime or the Sofia City prosecutor's office, depending on the nature of the alleged crime.

<sup>36</sup> The concerns with regard to judicial independence focused in particular on the proportionality of the envisaged suspension from office, which would follow automatically from a decision of to open a criminal investigation. In addition, the view was expressed that no special procedure was needed for the court presidents, as the prosecution is already able to conduct an independent investigation within the current legal framework.

<sup>37</sup> This aspect is for example recalled in the Venice Commission's opinion of October 2017 on the Bulgarian Judicial System Act (Opinion No. 855 / 2016, p. 10).

While it is welcome that the Bulgarian authorities had initiated a public debate based on concrete proposals on this sensitive topic, it will be crucial for the maintenance of public confidence that the concerns raised are adequately addressed. In such cases, the Commission considers that there are great benefits in drawing on the Council of Europe and other independent expertise. To ensure that the amendment as finally adopted will contain adequate safeguards for judicial independence, the Bulgarian authorities have requested an opinion from the European Commission for Democracy Through Law (Venice Commission).<sup>38</sup> The request was sent to the Venice Commission by the Minister of Justice on 24 September 2019, and in contacts at Prime Ministerial level with the European Commission, Bulgaria has committed to fulfil the recommendations of the Venice Commission in compliance with the parameters of the Bulgarian constitutional order. The Commission welcomes the readiness of the Bulgarian authorities to draw on outside expertise to help find a measured and balanced solution, to guarantee that judicial independence is assured in the future procedure.

While the proposals already presented concern in particular the issue of effective investigation of top magistrates, the broader systemic issue of effective investigations also needs careful consideration by the Bulgarian authorities, in due respect of the need for wide consultation of stakeholders and experts. The Bulgarian government has committed to continue its cooperation with the Council of Europe to find workable solutions on these matters, which need to be in line with the case law of the European Court of Human Rights.<sup>39</sup>

*On the basis of the analysis of benchmark three, Bulgaria has taken important steps to implement recommendations 5, 6, 7 and 8, and these recommendations can be considered satisfactorily fulfilled. The Bulgarian government has also set in train a set of follow-up measures and the Commission welcomes the commitments made by the Bulgarian government in this respect. Such follow-up needs to be allowed the necessary time for broad consultation of stakeholders and experts, including the relevant bodies of the Council of Europe. It would also be a subject matter for examination by the post-monitoring council, and would feed into to the future dialogue with the Commission in the framework of the comprehensive rule of law mechanism.*

### **3.3 Benchmark Four: High-level Corruption**

***Recommendation 9:*** *Adopt a new legal framework on the fight against corruption in line with the intentions set out in the anti-corruption strategy, and ensure its implementation. Set up an effective anti-corruption authority.*

***Recommendation 10:*** *Adopt and implement a reform of the law on public administration to strengthen the internal inspectorates in the public administration.*

***Recommendation 11:*** *Building on the analysis of past cases, establish a roadmap between all relevant institutions to address shortcomings in the investigation and prosecution of high-level corruption cases, including a mechanism for the reporting of progress to the wider public.*

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<sup>38</sup> The European Commission for Democracy through Law (Venice Commission) is an advisory body under the Council of Europe, advising its member states on constitutional matters and European standards in the fields of democracy, human rights and the rule of law.

<sup>39</sup> A roundtable discussion involving representatives of the authorities, judicial institutions and experts from the Council of Europe took place in June 2019.

**Recommendation 12:** *Establish a mechanism for public reporting on progress in high-level corruption cases which are in the public domain. General Prosecution to report – whilst respecting the presumption of innocence – on investigations and indictments. Supreme Court of Cassation and Ministry of Justice to report on convictions as well as the enforcement of sentences.*

The November 2018 report noted significant progress by Bulgaria on the four recommendations related to the fight against high-level corruption. At the same time, it also noted that a solid track record of final convictions in high-level corruption cases was still to be developed, and that continued monitoring of the new anti-corruption institutional framework was needed in order to consolidate the progress made.

The comprehensive reforms of the general anti-corruption institutional framework that were carried out over the past two years have started to have an impact. This relates in particular to the January 2018 anti-corruption law establishing a new anti-corruption agency, the 2017 amendments to the law on public administration clarifying the legal framework for the work of internal inspectorates, and the 2017 amendments to the criminal procedural code, giving the specialised prosecutor's office and court for organised crime additional powers with regard to high-level corruption.

The Bulgarian authorities report that these reforms have contributed to improving the overall conditions for the prevention, detection, investigation and prosecution of corruption. For example, the new anti-corruption agency has been examining the interest declarations of thousands of officials, identifying where follow-up is needed.<sup>40</sup> It is natural that reforms will take some time to carry through the various stages of investigation, prosecution and possible conviction, but this will need to be a major focus into the future to ensure that a solid track record of concrete results.<sup>41</sup> Recent high-profile allegations involving high-ranking public officials and politicians have further highlighted the challenges faced by Bulgaria in this area.

A particular challenge in the Bulgarian context – faced by institutions such as the new anti-corruption agency and the prosecution service – is the need for anti-corruption institutions to build public trust and gain a reputation over time for independence and professionalism in their work. Above all, citizens should be able to have full confidence that such institutions act in an impartial manner, in full respect of due process and fundamental rights, including the presumption of innocence.<sup>42</sup> An important element to build confidence concerns the process of appointing the management of such institutions.

The anti-corruption agency currently continues to function in the absence of a permanent head. As highlighted in the November 2018 report, the procedure for the election of the management of the anti-corruption agency has been controversial due to its reliance on a simple majority in the National Assembly, raising concerns about a possible politicisation of the agency's management. The upcoming appointment of a new head of the anti-corruption agency will be an important test of the capacity of the National Assembly to organise the

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<sup>40</sup> The report for 2018 states that verification of private assets and interest declarations was carried out for over 9 000 persons. More than 700 declarations were subject to correction or special follow-up.

<sup>41</sup> Corruption remains an area of serious concern in Bulgaria, as indicated by various surveys and studies by independent observers.

<sup>42</sup> This requires, in addition to the observance of the law in actual practice, also careful communication by such institutions to project an image of neutrality and professionalism towards the general public.

process in an open and merit-based manner so as to alleviate such concerns and help restore confidence in this key institution.

Two other key areas for building confidence are to draw on relevant outside expertise to improve the anti-corruption framework, and the engagement and dialogue with stakeholders on the implementation of the anti-corruption strategy. Both will be key to maintaining a credible forward momentum. In contacts with the Commission, the Bulgarian government has committed to continuing its efforts in this area, including by drawing on cooperation with the Council of Europe Group of States against Corruption (GRECO).<sup>43</sup> The post-monitoring council would also play an important role in maintaining public attention on these important challenges following an end to the CVM.<sup>44</sup>

*On the basis of the analysis of benchmark four, the legal and institutional framework has started to consolidate its work in line with recommendations 9, 10, 11 and 12, and these recommendations can be considered satisfactorily fulfilled. Bulgaria will need time to follow this up with a solid track record, notably under new leadership at the anti-corruption agency. The Commission welcomes the Bulgarian government's commitment to pursue the work by drawing on international experience, and by providing transparency and accountability. It would also be a subject matter for examination by the post-monitoring council and will also feed into the future dialogue with the Commission in the framework of the comprehensive rule of law mechanism.*

### **3.4 Benchmark Five: Corruption in General including Local Level and Borders**

**Recommendation 13:** Carry out an external review of the ex ante checks of public procurement procedures and their follow-up, including ex post checks, as well as on cases of conflicts of interest or corruption discovered and remedial measures taken to address identified shortcomings.

**Recommendation 14:** Put in place risk-based measures to address low-level corruption in high risk sectors within the public administration, taking inspiration from what has been done in the Ministry of Interior. Continue the efforts in the Ministry of Interior.

**Recommendation 15:** Establish a mechanism for public reporting on the implementation of the national anti-corruption strategy covering the remaining duration of the Strategy's implementation.

The November 2018 report acknowledged that Bulgaria had made significant progress on the three recommendations under benchmark 5, but also noted that these issues would need continued follow-up by the Bulgarian authorities over the longer term in order to be able to show concrete results. Over the past year, Bulgaria has confirmed the progress made and continued its efforts in these areas.

Public procurement is a high-risk area for conflicts of interest and corruption. Bulgaria has drawn upon assistance from the International Bank for Reconstruction and Development

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<sup>43</sup> The Council of Europe Group of States against Corruption (GRECO), a consultative body monitoring the implementation of anti-corruption policies by the members of the Council of Europe, is currently analysing aspects of the Bulgarian anti-corruption framework in the context of its fourth evaluation round and is expected to launch activities under the fifth evaluation round shortly. In addition, Bulgaria may also draw on assistance in the framework of the Commission's Structural Reform Support Programme.

<sup>44</sup> On the post-monitoring council, see section 2 above.

(World Bank) to carry out a comprehensive review of its public procurement system. This project was finalised in early spring 2019, resulting in a number of recommendations, including with regard to prevention of corruption, conflict of interest, and fraud. The authorities report that some initial follow-up on these recommendations is already ongoing, while the entire review will feed into the development of a future comprehensive public procurement strategy. The broader area of public procurement is governed by EU law and it will be important to carry this work through and to draw on additional expertise if needed in specific areas.<sup>45</sup>

Bulgaria also continued the implementation of specific sector action plans for the prevention of corruption in the State administration. A new round of sectorial plans were adopted in early 2019 as part of an annual cycle, monitored by a national anti-corruption policies council chaired by a national anti-corruption coordinator, who is also a high-ranking member of the government.<sup>46</sup> This work needs continuous focus within all government departments and agencies. The post-monitoring council could play an important role in providing visibility and support to these efforts. Together with the national anti-corruption policies council, the new council will have a role to play in updating the current anti-corruption strategy from 2015 in light of current developments and challenges. An important element will be a broad involvement of stakeholders and civil society in the evaluation of the current strategy as well as in the definition of new priorities for the future.<sup>47</sup>

*The analysis of benchmark five confirms the progress noted in the November 2018 report on recommendations 13, 14 and 15, and these recommendations can now be considered satisfactorily fulfilled. Many of these are issues which call for ongoing attention and the work to analyse the challenges and establishing a coherent process for addressing them on an ongoing basis has provided a good foundation for future work. Issues like public procurement are also followed up in the normal process of enforcement of EU law. These will again be important subject matters for examination by the post-monitoring council and will feed into the future dialogue with the Commission in the framework of the comprehensive rule of law mechanism.*

#### **4. CONCLUSION**

In the Decision establishing the CVM, the Commission, whilst noting the considerable efforts made to complete Bulgaria's preparations for membership, had identified remaining issues where further progress was still necessary to ensure the capacity of judicial system and law enforcement bodies to implement and apply the measures adopted to establish the internal market and the area of freedom, security and justice.<sup>48</sup> This included the accountability and efficiency of these bodies.

This has driven the CVM process, leading to the seventeen key recommendations made by the Commission in January 2017. Bulgaria has worked consistently on the implementation of these recommendations, as set out in the November 2017 and November 2018 reports. This work has continued over the past year, and Bulgaria has made further progress, including on

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<sup>45</sup> This could also include assistance for the good implementation of EU public procurement law.

<sup>46</sup> Currently the deputy Prime Minister for judicial reform and minister for foreign affairs also has the role as national anti-corruption coordinator.

<sup>47</sup> Both the national anti-corruption policies council and the new post-monitoring council has an element of civil society involvement and could act as conduits for broader engagement with civil society.

<sup>48</sup> Commission Decision of 13 December 2006 (C(2006) 6570)

the recommendations relating to benchmarks three, four and five, which remained open following last year's assessment.

The past year has seen the consolidation of the legal and institutional framework put in place over previous years. Translating this into results over the long term will require determination and follow-up. The steps taken by Bulgaria to put systems in place to monitor this process are essential in that respect.

In addition to the commitment to pursue reforms in relation to the fight against corruption, the Commission notes in particular the commitment expressed by the Bulgarian government to put in place procedures concerning the accountability of a Prosecutor General, including safeguarding judicial independence in line with Venice Commission recommendations. The Bulgarian government has submitted a request for an opinion and committed to fulfil the recommendations of the Venice Commission in compliance with the parameters of the Bulgarian constitutional order.

The Commission also notes the commitment of the Bulgarian authorities to adopt legislation to repeal provisions in the Judicial System Act requiring automatic suspension of magistrates in case of a criminal investigation against them and reporting of membership in professional associations. The Bulgarian government has already submitted a legislative proposal to the National Assembly.

Finally, the Commission notes the commitment expressed by the Bulgarian government to ensure continued cooperation with Council of Europe bodies to address any remaining shortcomings with regard to the Bulgarian anti-corruption framework and effective criminal investigations.

The Commission considers that the progress made by Bulgaria under the CVM is sufficient to meet Bulgaria's commitments made at the time of its accession to the EU. Bulgaria will need to continue working consistently on translating the commitments specified in this report into concrete legislation and on continued implementation. The monitoring of the continued implementation of the reforms put in place by Bulgaria will need to be ensured by the post-monitoring council, and that will feed into the future dialogue with the Commission in the framework of the comprehensive rule of law mechanism. Before taking a final decision, the Commission will also take duly into account the observations of the Council, as well as of the European Parliament.<sup>49</sup>

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<sup>49</sup> Terminating the CVM for Bulgaria would take the form of a Commission decision revoking 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 (C(2006) 6570).