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BULGARIA : Technical Report

Accompanying the document

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

on Progress in Bulgaria under the Cooperation and Verification mechanism

{COM(2019) 498 final}

Benchmarks to be addressed by Bulgaria pursuant to Commission Decision of 13/XII/2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime¹:

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

Benchmark 2: Ensure a more transparent and efficient judicial process by adopting and implementing a new judicial system act and the new civil procedure code. Report on the impact of these new laws and of the criminal and administrative procedure codes, notably on the pre-trial phase

Benchmark 3: Continue the reform of the judiciary in order to enhance professionalism, accountability and efficiency. Evaluate the impact of this reform and publish the results annually

Benchmark 4: Conduct and report on professional, non-partisan investigations into allegations of high-level corruption. Report on internal inspections of public institutions and on the publication of assets of high-level officials

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

Benchmark 6: Implement a strategy to fight organised crime, focussing on serious crime, money laundering as well as on the systematic confiscation of assets of criminals. Report on new and ongoing investigations, indictments and convictions in these areas

List of acronyms:

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

CIAF: Commission on Illegal Asset Forfeiture

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

CVM: Cooperation and Verification Mechanism

ECtHR: European Court on Human Rights

ISJC: Inspectorate to the Supreme Judicial Council

NAO: National Audit Office

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

SANS: State Agency for National Security

SJC: Supreme Judicial Council

SRSS: Structural Reform Support Service

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

1. INTRODUCTION

This technical report summarises the information which the Commission has used as the basis for its assessment of Bulgaria's progress under the Cooperation and Verification Mechanism (CVM) since the last CVM report of 13 November 2018.²

This information has been collected from a variety of sources. The Commission has had the benefit of working closely with the relevant authorities in Bulgaria, providing information on progress in detailed reports, as well as in face-to-face meetings.³ Commission contacts with the Bulgarian administration and society across the full range of EU policies help to inform the CVM reports. In addition to official contacts with Bulgarian authorities, the Commission meets with non-governmental organisations active in the area of judicial reform and anti-corruption work, with professional associations of judges and prosecutors, and with representatives of other EU Member States in Bulgaria. More generally, the Commission draws on the various studies and reports that are available from international institutions and other independent observers in the field of judicial reform and the fight against corruption and organised crime. The variety of opinions expressed by the different Bulgarian interlocutors is an important element for an open and transparent debate. The Commission bases its assessment on all sources available, also taking into account divergent views.

Since the adoption of the CVM benchmarks in 2006,⁴ there have been major developments in the case law of both the EU Court of Justice and the European Court of Human Rights, as well as in international standards and best practices, and in comparative information on national justice systems in the EU⁵. These developments have also helped to provide an objective and comparable measure of progress in the Bulgarian judicial system and in the fight against corruption and organised crime. Analysis of these topics have also become a regular feature in the European Semester for economic policy coordination in recent years. The CVM was also part of the reflection process underlying the Communication adopted by the Commission in July 2019 on *Strengthening of Rule of Law within the Union – a blueprint for action*, in which it announces its intention to establish an annual rule of law review cycle covering all Member States.⁶

Over the years, Bulgaria has benefited from EU funds as well as bilateral support from EU Member States. In the current programming period, the Operational Programme "Good Governance" under the European Social Fund has dedicated some €30 million to a separate priority axis for judicial reform in Bulgaria.⁷ Support from the European Structural Reform Support Service (SRSS) also continues to be available for reforms in Bulgaria, including in the justice sector.⁸ For example, in 2016 several Member States provided experts for a project led by the Commission's Structural Reform Support Service (SRSS) to carry out an independent analysis of the Public Prosecutor's Office of Bulgaria. More recently, the SRSS launched a technical assistance project for the Bulgarian judicial inspectorate, with assistance from the Council of Europe.

² COM(2018) 850 final. All the reports under the Cooperation and Verification Mechanism are available on the Commission's website: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en

³ Commission services carried out full fact-finding missions in Bulgaria in March and June 2019 as well as a number of smaller staff missions during 2019.

⁴ Commission Decision of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime (notified under document number C(2006) 6570).

⁵ Including the EU Justice Scoreboard: <http://ec.europa.eu/justice/effective-justice/scoreboard/>

⁶ COM(2019)/343 final. This Communication was a follow-up to a broader review of the Commission's work in the rule of law area, including a call for contributions from Member States and other stakeholders: https://europa.eu/rapid/press-release_IP-19-4169_en.htm

⁷ Currently, contracts for approximately 46 per cent of this amount have been signed, while 20 per cent has been paid to beneficiaries.

⁸ In addition, funding for the Ministry of Interior is available through the Internal Security Fund – Police.

On 25 January 2017, the Commission adopted a comprehensive assessment of progress over ten years under the CVM and identified a limited number of key remaining steps for Bulgaria to fulfil in order to reach the goals of the CVM and address specific shortcomings identified at the time of Bulgaria's accession to the EU. This process resulted in seventeen final recommendations, set out in the January 2017 CVM report. Many of the recommendations focused on ways to internalise the reform process and strengthen the basis for domestic monitoring in Bulgaria. At the same time, they provided a clear path towards ending the monitoring under the CVM: when all the recommendations under each benchmark had been followed up, the respective benchmark would be considered provisionally completed, and when this applied to all benchmarks, the CVM would be closed. Complying with the seventeen recommendations could therefore be considered as sufficient to meet the CVM goals – except if developments were to clearly reverse the course of progress underlying the baseline assessment of January 2017.

Since January 2017, the Commission has made two assessments of progress on the seventeen recommendations.

The first assessment report adopted on 15 November 2017 concluded that while significant progress had been achieved the Commission could not yet conclude that any of the benchmarks were at that stage satisfactorily fulfilled.⁹

The second report adopted on 13 November 2018 concluded that: *'In line with the assessment set out in this report, the Commission considers that several recommendations have already been implemented and a number of others are very close to implementation. On this basis, the Commission has concluded that Benchmarks One, Two and Six can be considered provisionally closed. Given that in some cases developments are ongoing, continued monitoring is required to confirm this assessment. The Commission is confident that Bulgaria will be able to fulfil all the remaining recommendations.'*

With a determined follow-up to the remaining recommendations, Bulgaria will take an important step towards solving many of the challenges that it faces. Bulgaria needs to continue to develop a track record of concrete results so as to consolidate the progress made. This positive trend will need to be maintained under the CVM and will need continued monitoring by the Bulgarian authorities after the closure of the CVM. Transparent reporting by the Bulgarian authorities and public and civic scrutiny will play an important role in internalising monitoring at national level and providing the necessary safeguards to maintain the path of progress and reform.

*The Commission will continue to monitor and follow progress closely and will make a further assessment of the progress made before the end of this Commission's mandate. The Commission expects that with this the CVM process for Bulgaria will be concluded. In line with this objective, the Commission invites Bulgaria to pursue the current positive trend towards implementation of all remaining recommendations.'*¹⁰

2. PROGRESS ON KEY REMAINING STEPS

On the basis of the key remaining steps identified in the January 2017 CVM report, this section will describe the actions taken by the Bulgarian authorities to fulfil the recommendations since November 2018. The benchmarks that were provisionally closed in the November 2018 report are covered in a general way only, given the assessment already made in the last report.

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

The November 2018 report concluded that under Benchmark One, Bulgaria had implemented recommendation 1 and recommendations 2 and 3 were close to implementation. The report noted that continued monitoring was necessary to confirm the assessment, but the benchmark was nevertheless

⁹ COM(2017) 750 final.

¹⁰ COM(2018) 850 final.

provisionally closed. This implies that the Commission continues to work with Bulgaria on general issues of independence and accountability of the judicial system as with other EU Member States.

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

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

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

High-level judicial appointments constitute a key area of responsibility of the Supreme Judicial Council in Bulgaria. Since the last report, the council has continued to carry out its responsibilities in this area, with a significant number of appointments of court chairs giving rise to no overt controversy. Some key appointments have nevertheless been postponed or challenged in court. The November report referred in particular to the appointment of a new chair of the Sofia City Court, which had remained without a permanent management for over a year following the decision of the previous chair to resign for personal reasons in summer 2017. Shortly after the report, the council appointed a new head in a competitive procedure involving two candidates.¹¹ Meanwhile, a number of key appointments in the prosecution service have been delayed due to the failure of previous appointment procedures to reach a consensus on a preferred candidate. This concerned the specialised prosecutor's office for organised crime and high level corruption, where the appointment was eventually made at the end of July 2019, and the corresponding appellate prosecutor's office, as well as the head of the Sofia City appellate prosecutor's office.

The most prominent appointment procedure to take place in 2019 concerns the election of the new Prosecutor General ahead of the expiry of the incumbent's term in office in January 2020. This procedure was launched in June and will culminate in a vote of the Supreme Judicial Council on 24 October. The nominee selected by the council will then need to be confirmed by the President of the Republic.¹² The procedure set out in Article 173 of the Judicial Systems Act provides that candidates can be put forward by at least three members of the prosecutorial chamber of the Supreme Judicial Council, or by the Minister of Justice. In this case, the Minister of Justice had already announced that he would not make use of his right to present a candidate. On 22 July the prosecutorial college of the Supreme Judicial College unanimously put forward a single candidate for the consideration of the council.¹³ The vote of the Supreme Judicial Council on the nomination will be preceded by a public hearing, informed by written opinions submitted by civil society and other stakeholders as well as a written concept paper prepared by the candidate.¹⁴ The nomination was seen as controversial by some

¹¹ The decision was challenged in the Supreme Administrative Court by the failing candidate, who held that it had not been sufficiently well motivated, but the new chair was able to take up his functions. A final decision of the Supreme Administrative Court is expected in November.

¹² The nominee is elected by a qualified majority of 17 votes within the plenary of the Supreme Judicial Council, which consists of 25 members (6 elected by judges, 4 elected by prosecutors, 1 elected by investigating magistrates, 11 elected by the National Assembly, as well as the sitting Prosecutor General and the Presidents of the Supreme Court of Cassation and the Supreme Administrative Court). The President of the Republic can reject a nominee, but will nevertheless have to accept if the nominee supported in a second vote of the council.

¹³ The prosecutorial chamber is chaired by the serving Prosecutor General and consists of 11 members (four elected by prosecutors, one elected by investigating magistrates, five elected by the National Assembly, as well as the serving Prosecutor General who is an ex officio member). It is in charge of all personnel matters for prosecutors.

¹⁴ The candidate submitted his concept paper on 13 August. Civil society organisations can submit opinions until 14 October.

civil society representatives and sparked protests over the summer of 2019.¹⁵ On 16 and 17 October the appraisals and ethics committees of the Supreme Judicial Council both issued positive opinions on the candidate, an important procedural step to inform the final decision of the council.¹⁶

Another sensitive issue in the Bulgarian context concerns disciplinary proceedings and checks concerning integrity of magistrates. Constitutional and legislative changes in 2015 and 2016 vested the independent Inspectorate to the Supreme Judicial Council with additional powers in this area. Following the recommendation of the January 2017 report to seek outside assistance in order to strengthen the capacity of the inspectorate in these areas, discussions started between the Bulgarian authorities and the European Commission's Structural Reform Support Service (SRSS) on a technical assistance project to be implemented with the assistance of the Council of Europe. After a number of delays,¹⁷ the operational part of the project was launched in July 2019, and is expected to be concluded in spring 2020. The project is intended to provide an analysis of the procedures of the inspectorate for the initiation and conduct of integrity checks, a comparative analysis of similar institutions in other Member States, and a study to collect best practices and models of judicial inspection.¹⁸

In the meantime, the inspectorate has continued implementing its new functions, including acting on alerts received from the public about possible integrity problems of magistrates,¹⁹ as well as the more traditional regular and thematic inspections of judicial bodies²⁰ and checks of the property declarations of magistrates.

Benchmark 2 (provisionally closed): Ensure a more transparent and efficient judicial process by adopting and implementing a new Judicial System Act and the new Civil Procedure Code. Report on the Impact of these new laws and of the Criminal and Administrative Procedure Codes, notably on the pre-trial phase

The November 2018 report concluded that under Benchmark Two, Bulgaria had made significant progress on recommendation 4. A number of legislative issues with relevance for Benchmarks Three and Four were still under consideration, but the Benchmark was provisionally closed, pending continued monitoring of the follow up to legislative changes. This implies that the Commission continues to work with Bulgaria on general issues of transparent and efficient judicial process as with other EU Member States.

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

¹⁵ The controversy was related partly to the procedure and the lack of alternative candidates, and partly to the candidate's role in past high profile cases as well as public statements from the candidate voicing speculation about political figures as well as views expressed regarding the principle of separation of powers.

¹⁶ Some stakeholders nevertheless continued to voice criticism, including the Bulgarian bar association which issued a critical statement on 18 September.

¹⁷ Preparations started in 2017.

¹⁸ The project will in particular draw on expertise and experience of judicial inspectorates of France and Spain.

¹⁹ Since November 2018, the inspectorate received 34 such alerts. Inspections were initiated of nine alerts, one of which has led to a proposal for disciplinary follow-up, three are pending, and five were closed due insufficient evidence. 23 files were terminated without an inspection: 20 due to the incompleteness of the information provided in the alert, two because the limitation period had expired, and one because disciplinary proceedings were already ongoing. Finally, the inspectorate is still awaiting additional information on two alerts in order to determine if an inspection would be warranted. (Information provided by Bulgaria in August 2019.)

²⁰ This work also regularly leads to proposals for disciplinary follow-up, typically related to efficiency issues such as systematic non-compliance with deadlines. In addition to the inspectorate, the heads of the various judicial bodies can also propose the initiation of disciplinary proceedings. The proceedings are carried out and decided by the relevant chamber (for judges and prosecutors respectively) of the Supreme Judicial Council.

Where relevant, the continued follow-up on relevant issues is presented under Benchmarks Three and Four below.²¹

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

The November 2018 report concluded that under Benchmark Three, Bulgaria had made significant progress, and recommendations 5, 6, 7, and 8 were close to implementation. The report noted that some developments were still ongoing, and continued monitoring was necessary to confirm the assessment. The benchmark was left open.

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

As outlined in the November report, the Bulgarian authorities have set in place a cycle of half-yearly public reporting on progress under the current judicial reform strategy.²² The half-yearly reports are public and are discussed with stakeholders in a special consultative council on judicial reform, established under the Ministry of Justice in 2016.²³ This council has held four meetings since November 2018, discussing items such as the content of the reports on progress in the implementation of the judicial reform, the Commission's November 2018 CVM report, various proposals for legislative initiatives, and various projects with relevance for the preparation or implementation of judicial reforms. In May 2019 the government adopted a revised roadmap for the implementation of measures under the judicial reform strategy, with a particular focus on measures funded by the Operational Programme on Good Governance (OPGG) under the European Social Fund 2014-2020.²⁴ The revision involves the postponement of deadlines and mean that the current strategy will continue to be valid for some time after 2020.

The November 2018 report also noted the importance of preparing priorities for a future judicial reform strategy through broad public debate. The Bulgarian authorities have indicated that their planning for a future justice reform strategy is still in a very early stage.

More generally, in spring 2019, discussions were launched with stakeholders on the establishment of a new coordination council with representatives of the relevant institutions, also associating civil society representatives, to monitor progress on a regular basis. This initiative of the Bulgarian authorities is meant to follow up on the need for continued monitoring in line with the rationale – highlighted in the January 2017 report – that monitoring mechanisms need to be embedded in the national framework.²⁵

²¹ The November report covered recent developments in the criminal procedural framework, including the introduction of the preliminary hearings and the transfer of competences for high-level corruption cases to the specialised court and prosecution. It also highlighted some issues that were still under consideration by the Bulgarian authorities, notably the accountability of a Prosecutor General for allegations of possible criminal misconduct and issues related to the more general system for the opening of criminal investigations.

²² An English version of the current judicial reform strategy adopted in 2014 and endorsed in January 2015 is available via this link: www.strategy.bg/FileHandler.ashx?fileId=5570

²³ This council brings together representatives of the judiciary, the executive, professional organisations of judges, prosecutors and investigating magistrates, representatives of the academic community, as well as non-governmental organisations active in the area of judicial reform.

²⁴ The update was discussed in the consultative council on judicial reform in February 2019.

²⁵ Also, the conclusions of the November 2018 report acknowledged the need for Bulgaria, after the end of the CVM, to continue monitoring progress while building a track record of concrete results.

The new council will be based on a government decree, adopted on 18 September 2019, and will formally be established once the Cooperation and Verification Mechanism is repealed.²⁶ The council will have a coordination and advisory function and would meet at least every 3 months, with the possibility of extraordinary meetings being arranged upon request of a the council's members, to monitor developments not only with regard to judicial reform, but also the broader efforts to address rule of law, corruption and organised crime. It will be composed of members of government and the judiciary, and also include representation from the National Assembly for issues with a legislative dimension. It will be co-chaired by the representative of the Supreme Judicial Council and a Deputy Prime Minister in charge of justice reform. Apart from regular publication of updates after each of its meetings, the council will also submit an annual report to the government and the Supreme Judicial Council.

The decree envisages that non-profit legal entities registered for public benefit activities and operating in any of the areas of competence of the council will be able to make proposals for items to be included in the agenda of its meetings. In addition, the decree includes provisions on the creation of a civic council with representatives of civil society, which would be able to attend meetings of the coordination council and provide a link to the wider civil society.

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

The rebalancing of workload between and within courts is a long-standing issue in Bulgaria, with in particular the main courts in the major cities experiencing a heavy workload. As detailed in previous reports, efforts have been made to address this in different ways, including legislative changes to reallocate responsibilities between jurisdictions as well as limited transfers of posts between courts.²⁷ These measures have had a positive impact,²⁸ although there will be a need for continued efforts to ensure a balanced workload in the future.²⁹ This should also be seen in the context of ongoing efforts for the introduction of e-justice and a reform of the judicial map, where a project is ongoing with the support of EU funds.³⁰

²⁶ <http://www.gov.bg/bg/prestentor/zasedaniya-na-ms/dneven-red-na-zasedanieto-na-ministerskiya-savet-na-18-09-2019-g>

²⁷ An important workstrand under the previous Supreme Judicial Council was the development of more objective workload standards as a basis for the assessment. However, during their implementation, these standards have run into criticism and the policy is currently under revision by the new council.

²⁸ For example, recent legislative changes reallocating responsibility for insurance claims cases has reportedly drastically reduced the number of cases handled in the Sofia regional court. The Supreme Judicial Council also reports that procedures initiated in 2018 for the transfer of additional judges' positions to the Sofia courts have now been completed, resulting in the transfer of 7 judges' positions in the Sofia regional court, 6 positions in the Sofia City court, and 2 positions in the Specialised Court for organised crime.

²⁹ The Supreme Judicial Council reports that discussions have been taking place on possible legislative amendments related to, respectively, the system of criminal courts and the regular appeal courts. Discussions have also taken place with stakeholders on proposals concerning the boundaries between the jurisdiction of key courts around the capital. The council can refer such proposals to the government or the legislator for further consideration.

³⁰ The project to prepare the implementation of e-justice and support a reform of the judicial map has been subject to several delays and is now expected to be completed by the end of 2020. A separate project focusing on the development of a centralised justice portal is planned for completion by the end of 2019. As mentioned under recommendation 5 above, a revised timetable for the relevant operational programme was adopted in May. Bulgaria also receives assistance from the Commission's Structural Reform Support Programme for activities related to e-justice.

While the Supreme Judicial Council continues to discuss specific aspects of the judicial map,³¹ a comprehensive reform remains a longer term prospect. In the meantime, the Prosecutor's Office has launched a staged process of rationalising the structure of local prosecution offices throughout the country. A pilot phase involving the closure of 11 local prosecution offices was completed in 2018 and a second phase of mergers was confirmed by the plenary of the Supreme Judicial Council in July 2019, this time involving the closure of an additional 28 local prosecution offices. By January 2020, this reform will therefore have resulted in the consolidation of what used to be 113 local prosecution offices into 74 larger units.³²

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

The Prosecutor's Office in Bulgaria forms part of the judiciary and plays a particular prominent role in society. Traditionally seen as a very hierarchical organisation, it has often been the source of tension within the judiciary and controversy in the wider public debate.³³ The prosecution is also at the centre of the system of criminal law enforcement, playing a key part in the direction and supervision of investigations into corruption and organised crime. This was the background for a project in 2016, involving a team of prosecutors with the assistance of the Commission's Structural Reform Support Service, to prepare an independent analysis of the challenges facing the prosecution service in Bulgaria. The analysis included a number of suggestions for follow-up by the Bulgarian authorities, which were reflected in an interinstitutional roadmap established in cooperation between the government and the prosecution service in 2017.

The November 2018 report noted that several of the recommendations had been followed up with concrete actions, including considerations of possible legislative amendments, some of which were however still ongoing. It was acknowledged that legislative changes would need careful assessment with regard to their impact on the overall system of criminal investigation and the balance between key institutions.³⁴ Many of the issues raised in the independent analysis were related to the issue of how to ensure a more effective investigation, prosecution and adjudication of cases involving high-level corruption or serious organised crime.³⁵

One particularly sensitive issue highlighted by the independent analysis relates to the accountability of the position of Prosecutor General in a situation where credible allegations are made of possible criminal misconduct. This is also an issue which was raised by the European Court on Human Rights in a landmark case from 2009, where it ruled that due to the highly centralised structure of the prosecution service and its monopoly on criminal prosecution, the Bulgarian system did not provide for an effective procedure ensuring the possibility of an independent criminal investigation into a serving Prosecutor General.³⁶ The follow-up by the Bulgarian authorities to this ruling remains under

³¹ In July 2019 the judges' chamber of the council decided to establish a working group to look into a possible reduction of the number of military courts, whereas it was also decided that matters related to the regional courts should continue to be dealt with in the context of a more comprehensive future reform.

³² Bulgaria has 113 local court districts, each of which has had a local prosecutor's office attached. The reform involves the merger of local offices into larger units, serving the local districts involved.

³³ These tensions were at the basis of a reform of the Supreme Judicial Council in 2015, establishing separate chambers within the council to deal with personnel issues for judges and prosecutors respectively.

³⁴ The legislative aspects were covered under Benchmark Two in the November report, which however did not note the close link to Benchmarks Three on judicial reform and Benchmark Four on high-level corruption.

³⁵ See below under Benchmark Three.

³⁶ *Case of Kolevi vs Bulgaria*, see [https://hudoc.echr.coe.int/eng#{"itemid":\["001-95607"\]}](https://hudoc.echr.coe.int/eng#{). The issue of lack of effective accountability of the Prosecutor has also been raised in a more general sense by the Venice Commission in its *Opinion on the Judicial System Act*, October 2017, see [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)018-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)018-e)

monitoring by the Committee of Ministers of the Council of Europe, which has issued several calls for Bulgaria to remedy the situation.³⁷

In June 2019, a roundtable discussion on the issue was held in Sofia with the participation of experts from the Council of Europe as well as from Bulgaria.³⁸ In parallel, the Minister of Justice presented a set of draft legislative amendments for public discussion. The proposals of the Minister of Justice provide for a special procedure for the initiation of criminal investigations into alleged criminal misconduct by any of the three highest ranking magistrates in the country: the Prosecutor General as well as the presidents of the Supreme Court of Cassation and the Supreme Administrative Court. In the initial draft,³⁹ it is envisaged that any pre-trial investigation of these top magistrates would need to be authorised by the Supreme Judicial Council. The decision would require a two-thirds majority⁴⁰ and would be considered only on the motion of either the Minister of Justice or of at least three members of the relevant chamber of the council.⁴¹ The motion would need to be motivated in writing. Crucially, any such decision to initiate an investigation would automatically entail the temporary suspension from office of the magistrate concerned, in principle for the duration of the proceedings.⁴² The investigation would be handled directly by prosecutors at the Specialised Prosecutor's Office for organised crime or the Sofia City Prosecutor's Office, depending on the nature of the crime.

The initial proposal of the Minister of Justice provoked a broad range of criticism from civil society.⁴³ The criticism raised in particular two types of general concerns. Firstly, the inclusion within the scope of the mechanism of the presidents of the two supreme courts was seen as creating a risk for judicial independence, due to the provisions on automatic suspension from office and the lack of clarity about the grounds required for such a decision.⁴⁴ Secondly, doubts were raised over the likely effectiveness of the proposed procedure in ensuring independence at all stages of a pre-trial investigation into a Prosecutor General.⁴⁵ Given these reactions, the Minister pledged to continue the consultations with civil society and relevant institutions both at national and international level.⁴⁶ As part of these

³⁷ Latest in March 2019: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809372d5

³⁸ The roundtable also dealt with broader issues of effective investigations: <https://www.coe.int/en/web/execution/-/bulgaria-round-table-on-effective-investigations-into-killings-and-ill-treatment>

³⁹ An English version is available at the website of the Ministry of Justice via this link: <https://newweb.mjs.bg/en/2019/07/draft-act-supplementing-the-criminal-procedure-code/>

⁴⁰ This means that 17 out of 25 members of the plenary would have to vote in favour of initiating a pre-trial investigation. This is the same majority as is required for a motion for dismissal on disciplinary grounds under the current rules.

⁴¹ The prosecutorial chamber for the Prosecutor General and the judges' chamber for the two court presidents.

⁴² Although this is limited to the timelimits for custodial measures: from 8 to 18 months depending on the severity of the charge (Criminal Procedure Code, Article 234(8)).

⁴³ See for example: [https://hudoc.exec.coe.int/eng#{"EXECIdentifier":\["DH-DD\(2019\)766E"\]}](https://hudoc.exec.coe.int/eng#{)

⁴⁴ Some also questioned whether a special procedure was needed to ensure an independent pre-trial investigation of the President of a Supreme Court, as the special circumstances raising concerns over possible interference from a Prosecutor General did not exist in relation to those offices. The recommendations of the independent analysis of the prosecution from 2016 as well as the Council of Europe concerned only the Prosecutor General.

⁴⁵ Concerns were raised that the proposed procedure could make the initiation of an investigation even more difficult. Such concerns relate for example to the view that members of the prosecutorial quota of the Supreme Judicial Council could remain subject to influence by a serving Prosecutor General. Similar concerns have been raised by the Venice Commission in their opinion of October 2017 (*op cit*) in the broader context of disciplinary proceedings against a Prosecutor General. It should also be noted here that the procedure as envisaged would bar any other avenues of launching an investigation which exist at the moment, even – in theory at least – with regard to the Prosecutor General. They could therefore potentially constitute a form of immunity to general criminal investigation for the top magistrates, to be waived only by the Supreme Judicial Council.

⁴⁶ The draft amendments were presented for public debate by the Minister of Justice at an early stage of the preparation, before launching the formal process of government adoption and the associated process of general public consultations.

consultations, on 24 September, the government submitted a request for an opinion of the Venice Commission with the aim to guarantee the independence of the judiciary in the context of the proposed procedure for accountability of the Prosecutor General and the Presidents of the two Supreme Courts.⁴⁷

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

The November report acknowledged the steps already taken by Bulgaria under this recommendation and also noted the close link with measures taken under recommendations 4 and 7, given that the issues identified relate in particular to problems of effective investigation of crime, as reflected over the years in a number of cases at the European Court of Human Rights.

In connection with its 2015 decision in the case *S.Z. v. Bulgaria*, the European Court of Human Rights found that there was a systemic problem of ineffectiveness of criminal investigations in Bulgaria, referring to shortcomings affecting investigations revealed by a large number of judgements (more than 45) where a violation was found in relation to the effectiveness of the investigation.⁴⁸ The problem was referred to in the January 2016 CVM report⁴⁹ and formed the basis of a study carried out by the Bulgarian authorities on the relevant case law, which is referred to in this recommendation of the January 2017 report.

Discussions continue between the Bulgarian authorities and the Council of Europe. Notably, the Sofia roundtable referred to above also explored issues related to the initiation of criminal investigations and judicial review of prosecutorial decisions in order to seek solutions to address challenges with regard to effective investigations.⁵⁰ The follow-up continues to be monitored by the Council of Europe.⁵¹

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

The November 2018 report concluded that under Benchmark Four, Bulgaria had made significant progress on recommendations 9, 10, 11 and 12. The report also noted that Bulgaria would need to show concrete results and build a track record of final convictions in high-level corruption cases, and that the new anti-corruption institutional framework required continued monitoring in view of the need to consolidate the progress made. The benchmark was kept open.

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

Under this recommendation, Bulgaria adopted legislation in January 2018 that put in place a comprehensive reform of the legal framework for the prevention of conflicts of interest, illicit

⁴⁷ The European Commission for Democracy through Law (Venice Commission) is an advisory body under the Council of Europe, advising its member states on constitutional matters and European standards in the fields of democracy, human rights and the rule of law.

⁴⁸ In its latest update on the case *S.Z. v. Bulgaria*, the Council of Europe notes that while some progress has been achieved, concrete measures are still awaited in several crucial areas. The committee of ministers of the Council of Europe may revert to the issue already towards the end of 2019. See [https://hudoc.exec.coe.int/eng#{"EXECIdentifier":\["004-1934"\]}](https://hudoc.exec.coe.int/eng#{)

⁴⁹ COM(2016) 40 final, p. 6.

⁵⁰ Previous reports have referred to the complexity of these issues, which are also closely linked to the status of the so-called preliminary enquiries in the Bulgarian system of criminal investigation. The topic has also been discussed in a working group under the Ministry of Justice looking into possible follow-up to the 2016 independent analysis of the Bulgarian Prosecutor's Office.

⁵¹ The committee of ministers may revert to the issue already towards the end of 2019.

enrichment and corruption. Through the merging of existing structures, the reform established the new anti-corruption agency – the Commission for Countering Corruption and Illegal Assets Forfeiture – which became operational in April 2018. As noted in the November 2018 report, the new anti-corruption agency faced a number of difficult challenges, notably to effectively manage the broad remit of its responsibilities and establishing a reputation of neutrality and impartiality. The agency has now been in operation for a year and a half and is beginning to build a basic track record in various parts of its work.⁵²

In 2018, verifications of declarations of private assets and interests were carried out for over 9 000 persons. More than 700 declarations were subject to correction or special follow-up. On the basis of these verifications, the agency reported 19 officials to the tax authorities for further checks and initiated a full check of the asset status for 25 officials. As of July 2019, 222 proceedings for the establishment of the existence or non-existence of a conflict of interest have been initiated by the new agency, and 129 decisions were adopted on the merits, leading to the confirmation of a conflict of interest in 35 cases. The agency has assisted the Prosecutor's Office with preliminary checks under the Judicial System Act in more than 600 cases since its creation and participated in several joint operations with the Specialised Prosecutor's Office for organised crime.⁵³

The spring of 2019 saw the start of a series of highly publicised scandals involving various allegations linked to the purchases of private properties at below market values by a number of high-level officials.⁵⁴ In this context, allegations also appeared regarding the head of the new anti-corruption agency, leading to his resignation from office in August 2019, citing the need to preserve the reputation of the newly established agency.⁵⁵ Despite this controversy, the agency has for now continued to operate under the leadership of its remaining management.

It will now be for the National Assembly to elect a new head of the institution, which may reopen past debates on the underlying legislation. As noted in the November 2018 report, the procedure defined in the law for the appointment of the agency's management has been subject of controversy.⁵⁶

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

The network of internal inspectorates within national ministries play a pivotal role in preventing and detecting corruption within the State administration. Previous reports already noted the revision of the law on public administration to clarify the roles and activities of the inspectorates as well as the subsequent implementation of the new standards in internal government regulations. The new legislation, which sets out more clearly the structure and tasks of the inspectorates including a stronger coordinating role of the chief inspectorate under the Prime Minister's office, came into force in January 2019 and provided for a significant increase in staff in many of the inspectorates.

In the context of the reform undertaken at the beginning of 2018, the inspectorates were also given important new responsibilities with regard to the verification of interest and asset declarations, as well

⁵² In March 2019, the new anti-corruption agency published its first annual report: <http://www.ciaf.government.bg/web/attachments/Page/56/3148/5c828fe972bb5.pdf>

⁵³ Information provided by the Bulgarian authorities in July and August 2019.

⁵⁴ Dubbed in the media as 'Apartmentgate', these scandals led to the resignation of multiple government officials, including ministers. Various investigations are currently ongoing into the affair, led by the prosecution and tax authorities. The anti-corruption agency already carried out a check under the legislation on conflicts of interests and did not identify any circumstances that would fall under those provisions.

⁵⁵ He had already been on leave following a public appeal from the Prime Minister in June for all officials concerned by the scandal to step down or take leave to allow investigations to be carried out free of any perceived risk of interference.

⁵⁶ In the context of the finalisation of the legislation in late 2017 and early 2018, concerns were raised over the fact that the management of the agency is elected by a simple majority in the National Assembly, creating a possible risk of politicisation of the agency's management.

as the assessment of concrete instances of potential conflicts of interest for lower level staff not covered by the new anti-corruption agency.⁵⁷

The implementation of the new standards and the strengthening of capacity of the inspectorates is being monitored by the National Anti-corruption Policy Council and has reportedly been largely completed.

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

The reform of the criminal justice system to more effectively investigate and prosecute high-level corruption has been a long-standing issue under the CVM and a focus of several recommendations of the January 2017 report. There is a certain amount of overlap with the issues dealt with in the independent analysis of the Prosecutor's Office and in the case law of the European Court of Human Rights. Many issues highlighted over the years were directly related to the complex and formalistic Bulgarian system of criminal procedural law and the need for more effective coordination and specialisation in the investigatory and prosecutorial functions. The November 2018 report noted the recent reforms of the criminal procedure code, including the transfer of important responsibilities for high-level corruption to the Specialised Prosecutor's Office for organised crime as important steps.

The Bulgarian authorities report that these reforms are beginning to bear fruit in terms of facilitating a more effective coordination of investigations and subsequent prosecution of corruption offences. The reform's positive effects in terms of enabling an improvement of the track record of final convictions remains to be seen.⁵⁸

Efforts continue to streamline procedures and improve cooperation among the various institutions involved in the investigation and prosecution of corruption.⁵⁹ The new coordination council envisaged by the Bulgarian authorities could play an important ongoing role in monitoring progress in high-level corruption and ensuring a continued dialogue among all institutions involved, as well as reporting to the wider public on progress.⁶⁰

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

As already reported in the November 2017 and November 2018 reports, a public website at the Supreme Court of Cassation presents information on ongoing court proceedings. In addition, the annual reports on the activities of the Supreme Court of Cassation and on the application of the law and the activities of the courts include summary lists of decisions in corruption and organised crime cases, as well as brief summaries for each case. Similarly, the annual report of the Prosecutor's Office contains information on cases of high public interest, which includes cases related to corruption and serious organised crime.

⁵⁷ The anti-corruption agency focusses on high-level officials as set out in the law of January 2018, including ministers, parliamentarians, mayors, heads of administrative services, etc.

⁵⁸ See also under recommendation 12 below.

⁵⁹ For example, in January 2019, amendments to the criminal procedure code simplified the requirements on the presentation of indictments in court, which previously had allowed defendants to require a full reading in court. On the operational side, a permanent contact group has been set up between the Prosecutor's Office and the new anti-corruption agency in order to facilitate cooperation between the two institutions. The group may also be attended by other relevant authorities such as the revenue agency and the State Agency for National Security. Work is also ongoing to improve the system for providing technical experts in courts.

⁶⁰ On the coordination council, see under recommendation 5 above.

As regards the current track record on high-level corruption, the Prosecutor's Office reports that a significant number of investigations into high-level corruption are ongoing. A number of high-ranking officials have been charged or brought to court, including senior staff in the State or regional administrations, members of parliament, magistrates, former government ministers and deputy ministers, and a significant number of mayors. Several cases have also progressed through the trial phase, some resulting in convictions. Despite a certain number of sentences being imposed at first instance, however, it remains the case that very few final convictions have been adopted and enforced in cases involving high-level corruption.

This is also an area envisaged by the Bulgarian authorities to be monitored by the new coordination council. As mentioned above, previous reports consistently note the need for Bulgaria to build a track record in high-level corruption cases.

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

The November 2018 report concluded that on Benchmark Five, Bulgaria had made significant progress on recommendations 13, 14 and 15. The report also noted that these issues would need continued follow-up by the Bulgarian authorities over the longer term in order to be able to show concrete results. The benchmark was kept open.

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

Following this recommendation, the Bulgarian authorities have drawn on the assistance of the World Bank in 2017 to assess the effectiveness of their public procurement framework.⁶¹ As noted in the November report, the project included an assessment of the overall public procurement system, including the functions of the national Public Procurement Agency concerning ex ante checks on public procurement procedures and their follow-up, as well as mechanisms to address issues such as conflicts of interest and the risk of corruption.

The Bulgarian Public Procurement Agency published the World Bank report setting out the main results of its project in February 2019.⁶² Overall, the assessment commends the progress which has been made by Bulgaria in modernising its public procurement since the public procurement strategy was launched in 2014 and the key legislation adopted in 2016. The progress was largely attributed to the leadership of Bulgaria's Public Procurement Agency, which has been at the helm of reforms on a number of fronts.

Despite the reported progress, the World Bank sets out in its assessment a wide range of recommendations that the Bulgarian authorities will need to follow in order to address the remaining challenges.⁶³ The review will feed into a future public procurement strategy and has also informed an action plan of concrete measures to be implemented over the coming months.⁶⁴

⁶¹ The Agreement with the World Bank was signed at the end of 2017. The project had three components: functional analysis of the PPA's capacity to effectively and efficiently carry out the assigned tasks (especially in connection with the ex-ante control); quantitative and qualitative analysis of data on procurement procedures and contracts in order to establish the effectiveness of procurement processes; and assessing the overall functioning of the public procurement system after the entry into force of the new legislation.

⁶² The overall assessment of the public procurement system in Bulgaria (under the third component of the project) is available via this link: [http://www.aop.bg/fckedit2/user/File/bg/agency/Bulgaria%20RAS%20Procurement%20Report%20Component%203%20\(BG\).pdf](http://www.aop.bg/fckedit2/user/File/bg/agency/Bulgaria%20RAS%20Procurement%20Report%20Component%203%20(BG).pdf)

⁶³ Recommendations include the development of more targeted measures to deal with issues of fraud and corruption, such as sector assessments of about the presence of fraud, corruption and conflicts of interest, identification of vulnerabilities, and guidance on the application of integrity measures at the various stages

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

As noted in the November 2018 report, the National Anti-Corruption Policy Council agreed in early Spring 2018 a set of comprehensive uniform guidelines with the view of assessing the effectiveness of the sectorial anti-corruption plans and identifying ways to improve the system. Under these guidelines a regular cycle for the implementation of the sectorial anti-corruption plans was set up, with each ministry drawing up and implementing its own plan. The sectorial anti-corruption plans for 2019 have already been submitted to the National Council on Anti-Corruption Policies and are publicly available on the websites of the relevant institutions.⁶⁵

The National Anti-Corruption Policy Council provides an annual assessment of the sectorial anti-corruption plans, ensuring that the plans are up to date and prepared according to the guidelines. In this context, the analysis of the Council is key in identifying weaknesses and areas for future improvement.⁶⁶ Following its latest assessment of the anti-corruption plans, the Council adopted a number of decisions, which include the obligation for all competent bodies to address the recommendations in the analysis within one month and to inform the Council of the measures taken and their deadlines for implementation. In the event that the measures have not been adopted by the relevant authorities, the latter must inform the Council of the reasons.

Previous reports have highlighted in particular the measures taken in recent years within the Ministry of Interior, including measures to address administrative corruption in the traffic police and at the borders. Recent developments in this regard include the acquisition of additional equipment⁶⁷ and the implementation of integrity checks on staff in the Minister of Interior.⁶⁸

Furthermore, in the future the new coordination council referred to under recommendation 5 above would also have a role to play in ensuring a continued focus on this area of work.⁶⁹

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

Previous reports have noted the establishment of an Anti-Corruption Policy Council chaired by a National Anti-Corruption Coordinator with a broad remit to coordinate the implementation of the anti-corruption strategy.⁷⁰ The council brings together all the key authorities involved in the prevention, detection and investigation of corruption as well as a number of civil society organisations. It receives

of the procedures. The World Bank report also recommends strengthening reporting channels on corruption and conflicts of interest, including a possibility to submit anonymous alerts and stronger protection of whistleblowers.

⁶⁴ For example, the Public Procurement Agency is to conduct periodic surveys among contracting authorities on the effectiveness of its ex ante checks, and a cooperation agreement adopted in 2017 among relevant authorities for the prevention of conflicts of interest is to be reviewed and updated.

⁶⁵ Forty government ministries and other State bodies have developed sectorial anti-corruption plans.

⁶⁶ In Spring of 2019, it was reported by the National Anti-corruption Policy Council that some of the anti-corruption plans that had been drawn up revealed an imprecise definition of the measures, with proposed measures that were general or formal or reiterated the obligations under the law, or that the anti-corruption orientation was not clear in the plans. In some cases, there was a difficulty in determining the direction of the measure and in defining the indicators, making it difficult to assess objectively the effect of the measure.

⁶⁷ This includes cameras for police vehicles and border posts.

⁶⁸ Integrity checks in the Ministry of Interior were applied for the first time in February 2019, but has been under preparation for some time.

⁶⁹ See also recommendation 15 below.

⁷⁰ Currently the anti-corruption coordinator is also deputy Prime Minister in charge of judicial reform.

regular updates on the work of the different authorities under the national anti-corruption strategy⁷¹ and publishes an annual implementation report.

More recently, as described under recommendation 5 above, the government envisages the creation of a broader coordination council which would continue to monitor progress in the future after the monitoring under the CVM would have been brought to an end. The new council will cover corruption and organised crime within its remit in addition to judicial reform and rule of law more generally. Continued monitoring has a particular relevance with regard to the fight against corruption, which is an area where Bulgaria continues to face significant challenges.⁷²

Benchmark 6 (provisionally closed): Implement a strategy to fight organised crime, focussing on serious crime, money laundering as well as on the systematic confiscation of assets of criminals. Report on new and ongoing investigations in these areas

The November 2018 report concluded that on Benchmark Six, developments had confirmed the conclusion of the previous report that Bulgaria had made significant progress on the two recommendations. On this basis, the Benchmark was provisionally closed. This implies that the Commission continues to work with Bulgaria on general issues of fighting organised crime, including serious crime, money laundering as well as on the systematic confiscation of assets of criminals as with other EU Member States.

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

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

Since November 2018 the Bulgarian authorities have continued their work in this area to consolidate a track record in the fight against organised crime.

With regard to the confiscation of criminal assets, a ruling of the Supreme Court of Cassation in December 2018 necessitated legislative amendments to clarify the legislative framework with regard to the civil asset forfeiture regime. The confiscation of illicit assets through a civil law procedure has been seen as a key element of the Bulgarian system since 2012, but according to the ruling of the Supreme Court the law should be interpreted to the effect that the termination of the criminal proceedings constitutes an absolute procedural obstacle to the continuation of the confiscation proceedings. Following the ruling, targeted amendments were enacted by the National Assembly to clarify that confiscation through a civil procedure was not dependent on the continuation of the criminal proceedings or their outcome. A number of cases nevertheless had to be dropped in the immediate aftermath of the supreme court ruling.⁷³

⁷¹ The current Bulgarian anti-corruption strategy dates from 2015. An English version can be found via the following link: http://rai-see.org/wp-content/uploads/2015/08/Bulgaria_Anti-corruption_strategy_-2015.pdf

⁷² The January 2017 report highlighted the two benchmarks concerning corruption as those where the least progress had been made over the ten years of the Cooperation and Verification Mechanism. The subsequent reports of November 2017 and November 2018 note several significant further steps but continued to highlight the need for Bulgaria to develop a track record of concrete results.

⁷³ After the ruling and the legislative changes that followed it, criticism was raised by some stakeholders that the civil procedure did not provide sufficient protection of fundamental rights. In addition, a request for a preliminary ruling by the Sofia City court concerning the compatibility of the Bulgarian legislation with European law is pending at the European Court of Justice (Case C-234/18).