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BULGARIA : Technical Report

Accompanying the document

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

on Progress in Bulgaria under the Cooperation and Verification mechanism

{COM(2018) 850 final}

Benchmarks to be addressed by Bulgaria pursuant to Commission Decision of 13/XII/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 crime¹:

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

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 criminal and administrative procedure codes, notably on the pre-trial phase

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

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

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

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

List of acronyms:

BORKOR: Centre for the Prevention and Counteraction of Corruption and Organised Crime

CIAF: Commission on Illegal Asset Forfeiture

CPACI: Commission for the Prevention and Ascertainment of Conflicts of Interest

CVM: Cooperation and Verification Mechanism

ECtHR: European Court on Human Rights

ISJC: Inspectorate to the Supreme Judicial Council

NAO: National Audit Office

PACE: Monitoring Committee of the Parliamentary Assembly of the Council of Europe

SANS: State Agency for National Security

SJC: Supreme Judicial Council

SRSS: Structural Reform Support Service

¹ Previous CVM reports can be consulted at https://ec.europa.eu/info/effective-justice/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en

1. INTRODUCTION

This technical report summarises the information which the Commission has used as the basis for its assessment of Bulgaria's progress under the Co-operation and Verification Mechanism (CVM) since the last CVM report of November 2017.

This information has been collected from a variety of sources. The Commission has had the benefit of working closely with the relevant authorities in Bulgaria, providing information on progress in detailed reports, as well as in face-to-face meetings.² Commission contacts with the Bulgarian administration and society across the full range of EU policies, including through the European Semester for economic governance, help to inform the CVM reports. In addition to official contacts with Bulgarian authorities, the Commission meets with non-governmental organisations active in the area of judicial reform and anti-corruption work, with professional associations of judges and prosecutors, and with representatives of other EU Member States in Bulgaria. More generally, the Commission draws on the various studies and reports that are available from international institutions and other independent observers in the field of judicial reform and the fight against corruption.

Since the time when the CVM benchmarks were adopted, there have been major developments in Court of Justice and ECHR case-law, international standards and best practices, and comparative information on national justice systems in the EU,³ which also help to give an objective and comparable measure of the development of the Bulgarian judicial system and the fight against corruption and organised crime.

Over the years, Bulgaria has benefited from EU funds as well as bilateral support from EU Member States. In the current programming period, the Operational Programme "Good Governance" under the European Social Fund has dedicated approximately EUR 30 million to a separate priority axis for judicial reform in Bulgaria.⁴ Support from the European Structural Reform Support Service (SRSS) also continues to be available for reforms in Bulgaria, including in the justice sector.⁵ For example, in 2016 several Member States provided experts for a project led by the SRSS to carry out an independent analysis of the Public Prosecutor's Office of Bulgaria.

The Commission Decision of 2006 defined six benchmarks for Bulgaria.⁶ The six benchmarks were conceived in the circumstances of the day and their concrete wording reflects this, but the underlying themes have remained relevant.

On 25 January 2017, the Commission adopted a comprehensive assessment of ten years' progress in Bulgaria on judicial reform and the fight against corruption and organised crime. This report used a long-term perspective to identify the key remaining steps to reach the goals of the CVM. This process resulted in seventeen final recommendations set out in the January 2017 CVM report. Most of them focus on the responsibility and accountability required by the Bulgarian authorities and on the internal safeguards needed to ensure that progress achieved is irreversible. When these steps set out under each benchmark are taken, the respective benchmark will be considered provisionally completed. When this applies to all benchmarks, the CVM will be closed. Complying with the seventeen recommendations can therefore be considered as sufficient to meet the CVM goals – except if developments were to clearly reverse the course of progress underlying the baseline assessment of January 2017.

On 15 November 2017, the Commission made its first assessment of progress on the seventeen recommendations, concluding that: *"During the nine-month period since the January 2017 report,*

² Commission services carried out fact-finding missions in Bulgaria in March, June and September 2018.

³ Including the EU Justice Scoreboard: <http://ec.europa.eu/justice/effective-justice/scoreboard/>

⁴ Currently, contracts for approximately 44 per cent of this amount have been signed, while 10 per cent has been paid to beneficiaries.

⁵ In addition, funding for the Ministry of Interior is available through the Internal Security Fund – Police.

⁶ Commission Decision 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 (notified under document number C(2006) 6570).

setting out the key recommendations to fulfil all CVM benchmarks, further positive developments have taken place. While political uncertainty led to some delays in the implementation of reforms early in the year, since May the reform process has again taken on momentum, even if final outcomes are still to be seen, notably in areas requiring legislative reform and government action, such as in the fight against corruption. In the judiciary, important developments have also taken place this year, notably with the election of a new SJC, the impact of which should begin to show in the coming year.

This report notes that significant progress has been achieved on the recommendations set out in the January 2017 report, in particular recommendations 1, where it will now be up to the new composition of the SJC to demonstrate results, and 16 and 17, where the progressive trend should be maintained. Important progress has also been made on recommendation 4, although more remains to be done. While the Commission cannot yet conclude that any of the benchmarks are at this stage satisfactorily fulfilled, it remains of the opinion 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.”⁷

2. PROGRESS ON KEY REMAINING STEPS

On the basis of the key remaining steps identified in the January 2017 CVM report, this section will describe the actions taken by the Bulgarian authorities to fulfil the recommendations since November 2017.

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

Recommendation 1: *Ensure a transparent election for the future SJC, 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.*

The Supreme Judicial Council (SJC) is the main governing body of the Bulgarian judiciary. Important changes were made in 2016 to its organisation as well as to the rules for the election of its members, following constitutional amendments in December 2015. Among the more notable improvements brought about by these changes was the introduction of direct elections to the professional quota on a “one magistrate-one vote” basis and a two-thirds majority requirement for the election of the parliamentary quota by the National Assembly.⁸ In 2017, a new SJC was elected in accordance with the new rules. The November 2017 report described the process, and, while noting that some aspects of the process had given rise to criticism⁹, it concluded that overall the elections to the new SJC had shown the merits of the new legislative framework put in place in 2016. The report further noted that it was now up to the newly elected Council to show its independence through a track record of impartial and professional decision-making in key areas.¹⁰

The new SJC took up its duties in October 2017 and has now been in operation for a little more than a year. In comparison with the previous Council, there appears to have been a positive shift in

⁷ COM(2017) 750 final.

⁸ The SJC is composed of 11 members elected by their peers and 11 members elected by the National Assembly in addition to three *ex officio* members (the Prosecutor General and the Presidents of the Supreme Court of Cassation and the Supreme Administrative Court). It brings together in one body the overall responsibility for the management of both the courts and the prosecution service, although with the reforms of 2015 and 2016 two separate chambers were created with competence in key personnel decisions respectively for judges on one hand and for prosecutors and investigating magistrates on the other.

⁹ The criticism concerned the election of the politically appointed quota by the National Assembly, which was seen by some observers as reflecting behind the scenes arrangements between the main political parties rather than the relative merits of the candidates. The proportion of the Council elected by the National Assembly, rather than by the magistracy, has also continued to give rise to concerns (see SWD(2017) 700, p. 4).

¹⁰ COM(2017) 750, p. 3.

atmosphere, less polarised and marked to a lesser extent by overt controversies.¹¹ In a number of areas it has started to chart a direction for its work.¹² An important responsibility of the Council, given the challenging media environment in Bulgaria¹³, is to defend the judiciary and the principle of judicial independence, including in the context of media attacks against individual judges.¹⁴

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.*

The appointment of magistrates is one of the key responsibilities of the SJC, and one which has often in the past been marked by considerable controversy. With the exception of the offices of Prosecutor General and of Presidents of the two Supreme Courts¹⁵, this task falls within the remits of the two separate chambers for judges and prosecutors within the SJC. Over the past year, new heads have been appointed to a number of courts and prosecution offices by the new SJC. The great majority of these appointments do not appear to have given rise to serious controversy, even if some criticism has been aired in concrete cases. Each appointment is preceded by a public hearing phase, which provides an opportunity for a wide range of interests to give their opinion on the candidates and requires candidates to submit a concept paper detailing the objectives that they would pursue in the post, as well as a declaration of private property and interests. This level of transparency is designed to facilitate public scrutiny of candidates. It also allows for a more open and systematic comparison of merits, where several candidates have applied for a post.¹⁶

Following the reform of 2015/2016, voting records are now public, which also enhances transparency around appointment decisions. On the other hand, some stakeholders have pointed to the fact that decisions of the SJC often are not clearly reasoned, as they result from a simple vote, and members have not always clearly explained the motivations based on which they have cast their votes.¹⁷ The presentation of clear reasoning behind appointment decisions, including any dissenting opinions is generally beneficial for the development of public trust that such decisions are being made on the basis of merit. It is also one way to communicate the SJC's broader vision for development of the judiciary. Notwithstanding these concerns expressed by some stakeholders over transparency, it seems clear that recent reforms, in particular the public voting record, have contributed to an improvement in the public's ability to follow decision-making within the Council. The approach towards appointments also reflects a general environment within the current Council seen as more consensual and professional.

¹¹ Previous reports have noted that controversies and infighting among members of the Council had given rise to concerns and affected public confidence in the judiciary, see COM(2017) 43, p. 4 and 8.

¹² This is the case notably in areas such as workload and reform of the judicial map. In some respects the approach taken by the new council on these issues has put into question work done by the previous council. In others, it has given new impetus to necessary decisions. See also recommendation 2 and benchmark 3 below.

¹³ Observers have noted a significant deterioration in the general media environment in recent years, see <https://rsf.org/en/ranking> and <http://cmpf.eui.eu/media-pluralism-monitor/>

¹⁴ In some recent cases, the Council has found it difficult to reach a consensus on an appropriate response, with members divided on the balance to be found between the legitimate interest of the media to report on judicial affairs and the need to defend the judiciary against the risk of intimidating press coverage exerting pressure on individual judges. As a way forward, the council recently decided to prepare internal guidance on the matter.

¹⁵ These are appointed by the President of the Republic on a motion of the plenary of the SJC.

¹⁶ In a large number of cases, however, there was only a single candidate.

¹⁷ Some stakeholders have expressed concern that an impression of decisions being determined behind the scenes could reflect a possible reappearance of intransparent practices which marred the previous SJC. Such concerns often focussed on the significant share of political appointees in the SJC, an issue which was not addressed by the 2015 constitutional amendments. See also footnote 9 above.

One high-profile appointment which presented a particular challenge for the SJC over the past year was the appointment of a new President of the Sofia City Court.¹⁸ As one of the main courts of the country, dealing with major commercial as well as important criminal cases, the Sofia City Court has a prominent position within the overall judicial system in Bulgaria. It was embroiled in a high-profile scandal at the end of 2014 concerning the handling of random allocation of cases, with alleged links to corrupt practices within the court. Under a new management since spring 2015, the Court has undergone important changes in an effort to address the issues identified. However, judges have continued to raise concerns over working conditions. Together with the other Sofia courts, the Sofia City Court is known to have a disproportionately heavy workload compared to other courts in the country. Given this background, the appointment of a new President of the Sofia City Court can be seen as a particularly sensitive test case for the SJC. In March 2018 a first attempt at filling the vacancy failed, as neither of the two candidates obtained the required majority in the judges' chamber of the SJC,¹⁹ despite the benefits of a competition between two candidates and the fact that at least one of the candidates appeared to have wide support among judges at the Court.²⁰ A second procedure was subsequently launched with two candidates applying within the deadline in June 2018. The vote in the SJC should now be imminent. The delays experienced have caused uncertainty and tensions in the Court.²¹ On the other hand, the SJC has pointed to the fact that these are important appointments which should not be rushed.

As regards appointments more generally within the judiciary, a number of competitions have already taken place under the new SJC, although these have primarily concerned the promotion of prosecutors. Competitions for the promotion of judges, on the other hand, are generally only in preparation or still ongoing.²² In this context, concerns have been raised that long timelags, in combination with legislative amendments made in autumn 2017 to deregulate secondments, risk leading to the reappearance of practices, widespread before the legislative reform of 2016, to use long-term secondments of judges as an alternative to, or circumvention of, official promotions within courts.²³

The January 2017 recommendation pays particular attention to the appointment of a new President of the Supreme Administrative Court, which took place in the autumn of 2017, and was covered in the report of November 2017.²⁴ The next appointment for one of the 'top three' positions within the judiciary is expected to be the appointment of a new Prosecutor General in the autumn of 2019.²⁵ The very high profile of the Prosecutor General's office in the Bulgarian system further accentuates the

¹⁸ The previous President of the Court since 2015 resigned for personal reasons in summer 2017.

¹⁹ An appointment requires an absolute majority of 8 out of the 14 members of the chamber, which is composed of 6 judges from the professional quota and 6 jurists elected by the National Assembly as well as the two Presidents of the Supreme Court of Cassation and the Supreme Administrative Court, who are members *ex officio*.

²⁰ Under legislation adopted in 2016, the assembly of judges at the individual court is competent to hear all candidates and give its opinion. In this case the assembly of judges at the Sofia City Court had explicitly recommended one of the two candidates. Such a recommendation is however only advisory, and the final decision is made by the SJC, following its own hearing of the candidates.

²¹ Another ongoing procedure for a prominent position concerns the presidency of the specialised court for organised crime, which is currently under additional stress due to the assignment to it of new competences regarding high-level corruption cases.

²² A competition for seven appointments to the Supreme Court of Cassation and 59 positions in the regional courts were launched in December 2017 but were still ongoing as of October 2018. Other competitions are in preparation, including for the appellate courts.

²³ Such practices were partly a response to a shortage of official competitions for the promotion of judges, as these were seen as a complex and lengthy way of filling judicial posts, but were also criticised in the past as a means of circumventing merit-based promotion policies, and possibly creating risks to judicial independence, due to the temporary nature of secondments and the resulting dependence of the judges concerned on the goodwill of the judicial hierarchy.

²⁴ COM(2017) 750, p. 4.

²⁵ The prosecutor General is appointed for a non-renewable term of 7 years. The incumbent was appointed in November 2012.

need for a transparent and merit-based process. The nomination process will attract a significant amount of attention, also at political level, and is hence likely to represent an important test for the new SJC in the coming year.

Recommendation 3: *To improve the practical functioning of the ISJC 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 SRSS and/or Council of Europe.*

In response to this recommendation, the Bulgarian authorities have requested the assistance of the Commission's structural reform support service (SRSS) for a project which will be led by the Council of Europe and will help the inspectorate further develop its capacity to deal with integrity issues among magistrates, while drawing on lessons from other Member States.²⁶ The project is planned to be launched by the end of 2018 and to be completed in autumn 2019.

The Inspectorate to the SJC plays an important role in promoting good management practices in the judiciary through regular inspections of judicial bodies. Following the constitutional and legislative reforms of 2015 and 2016, the inspectorate was furthermore given a more central role in regard to integrity issues, including the checking of asset and interest declarations of magistrates and the verification of concrete circumstances raising concerns over judicial integrity, for example based on information received through alerts from the public. The inspectorate is also competent to propose the initiation of disciplinary proceedings, although any decisions on disciplinary matters of magistrates are made by the SJC, subject to judicial review at the Supreme Administrative Court. The handling of integrity and disciplinary issues has been a concern in the past, which is the background for the recommendation in the January 2017 report to draw on outside expert assistance in order to develop the capacity and review the functioning of the Inspectorate in this area.

With the entry into force of the new rules in January 2017, the inspectorate has started gaining concrete experience in the application of its new powers, which can serve as an important basis for the review.²⁷ The system for the checking of asset and interest declarations for around 4,000 magistrates is now up and running.²⁸ Due to the technical challenge of setting up the new system, deadlines for the processing of the declarations were extended to six months, but the checks for 2017 were finalised on time by early 2018. As regards the effectiveness of the checks, the Inspectorate has drawn attention to the limitations on its access to bank account data. As a result, the law has been amended to facilitate the checks by allowing magistrates to voluntarily agree to the lifting of banking secrecy for the purposes of the checks.²⁹

More significant challenges have been identified in regard to the response to alerts received from the public as well as to the specific inspection of circumstances which have been deemed to raise potential integrity issues. The inspectorate cannot act on anonymous alerts or alerts which do not provide sufficiently concrete information. It is possible for the inspectorate to prompt the person making the alert to provide additional information, but this is not necessarily sufficient, as the person may not always have access to all the facts or possess the necessary legal knowledge. In terms of its own follow-up, while the inspectorate can invite the magistrate concerned for an interview, it has no

²⁶ Bilateral contacts have already taken place with the judicial inspectorate of France to learn from the French experience and there is also an interest to learn from the Spanish system.

²⁷ In addition, as noted in the November 2017 report, the Venice Commission has raised a number of issues in its opinion of October 2017 on the 2016 reform of Bulgaria's judicial systems act, which could also provide useful input. COM(2017) 750, p. 4.

²⁸ The submission of declarations reportedly passed without major incident, with only a small number of magistrates failing to declare within the set deadlines. Failure to declare is publicised on the website and may result in financial penalties. Significant discrepancies in the information declared compared with data in other public registers results in referral of the case to relevant authorities such as the National Revenue Agency, if not corrected within the deadline. The inspectorate reports that in 2018 a substantial number of declarations contained discrepancies, the majority of which were however clarified within the deadline.

²⁹ The Inspectorate has already been given access to the relevant public registers for cross checks.

powers to require him or her to appear, and, more generally, it has limited investigatory powers. As a result, while the inspectorate does receive a significant number of alerts and can also act on media publications³⁰, only a minority of alerts provide a basis for the opening of an inspection, and very few result in the identification of irregularities. Even fewer have resulted in a disciplinary follow-up.³¹ The inspectorate may also refer cases to the Prosecutor's Office in case there is evidence of a potential crime, but the information included in the alerts has generally not provided sufficient basis for such a reference.³²

In 2017 and 2018 the inspectorate has continued to refer cases for disciplinary follow-up at the SJC, which have generally been followed up by the SJC.³³ While, as already mentioned, referrals related to integrity issues are few in number, a large number of disciplinary proceedings appear to concern the failure of judges to respect procedural deadlines, an issue which in some cases could be partly related to problems with workload, therefore reflecting broader management challenges in the judiciary.³⁴

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 Criminal and Administrative Procedure Codes, notably on the pre-trial phase

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.

The January 2017 report highlighted the complex legal framework and formalistic criminal procedures as a key challenge affecting the ability of the Bulgarian law enforcement to fight corruption and organised crime. As already noted in the November 2017 report, Bulgaria enacted amendments to its criminal procedural code in the summer 2017 which came into effect on 5 November 2017. The main objectives of the amendments were to speed up court procedures in criminal cases and to strengthen the institutional framework for the investigation and adjudication of corruption cases involving high-level officials.³⁵

In concrete terms this involved, in the first case, the introduction of a preliminary hearing stage in court proceedings, during which formal shortcomings affecting the pre-trial investigation and the indictment had to be addressed. The idea behind this innovation was that such formal issues should no longer provide a basis for referring cases back to the prosecution in late stages of the trial. Such referrals have been identified as a major cause for delays in court proceedings, with prosecutors often criticising what is sometimes seen as an overly zealous attitude in the courts over minor formal errors,

³⁰ In the case of media publications the inspectorate may act *ex officio*.

³¹ The decision on a referral of an inspection report for disciplinary follow-up at the SJC is not automatic but is taken on a case by case basis by the college of inspectors. In this sense, the inspectorate operates as an independent authority within the judiciary, with a certain gatekeeper role in regard to the disciplinary system, although court presidents and the Minister of Justice can also propose the initiation of disciplinary proceedings. Inspectors are elected by the National Assembly by two-thirds majority.

³² The challenges outlined above have reportedly resulted in deliberations over whether it could be appropriate for the inspectorate to be able to draw on investigatory agencies via the intervention of the Prosecutor's Office in order to clarify the facts in relation to alerts that it receives. In considering such an option, account has to be taken of the differentiation between administrative verifications, disciplinary proceedings, and criminal investigations, which are fundamentally different types of procedures requiring very different procedural safeguards, thus making the issue inherently sensitive. Reportedly, draft amendments were discussed in the Legal Affairs committee of the National Assembly but ultimately rejected.

³³ Reportedly, a rare exception was a case which was rejected because the limitation period for the initiation of disciplinary proceedings expired while the case was pending, which could possibly point to a need to review procedures to ensure all cases within the SJC are dealt with on time. Reportedly there has been at least one other case, this one not initiated by the Inspectorate, which was also rejected based on expiry of the limitation period.

³⁴ In addition, a large number of disciplinary proceedings are referred to the SJC by heads of judicial bodies.

³⁵ SWD(2017) 700, p. 7.

and judges tending to underline quality failings in the work of the prosecution. The logic of the new procedural step was to impose a higher level of discipline on both prosecution and defence, so as to ensure that formal errors were cleared up early on in the procedure so that the later stages of the trial could focus on issues of substance. The other major element of the reform was the transfer of jurisdiction for corruption cases involving high-level officials to the specialised court for organised crime. A consequence of this was also to give the specialised prosecutor's office for organised crime the lead in the supervision of investigations and in the prosecution of such crimes.

Initially these reforms received a mixed reception among a number of stakeholders within the judiciary, with critics highlighting possible legal issues as well as arguing that there had been a lack of consultation and debate.³⁶

The amendments have now been in force for one year and while it may still be too early to make a comprehensive assessment, it is possible to draw some preliminary lessons from the experience so far. As far as the preliminary hearing is concerned, initial experience reportedly indicated that a high proportion of cases were being referred back to the prosecution during the preliminary hearing. This could be seen as confirmation of a more effective process, identifying problems early on. It could also reflect a more cautious attitude among some judges, given the expressed concerns over a possible negative impact on defendants' rights of the new system. On balance, however, the Bulgarian authorities have indicated that they expect the additional delays at the early stage of proceedings to be compensated later on by a more expedient progress of cases through the trial phase.

As for the transfer of high-level corruption cases to the specialised court, the November 2017 report referred to the need for proper preparation and planning in terms of resource needs and organisation. These concerns seem at least partly to have been addressed. In particular, there was a significant increase in staff resources allocated to the specialised prosecutor's office and the attached department of investigating magistrates in early 2018. The specialised prosecution works closely with the general directorate for organised crime in the Ministry of Interior, which is also increasingly involved in the investigation of corruption crimes, as well as with the special anti-corruption unit under the Sofia City Prosecutor's Office, which used to be in charge of corruption cases involving high-level officials, in order to ensure a smooth transition. A similar increase in resources for the specialised court was initially not made, which led to concerns over the expected increase in workload and the risk that a shortage of courtrooms and staff could mean cases unnecessarily delayed.³⁷

Apart from these amendments already enacted and implemented, the last CVM report also noted that deliberations were under way on wider procedural and legal reforms to address formalism in criminal procedures and complexity in the legal framework. These efforts are based on several analyses carried out in recent years by independent experts and the Bulgarian authorities, which have highlighted a number of challenges affecting the effectiveness of investigations and the prosecution of corruption and organised crime in Bulgaria.³⁸ A number of working groups were set up under the Ministry of Justice in 2017, involving stakeholders from the judiciary. The discussions concern a wide range of issues, such as the format and content of indictments, the role of the preliminary enquiry stage prior to the formal pre-trial investigation, the role of the State Agency for National Security in criminal

³⁶ Elements of the reform were brought before the Constitutional Court in order to verify their coherence with constitutional principles, such as the protection of defendants' rights and the prohibition against special tribunals. In the course of 2018 the Constitutional Court has decided on these cases and found that the reforms were in conformity with the Constitution on these points.

³⁷ The SJC has now decided, in the context of a wider reallocation, to reassign three vacant posts for judges to the specialised court as well as to explore possibilities for additional judges to be assigned through voluntary transfers. Discussions are also ongoing to address the issue of suitable physical premises through a combination of short and long term measures, ultimately involving the refurbishment of a new building for the Court.

³⁸ COM(2017) 750, p. 5. See also recommendations 7, 8 and 11 below.

investigations, procedures for the application of special investigatory means, and the status and follow-up to intelligence reports from the financial intelligence directorate.³⁹

These deliberations have not yet led to further proposals for legislative amendments, and reports suggest that on most issues the conclusion is that legislative change is not the appropriate way to address the issues raised. This is the case, for example, concerning the follow-up to intelligence reports on suspicious transactions, the role of the national security agency in criminal investigations, procedures for special investigatory means, and the content and format of indictments.⁴⁰

The status of the preliminary enquiry is one of the issues where discussions appear still to be ongoing. Preliminary enquiries are widely used as a step prior to the opening of a formal pre-trial investigation, as they allow for greater procedural flexibility than the formal investigation. However, these pre-trial investigations are not regulated by the criminal procedure code, and any evidence or testimony gathered has no status in court, resulting in lengthy and cumbersome double work if they need to be followed up by a formal investigation. Furthermore, precisely because of their less formal nature, the institution of the preliminary enquiry is often regarded with suspicion, as a possible avenue for the investigatory and prosecuting authorities to circumvent the constraints and guarantees implied by the formal pre-trial procedure.⁴¹ Investigatory and prosecuting authorities have cited the very high number of preliminary enquiries to argue that abolishing this procedural step would risk a dramatic increase in the number of formal investigations, with serious consequences for the efficiency of the system. On the other hand, critics of the procedure argue that given the discretion left to the Public Prosecutor's Office and the fact that the threshold for opening a formal investigation remains relatively high, the current system carries a risk of restricting access to justice for victims of crime.

The issue of the preliminary enquiry is closely related to the issue of judicial review of prosecutorial decisions. Bulgarian law affords the victim the right to judicial review of the prosecutorial decision to close a formal pre-trial investigation without trial. However, no judicial review exists on the decision not to open a pre-trial investigation in the first place.⁴² Critics of the current system have linked this to the availability of the preliminary enquiry as an initial step, arguing that this gives the prosecutor considerable discretion over the decision to open a formal investigation.⁴³

Another issue which is still subject to discussion concerns the challenges involved in ensuring an independent and impartial investigation into any allegations of criminal conduct by the most senior officials of the magistracy while in post – the Presidents of the High Court of Cassation and the Supreme Administrative Court, and the Prosecutor General. This issue was raised specifically in regard to the particular role of Prosecutor General within the Bulgarian system in a ruling of the European Court of Human Rights from 2009, where the follow-up by the Bulgarian authorities is still being monitored by the Council of Europe.⁴⁴

³⁹ The financial intelligence directorate of the State Agency for National Security plays a key role in the prevention and detection of money laundering and terrorist financing and other financial crimes, preparing intelligence reports to law enforcement based on alerts from financial institutions about potentially suspicious financial transactions.

⁴⁰ On the format and content of indictments, the Prosecutor General instead asked the Supreme Court of Cassation for an interpretative ruling in order to clarify the legal basis (set out in Article 246 of the criminal procedure code). In its response, however, the court limits itself to referring to a previous interpretative ruling from 2002, considering that no further guidance is necessary.

⁴¹ A positive recent step in this regard was a new rule to limit the duration of the preliminary enquiry to three weeks. Previously, such enquiries have been reported to continue for very long periods in some cases.

⁴² The victim may only appeal to a higher ranking Prosecutor's Office. Ultimately the Prosecutor General may also decide on the opening of an investigation in exceptional circumstances.

⁴³ See also recommendation 8 below.

⁴⁴ *Kolevi vs Bulgaria*, [https://hudoc.echr.coe.int/eng#{"itemid":\["001-95607"\]}](https://hudoc.echr.coe.int/eng#{). This issue is also relevant in relation to recommendations 7 and 8 below. Although the issue was identified specifically in regard to the

The difficulties encountered in identifying and agreeing on legislative solutions to address highly formalistic procedures in Bulgaria highlights the complexity and sensitivity of the issues at stake. These issues are deeply entangled in legal tradition and institutional convention, and may therefore require a broader change in culture for greater trust to develop in the relations between different parts of the judiciary.⁴⁵

A similar challenge affects the efforts to modernise outdated provisions of the Bulgarian criminal code. As described in previous reports⁴⁶, attempts at comprehensive reform of the code have not been successful in the past and the Bulgarian authorities have therefore directed their efforts rather towards more targeted amendments to facilitate the prosecution of corruption crimes. However, even this more limited approach ran into problems in spring 2018, when a set of amendments concerning private sector corruption was met with broad opposition from stakeholders across society, prompting the legal affairs committee of the National Assembly to postpone their adoption in order to carry out additional consultations with stakeholders.⁴⁷

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

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.

This recommendation envisages a mechanism for involving stakeholders and the wider public in the setting of priorities for further work under the 2014 judicial reform strategy.⁴⁸ In response, the government has established a cycle of half-yearly reporting and consultations with stakeholders on the implementation of the judicial reform strategy. The government has also maintained the consultative Judicial Reform Council, which bring together stakeholders to discuss ongoing reform initiatives.⁴⁹

These mechanisms constitute useful complements to formal stakeholder consultations on new legislative initiatives and could promote a wider debate among stakeholders, including the judicial professions, on the direction of judicial reform in the coming years. Such wider debate is necessary in areas where reforms require coordination between the different branches of government and could be used to involve the wider public in decisions on issues such as updating of the court map, introducing e-justice solutions, and enhancing public accountability and transparency in the judiciary.⁵⁰

prosecution, the Bulgarian authorities have decided to broaden the scope of their deliberations to all the three top figures within the judiciary.

⁴⁵ Some observers have pointed out that the formalism affecting Bulgarian criminal court procedures is at least partly the result of a low level of trust within the judges profession in the professionalism and impartiality of the investigating and prosecuting authorities.

⁴⁶ COM(2017) 43, p. 5.

⁴⁷ The debate once again raised the issue of trust in institutions, as opposition was at least in part a reflection of concerns over the extension of investigatory and prosecutorial authority in the realm of private sector economic relations.

⁴⁸ An English version of the strategy can be found via this link: www.strategy.bg/FileHandler.ashx?fileId=5570

⁴⁹ Over the past year, the council held regular meetings in December, March and July as well as an extraordinary meeting in November 2017. Topics covered have included draft amendments to the judiciary system act and the penal code, follow-up to the CVM report of November 2017, and the report on the implementation of the judicial reform strategy. Some stakeholders have expressed concern that the meeting on the last topic did not leave sufficient room for debate, possibly indicating a need for further consultations.

⁵⁰ Some observers have indicated that judicial reform has not had a high profile on the public agenda over the past year, as other issues have tended to take priority.

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.

While the engagement in broader debate on judicial reform strategy remains important, a number of more concrete challenges have been left over from the previous Council and now figure prominently on the agenda of the SJC. This concerns in particular the issues of how to address the unbalanced workload situation across the various jurisdictions. As described in previous reports, there remains a large discrepancy in workload among the different courts, which affects in particular the larger courts in the capital and larger cities. The efforts of the previous SJC were mainly focussed on developing common standards for the assessment of the issue, as a basis for agreeing on remedies.

Some incremental reallocation of posts among courts has also taken place over the years in the direction of the more busy courts. It has been argued that this approach has its limits, as some of the courts concerned are already very large and a further increase in staff would run into limits in terms of suitable premises and result in the number of judges at certain courts becoming too high for an effective staff management to be possible.⁵¹ Nevertheless, discussions are under way exploring how to further strengthen the Sofia City and Regional courts with additional posts.⁵²

The new SJC has also engaged in a dialogue with the government and legislature to explore possible ways of addressing the workload issue through legislative changes, by redistributing the competence for certain types of cases among courts. For various reasons, many civil law cases are concentrated in the Sofia courts, whereas the citizens concerned are spread out throughout the country.⁵³ A number of potential legislative options have been under consideration, and amendments concerning certain consumer and insurance claim cases were promulgated in August 2018.⁵⁴ Further changes are expected to be developed with assistance from the Commission's Structural Reform Support Service.⁵⁵

In the longer term, the Bulgarian authorities envisage that such legislative solutions could be combined with adjustments in the geographic structure of jurisdictions, that is, a reform in the judicial map. As already noted in the November 2017 report⁵⁶, this process is furthest advanced with regard to the prosecution service, where already in spring 2017 the previous SJC discussed in principle an approach to the consolidation of local offices throughout the country. Further steps towards implementation have been held back by uncertainty over the future plans with regard to the local courts.⁵⁷ In the meantime, the prosecution is currently pursuing an incremental approach, in which a

⁵¹ A concern often raised by judges at the Sofia courts is the access to suitable physical premises. A dialogue is ongoing with the Ministry of Justice on ways to rationalise the management of court premises in order to seek partial solutions to this issue.

⁵² This discussion follows consultations with the management of a number of courts around the country and would entail the reallocation of vacant positions as well as the possible voluntary transfer of judges towards the Sofia courts. It was also decided to allocate three posts to the Specialised criminal court, and explore the possibility of further voluntary transfers, in light of the additional responsibilities for high-level corruption cases assumed by that court in November 2017.

⁵³ One reason is the location of many company headquarters in Sofia.

⁵⁴ In consumer or insurance cases the concentration of trials in Sofia has created challenges not only in terms of workload, but also with regard to access to justice for citizens who are forced to travel or take legal representation in the capital. A reallocation of such cases closer to the citizens affected is therefore expected to serve a double purpose, alleviating the burden on the Sofia courts while at the same time improving the ease of access to justice.

⁵⁵ This concerns the development of a system for digital handling of payment order proceedings, where a project proposal was submitted by the Bulgarian authorities in the summer 2018.

⁵⁶ COM(2017) 750, p. 6.

⁵⁷ Bulgaria has 113 local courts and prosecutors' offices for a population of little over 7 million inhabitants. While there is broad consensus on the need for a rationalisation of the prosecutor's offices into fewer entities, the closing of local courts has proven to be more contentious on the local level. Nevertheless, a rational approach to the closing of prosecutors' offices would naturally take into account where the remaining local courts will eventually be situated, hence raising the need for a coordinated approach.

limited number of local offices will be consolidated during a pilot phase⁵⁸, to be followed by further steps in the context of a broader plan for the reform of the local courts.⁵⁹

It is still to be seen when the blueprint for a broader reform will be ready. The previous SJC had launched a package of large projects with funding from the European Social Fund⁶⁰ for the development of a concept for the reform of the judicial map and the development of e-justice. The package covers not only the development of a concept for the reform of the court map but also elements for the future Bulgarian e-justice system.⁶¹ However, these projects have seen significant delays under the previous SJC. In light of the limited progress made, the new SJC has since relaunched the process and agreed an extension of the relevant deadlines.⁶²

Recommendation 7: *Establish a roadmap for the implementation of the recommendations of the SRSS 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.*

The Bulgarian Prosecutor's Office forms part of the magistracy and retains a pivotal role in Bulgarian society, with the Prosecutor General's office counting among the key institutions of the State.⁶³ The independent and powerful role of the Prosecutor's Office has over the years given rise to controversy, with concerns expressed about a perceived lack of accountability for prosecutorial decisions and possible risks to judicial independence. Due to its central position within the overall criminal justice system, the prosecution has also been a natural focal point for criticism of limited progress in the fight against corruption and organised crime in Bulgaria. The result was calls for reform to enhance transparency and accountability in the prosecution and to ensure effective and independent investigations. A number of legislative and organisational reforms have sought to reflect such concerns over the years⁶⁴, and in 2016 a project was organised by the Commission's Structural Reform Support Service to carry out an independent and comprehensive analysis of the Prosecutor's Office, to provide suggestions for ways to improve the system.⁶⁵

The independent expert analysis was welcomed by the Bulgarian authorities and was followed up through a number of initiatives set out in a roadmap in summer 2017. The November 2017 CVM report noted that while many measures were already being implemented, some initiatives were still

⁵⁸ The decision to close 11 local offices (out of 113) was taken in July and is expected to enter into force in January 2019. Public protests in some of the localities concerned prompted the Prosecutor's Office to take additional measures to inform local communities and alleviate concerns about the possible implications of the plans, highlighting the sensitivities involved.

⁵⁹ On the side of the courts, the option of addressing workload through limited changes to the territorial jurisdiction of the Sofia courts, pending a decision on possible broader changes to the judicial map, is reportedly also being considered.

⁶⁰ Under the Operational Programme for Good Governance (OPGG) the European Social Fund has earmarked up to 30 million euro for the 2014-2020 programming period for projects in the area of judicial reform in Bulgaria.

⁶¹ A more streamlined use of ICT across the courts would contribute to enhancing the efficiency and transparency of court proceedings and could also contribute to a more effective use of staff resources.

⁶² Different elements are now expected to be finalised in stages towards the end of 2020.

⁶³ This is often characterised as a legacy of communist times, and this model exists in a number of former communist countries.

⁶⁴ For example, legislative changes in 2016 aimed to clarify the legal framework for exercising hierarchical authority over the decisions of individual prosecutors and lower level prosecutors' offices, notably by requiring instructions to be reasoned, made in writing and respecting the independence of the responsible prosecutor on the case, and by restricting the formal power of instruction of the Prosecutor General vis-à-vis individual prosecutors, giving a stronger role to the different steps in the organisational hierarchy.

⁶⁵ The project was carried out by an independent expert team of prosecutors from Germany, France, Spain and the Netherlands, under the aegis of the Commission's Structural Reform Support Service. An executive summary of the final report can be found at the website of the Ministry of Justice:

<http://www.mjs.bg/Files/Executive%20Summary%20Final%20Report%20BG%2015122016.pdf>

ongoing or needed to be translated into a clear plan of action in key areas.⁶⁶ The latter referred in particular to initiatives envisaging possible legislative amendments, which were to be discussed in working groups under the Ministry of Justice with involvement of the relevant stakeholders. As mentioned under recommendation 4 above, these discussions still continue in some areas, notably regarding the role of the preliminary enquiry and the procedure to ensure an independent investigation in the event of serious allegations relating to a Prosecutor General while in office. In other areas, however, discussions have led to the conclusion that the issues concerned cannot adequately be dealt with through legislative amendments, the implication being that focus should rather be on practical and organisational measures to address the issues raised in the analysis.

The Prosecutor's Office has reported that the wide range of organisational measures which were within its own remit of authority⁶⁷ have largely been implemented or are being implemented on an ongoing basis. Additional organisational measures may also be appropriate for some issues initially referred for legislative follow-up where it was eventually concluded that legislation was not the solution.⁶⁸

Two key aspects that were highlighted in the analysis and which appear to have been particularly sensitive in the Bulgarian context were how to deal with hierarchy and accountability. An important conclusion was that while the system needs to ensure the necessary space for prosecutors to do their job in an autonomous fashion, this does not necessarily imply the total absence of supervision by the management. Experts pointed to the fact that in many systems it would be normal, especially in high-profile cases, that the management takes responsibility for key decisions, depending on the sensitivity of the issue. This turned out to be one of the more controversial recommendations in the Bulgarian context, reflecting strong sensitivities surrounding the exercise of hierarchic authority within the prosecution.⁶⁹ Given that the organisation of the Bulgarian Prosecutor's Office retains strong hierarchic features, the balance struck in terms of managerial responsibility will remain an issue of legitimate debate.

The second aspect mentioned concerns external accountability. The prosecution should be independent in its day to day functioning. At the same time, the management should also be accountable towards wider society. A recommendation made in this regard was for a stronger parliamentary oversight role by the National Assembly. In response to this, the National Assembly in 2017 initiated a practice of calling on the Prosecutor General to appear before the Legal Affairs Committee every three months, to provide information on current developments involving the prosecution.⁷⁰ Members of the Legal Affairs Committee reported satisfaction with the frequency and depth of these meetings. Other aspects of accountability that are relevant in this context, such as communication with the public, judicial oversight of prosecutorial decisions, disciplinary procedures, and appointments to prosecutorial office, are also covered in other recommendations.⁷¹

⁶⁶ See COM(2017) 750, p. 6-7; SWD(2017) 700, p. 9-12.

⁶⁷ SWD(2017) 700, p. 11.

⁶⁸ See recommendation 4 above.

⁶⁹ The recommendation was seen as going against the direction taken in recent reforms, which have aimed at protecting the independence of individual prosecutors by restricting the possibilities of management to intervene in decisions. While in reality it is unlikely that any prosecutor would be able to work effectively on a major case without the support of his or her management – tacit moral support at the very minimum – the suggestion that managers should be regularly involved in important decisions on cases, beyond the limited possibilities already provided for in the law, was met with strong resistance.

⁷⁰ In addition, the Prosecutor General regularly appears before various other committees whenever relevant topics are discussed. There is also an annual debate in the National Assembly of the annual reports of the judicial institutions.

⁷¹ Appointments and disciplinary proceedings are within the responsibilities of the prosecutors' chamber within the SJC, which is chaired by the Prosecutor General and brings together an additional five members elected by prosecutors and investigating magistrates as well as five members elected by the National Assembly.

Recommendation 8: Establish a roadmap for the implementation of the recommendations of the study [of European Court on Human Rights rulings], including a mechanism for the reporting of progress to the wider public.

The European Court on Human Rights in 2015 identified a systemic problem concerning the effective investigation of crime in Bulgaria, based on a large number of cases reaching the court over the previous years. This led the Bulgarian authorities to carry out an in-depth analysis of the past case law of the European Court on Human Rights with regard to Bulgaria, and in 2017 the government and prosecution set out a number of measures to be considered in order to address the shortcomings identified. Many of the issues overlap with those identified under recommendations 4 and 7 above, including challenges linked to formalistic procedures, and have therefore been discussed in the context of possible amendments to the criminal procedure code.⁷²

In addition to possible legislative initiatives, a number of measures of a more managerial nature have also been taken within the prosecution to address the issues identified.⁷³ In June 2018, the Prosecutor's Office and the Ministry of Justice signed a cooperation agreement setting out a framework for the coordination of the follow-up to any future cases with the European Court on Human Rights concerning alleged shortcomings concerning the effective investigation of crimes in Bulgaria. The agreement provides that such cases will be followed closely by the relevant Prosecutor's Office, in order to make sure that the Ministry of Justice is provided with all relevant information about measures taken in regard to the case concerned. The relevant office will be supervised by the Supreme Cassation Prosecutor's Office, which will also identify any issues of broader relevance deemed to require an organisational or methodological follow-up within the prosecution. Any rulings pronounced by the Court are to be published on the website of the Ministry of Justice, to be followed up with the publication of annotated comments from the Prosecutor's Office.

Measures for the implementation of rulings of the Court⁷⁴ will be prepared by the Ministry of Justice with the assistance of the Supreme Cassation Prosecutor's Office, which will also internally coordinate any measures to be taken within the remit of the prosecution and report back to the Ministry of Justice.

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

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.

In the January 2017 report the fight against corruption was identified as an area where only limited progress had been achieved over the ten years under the CVM. A national anti-corruption strategy had been adopted in 2015 but implementation remained in an early stage. Efforts to address endemic corruption and lack of trust in institutions had therefore had few results over the years. The investigative and judicial follow-up to allegations of high-level corruption seldom resulted in final convictions in court. Preventive mechanisms were hampered by institutional fragmentation and a lack of coordination. Key institutions suffered from a general lack of support from the political establishment and in some cases had been affected by high profile scandals.⁷⁵

⁷² For example, a key issue identified in the case law concerns instances where ineffective judicial review on prosecutorial decisions has hampered the right of victims to an effective investigation. As discussed above, this is partly related to the ongoing debate on possible changes to the role of preliminary enquiries.

⁷³ SWD(2017) 700, p. 12.

⁷⁴ The Council of Europe monitors the implementation of rulings of the European Court on Human Rights through regular reviews of action plans prepared by the representations of the Member States concerned.

⁷⁵ Most notably, the Commission for the Prevention and Ascertainment of Conflicts of Interest lost its chairman in 2013 amidst allegations of abuse of powers and having directed the activities of the commission for

In this context, a key initiative of the Bulgarian government in 2015 was the presentation of a major legislative reform which aimed at merging a number of existing institutional structures into a unified, independent anti-corruption agency charged with the investigation and verification of conflicts of interest and private assets of high level officials, as well as the general promotion of measures for the prevention and detection of corruption in public institutions.⁷⁶

The progress of this legislative initiative was difficult. The proposal was first rejected by the National Assembly in 2015 due to political opposition to allowing the new agency to act on anonymous alerts. A revised version of the law was presented in 2016 but parliamentary negotiations were still underway when a political crisis resulted in the resignation of the government towards the end of 2016, followed by the dissolution of Parliament and a general election in March 2017.

In autumn 2017 the government presented a revised proposal to the National Assembly which was adopted in December of the same year. However, concerns were raised about some aspects of the new law, notably what was seen as weak provisions on whistleblower protection as well as the fact that the management of the new agency was to be elected by a simple majority in the National Assembly, raising concerns over possible politicisation.⁷⁷ The political tensions over the new law came to a head when the President of the Republic issued a veto, sending the legislation back to the National Assembly for a second hearing. In January the National Assembly overruled the Presidential veto and the law entered into force.⁷⁸

With the new legislation in force the new anti-corruption agency⁷⁹ was formally established, through a merger of existing structures. The law ensured a seamless transition with the staff and resources of the pre-existing institutions automatically incorporated into the new structure. In March 2018, the National Assembly elected the chair of the former Commission for illegal asset forfeiture as the director of the new agency.⁸⁰ The deputy director as well as remaining three members of the

political ends. The post of chairman was never filled and remained vacant in subsequent years, as did another seat on the five member board, with the result that all decisions of the commission required a unanimous decision of the remaining three members.

⁷⁶ Originally, the new institution would incorporate the Commission for the Prevention and Ascertainment of Conflicts of Interest, the centre for the prevention of corruption and organised crime (BORKOR), the anti-corruption directorate of the State Agency for National Security and the part of the National Audit Office in charge of the verification of asset declarations for high level public officials. In the final version presented by the current government in autumn 2017, the Commission for Illicit Asset Forfeiture was also included, significantly raising the profile of the new agency.

⁷⁷ As the agency was not allowed to act on anonymous alerts, the issue of whistleblower protection had particular relevance. On the issue of politicisation, this concern has notably been raised by opposition politicians. The main opposition party in the National Assembly had presented its own proposals under which the management would be appointed by the President of the Republic. Others have however pointed out that the President of the Republic is also a political figure and that no procedure can be entirely without risk of politicisation.

⁷⁸ The President can veto legislation once but cannot oppose a law that has been reconfirmed by an additional vote in the National Assembly.

⁷⁹ The agency is formally named the Commission for Counteracting Corruption and Illegal Assets Forfeiture.

⁸⁰ The procedure was transparent and featured an open contest between two qualified candidates, with the successful candidate supported by the governing coalition and the former acting chair of the conflict of interest commission having the support of the main opposition party. The procedure involved the presentation by both candidates of their personal concepts for the work of the new agency as well as an opportunity for civil society to raise questions, which served as a basis for a public hearing in the anti-corruption and parliamentary ethics committee of the National Assembly, followed by the vote in plenary on 8 March. The Director is elected for a term of 6 years.

management were subsequently confirmed by the National Assembly on a proposal of the director.⁸¹ By the end of April the transition was largely complete.

The new anti-corruption agency has a wide mandate. One key responsibility is the verification of personal interest and asset declarations of about 15,000 high-level officials, including ministers, mayors and key civil servants, as well as conducting administrative investigations into alleged misconduct by such officials in the course of their duties. The agency has the authority to use special investigatory means, including covert surveillance operations.⁸² While it does not have the status as a criminal investigatory agency, it may be requested by the Prosecutor's Office to assist in the investigation of corruption cases by verifying circumstances and collecting information. It does not have the power to carry out arrests or other police activities.

Another major area of activity for the new agency will be the promotion of general corruption prevention throughout the public administration and the wider society. As such, it will be working closely with the National Anti-corruption Policies Council, which remains the main forum for the coordination and development of government policy in the area.⁸³

Finally, the agency takes over the responsibilities of the former asset forfeiture commission in the area of the seizure and confiscation of criminally acquired assets. The new law has incorporated all the main features of the previous legislation on asset forfeiture, including the ability to confiscate assets through a civil law procedure (non-conviction based confiscation) as well as the relevant staff and resources. These functions are also managed under the authority of an especially assigned member of the management.

The anti-corruption agency has now been in operation for little over half a year. The transfer of a number of separate organisational entities into a single institution has reportedly been finalised without major incident or interruptions in the work. A wide range of agreements have been concluded with relevant counterparts in order to ensure continued cooperation with the various institutions and access to relevant information.

A number of difficult challenges will have to be addressed by the new agency as it begins developing a track record. The success of the new agency over the longer term will depend on its ability to draw synergies between the different parts, the idea behind the new agency being that bringing together these pre-existing structures should result in improved efficiency and effectiveness while also enhancing coordination within the corruption prevention system, as well as visibility towards the society at large.

Apart from the evident challenge of effectively managing an institution with such a wide remit, while at the same time being able to focus on key priorities, another challenge will be to establish a track record and a reputation for neutrality and impartiality. As an element of transparency, the law provides that the agency is to be accountable towards the National Assembly, which can request its management to appear and to provide information on its activities. The agency will also publish an annual activity report.⁸⁴ As some stakeholders have voiced concerns over possible attempts to exert political or other undue influence on the agency's work, a key challenge for the agency will be to

⁸¹ The deputy director and remaining three members of the commission heading the agency are nominated by the Director and confirmed by the National Assembly in a procedure similar to the procedure for the election of the Director, with a public hearing in committee followed by a plenary vote.

⁸² These are conducted under the authority of the directorate that was transferred from the State Agency for National Security, which was also responsible for carrying out such investigations under the previous institutional set-up. It works under the direction of the deputy director of the agency and its staff has a special status, similar to that of agents of the State Agency for National Security.

⁸³ It is chaired by a national anti-corruption coordinator, currently the deputy Prime Minister for judicial reform, and brings together all the main institutions involved in anti-corruption work together with representatives of civil society.

⁸⁴ The first activity report is expected in spring 2019.

ensure transparency and trust around its work, in full respect of the necessary confidentiality around sources and concrete investigations.⁸⁵

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

The network of internal inspectorates within national ministries play a pivotal role in preventing and detecting corruption within the State administration in Bulgaria. A key element envisaged in the anti-corruption strategy adopted in 2015 was the strengthening of these structures through a clearer legal framework and better coordination. Legislative amendments to this effect were adopted in the autumn of 2017 after two years of preparation.

The new legal framework is currently being implemented, based on a government ordinance adopted in June 2018. It provides for clearer rules and standards regarding the number of inspectorates, minimum requirements for staff, functions of inspectorates, rights and obligations of inspectors, reporting and planning of inspections and transparency of results towards the public.⁸⁶

Under the new rules the content of inspections is more clearly regulated, as are the requirements for any follow-up by the services concerned on recommendations given on the basis of the inspection. Furthermore, the chief inspectorate, reporting directly to the Prime Minister's Office, is given a formal coordinating role, with the authority to provide guidance and assess the work of other inspectorates. The implementation of these new rules should provide a more coherent and coordinated approach across the State administration. Implementation is ongoing. Notably, competitions for additional staff for the inspectorates are in preparation for early 2019 in order to boost the number of inspectors in line with the new standards.⁸⁷ Additional specialised training programmes for inspectors are also being put in place in connection with the implementation of the new law.

With the reform of the general anti-corruption legislative framework adopted at the beginning of 2018⁸⁸, the inspectorates were given important new responsibilities in regard to the verification of interest and asset declarations as well as the assessment of concrete instances of potential conflicts of interest for staff at lower levels within the State administration. The new rules constitute a significant extension of the requirement to declare interest and assets, which now apply to all public officials.⁸⁹ The need to carry out related verifications may require additional staff to be assigned to the inspectorates as well as appropriate methodologies for their practical implementation. General rules were set out in a government ordinance in September 2018, which provides that verifications should follow a risk-based approach, in accordance with a methodology to be developed by the new anti-corruption agency.⁹⁰

⁸⁵ A recent law enforcement operation where the agency was involved drew criticism for alleged violations of the rights of individuals concerned. Questions have also been raised about the extent to which the agency should be obliged to publicly explain decisions not to open an investigation on the basis of an alert from the public.

⁸⁶ Reportedly the practice on such issues varied widely between ministries in the past.

⁸⁷ The ordinance sets minimum standards for the staff numbers in inspectorates, based on the size of the administration they are covering. In some cases, such as the Ministry of Interior, these standards will require a significant increase in the number of inspectors.

⁸⁸ See under recommendation 9 above.

⁸⁹ The requirement for all government staff to submit such declarations is new. The anti-corruption agency is only responsible for the verification of declarations of the approximately 15,000 high level officials defined in the law. Remaining staff will be covered by the relevant government bodies themselves. For the State administration, this task falls to the inspectorates. Concerns have been raised in this regard about the very wide scope of the new requirements, which, depending on the method of verification, may pose a very extensive administrative burden on the public administration.

⁹⁰ This should help ensure a more effective use of the limited resources at the disposal of the inspectorates in regard to this new task, as the inspectorates will not have to systematically verify all declarations, as is the case for those of high level officials, but can concentrate on high-risk categories of staff. Rules also differ

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.*

An effective anti-corruption system needs to cover the whole chain of prevention, detection, investigation, prosecution, and adjudication in the courts. The criminal justice system forms a key part of any successful strategy. The challenges facing Bulgaria in this area have to a large extent already been mentioned under benchmarks 2 and 3 above. Nevertheless, due to the importance of corruption in the Bulgarian context, this recommendation aimed at ensuring a specific focus on this particular challenge. The response by the Bulgarian authorities was set out in a separate roadmap in 2017 and included measures ranging from consideration of possible legislative changes to initiatives of a more managerial nature such as revamping training and strengthening the units dealing with the investigation and prosecution of corruption cases.⁹¹

Implementation of the envisaged measures are at various stages of completion. They include, as already mentioned, the strengthening of the specialised prosecutor's office for organised crime with additional prosecutorial and investigative staff, as well as the development of agreed modalities for close cooperation of the prosecution with all the various relevant agencies, including the organised crime directorate of the Ministry of Interior, the new anti-corruption agency, the public inspectorates, tax and customs agencies, and the State Agency for National Security.⁹² In addition, a wide range of training initiatives have been launched for the relevant staff.

Finally, various options for legislative follow-up have been analysed, with some proposals still under consideration.⁹³ Although legal barriers may be important in some instances, it seems clear that legislative amendments on their own will not provide a full solution to the challenges hampering the effective investigation and prosecution of corruption in Bulgaria. These challenges will also require continued efforts by all the relevant institutions and agencies, to raise motivation and trust among staff and to improve the environment for effective cooperation.⁹⁴

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.*

An important step in regard to the development of a track record of investigations into allegations of high-level corruption is to ensure public accountability and transparency around such investigations and the related judicial proceedings. This recommendation aims at facilitating public access to information about corruption cases and court proceedings, in full respect of fundamental rights.

The November 2017 report already noted the establishment of a public website at the Supreme Court of Cassation presenting information on ongoing court proceedings, based on reporting from the various appellate regions. The report also noted the already existing accounting mechanisms in the form of annual reports and regular relations with the media. The National Anti-corruption Policy

from those applicable to high level officials in terms of penalties and public access to the information gathered.

⁹¹ SWD(2017) 700, p. 14-15.

⁹² While parts of the State Agency for National Security has been transferred to the new anti-corruption agency, the security agency continues to play an important role, notably in providing intelligence for financial crime investigations through its financial intelligence directorate. One of the issues highlighted in the analysis of the Prosecutors Office by independent experts in 2016 concerned the follow-up by law enforcement to intelligence reports from the financial intelligence directorate.

⁹³ The legislative changes under consideration largely overlap with those already discussed above under benchmark 2 and 3, including in response to the independent analysis of the prosecution service and the analysis of the follow-up to cases at the European Court for Human Rights.

⁹⁴ This also concerns the relations between prosecution offices and courts.

Council has also published summary information gathered from prosecution and courts on its website. More recently, the Council has initiated the development of more elaborate standards for the presentation of this information and is exploring the possibility of establishing a more comprehensive reporting mechanism based on automatic retrieval of information from the unified information system handling criminal cases.⁹⁵ Ultimately, the aim is to present information on the whole chain from prosecution over court procedures and to enforcement in a single place.

The Bulgarian authorities report that a number of large scale investigations are underway and several cases concerning former high-level officials have entered the trial phase. A limited number of cases have led to final convictions in court.⁹⁶ Significant cases of organised corruption that are being investigated by the authorities have recently appeared in the public domain.⁹⁷

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

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.

In November 2017 the Bulgarian authorities launched a review of the public procurement system, with assistance from the World Bank.⁹⁸ The project includes a component which will assess the overall institutional capacity of the national Public Procurement Agency with particular attention paid to the agency's functions related to ex ante checks on public procurement procedures. The project, which also includes a broader assessment of the entire system, is expected to be completed in early 2019 and result in concrete recommendations for follow-up by the Bulgarian authorities. Serious risks of corruption in public procurement continue to be a concern in regard to Bulgaria.⁹⁹

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.

As noted in the November 2017 report, the sectorial anti-corruption plans were made subject to a general review in the autumn of 2017 in order to assess their effectiveness and identify ways of improving the overall system. Based on this review, the National Anti-corruption Policy Council agreed a set of comprehensive guidelines for such plans in early spring 2018. The guidelines set out an agreed framework for the implementation of such plans in a regular cycle involving the adoption of the plan by the respective minister at the beginning of the year and regular reporting on its implementation. The plans are drawn up and implemented within each ministry under the supervision of working groups chaired by a deputy minister and composed of the internal inspectorates and specialised department heads, together with high level officials for legal affairs, public procurement and general administration.

New sectorial anti-corruption plans were finalised by all Ministries under the new guidelines in March 2018 and submitted to the National Anti-corruption Policy Council, which is in charge of overall

⁹⁵ The decision to move ahead on this is still to be made pending a study on the technical feasibility of developing such a mechanism.

⁹⁶ The Prosecutor's Office reports a significant number of high-level officials being charged with corruption offences in the first half of 2018, including one minister, two deputy ministers, and several mayors. Indictments have been rendered in court for one member of parliament, three ministers, two deputy ministers, and several mayors. A number of cases have also recently resulted in convictions, including six cases involving mayors.

⁹⁷ This includes alleged large scale organised fraud involving State officials in the granting of Bulgarian citizenship to foreigners against the payment of bribes.

⁹⁸ The project is financed by the European Social Fund (Operational Programme "Good Governance").

⁹⁹ Recent revelations by investigative journalists concerning possible massive frauds targeting procurement in EU funded programmes are currently being investigated by law enforcement.

coordination and evaluation of progress.¹⁰⁰ The plans cover a wide range of risk areas such as the management of public funds, procurement, provision of administrative services, concessions, granting of licences and permits, registration regimes etc. and should provide for measures to address any risks identified in the respective areas. Concrete measures already taken have a strong emphasis on training of personnel, especially in management positions and potential risk areas. In addition, a wide range of organisational measures have been taken in various sectors such as rotation of personnel,¹⁰¹ introduction of electronic services, dissemination of information to staff and private interlocutors to facilitate compliance, and mechanisms to gather feedback from stakeholders.¹⁰²

Particular attention continues to be given to the prevention of corruption within the Ministry of Interior and at the borders. Measures already in use include rotation of personnel in sensitive posts, video-surveillance¹⁰³ and the expansion of the use of electronic services.¹⁰⁴ A new system of integrity checks for Ministry of Interior personnel is planned to be implemented over the coming months.¹⁰⁵ In addition, a special department is being set up to deal with interest and asset declarations and options for electronic processing of the declarations are being explored.¹⁰⁶ Measures implemented by the Ministry of Interior as well as the Customs Authorities to specifically address corruption at the borders also include mobile checks behind the border as well as information flyers and hotlines for the public to report irregularities.¹⁰⁷

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 2017 report mentions the continued operation of the National Anti-corruption Policies Council, which is responsible for the overall coordination and evaluation of progress under the national anti-corruption strategy. In 2018 the composition of the council was expanded to include deputy chairs of the supreme courts as well as the deputy of the new anti-corruption authority. In addition, the civil council attached to it is expanded from 9 to 11 members and allowing for the participation of business associations in addition to general civil society organisations. At the same time, rules were adopted for a more transparent selection of representatives from civil society, based on a regular rotation of membership.

¹⁰⁰ In addition, under the new law adopted at the beginning of 2018, the new anti-corruption agency is expected to play a role in terms of analysing existing anti-corruption measures and proposing possible improvements.

¹⁰¹ For example the customs agency applies an extensive system of random rotation of personnel in order to prevent opportunities for the development of corrupt practices at local level.

¹⁰² The National Revenue Agency has for example established a coordination council with employers' associations and other private stakeholders to discuss challenges related to tax compliance, which covers the issue of how to address possible corruption risks.

¹⁰³ Video cameras have been installed in traffic and security police cars and at border check points.

¹⁰⁴ The Ministry of Interior is delivering 37 percent of its services electronically and has an objective of reaching 50 per cent. This covers for example the electronic administration of fines.

¹⁰⁵ This project drew on experience sharing by counterparts in the United Kingdom in particular.

¹⁰⁶ In the Ministry of Interior the requirement for all personnel to submit personal interest and asset declarations will cover up to 40,000 people and will require electronic processing in order for the system to be effective, allowing inspectors to focus on problematic cases. The Ministry is looking at experience in other Member States to gather inspiration in this area.

¹⁰⁷ The authorities acknowledge a continued challenge in this area but consider that the extent of the problem has reduced since a peak around 2015. Multilingual teams have been put in place and there is an objective to react to alerts within 24 hours, also involving the Prosecutor's Office where necessary. One challenge in this respect has apparently been linked to the fact that many irregularities are only reported once the victim - often transiting through Bulgaria - has returned to his or her country of residence. This delay complicates effective follow-up.

The council continues adopting annual progress reports on the implementation of the national anti-corruption strategy from 2015 and monitoring the implementation of anti-corruption measures throughout the public administration.¹⁰⁸

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 in these areas

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.*

The measures taken by Bulgaria to develop a system for the systematic reporting of progress on high-level corruption cases, as set out under recommendation 12 above, also cover reporting on organised crime cases. Implementation of this recommendation is therefore at a similar stage as described above.

The January 2017 report acknowledged a general change in the overall crime picture over the ten years to 2017¹⁰⁹ as well as the ability of the specialised court and prosecution office, set up in 2012, to establish the beginning of a track record of final convictions in serious organised crime cases. The authorities report that the institutions continue to consolidate their track record in this area.¹¹⁰

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.*

As noted in the November 2017 report, the relevant legislative amendments have been implemented. In the meantime, a new comprehensive reform of the legislative framework for the fight against corruption in Bulgaria was adopted in January 2018, which incorporates the pre-existing law on confiscation of criminal assets and integrates the former asset forfeiture commission in a new unified anti-corruption agency.

As regards confiscation of criminal assets, the new law retains the main features of the previous legal framework¹¹¹, and the administration of the former commission has been effectively incorporated into the new agency in a manner which appears to have ensured continuity in its functions. Data for 2018 do not so far indicate any adverse impact on the relevant proceedings and the Bulgarian authorities have reported no complications linked to the introduction of the new legal or institutional framework.

¹⁰⁸ See also recommendation 14 above.

¹⁰⁹ The Bulgarian economy and society remains vulnerable to infiltration by organised crime for a number of reasons, but there has been a clear improvement compared to the situation in the mid-2000s, notably in terms of the level of open violence associated with organised crime gangs.

¹¹⁰ In the first half of 2018, the Specialised Prosecutor's Office obtained 104 convictions in cases involving organised crime and initiated 100 new pre-trial proceedings. For the entire 2017, the corresponding figures are 261 convictions and 162 newly initiated pre-trial proceedings.

¹¹¹ The Commission addressed on 8 November 2018 a reasoned opinion to Bulgaria for not having fully communicated the national measures taken to implement Directive 2014/42/EU. Bulgaria should have implemented the Directive by 4 October 2016.