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

1. INTRODUCTION

On entering the EU in 2007, Bulgaria faced serious challenges in ensuring the functioning of its judiciary and in fighting corruption and organised crime. These problems were judged by the Commission and the other Member States to be surmountable and the Bulgarian Government committed to remedy shortcomings in these areas so that Bulgaria could fully assume the rights and obligations of EU membership. The Bulgarian government and the other Member States recognised that far reaching judicial reform and a concerted effort to fight corruption and organised crime were necessary if Bulgarians were to be able to exercise their rights as EU citizens and benefit from all the opportunities, including financial support, that EU membership would bring. More broadly, they recognised that principles which are at the heart of the EU – respect for the rule of law, mutual recognition and cooperating on the basis of a fundamental bargain of trust – could only be put into practice if these problems were tackled at source.

Against this background, the Commission and the other Member States saw the need to work closely and cooperatively with Bulgaria following accession to ensure that the necessary reforms were put in place to strengthen the judicial system and to fight corruption and organised crime. A Cooperation and Verification Mechanism (CVM) was set up by the Commission to monitor progress and extend support in dealing with these shortcomings. Based on inputs from the Bulgarian Government, complemented by expert missions, this report presents a summary and detailed assessment of how far Bulgaria has come in meeting the benchmarks set out in the CVM. It is the third report in a six monthly reporting cycle.

The assessment points to the serious difficulties which the Bulgarian Government is having in making real headway in judicial reform and the fight against corruption and organised crime. Despite good efforts to establish necessary institutions and introduce required procedures and processes, there are few results to demonstrate that the system is actually functioning correctly. It would have been unrealistic to assume that deep seated change would be quick. However, despite the efforts of the Bulgarian Government, progress has been slower and more limited than expected and the need for verification, monitoring and cooperation will continue for some time. The judicial system and the administration need serious strengthening and fundamental cleansing. This is a long haul exercise.

2. THE REFORM PROCESS IN BULGARIA

2.1. Achievements : Modest Progress in Setting Up Institutions and Introducing Necessary Processes and Procedures

Bulgaria has made an effort to set up institutions and introduce procedures and processes which could, if the institutions are properly staffed and the processes

effectively managed, deliver the results expected of a functioning judiciary and administration, free from corruption and the threat of organised crime.

On the reform of the judiciary, Bulgaria has enacted amendments to the Constitution and adopted the Civil Procedures Code, the Judicial Systems Act and its implementing legislation. These laws confirm the independence of the judiciary. They provided for the establishment of the Supreme Judicial Council as an independent elected body charged with overseeing the governance of the judiciary. An independent judicial inspectorate was set up and has become operational, launching its first inspection missions.

A State Agency for National Security has been set up to fight against corruption and organised crime, and has exercised de facto investigative powers since the beginning of 2008. It has established a roster of cases which are being investigated under the supervision of the prosecution. In addition Bulgaria has made progress on the investigation of two important and symbolic cases.

Bulgaria has made progress on local corruption, by introducing new administrative procedures, in particular for the border police, which reduce the possibilities for corruption. Bulgaria decided to close down duty-free shops and duty free petrol stations which were allegedly focal points for local corruption and organised crime.

2.2. Results: difficult to demonstrate.

Despite the effort that has gone into setting up institutions and processes, there is a lack of results. The adoption of laws, the introduction of procedures and the creation of institutions is necessary but not sufficient – the laws have to be implemented and the institutions have to work effectively to produce concrete results.

On judicial reform, the substantial shortcomings of the Penal Code and the Penal Procedure Code remain. The Penal Procedure Code adopted in 2006 has not been instrumental in improving the efficiency of the pre-trial phase. The roles and responsibilities are not sufficiently precise or well defined to facilitate cooperation between the different actors. Important cases are sent back to the prosecution on the basis of small procedural flaws. Delays in trials are frequent and there are no procedural safeguards to prevent courts from delaying decisions. The Penal Code is outdated and is part of the reason why the judiciary is overloaded.

Although a reform of law enforcement - both in the police and in the Ministry of the Interior - was proposed in April 2008, the lack of clarity about roles and of the various actors in the pre-trial phase in relation to intelligence gathering, investigation and prosecution of criminal cases has generated debate. The divergent views between the responsible bodies about these roles and responsibilities has created uncertainty and impeded performance. While the new institution, SANS, has already shown a first track record of investigations, this has not yet translated into the effective treatment of cases in the legal system.

The administrative capacity of both law enforcement and the judiciary is weak. The police do not have enough well trained staff or equipment to investigate complex cases. There has been limited progress on the computerisation of the judiciary. There is insufficient reliable information and data on investigation, indictment and

judgements of cases. This hinders the achievement of high quality results in the work of the judiciary and the Ministry of Justice.

On local corruption, there was little follow-up – few investigations and no sentences – to widespread allegations of corruption and vote buying at the November 2007 local elections. These practices were allegedly repeated during local by-elections in at least two towns in early June 2008. There are signs of endemic corruption in the health and education sectors: Despite awareness raising activities, no complaints have been filed and no whistle blowers have emerged. There is little control or monitoring of conflict of interest in public procurement. A strategic approach to fighting local corruption is missing. The anti-corruption Commission of the Council of Ministers has not been active in this regard and there seems to be little high level commitment to implementing recommendations of an EU funded project on anti-corruption.

The fight against high level corruption and organised crime is not producing results. While there has been movement on a few cases and widespread publicity given to the 'war on corruption', these cases represent a negligible share of crimes effectively punished in Bulgaria. The statistical information provided is not reliable and sometimes contradictory. Bulgaria has made little progress in freezing or confiscating financial assets resulting from criminal activities.

Corruption and fraud is affecting the delivery of EU financial assistance programmes. Bulgaria is unable to demonstrate its capacity to correctly manage EU funding. This has meant that many EU funding programmes have had to suspend or freeze activities. OLAF, the EU anti-fraud agency, reports that procedural blockages, slow progress of cases through the judiciary, leaks of confidential information and alleged influence on the administration and judiciary are impeding the rapid and effective resolution of corruption and fraud cases. An accompanying report sets out in detail the problems that have emerged in the EU funding context.

2.3. Improvements needed

Some fundamental improvements are needed, although the first priority should be to deliver results irrespective of structural deficiencies. This requires political will and determination.

Steps need to be taken to facilitate a more effective administration of justice. Adjustments need to be made, including to the Penal Procedure Code, to improve efficiency in the pre-trial phase, reduce delays and establish safeguards in relation to delays. A thorough reform of the Penal Code is needed, including a better differentiation between minor offences and serious crime and an update of definitions to take account of new forms of criminality. It is important that a more effective law on conflict of interest and asset control be established – the current draft is not sufficient to achieve its purpose. Once a revised law is adopted it needs to be implemented as soon as possible.

The newly established Supreme Judicial Council needs now to assume responsibility for the reform process and take steps to ensure that the judiciary delivers expeditious and effective decisions. The Inspectorate of the Supreme Judicial Council still has to establish a track record of pro-active investigations into procedural deficiencies and

disciplinary cases which should then be followed up swiftly by the Supreme Judicial Council.

Law enforcement needs to be better organised to handle complex cases. The roles and responsibilities of actors in the pre-trial phase must be clarified so as to achieve improved cooperation between the police, investigators, specialised departments and the prosecution. The current debate on the reform of the pre-trial process is creating uncertainty and is detrimental to achieving results in on-going investigations. In particular, the precise interaction of police, SANS and the prosecution should be codified. The investigative role of SANS needs to be clarified and clearly separated from its intelligence role. Parliamentary oversight must be established, not to interfere in the investigative activities, but to ensure normal accountability. The role of investigating magistrates and their authority over special investigations needs to be clarified. The lack of respect for confidentiality and for the protection of witnesses during the pre-trial and trial phase is a recurring problem which needs to be rectified.

The administrative capacity of both law enforcement and the judiciary needs to be strengthened. The police need better trained staff and the necessary equipment to investigate complex cases. The computerisation of the judiciary needs to be completed and more efficient case management systems introduced at the pre-trial stage. The development of a unified information system would generate useful information and data on the efficiency of the judicial system and thereby facilitate the work of both the Supreme Judicial Council and the Ministry of Justice, particularly as concerns the latter's role in penal policy making.

Bulgaria needs to improve transparency and the notification and regulation of financial asset flows and transactions in order to better detect and deal with financial assets from criminal activities. In a similar vein, Bulgaria needs to strengthen its capacity to fight fraud and exercise adequate financial control. Equally important, conflict of interest and unwanted influence need to be contained systematically. This is particularly important so that Bulgaria can continue to benefit from EU funding. The absence of convincing results under the current structures is striking and needs to be addressed urgently.

3. CONCLUSIONS

The Co-operation and Verification Mechanism and its related benchmarks were designed to allow Bulgaria to demonstrate, on a regular basis, that it has made progress on reform of the judicial system and in fighting corruption and organised crime. The onus is on the Bulgarian authorities to show the judicial system works and that investigations into corruption and organised crime lead to arrests, prosecution and, depending on the court's judgement, convictions with dissuasive effect and seizure of assets. So far, Bulgaria has not been able to demonstrate that its judicial system is working effectively in this manner. Institutions and procedures look good on paper but do not produce results in practice; recommendations are made but are not followed up. The core problems remain.

Insufficient progress in meeting the benchmarks set under the Cooperation and Verification Mechanism is depriving Bulgarian citizens of the full benefits of accession. Failure to make progress under the Co-operation and Verification Mechanism and to dispel doubts about Bulgaria's ability to deal with corruption and organised crime could have long term

dampening effects on the performance of the Bulgarian economy, deterring much needed foreign investment. It will colour the assessment of whether Bulgaria is ready to shoulder the responsibilities and perform a wider role on behalf of the other Member States which would be necessary if it wishes to enter the Schengen area and the Eurozone. The practical result of poor administrative capacity and lack of effective control of conflict of interest, fraud and financial irregularities is that EU pre-accession funds to Bulgaria risk being lost and structural funds risk being suspended. These funds are the practical expression of the Union's solidarity with Bulgaria and it is in everyone's interest to see them being used to support Bulgaria's less favoured regions.

A clear strategy and an unequivocal commitment at all levels to cleanse the system are needed. This is not simply a question of giving new institutions and processes time to prove their effectiveness. Even with the existing structures – and despite their deficiencies – Bulgaria should be able to show results in the fight against organised crime and corruption and untangle the web of conflict of interests and apparent connections between the political class, business and organised crime. To ensure the efficient absorption and delivery of EU funds Bulgaria needs not only to enhance substantially its administrative capacity but also drastically curb opportunities for high level and petty corruption and vigorously fight organized crime.

Continued need for cooperation

It is not only in Bulgaria's but in the EU's wider interests to have a healthy administration and judiciary in Bulgaria which is able to successfully deal with corruption and organised crime. That is why cooperation and support is essential. That is why, for the time being, the Commission considers support to be a more effective than sanctions and will not invoke the safeguard provisions set out in the Accession Treaty. However, it is clear that there will be a need to maintain the Co-operation and Verification Mechanism for some time to come.

The January report under the Cooperation and Verification Mechanism highlighted the significant amounts of assistance Bulgaria has received in recent years from Member States and the Commission in either financial terms or technical expertise. It outlined the important amounts of funding which are designated for Bulgaria over the next financial perspective. This very substantial level of assistance has not delivered expected results and there is a growing sense of frustration amongst Member States who have offered support. They are withdrawing their experts or are reluctant to provide additional expertise because of lack of transparency and results in their dealings with the Bulgarian administration and poor results.

It is important to reverse this fatigue and reinvigorate the reform process. All sides have to make a renewed effort to help Bulgaria succeed. Bulgaria publicly recognises its continuous need for independent, high level expert advice. The Commission is ready to work in cooperation with the Member States to provide this assistance – but it requires that those on the receiving end provide access to information and use the advice strategically and effectively so as to move forward with reform.

Outlook

Bulgaria is at a cross roads. The reform of the judiciary and law enforcement structures is an important opportunity for Bulgaria: it is necessary and long overdue. The test of progress will be substantial results in investigating, prosecuting and judging cases of high-level corruption and organised crime.

Bulgaria has taken steps in the right direction - the setting up of the State Agency for National Security and the proposed reform of the Ministry of Interior, and the appointment of a deputy Prime Minister for coordinating the sound management of EU funds. But improvements are still superficial - Bulgaria has to translate words into deeds and deliver on its commitment to serious reform.

The Commission strongly encourages Bulgaria to intensify its reforms and to maintain its close cooperation with Member States and the Commission so that the significant remaining challenges can be tackled successfully together.