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

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

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1. INTRODUCTION –

When Bulgaria entered the EU on 1 January 2007, a *Co-operation and Verification Mechanism (hereafter CVM)*¹ was set up to help Bulgaria remedy certain shortcomings in the areas of judicial reform, the fight against corruption and organised crime and to monitor progress in these areas through periodical reports.

The present report is an interim report providing a technical update on significant developments having occurred during the last 6 months in Bulgaria under the CVM². It does not contain an assessment on progress achieved. The update is limited to measures that have either been completed or where their finalisation can be expected shortly.

The communication adopted by the Commission on 23 July 2008 remains the point of reference for the assessment of progress achieved against the benchmarks and the identification of the remaining challenges. The Commission will make its next assessment in summer 2009.

2. JUDICIAL REFORM AND THE FIGHT AGAINST CORRUPTION AND ORGANISED CRIME: GENERAL COMMENTS ON THE STATE OF PLAY

The Bulgarian authorities broadly accepted the Commission's assessment of July 2008. To respond to the challenges identified by the Commission, initial steps for structural and legislative reform were taken by the prosecution office, the Ministry of Justice and the Ministry of the Interior. These measures need to be sustained and further extended in order to deliver concrete results.

Since July 2008, some developments took place under Benchmarks 1- 3 (reform of the judiciary) notably as regards the work of the Inspectorate to the Supreme Judicial Council which has gained some operational capacity. The Supreme Judicial Council launched an analysis on disciplinary case law, started to examine why cases are sent back to the prosecution and set up a reporting mechanism on the movements of cases. Further measures have been announced with the aim of reducing the uneven workload of the courts, improving administrative management and organising a transparent appointment process which assures a high professional quality and integrity regarding magistrates at management level. On the legislative side the Law on Conflict of Interest has been adopted and the Public Procurement Act been amended.

A significant development regarding Benchmarks 4-6 (corruption and organised crime) was the launching of the pilot project on joint investigation teams composed of representatives from the prosecution, the State Agency for National Security

¹ Commission Decision 2006/929/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime (OJ L 354, 14.12.2006, p. 58).

² The cut-off date of this report is 15 January 2009.

(SANS), and the Ministry of the Interior. The next steps should be indictments regarding the serious crime groups targeted by these joint teams.

Steps to reform the Ministry of the Interior and to clarify the respective competences of authorities in the pre-trial phase were taken but results and impacts are not yet measurable. Further attention needs to be paid to developing transparent and accountable arrangements between SANS and the Ministry of Interior on e.g. the use of special surveillance means, the extent of Parliamentary control over SANS and the extension of powers of investigating police forces.

A comprehensive reform of the pre-trial phase to improve the current system of admissibility of evidence and important legislation concerning land swaps, party financing and the forfeiture of criminal assets are awaited.

3. CONCLUSION - OUTLOOK

The next assessment of progress by the Commission in summer 2009 will show the extent to which Bulgaria has been able to address the shortcomings identified by the Commission in the reform of the judiciary and to produce convincing and tangible results in the fight against corruption and organised crime. In order to demonstrate systemic and irreversible change, Bulgaria needs to show that it has put in place an autonomously functioning, stable judiciary which is able to detect and sanction conflicts of interests, corruption and organized crime and preserve the rule of law. This means in particular adopting the remaining laws needed to complete the legal system and showing through concrete cases of indictments, trials and convictions regarding high-level corruption and organised crime that the legal system is capable of implementing the laws in an independent and efficient way.

4. TECHNICAL UPDATE ON BENCHMARKS

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

The implementation of the Constitutional amendments requires a fully functioning and independent judicial inspectorate with a trail of disciplinary investigations. In this respect, in the second half of 2008, the Inspectorate to the Supreme Judicial Council has gone into full operation. It has carried out numerous ad-hoc inspections (following media reports or on its own initiative), planned inspections of two out of five appellate regions³ and thematic inspections (*inter alia* on the *housing criminal group* in Kostinbrod).

The Inspectorate also carried out disciplinary inspections and highlighted the need for interpretative judgements, decisions or decrees where conflicting jurisprudence was identified.

The Inspectorate has been pro-active in carrying out its mandate and demonstrated encouraging preliminary results. It is important now to ensure that the Supreme Judicial Council, the Prosecution Office, the courts or other relevant competent bodies follow up the work of the Inspectorate appropriately and take the necessary corrective actions.

³ Veliko Turnovo and Burgas Appellate Regions

4.2. 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

The implementation of the new judicial system act and the new civil procedures code is proceeding although significant problems remain in criminal proceedings. In this respect, the Bulgarian authorities need to adopt a comprehensive approach towards criminal procedure which delivers effective and efficient administration of evidence in court while respecting procedural guarantees.

Although proposals have been made by the judiciary and external experts, the Penal Code has not yet been reformed and the extremely cumbersome penal procedures have not yet been sufficiently streamlined. A partial reform of the Criminal Procedure Code was adopted on 17 December 2008⁴. Problems may arise from the fact that the amended law obliges the court to apply an "expedited procedure" which implies automatically a penalty below the legal minimum if the defendant admits the facts and request this procedure irrespective of the seriousness of the crime committed. Before 1 January 2009 judges could in practice decide whether to accept such a request by the defendant. In its next report, the Commission will closely monitor the effect of this amendment and assess whether it is a step back in the protection against serious crime, including fraud and high-level corruption.

Inefficiencies identified in the pre-trial phase have not yet been addressed. Too few complex criminal cases reach court; at court level, cases continue to be returned to the Prosecution⁵ or are delayed, often due to an abuse of procedural rules.

The Law on the Ministry of Interior was amended on 22 July 2008 in order to improve the management of the Ministry of Interior by reducing the number of management levels, removing overlapping functions, giving management direct control over operational functions and introducing intelligence-led policing. On 2 October the Council of Ministers adopted the Regulation for the Application of the Law on the Ministry of Interior. One important element, i.e. the reform of police investigation, provides for the recruitment of specialists from various relevant backgrounds such as e.g. finance. It is too early to assess whether these reforms will achieve their goals, such as improvement in effectiveness of police investigation, in particular in complex cases.

The Law on Amendment to the Special Intelligence Means Act was finally approved by the National Assembly on 17 December 2008. It is too early to assess its impact.

The issue of Parliamentary control over the State Agency for National Security (SANS) needs to be resolved.

⁴ The Bulgarian authorities informed the Commission that the Law aims at: simplifying the pre-trial phase and the burden of proof in cases related to organized crime, exempting the liability of a bribe taker in specific cases in order to detect a proof and increasing criminal liability for violations of electoral law.

⁵ Restitutions concern particularly Sofia, where the majority of complex cases are judged and an average of 20% of cases is returned.

4.3. 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

In 2008 almost half (47%) of the disciplinary proceedings instituted in the Supreme Judicial Council (SJC) were based on proposals made by the Inspectorate. Six proceedings have been concluded, nine were due for a conclusion and further three are scheduled for initial hearings. Significant corrective action by SJC is needed to follow up on the findings of inspections such the one examining why cases are returned to the prosecution. One of the key tests for the professionalism and transparency of the judiciary this year will be the appointment of the administrative heads of the judicial authorities, in which the SJC has a vital role.

All 180 courts in Bulgaria are reported to have fully operational internet sites, which should contribute to the transparency and the access to justice. It is essential that these sites respect fully the right to data protection and the protection of privacy.

4.4. 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

Data on overall follow-up of corruption cases from the second half of 2008 show a downward trend compared to the first half of 2008⁶. This negative trend seems to continue in November- December 2008.

In response to the CVM report of July 2008 joint teams counteracting EU fraud, organised crime and corruption and money laundering were set up at the Supreme Cassation Prosecution Office. These teams consist of staff of the prosecution, police, SANS and the national investigation service. Other services (e.g. tax authorities) are integrated depending on the specific case. While it is too early to assess the results of these joint teams, their positive potential can be noted.

The National Assembly adopted the Conflict of Interest Prevention and Disclosure Act on 16 October 2008. The law, which entered into force on 1 January 2009, targets conflicts of interest between public functions and private interests. The law creates similar standards for holders of public posts in all institutions at central, district and local level. It applies a fully decentralised control mechanism which must prove its effectiveness given the absence of functional independence in many cases: The Commission will closely monitor enforcement of the law⁷.

The amendments to political party financing rules are still being debated in the National Assembly. The rules in force for the financing of election campaigns vary depending on the type of elections and do not address donations in kind, unregulated cash transactions or the question of the public register of donors. Legislation on

⁶ The following figures for high-level corruption offences have been communicated by Bulgaria:

- January to May 2008: 200 pre-trial proceedings initiated; 78 prosecutors' acts submitted to court; 103 indictments and 55 convictions.
- June to October 2008: 179 pre-trial proceedings initiated; 63 prosecutors' acts submitted to court; 76 indictments and 50 convictions.
- November- December 2008: 30 pre-trial proceedings instituted, 18 prosecutors' acts brought to the court, 19 persons accused and 11 convicted.

⁷ Application of the law has been postponed in parts until 1 March. A debate on amendments is however ongoing. It is important that the law continues to address family links, political party affiliations and membership in non-profit organisations.

campaign financing rules need to be coherent, clear and set strict control mechanisms with a view to the national and European elections which will take place in summer 2009. The authorities must also strengthen their efforts to curb vote-buying. The initiatives of civil society to prevent election fraud are encouraging.

There is a risk of a reduction of transparency regarding information on owners of company assets with the entering into force of the Commercial Registry Code. The Commercial Code does not require registration of *changes* in the acquisition and transfer of shares taking place after the first registration of the company. The Commission will closely monitor this situation which risks impeding effective financial investigation.

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

On 16 October 2008, the National Assembly passed several amendments to the Public Procurement Act which entered into force on 1 January 2009⁸. These should contribute to improved transparency, equal treatment and non-discrimination in public procurement. The impact of the amendments need to be monitored closely and must be complemented by the strengthening of administrative capacity and effective control procedures based on continuous risk assessment⁹.

The Commission notes that laws which should prohibit abuse of land and forest swaps enter into force as of 1 February (forests) and 1 March (land). The Commission will continue to closely monitor the effective implementation of these laws.

4.6. 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

In order to increase the efficiency of the fight against organized crime, joint teams have been established at the level of the Supreme Cassation Prosecution Office (see benchmark 4).

However, the statistics presented by the Bulgarian authorities show no significant change¹⁰ in the prosecution and judicial follow-up of organized crime cases in 2008.

⁸ Main changes include: Compulsory publication of all completed procedures in the procurement registry, compulsory publication of price offers, increased sanctions for violations, compulsory participation of outside experts in evaluation committees, increased thresholds, additional checks on procurement procedures involving EU funds, more leverage for additional bonus payments for officials involved in procurement and limited public access to information due to the data protection.

⁹ Typical violations of public procurement rules in Bulgaria include the division of a large contract into several smaller ones which then fall below the competition threshold, the abuse of sub-contracting, the participation in the tendering process of several affiliated companies to create false competition and manipulation of terms of reference and of the evaluation of bids.

¹⁰ Date on offences related to organised crime for the period June to October 2008: 39 pre-trial proceedings initiated; 43 prosecutors' acts submitted to court; 147 indictments; 65 convictions with 35 convictions becoming effective. The corresponding figures for the period January to May 2008 are: 48 pre-trial proceedings initiated; 30 prosecutors' acts submitted to court; 132 indictments and 60 convictions with 48 convictions becoming effective. The November- December 2008 data demonstrate that in that period: 11 pre-trial proceedings were instituted, 10 prosecutors' acts were submitted to the courts, 52 people were accused, 17 people were convicted and 17 convictions became effective.

No major court decisions on high profile cases of organised crime have been taken in recent months.