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TO THE EUROPEAN PARLIAMENT AND THE COUNCIL**

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

BULGARIA: Technical Update

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 - *Implement the new legislation to combat money laundering*

Note:

Under each of the six benchmarks, several issues of particular concern were mutually agreed when the Cooperation and Verification Mechanism was created in December 2006. These issues are listed above. You may consult previous reports at: http://ec.europa.eu/dgs/secretariat_general/cvm/index_en.htm

1. BENCHMARK 1: ADOPT CONSTITUTIONAL AMENDMENTS REMOVING ANY AMBIGUITY REGARDING THE INDEPENDENCE AND ACCOUNTABILITY OF THE JUDICIAL SYSTEM

Judicial inspections

In the reporting period, the Inspectorate to the Supreme Judicial Council continued to carry out its *planned, thematic and ad hoc inspections*.¹ By end 2010, it completed reviewing all the judicial bodies in Bulgaria, including courts, prosecution offices and investigative services, with the exception of administrative courts. A standard methodology has been established and, since 2010, follow-up checks to monitor the implementation of recommendations have been applied.² In 2011, the Inspectorate intends to deliver further *planned inspections* of 22 judicial bodies and 10 *thematic inspections* with a focus on the recurring problems identified during previous inspections as well as on non-unitary interpretation of legal provisions.

In the reporting period, several *ad-hoc inspections* have been launched in response to media publications, including a real-estate case involving senior magistrates.³ The Inspectorate also performed inspections of several high-level cases monitored by the Supreme Judicial Council (SJC) and issued recommendations. Through its inspections, the Inspectorate has gathered comprehensive data on the functioning of the judicial system in Bulgaria and could identify best practices as well as persisting shortcomings. Although the Inspectorate reports that follow-up checks confirm a positive impact of the inspections on the performance of judicial bodies, it appears that the Inspectorate's findings and recommendations are not used to identify persisting structural deficiencies and shortcomings in judicial practice in a systematic manner with a view to supporting the judicial reform. A strategic approach as to how certain problems may be addressed through managerial measures, structural reforms or through legal amendments is missing. The follow-up to the Inspectorate's recommendations depends entirely on the administrative heads of courts, although it is clear that some problems, such as imbalances in workload among judicial bodies, cannot be successfully addressed by court heads alone. A number of systemic problems require the intervention of the Supreme Judicial Council, the General Prosecutor and the supreme judicial bodies. The SJC has recently endorsed recommendations of some inspections by publishing the reports on its website. An active follow-up of shortcomings by the SJC will be required.

¹ Between July 2010 and March 2011, the Inspectorate carried out *planned inspections* on civil and commercial cases in the Sofia Appellate Court area, namely the Sofia Court of Appeal, 5 district courts and Sofia City Court, 17 regional courts and the Sofia Regional Court. *Planned inspections* of criminal cases were carried out in the Appellate Court areas of Varna and Plovdiv, namely in the Varna and Plovdiv Courts of Appeal, two district and seven regional courts. *Planned inspections* of prosecutors' offices included the Sofia City Prosecutor's Office and the Sofia Regional Prosecutor's Office. In 2010, the Inspectorate carried out 7 *thematic inspections* and 13 *follow-up inspections*. Between July 2010 and March 2011, the Inspectorate carried out 4 *thematic inspections*, 3 *ad-hoc inspections* and 9 *follow-up inspections*.

² In 2010, the Inspectorate carried out a total of 13 *follow-up checks* on 11 scheduled inspections carried out in 2009 and two thematic inspections. In 2011, 38 *follow-up checks* have been scheduled.

³ Two other inspections concerned a delay of court's motivation in a money laundering case and significant delays in an investigation initiated through media reports in December 2010.

Disciplinary practice

In the reporting period, the SJC took disciplinary measures against magistrates involved in a real estate case, including one disciplinary removal from office and one removal from position of administrative head.⁴ Salary reductions have been imposed on three other magistrates of the Supreme Administrative Court. The judicial follow-up by the prosecution has not led to any results. The SJC, albeit with some delay, applied sanctions of dismissal from the magistracy against two senior judges in a case concerning trade in influence.⁵ Concerns have appeared in this context regarding significant differences between sanctions for similar offences.⁶ Criminal investigations against magistrates have not been initiated by the prosecution reportedly due to lack of evidence. No criminal investigations or disciplinary sanctions have been taken in another case of alleged conflict of interest.

The Inspectorate forwarded a number of proposals for disciplinary measures to administrative heads.⁷ In the absence of any guidance on the application of disciplinary sanctions, the SJC individualises sanctions on a case by case basis, taking into account aspects such as the visibility of the offence, the seniority of the offenders and their professional track record. In some cases, the type of sanction applied appears lenient.⁸

Increasing alignment between the disciplinary sanctions proposed by the Inspectorate and subsequently decided by the Supreme Judicial Council can be observed.⁹ While the cooperation between the Inspectorate and the SJC through a joint committee has contributed to improving the consistency of disciplinary practice by the SJC, the case law of the administrative appeal courts and the Supreme Administrative Court on disciplinary matters has not always been consistent.¹⁰

⁴ In 2010, overall, the Inspectorate initiated 11 disciplinary proceedings upon referral by the SJC, including 8 against judges, 1 against prosecutor and 2 against investigators. Between July 2010 and March 2011, the Inspectorate initiated 3 disciplinary proceedings against 2 judges and one head of an investigative unit in the prosecution office.

⁵ One disciplinary dismissal has been confirmed by SAC by a panel of 3 judges (1st instance appeal). Appeal proceedings in relation to the second senior magistrate are facing delays.

⁶ In one cases, for a comparable offence a junior judge has been removed from office whereas a senior judge received a temporary reduction in salary.

⁷ The total number of disciplinary referrals to administrative heads was lower compared to the previous reporting period: In 2010, the Inspectorate proposed 43 disciplinary sanctions to administrative heads including 21 reprimand measures pursuant to Article 308 para 1 JSA and 22 admonitions pursuant to Article 327 JSA. Between July 2010 and March 2011, the Inspectorate forwarded four proposals for disciplinary measures and four proposals for admonitions to administrative heads. For comparison, in the pervious reporting period the Inspectorate referred 14 proposals for sanction to administrative heads.

⁸ Following the Inspectorate's recommendation one supervising prosecutor was sanctioned with a reprimand after it was established that an investigation supervised by the prosecutor had been ongoing for 3 years and did not lead to indictments. The inspectorate concluded that investigators undertook superfluous and inconsistent inquiries, prosecutors showed a passive approach and no supervision by the senior prosecutors was exercised.

⁹ In 2010, ten sanctions proposed by the Inspectorate were endorsed by the SJC. Between July 2010 and March 2011, the SJC endorsed 6 proposals for disciplinary sanctions by the Inspectorate and returned one case to the administrative head.

¹⁰ For example, in May, the SAC overturned a disciplinary decision of the Supreme Judicial Council ordering removal from the position of administrative head of an appellate court.

The role of the Inspectorate in detecting professional shortcomings, negligence and corruption signals should be further enhanced. The Inspectorate reports that it informed the prosecution of several signals on corruption uncovered in the course of inspections. The number of criminal proceedings initiated based on such signals appears limited.¹¹ The Inspectorate has been reluctant to investigate some alleged disciplinary infringements of magistrates based on individual signals regarding these magistrates.

Judicial appointments

Recent senior judicial appointment decisions taken by the Supreme Judicial Council have not been in line with the spirit of transparency and merit-based approach inherent in the amended Judicial System Act (JSA).¹² The recent appointments of the President of the Supreme Administrative Court (SAC) and the head of the Sofia City Court have been widely criticised by stakeholders for lacking transparency, impartiality and competitive character. The only candidate supported by the Supreme Judicial Council for President of the SAC did not propose any management strategy for one of the most important court in Bulgaria. In May, the appointment of the head of the Sofia City Court received severe criticism within the judiciary and the public opinion at large. The appointed magistrate had reportedly less professional and managerial experience compared to other candidates. The allegations of conflict of interest in a case decided by the nominated magistrate have generated further criticism. The Supreme Judicial Council had initially rejected these allegations but subsequently an inspection by the Inspectorate identified a number of procedural violations in the handling of this case.

The last senior appointment decision led to the resignation of two judges and two members of the SJC as a sign of disagreement with the last appointment and the overall lack of transparency in the SJC's human resources policy.¹³ Civil society organisations denounced the track-record of the SJC and called on its members to resign. Associations of magistrates sent a petition to the Minister of Justice and Parliament requesting constitutional amendments concerning the election modalities of the members of the SJC to ensure greater accountability and independence of this body. The Minister of Justice also received a number of reform suggestions from the *Civic Council*.¹⁴ On 2 June 2011, Parliament adopted a decision establishing its rules of procedure for the nomination of two vacant positions in the SJC from the Parliamentary quota, which remained unfilled for over one year. The decision established the deadline for submitting nominations to the National Assembly by 17 June and scheduled the election date for 20 July 2011.¹⁵ The procedure envisaged

¹¹ Between July 2010 and March 2011, Bulgaria reported final criminal convictions against 8 magistrates ranging from 6 months to 3 years imprisonment, however all with suspended sentences, and 2 non-final convictions.

¹² In accordance with the transition provisions of the recently amended Judicial System Act (JSA), senior judicial appointments delivered in the first half of 2011 have been based on the old version of the JSA.

¹³ In July, in an act of support to the former SJC members who resigned, judges from the Supreme Cassation Court and a regional court refused to nominate their delegates in a procedure to fill in the vacant positions within SJC.

¹⁴ The Civic Council - an informal advisory body composed of NGOs and professional associations providing opinion to the Minister of Justice.

¹⁵ Amended Article 19(2) JSA set a requirement providing for a period “up to one month” before the publication of candidacies and the actual election. The date of publication of the candidates’ names and their CVs has not been foreseen in Parliament’s decision.

brief hearings of candidates during the Parliamentary session (10 minutes per candidate). Concerns have appeared as to the integrity of one of the two candidates proposed. It will be important to ensure that the selected candidates meet the requirements of high professionalism, sufficient managerial experience and high integrity standards.

2. BENCHMARK 2: ENSURE A MORE TRANSPARENT AND EFFICIENT JUDICIAL PROCESS BY ADOPTING AND IMPLEMENTING A NEW JUDICIAL SYSTEM ACT AND THE NEW CIVIL PROCEDURE CODE. REPORT ON THE IMPACT OF THESE NEW LAWS AND OF THE PENAL AND ADMINISTRATIVE PROCEDURE CODES, NOTABLY ON THE PRE- TRIAL PHASE

Judicial System Act

As a follow-up to the Commission's recommendation of July 2010, Bulgaria adopted important amendments to the *Judicial System Act* (JSA).¹⁶ The amendments lay down new procedures for recruitment, appointments and appraisals and confer new rights and obligations to the SJC. The reform of the appraisal system seeks to introduce more precise quantitative and qualitative criteria, taking into account the workload of magistrates. Magistrates will be evaluated by decentralised standing commissions established at the level of courts and prosecutions offices. Appropriate guidelines and the monitoring of the appraisal process by the SJC will be required to ensure uniform application of the evaluation criteria. Integrity issues and results of inspections should be taken into account in appraisals and promotions.

The system of promotions will be organised through competition commissions established at the local level. Competitions for administrative heads will be interview-based and run by the SJC. Judges and prosecutors will be assessed separately by two sub-commissions of the SJC *Commission for Appointments and Appraisals*. The vote by the SJC should be public and the Council is obliged to motivate its appointment decisions. The amended JSA also introduced certain changes in the procedure for the nomination of SJC members. Nominations of candidates should be announced at least one month before the election date and their CVs should be published on the website of the SJC and the National Assembly.

Under the amended JSA, the SJC has now also the competence to close down or open new courts, change the judicial areas or the seats of courts. The share of new vacant positions in a judicial body, which can be opened by the SJC, was increased to 20%. The mandatory period of initial training for junior magistrates has been extended from 6 to 9 months and will be concluded by a written and oral exam.

Penal Code

In the reporting period, an experts' working group finalised the core provisions of the new *Penal Code*. The draft was published for consultation on the website of the Ministry of Justice in January 2011. The work on specialised provisions, such as cybercrime, environmental offences and corruption is being pursued by specialised working groups. The Ministry of Justice intends to finalise the draft by end 2011 and organise public consultation in early 2012. Sectoral consultations will be considered

¹⁶ The amendments to the Judicial System Act were adopted by Parliament in December 2010 and entered into force on 4 January 2011.

for some specialised provisions. The draft *Penal Code* should be tabled to Parliament by mid-2012.

Penal Procedure Code

The amendments to the *Penal Procedure Code* (PPC) adopted in May 2010¹⁷ have reportedly helped to streamline and enhance the effectiveness of criminal proceedings. Data collected by the Ministry of Interior show some increase in the number of completed investigations and a decrease in the number of cases returned by prosecution for further investigation.¹⁸ Statistical data show a small increase in the number of completed cases and a more significant decrease in the number of cases remaining unsolved.¹⁹ The amendment extending investigative powers to the police is reported to have significant positive impact on the pre-trial phase by allowing the police investigators to initiate investigations under circumstances defined by the law.²⁰ Bulgaria reports some positive effects of the amendments on administration of evidence²¹ and the possibility to use testimonies of police operational staff. The application of reserve defence counsels has reportedly helped to improve the celerity of some high-level cases. Bulgaria reports that the possibility to appeal courts' decisions to return cases to the prosecution for further investigation has helped to reduce the number of such decisions.

Bulgaria intends to set up a working group to analyse the need for possible further amendments to the Penal Procedure Code, notably as regards investigative powers of customs officers. Future amendments should aim to further diminish the formalism of the penal procedure.

Bulgaria reports that plea-bargaining and expedited procedure have been used by the joint team in investigations into organised crime cases. This procedure helped reportedly to achieve convictions in four cases.

Bulgaria continued to monitor the implementation of the *Civil Procedure Code* through *planned* and *thematic inspections* by the Inspectorate to the SJC. The findings of these inspections have been reported to the administrative heads and to the SJC for follow-up. The response to the Inspectorate's recommendations is monitored through follow-up checks; however no comprehensive analysis has been performed to propose a strategy for tackling the identified problems in a horizontal manner.

In May 2011, Parliament adopted amendments to the *Administrative Procedure Code*, which re-organise first-instance jurisdiction in a number of administrative

¹⁷ The amendments to *Penal Procedure Code* (PPC) extended the investigative powers of the police, clarified rules on the admissibility of evidence and introduced other provisions aimed to reduce the formalism of criminal proceedings. For further information on the PPC amendments see: SEC(2010) 948.

¹⁸ The Ministry of Interior reports increase in the number of pre-trial proceedings finalised: 2010: 57.834 cases; 2009: 51.690 cases; January-February 2011: 8017 cases. The Sofia City Prosecution Office reports a 15% increase in the number of investigations finalised within the statutory deadlines in 2010 as compared to 2009. The figure for newly initiated investigations is 22.5% compared to 2009.

¹⁹ Bulgaria reports figures on new cases decided by the prosecution: 2010: 19.208; 2009: 18.860; 2008: 12.985. Cases unsolved by prosecutor: 2010: 2.741; 2009: 5.655; 2008: 7.265.

²⁰ Article 194(3) and 212(2) PPC. Expanding powers to institute pre-trial proceedings to investigative bodies led reportedly to increase in new pre-trial proceedings initiated (2010: 19.765; 2009: 13.360).

²¹ Article 281(4) PPC on possibility to read out of testimony collected in pre-trial phase, Article 177(3) PPC on special intelligence means; Article 287 PPC on modification of indictment based on re-assessment of evidence.

cases from the Supreme Administrative Court to the district administrative courts. Some of the amendments proposed were rejected. Bulgaria intends to pursue further reform of the administrative jurisdiction to improve the balance of caseload within the administrative courts and streamline the celerity of administrative proceedings.

3. BENCHMARK 3: CONTINUE THE REFORM OF THE JUDICIARY IN ORDER TO ENHANCE PROFESSIONALISM, ACCOUNTABILITY AND EFFICIENCY. EVALUATE THE IMPACT OF THIS REFORM AND PUBLISH THE RESULTS ANNUALLY

Implementation of the Judicial Reform Strategy

Bulgaria continued to implement the *Judicial Reform Strategy* adopted in June 2010. A detailed Action Plan and a timetable listing concrete measures to be taken within the established deadlines have been developed.²² These measures range from enhancing governance structures within the judiciary, training and capacity building actions, to monitoring of the implementation of laws and enhancing the celerity of the judicial proceedings. Although delays have occurred in relation to some measures (e.g. establishment of the Conflict of Interest Commission), the Action Plan and the accompanying timetable prove to be a useful mechanism to advance with judicial reform. Some of the measures are applied on continuous basis. The Strategy and its coordination and monitoring mechanisms provide a comprehensive framework for the reform of the judiciary.

Implementation of the Judicial System Act (JSA)

The Supreme Judicial Council enacted secondary legislation for the implementation of the amendments of the Judicial System Act (JSA).²³ The new rules on appraisal of magistrates have entered into force, although guidelines on the application of the new appraisal criteria by the decentralised commissions have not been yet issued by the SJC. The new appraisals will be carried out every two years and should be taken into account in promotion and appointment decisions.²⁴

The National Institute of Justice (NIJ) commenced preparations to implement amended JSA provisions concerning initial training for magistrates. The implementing rules and steps necessary to prepare the extension of the initial training from 6 to 9 months are under preparations. The revised training curricula should be finalised before September 2011. The NIJ launched preparations of draft proposals to the SJC on obligatory training for mentor-judges and mentor-prosecutors. The first entry exam under new JSA rules for junior magistrates is scheduled for the beginning of 2012. The main constraint in the activity of the NIJ is related to limited budgetary resources.

The Supreme Judicial Council launched a study on the workload of individual magistrates and judicial bodies. The project is ongoing. No operational steps have been taken yet concerning the reallocation of staff in order to address the imbalances

²² The initial Action Plan covered the period of July-December 2010. The Action Plan has been subsequently supplemented for the period January-July 2011.

²³ The internal regulation of the Professional Ethics and Prevention of Corruption Commission was adopted by the SJC in February 2011. The SJC elaborated a sample model of questions to be taken into account by local ethics committees when preparing an opinion on candidate's ethical qualities. The SJC adopted an ordinance governing the Nominations and Appraisals Commission of the SJC was adopted.

²⁴ The first round of appraisals based on new rules should be carried out in 2012.

in workload between the courts in Sofia and the regional and district courts throughout the country. The SJC Nominations and Appraisal Commission prepared a draft decision on reducing the number of positions in the judicial bodies with the least workload. No further information is available on the follow-up to this draft.

Judicial practice

Bulgaria took some steps to address the Commission's recommendation to improve judicial practice. In the reporting period, a number of trainings have been carried out focusing in particular on amendments to the *Penal Procedure Code*, joint trainings for the police and prosecutors and specialised training for prosecutors were carried out by the NIJ. Several training manuals have been published notably focusing on countering corruption, money laundering and tackling EU fraud. The monitoring mechanism on cases of public interest by heads of courts, has reportedly led to some improvement in the celerity of judicial proceedings. The SJC reports that the introduction of a standardised medical certificate and the appointment of reserve defence counsels reduced absenteeism of defendants and lawyers at court hearings. In 2011, the General Prosecutor adopted an instruction introducing a management supervision scheme in the prosecution office. The impact of this latter measure remains difficult to assess as no information was reported on its practical application.

The cooperation between the Inspectorate and the Supreme Judicial Council has been strengthened through the *Joint Commission on the analysis and follow-up to the Inspectorate's recommendations*. In July and October 2010 respectively, the SJC asked administrative heads of courts and prosecution offices to implement the recommendations of the Inspectorate.²⁵ The SJC and the Inspectorate report a significant reduction in the proportion of cases remanded by courts to prosecution for further investigation.²⁶ Measures such as joint discussions among judges at appeal courts, prosecutors and investigators have reportedly contributed to this reduction. In May 2011, the SJC published on its website three reports endorsing the findings and recommendations issued by the Inspectorate in 2010.²⁷

Although the above-mentioned steps go in the right direction, the Commission's analysis of judicial practice points to persisting shortcomings in terms of lack of proactive investigative strategy, failure to explore links between related cases and insufficient coordination between the police and the prosecution in complex investigations. Investigations concerning related offences and suspects are often disjointed. Important aspects of cases are left unexplored. Evidence in complex organised crime and corruption cases is often based only on witness testimonies without sufficient back-up by other types of documentary evidence. As witness protection is not always effective and witnesses may change their testimonies due to external pressures, there is a clear risk of cases failing in court. The capacity to carry out solid financial investigations appears insufficient. The above analysis is reflected

²⁵ They referred notably to monitoring of random allocation of cases, compliance with deadlines for issuing court acts, supervision over suspended criminal cases, etc.

²⁶ The Supreme Judicial Council reported 50% reduction in the proportion of cases remanded by courts to prosecution for further investigation. In the Varna Appellate Court area, a joint working group composed of judges, prosecutors and investigators analysed reasons for remanding, which helped to reduce the number of remanded cases by 60%.

²⁷ The recommendations focused notably on addressing inconsistent case law, improving the management supervision by the heads of courts and prosecution offices, enhancing procedural aspects of handling cases, establishing standard time frame for summary proceedings, etc.

in findings of the Inspectorate, which refer notably to the lack of rigour and focus in investigations or excessive delays in simple investigations. Some investigations into high-level and complex cases had been suspended for years and terminated on procedural grounds. The Inspectorate found also that prosecutors rarely apply assets freezing and confiscation measures.

Although improvements in the celerity of cases can be noted in some courts,²⁸ other courts continue to face significant delays.²⁹ In a number of district courts significant delays in issuing motivations of judgments have been reported. Several courts failed to comply with the rules on the registration of material evidence thus creating a risk of losing criminal evidence. A number of courts did not comply with the rules on registration of cases, issuing subpoenas and scheduling courts' hearings.

Despite efforts to improve the access to court verdicts and motivations, not all verdicts and motivations are published, some are published only with great delay and search for individual verdicts is generally difficult as there are no guidelines how to handle the obligation to publish. Although the Supreme Judicial Council and the Inspectorate confirm that the system of random allocation of cases is applied by all judicial bodies, recent reports exposed mechanisms to manipulate the system.

4. BENCHMARK 4: CONDUCT AND REPORT ON PROFESSIONAL, NON-PARTISAN INVESTIGATIONS INTO ALLEGATIONS OF HIGH-LEVEL CORRUPTION. REPORT ON INTERNAL INSPECTIONS OF PUBLIC INSTITUTIONS AND ON THE PUBLICATION OF ASSETS OF HIGH-LEVEL OFFICIALS

Bulgaria reports a general increase in the number of final convictions in corruption and EU fraud cases in the past years.³⁰ At the same time, the number of final convictions in high-level corruption cases remains low.³¹ Since July 2010, two suspended sentences were pronounced in cases of high-level fraud and corruption. Two cases against former ministers led to acquittals. Two other cases involving a former minister and a high public official experienced delays in court proceedings.³² Appeals in two emblematic cases involving EU fraud and money laundering, reported last year, remain pending in court. A number of cases involving EU funds were terminated by the prosecution despite indications for fraud provided by OLAF and judicial authorities of another Member State. Acquittals were registered in several emblematic fraud and corruption cases. A Member of Parliament has been acquitted of conflict of interest and a former director of a Paying Agency charged with abuse in office and concluding unfavourable contracts has been acquitted in three separate cases. No action has been taken to analyse reasons of these acquittals

²⁸ According to the Inspectorate's findings, several district courts and one regional court have a track record of swift court proceedings in criminal cases completed within three months.

²⁹ The Inspectorate reports that in one regional court a total of 170 cases were suspended over the period 2004-2008, some cases were terminated due to expired prescription periods. The Sofia City Court has a backlog of old civil cases registered in 1993-1999.

³⁰ According to statistics provided by the Office of the Prosecutor General of the Republic of Bulgaria.

³¹ This analysis is also reflected by Civil Society: See CDS Policy brief of May 2011 – "Public Trust in the Criminal Justice System – an Instrument for Penal Policy Assessment" p. 6.

³² One case involving a previous director of a state agency was returned to the Prosecution in June 2010 and retried after a new judge was appointed to the case. Witness statements were withdrawn in another case involving a previous minister.

or to recommend corrective action in the professional practice of prosecutors and judges or legal amendments.

The Commission's analysis of high-level corruption cases revealed persisting shortcomings in judicial practice. The Commission identified lack of a pro-active investigation methodology in complex cases, shortcomings as regards defining the scope of investigations and quality of financial investigations. Magistrates signal a limited availability and insufficient quality of independent expertise. Intelligence submitted by OLAF and other international partners with regard to alleged fraud is not matched with appropriate follow-up by the Bulgarian judicial authorities. Related cases are not joined and there is no systematic coordination between different prosecution offices in charge of such cases. The formulation of certain indictments appears at times too restrictive and unfocused and not adequately reflecting the scope of investigation. The interpretation of some provisions by courts appears overcautious. While Bulgarian practitioners consider that the effectiveness of judicial action against corruption is hindered by the outdated provisions of the *Penal Code*, no steps have been taken to identify provisions, which could require amendments.

The joint team on EU fraud, created in 2008 was strengthened with two additional team members. While the data on cases followed by the joint team indicates a positive trend, a qualitative analysis of cases would be required to demonstrate the impact of the joint team in the fight against EU fraud.³³

As regards the recommendation on creating networks of specialised prosecutors and judges, Bulgaria reports a number of projects carried out in cooperation with international partners.³⁴ Bulgaria also continues a close cooperation with EUROJUST and participates in the European Judicial Network.

In November 2010, the Council of Europe's Group of States against Corruption (GRECO) issued two Evaluation Reports on Bulgaria: on transparency of party funding³⁵ and on corruption incriminations.³⁶ In both cases, GRECO issued a number of recommendations, stressing in particular the need for improvements in the legal framework on corruption offences as well as rapid and meaningful improvements as regards the financing of political parties. Bulgaria is considering the recommendations related to incriminations in the context of the drafting process of the future new Penal Code, to be submitted to Parliament later this year. As regards the shortcomings related to the financing of political parties, Bulgaria reports that 11 of the 16 GRECO recommendations were included in the Election Code adopted in January 2011. It remains unclear how the other recommendations will be addressed. The first test case of implementation of the Electoral Code will be in the forthcoming Presidential and local elections.

³³ In 2010, the total number of cases in pre-trial stage followed by the joint team was 967, of which 573 were completed. The number of indictments presented to court at the end of 2010 was 327 compared to 125 at the end of 2009. The total number of final court decisions at the end of 2010 was 175. In the first five months of 2011, the EU fraud Joint Team registered 80 new indictments and obtained 48 convictions.

³⁴ E.g. The Supreme Cassation Prosecutor's Office implemented a project "Development of human resources in the field of judicial cooperation in criminal matters" funded through the European Social Fund.

³⁵[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_Two_EN.pdf)

³⁶[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)7_Bulgaria_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)7_Bulgaria_One_EN.pdf)

5. BENCHMARK 5: TAKE FURTHER MEASURES TO PREVENT AND FIGHT CORRUPTION, IN PARTICULAR AT THE BORDERS AND WITHIN LOCAL GOVERNMENT

Integrated Strategy against corruption and organised crime

The implementation of the *Integrated Strategy for Preventing and Countering Corruption and Organised Crime*, adopted by the Government at the end of 2009 continued notably through the BORKOR project.³⁷ A comprehensive action plan to address the fight against corruption has not been developed. The BORKOR project, launched in early 2010, is still in preparatory stages. The project is expected to become operational by the end of 2011. BORKOR is large scale project whose aim is to strengthen the analytical capacity of the Bulgarian administration with regard to corruption risks. The project intends to focus also on diminishing corruption risk with regard to EU funds and public procurement.

As part of the *Integrated Strategy*, a number of legal amendments³⁸ and new laws³⁹ have been adopted in order to strengthen the legal framework for the prevention and fight against corruption. Efforts have been made to increase transparency, for example by improving access to online information by different ministries. Further improvements are needed as regards access to information on disciplinary practice within the public administration and the judiciary. Other policy measures included revision of the ethic codes applicable in the Ministry of Interior, adoption of internal rules for public procurement (e.g. the Ministry of Labour and Social Policy) or adoption of an Action Plan against corruption (e.g. Ministry of Defense). In January 2011, a Unified Methodology for Assessing Corruption Risks in the public administration was approved. These changes strengthened the legal and institutional framework for the fight against corruption; however, they still have to yield concrete results.

Conflict of interest

Responding to the Commission's recommendation, the new law on the prevention and detection of conflict of interest, adopted in November 2010, foresees the establishment of an independent commission in charge of ruling on alleged conflicts of interests. The implementation of the law has been delayed. The members of the commission have been recently nominated by the respective authorities;⁴⁰ however, the commission and its administration are not yet operational. As a consequence,

³⁷ The BORKOR project: A Complex Model on Prevention and Countering Corruption and Organised Crime.

³⁸ As part of the Integrated Strategy, Bulgaria reported adoption of amendments to: Penal Code of 6 April 2010; Penal Procedure Code of 27 April 2010; Law on Extradition and European Arrest Warrant of 29 June 2010; Law on Prevention and Detection of Conflict of 10 December 2010; Law on the Recognition, Execution and Submitting Decisions for Confiscation or Forfeiture and Decisions for Imposing Financial Sanctions of 23 of February 2010; Law on the Transportation by Motor Vehicles and the Law on the Road Traffic; Law on Waters of August 2010,

³⁹ As part of the Integrated Strategy, Bulgaria reported adoption of the following laws: Law on Restriction of Cash Payments (over BGN 15.000) of 9 February 2011 aims introducing more control over large transactions, which do not figure in the primary accounting documents, and to limit the VAT drain. The possibility for fictitious transactions, used for justification of incomes will also be limited. The newly adopted Law on Forests of 8 March 2011 aims to better delineating economic and control activities among owners, forest operators and users of forest territories or products. Regulatory acts of the Ministry of Health.

⁴⁰ The members of the CoI commission are appointed respectively: one by the President, one by the Prime Minister, and three by Parliament Civil society is not associated to the work of the commission.

signals on conflict of interest are no longer followed up effectively since 1 April 2011, from which on the commission should have been operation according to the law. Once in place, the commission will have to adopt its rules of procedure and develop guidelines on implementation. Establishing a track record of impartial and effective follow-up to cases at all levels to ensure an efficient detection and a dissuasive sanctioning of conflicts of interest will be an important indicator of a successful implementation of the new law on conflict of interest.

Tackling corruption within public administration

The staff capacity of the General Inspectorate in the Council of Ministers has been strengthened from 10 to 17 staff members. The General Inspectorate continued its inspections within public administration bodies.⁴¹ To improve its working method, it introduced a standard template for reporting by the various sectoral inspectorates, which harmonises inspection practices and facilitates the annual reporting and the preparation of the general report of the Inspectorates to the Prime Minister. In October 2010, inspectors from the General Inspectorate received specialised training related to the implementation of the new conflict of interest law.

Limited evidence exists as regards steps taken to promote pro-actively ex-officio investigations of corruption within public administration. The entire system remains signal driven. There is no risk assessment on categories of public officials particularly vulnerable to engage into corrupt practices. The asset declaration and verification system is not used in assisting a pro-active approach of investigations into inexplicable wealth. The current system does not allow to effectively trace illicit enrichment as it does not allow detect significant changes in assets over years, nor does it look into the origins of assets. Officials have several occasions to correct their statements in asset declarations, which create potential room for abuse.

The Internal Security Directorate of the Ministry of the Interior (MoI) and the Inspectorate of the same ministry deal with disciplinary and criminal allegations against staff of the ministry. In 2010, only 333 complaints were received, given a total staff of 50.000.⁴² The Commission's analysis shows that there is scope for improvement as regards follow-up to signals and complaints against the Ministry of Interior's staff, notably through stricter transparency and accountability policy as well as modern management techniques. Risk assessment methodology should be further improved. Internal management should be further enhanced through clear rules on competence, reporting and systematic staff rotations in sensitive areas.

As regards protection of whistle-blowers, the new law on prevention and detection of conflict of interest sets out special provisions ensuring the protection of persons submitting signals on corruption or irregularities and also allows for the registration

⁴¹ In 2010, a total of 734 checks were conducted by the General Inspectorate. On the basis of these checks, 42 infringements were detected. Of this amount 151 checks were carried out specifically to look into allegations of conflict of interest; 581 checks were carried out on the orders of the body responsible for staff selection or appointment; 3 checks were conducted at the request of public officials. In the first four months of 2011 a total of 37 signals for conflict of interests were received at the inspectorates of the administration, 37 inspections were made, 2 signals were sent to the Prosecutor's Office and 3 disciplinary sanctions were imposed.

⁴² The Internal Security Directorate deals with situations liable to result in criminal proceedings. The Inspectorate considers complaints against office-bearers or serious indications of violence or misconduct by senior officials.

of anonymous signals. During 2010, the Directorate of General Inspection Service within the Council of Ministers did however not register a single signal.

The Regional anticorruption councils (RACC) continued to implement annual action plans in accordance with the Integrated Strategy for Prevention and Countering Corruption and Organised Crime. To strengthen the inter-institutional cooperation at regional level, consultative councils and working groups for the prevention of corruption within the RACC have been established.⁴³ The RACC take part in the planning and organization of trainings of regional administration officials on prevention and combating corruption.

Commercial Register

As a result of the recent amendments to the Commercial Register Act, which aim to ensure correct application of the data protection rules, access to the register will be subject to an authorization procedure. Access to the register will remain open to judicial authorities, certain legal professions and relevant public institutions (e.g. tax authority, personal data operators). . It will be important that the new procedures are adequately implemented to preserve transparency of information on companies and avoid hindering the detection of conflicts of interest.

Reform of the Customs Agency

The structural reform within the National Customs Agency continued.⁴⁴ The new rules on recruitment and appointments put emphasis on high integrity standards. Since February 2011 a new ‘hot line’ is in operation for receiving signals against illegal acts of customs officials. Signals can also be submitted in written form. Periodical rotations of customs staff from operative positions to administrative positions are carried out. In 2010 and in the first two months of 2011, 102 checks and internal inspections within the Customs Agency have been carried out and resulted in 16 disciplinary penalties, including 7 dismissals.⁴⁵ Four checks related to conflicts of interest were performed but no violations were established. Polls were performed to gather data on the performance of customs and the extent of corrupt practices.

A new agreement for joint risk analysis between customs and border police was signed in November 2010. Rules on exchange of information, coordination of joint activities, control surveillance activities, joint checks in the border zone were agreed upon in March 2011.

Public procurement

In response to the Commission’s recommendation, Bulgaria advanced preparations of amendments to the Public Procurement Law. The bill is expected to be finalised

⁴³ These structures include judges, prosecutors, representatives of regional structures of the Ministry of Interior, the territorial directorates “National Security” of the SANS, National Revenue Agency and the Customs Agency. Since 2010 RACC’s boards now also include representatives of the trade and employers’ unions and member of the NGO community are invited to attend council sessions for discussions on particular issues.

⁴⁴ A new *Department for Professional Standards and Internal Investigation* and a new *department for Methodology, Selection and Career Development of the Human Resources* were set up.

⁴⁵ Based on conclusions drawn from various inspections and on the findings of inspections carried out in July and August 2010, 48 specific recommendations and proposals were issued referring to organisational aspects, enhancing the effectiveness and transparency of procedures and activities in the customs administration. Units dealing with customs clearance of goods, issuing of licences and border customs offices appeared to be most vulnerable for corrupt practices.

by August 2011. The proposed amendments aim notably to simplify procedures through clarifying rules on different types of tender procedures and standardising documentation. The changes will also introduce a detailed list of incompatible relations that may lead to conflict of interest, which should provide for more clarity and legal certainty. As regards sanctions for infringements of public procurement rules against individuals, the draft foresees a number of situations where a private individual can be sanctioned with a fine.

In response to a recommendation by the Commission, the Government prepared draft amendments to the law on the Public Financial Inspections Agency (PFIA), which will allow for ex-officio checks based on a risk assessment in the framework of ex-post control. The scope of bodies subject to control from PFIA will be extended. The draft legislation is expected to be submitted to Parliament before the summer recess.

Based on its ex-ante checks, the Public Procurement Agency (PPA) reports a net increase in compliance of tenders with public procurement legislation from 55% to 80%). In 2010, in 30% of the inspections (56 reports) the PFIA suspected corruption activities and forwarded the cases to the prosecution for follow up. The PFIA has no feedback on follow-up to these cases from the judicial authorities. Such feedback could be useful to identify vulnerable aspects of the tender process and better target checks.

Steps have been taken to improve the cooperation between the different administrative authorities in charge of public procurement. A cooperation agreement has been signed between the PPA, the PFIA and the National Audit Office (NAO). Regular interagency meetings are now being held for discussing specific cases or developing joint opinions. In 2010, 17 training courses on specific matters (corruption risks, money laundering, green public procurement) were organised at the central level.⁴⁶

A central contracting unit has been created in 2010 in the Ministry of Finance in order to pool tenders for the public administration in response to a recommendation by the Commission. The bill on public procurement foresees a similar arrangement at the level of municipalities.

Administrative capacity remains an important challenge in this area. The PFIA intends to recruit 80 new inspectors and legal advisors adding to the current 112 inspectors to carry out ex-post checks. The staffing capacity of the PPA will need to be improved.⁴⁷ Based on a workload forecast, the PPA submitted a proposal for recruitment of additional staff to the Ministry of Finance. The newly recruited staff will also need to undergo adequate training. A further substantial strengthening of capacity among contracting authorities is necessary. This could be achieved through strengthening the methodological support provided by the Agency on Public Procurement to the contracting authorities in particular regarding the drafting of tender documentation and the preparation of technical specifications. On a general

⁴⁶ Training organised in cooperation with SANS, the Prosecutors office and the Ministry of Finance. Due to scarce resources such trainings are organised with external aid, on ad-hoc basis and for a limited scope of stakeholders. At the local level, trainings target corruption and financial discipline in the municipalities. A handbook entitled "Implementation of the Law on Prevention and Detection of Conflict of Interests (LPDCI)" was disseminated to all municipalities.

⁴⁷ Staff of the PPA currently comprises 63 positions of which 10 positions remain vacant.

level, it will also be important to promote institutional stability and transparent and merit-based appointments to management positions.

6. BENCHMARK 6: IMPLEMENT A STRATEGY TO FIGHT ORGANISED CRIME, FOCUSING 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

Fight against organised crime

In the reporting period, a number of pre-trial proceedings have been opened and a number of investigations led to indictments. However, the number of cases, which reached non-final and final court decisions, remains comparatively low.⁴⁸ Some re-opened investigations into unresolved murder cases have so far not led to concrete results.

The capacity of the joint team has not been further strengthened⁴⁹ and no further changes in the structure of the joint team have been introduced. The joint team dealt with a higher number of cases compared to the previous reporting period and achieved a number of indictments and court decisions.⁵⁰ While these results go in the right direction, further efforts will need to be deployed to strengthen the investigative capacity of the prosecution and the police. Court proceedings in two emblematic high level organised crime cases led to acquittals. In appeal, detention sentences have been pronounced but not enforced in one emblematic organised crime case.

Parliament adopted amendments to the Judicial System Act and the Penal Procedure Code with a view to establishing a Specialised Criminal Court and a specialised Prosecution Office⁵¹. The new jurisdiction should deal exclusively with organised crime cases, in order to improve celerity of such cases and strengthen the impartiality of the judicial proceedings. The setting-up of the new court and the attached prosecution office for organised crime cases has been postponed from August 2011 to January 2012. A number of open questions concerning the new specialised court still need to be addressed, notably as regards the scope of competence, budget and staffing. It will be important that the new specialised prosecution structures draw on the experience of joint teams on organised crime. The principle of close cooperation between the police, investigators and prosecutors will need to be maintained. The recruitment of magistrates of high professional quality and irreproachable integrity will be key to ensure high standards of the new structures. In this context, concerns

⁴⁸ For the period between July 2010 and March 2011, the Ministry of Interior reports the following data: 46 specialised police operations against 171 individuals; 138 pre-trial proceedings opened, of which 110 by the police and 27 by the prosecution; charges pressed against 65 persons; indictments filed against 39 persons; 16 persons sentenced with imprisonment decision; 3 probation sentence; plea bargaining concluded with 5 defendants.

⁴⁹ Bulgaria reports that the model of joint investigations by prosecutors and investigating officers has been applied in three district prosecutors' offices.

⁵⁰ Bulgaria reported the following data concerning the activity of joint teams on organised crime: Court convictions were achieved in 6 cases of which 4 through plea bargaining; indictments were filed in 15 cases, pre-trial proceedings were ongoing in 21 cases, some of which involve cooperation of district prosecution offices.

⁵¹ The relevant amendments to the Judicial System Act and to the Penal Procedure Code concerning the establishment of the Specialised Criminal Court were adopted by Parliament in December 2010 and January 2011.

must be raised as to the composition of the selection panel for the new court and prosecution office as one member of the panel had earlier been suspended in a disciplinary decision related to trade in influence

Reform of the police

Bulgaria took further steps to address the Commission's recommendations regarding a comprehensive reform of the police. The amendments to the Law on the Ministry of Interior adopted in October 2010 introduced structural changes by integrating the pre-trial investigation directorate into the operational directorates: the General Directorate on Criminal Police and the General Directorate on Organised Crime. As a result of these changes, police investigators ("doznateli") work in closer cooperation with the operational police officers, which helps to reduce red tape and improve the celerity of investigations. The number of staff in the Criminal Police and Organised Crime Directorates General has been significantly increased.⁵² The number of investigative police officers in the Ministry of Interior has been significantly expanded in the last 6 months from 4.000 to 6.000 staff and a further extension is planned. The Organised Crime Directorate General and the Criminal Police General Directorate were recently provided with new, modern and well-equipped premises. Further investment into equipment and infrastructure are planned for the decentralised structures of the Ministry of Interior. The Ministry of Interior has taken measures to enhance the professional skills of police officers, e.g. through training on amendments to Penal Procedure Code.⁵³ Police officers participated in joint training sessions with the prosecution delivered by the National Institutes of Justice.

An adequate follow-up to signals on police violence needs to be ensured. A recent acquittal by the Supreme Court of Cassation of five police officers convicted in first instance for causing death of a detainee was widely criticised by independent observers.

Bulgaria reports that witness protection was applied in 101 cases in 2010, while 7 persons received physical protection and in 217 cases the identity of a witness was kept secret. In the past months, several witnesses in high-level cases had altered their statements in the course of the investigation or trial proceedings as a result of external pressure, thereby revealing the limits of the current system of witness protection.

Concerns have been reported in connection with the practice of police to accept donations from private and legal persons to contribute to the funding of its operations. This practice challenges the independence of police investigation. It will require further follow-up.

Judicial practice in organised crime cases

Bulgaria reported a number of initiatives aimed at increasing the capacity of the prosecution, which range from participation in international cooperation projects,

⁵² Ministry of Interior reported increase in staff capacity from 330 to 960 staff in the Organised Crime Directorate General and from 650 to 1200 staff in the Criminal Police Directorate General.

⁵³ Bulgaria reports that 3951 police officers were trained on revised Penal Procedure Code between May 2010-May 2011.

manuals and specialised trainings. Yet, some concrete proposals developed through bilateral projects with international partners (e.g. on strengthening the joint teams and internal investigations against magistrates) have so far not been followed up. The impact of the instruction on methodological guidance and supervision of criminal proceedings issued by the General Prosecutor in February 2011 remains unclear. At the same time, the Commission's analysis showed that further efforts are needed to enhance the capacity and professional skills of police officers and prosecutors. The recurring problems in investigative practice include the lack of a comprehensive investigation strategy covering all relevant aspects of a case by using all the investigative tools at the disposal. There is significant scope for improvement concerning collection and administration of evidence in complex cases. Key evidence in high-level corruption and organised crime is often based on witness testimonies, which not always prove to be reliable in the course of judicial proceedings. Documentary evidence is often not sufficiently explored. Financial investigations and asset freezing constitute weak elements in criminal investigations. This finding is illustrated notably by modest results in high level corruption, organised crime and money laundering cases.⁵⁴

Court proceedings in high level criminal cases continue to suffer delays, although the monitoring of these cases by the Supreme Judicial Council has produced a certain disciplinary effect.⁵⁵ Few organised crime cases have reached court decisions and several acquittals have been registered recently. The delays in issuing and publishing courts motivations continue to be reported by the civil society. The establishment of a new specialised criminal court could help to improve the effectiveness and celerity of organised crime cases. The Penal Code dating back to 1968 is considered inadequate and hampering criminal cases. As the revision of the Penal Code is a long time process, Bulgaria could consider identifying the most relevant amendments, which could be adopted as a matter of priority.

Asset forfeiture legislation

Bulgaria pursued work on the adoption of new legislation on asset forfeiture in close cooperation with the Council of Europe's Venice Commission, although significant delays occurred in the preparation of the draft law. According to the information provided by the Ministry of Justice, the key elements of the bill referred to in the Commission's July 2010 report have remained unchanged. The right of ex-officio investigations by the asset forfeiture commission has been maintained. The new draft includes provisions allowing for ex-officio checks on assets of high-level officials. Some civil society organisations have raised concerns as regards the protection of fundamental rights and a potential scope for abuses. While some concerns were addressed by inclusion of fundamental rights safeguards, the effective protection of citizens' rights would need to be ensured through adequate implementation and public scrutiny. However, the bill, tabled to Parliament in May 2011, failed to obtain sufficient political support and was rejected by Parliament on 8 July 2011. Despite the recent setback in Parliament, it will be important for Bulgaria to pursue the

⁵⁴ Since July 2010, the Prosecution reported that 11 money laundering cases reached the court level and court decisions were issued in 9 cases, including four through plea bargaining. Courts delivered convictions against 11 defendants, of which 5 were suspended.

⁵⁵ The ECHR recently issued pilot ruling condemning Bulgaria for violation of Article 6 of ECHR for excessive delays in civil and criminal proceedings.

adoption of the asset forfeiture law, which is an important instrument in the fight against corruption and organised crime.

CEPACA

The commission in charge of asset forfeiture (CEPACA) continued its operations on freezing and confiscation of assets and noted an increase in the number of freezing decisions as well as in the number of cases forwarded to courts. The overall number of confiscation decisions confirmed by courts increased compared to the previous reporting period.⁵⁶ A small increase in the number of final court cases per year and the fact that the majority of CEPACA's decisions are confirmed by courts is a positive sign. The overall value of assets confiscated remains nevertheless modest. CEPACA often intervenes at a relatively late stage of investigations. Suspicious assets should be frozen at the point an investigation is brought to the knowledge of the defendant to avoid that suspicious assets are transferred or sold before they can be secured. The Commission's recommendation in this regard has not been addressed. The lack of policy concerning the management of the seized assets is another weak point of asset forfeiture system. Cooperation with the prosecution, notably for securing assets abroad, the cooperation with other administrative authorities, such as the tax board and customs and access to financial information also remains a point of attention for CEPACA.

The new head of the CEPACA appointed in April 2011 intends to enhance the effectiveness of the commission through managerial and technical measures. The new management seeks to reform the Commission's staff policy by increasing the share of the operational staff and reducing administrative personnel. The objective to equip the central and territorial structures with adequate information technology is being pursued. The Commission faces severe budgetary constraints, in particular in the last quarter of 2011.

⁵⁶

Between July 2010 and 1 June 2011, CEPACA initiated 170 proceedings and adopted 164 decisions on asset freezing for the cumulative amount of BGN 126 074 089. 89 decisions (BGN 42 235 602) have been filed with courts. First instance courts confirmed 31 and overturned 8 confiscation decisions by CEPACA. Courts issued 18 final decisions confirming confiscation and overturned 8 confiscation decisions through final decision.