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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 Co-operation and Verification mechanism

{COM(2014) 36 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 crime.[1]

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 penal 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

[1] Previous CVM reports can be consulted at: http://ec.europa.eu/dgs/secretariat_general/cvm/index_en.htm

I INTRODUCTION

This technical report sets out the information and the data which the Commission has used as the basis for its analysis. This information has been collected from a variety of sources. Since the beginning of the CVM, the Commission has devoted particular attention to collecting information and deepening its knowledge of Bulgaria. It has used a combination of on-the-spot dialogue with key interlocutors, presence in the Commission's representation, and the knowledge and experience of experts from other Member States. It has also had the benefit of working closely with a variety of key Bulgarian judicial and governmental bodies, which have provided detailed and focused responses to a series of questionnaires. This technical report summarises main developments since the last report was published in July 2012.

II INDEPENDENCE AND ACCOUNTABILITY OF THE JUDICIAL SYSTEM

2.1 The Supreme Judicial Council

2.1.1. Nomination and election of the SJC

As the independent governing body for the judiciary, the Supreme Judicial Council (SJC) plays a key role in providing leadership and managing the judicial system in Bulgaria. A newly elected SJC began its term in office on 3 October 2012. Its membership was chosen in accordance with a revised procedure adopted in June 2012 and discussed in detail in the July 2012 CVM report.[2] The 2012 report noted that there would be a potential for improvement in terms of transparency under the new procedure, but also pointed out that the opportunity had not been taken to introduce direct elections for the judicial chapter. [3]

The application of the new rules seemed to confirm this impression of positive but limited improvement. The nomination of the 11 members from the quota of the Parliament in September 2012 was based on the new procedure.[4] This allowed for the publication of background information on candidates, a public hearing in Parliament which was live streamed and the opportunity for civil society to ask questions. A group of NGOs drew up a list of seven possible candidates for nominations as well, but these were not taken forward. The same NGOs also formally submitted an extensive list of questions to be asked to the candidates, only some of which were raised during the hearings.

The choice of the 11 members of the judicial chapter[5] took place according to the system of election by delegates first nominated at the local level. A number of concerns were voiced at the time about whether the local meetings for choosing delegates were conducted with adequate rules for voting and counting of the vote. It was also noted that many of the delegates chosen were administrative heads or their deputies.[6] In reaction to concerns about

[2] COM (2012) 411 final, page 10-11 on Bulgaria's refusal to hold direct elections for the SJC.
[3] The next SJC is to be elected according to this principle.
[4] See the amendments to the Judicial System Act of 9 March 2012.
[5] Representing judges, prosecutors and investigators.
[6] Bulgarian Institute for Legal Initiatives, Assessment of appointments in the judiciary and the Constitutional Court, 17 December 2012.

the first round of the vote, a group of judges developed rules for conducting the final vote in the meeting of the delegates. These rules, offering further transparency, were then chosen by the General Prosecutor to be used to elect prosecutors to the SJC. While the amended rules and procedures used for electing the new SJC led to a more public exercise, there was limited scope for questions concerning the integrity and professional capacity of the candidates to be raised.

2.1.2. Track record of the Supreme Judicial Council

The establishment of the SJC in its new structure was completed at the end of October 2012. The SJC defined a number of priority areas for its work, which included addressing uneven workload of magistrates, organisation of competitions for the appointment of magistrates (where the previous SJC had bequeathed a major backlog (see below)), improving the criteria for appraisals of magistrates, and establishing a more objective disciplinary practice (the differing state of progress on these priorities is discussed below). It also announced the intention to reform the judicial map, including changes in the structure of the judicial authorities, allowing for underworked courts and prosecution offices to be closed down or merged.

The SJC has started to take measures regulating the workload by optimising vacancies across the country – by cancelling vacant positions in courts, prosecutor's offices and investigation authorities with little workload and opening new ones for judges and prosecutors at courts and prosecutor's offices with significant and great workloads (see below). The SJC reports that a reduction in the magistrates' workload in the busiest organs has been achieved, even if this workload continues to be much higher than the national average. [7]

The specialized SJC Commission for Analysis and Reporting the Level of Workload of Judicial Authorities has proposed a methodology for conducting an empirical study to assess the weight of different types of cases and a methodology for assessing the workload of judges, which have been approved by the SJC. The study will be based on the time judges and prosecutors spend on hearing and resolving case files and cases. It will be used to determine the number of judges and prosecutors needed in a given jurisdiction. The first results of survey questionnaires are expected in early 2014, while the definition of a workload norm is expected to be ready by September 2014.

On 1 October 2013 the same Commission adopted draft criteria for the restructuring of Bulgaria's judicial map and re-allocating staff positions and budgetary resources. The SJC has also developed rules under Article 194 of the Judicial Systems Act for the secondment of judges.

Relationship with civil society

In December 2012, the SJC set up a Civil Council, comprised of NGOs and professional organisations of magistrates which is to assist the SJC with defining and monitoring its reform

[7] For example, the workload per judge in the Sofia Regional Court will have fallen from 102.55 cases heard per month to 88.54 cases, respectively from 63.17 completed cases to 54.54 completed cases. In Varna Regional Court, the decrease is from 81.52 cases to 66.54 cases per magistrate a month; in Sofia City Court, the decrease is from 38.72 cases to 36.10 cases.

strategies. The Council's agenda and decisions are published on the SJC website in a special section. All internal SJC acts which are the basis for reforms are to be discussed in the Civil Council before their adoption, though some participants have expressed doubts that they have a genuine opportunity to influence the process. At present, a total of 17 organisations are taking part in the Civil Council which has held a total of 9 meetings since its establishment. One NGO has withdrawn from the Council citing a lack of cooperation.[8]

2.2 Judicial Independence

2.2.1 Appointments and promotions

Promotions in the judiciary are organised and decided upon by the SJC. A total of 35 competitions for the positions of magistrates at all levels via initial appointment, transfer and promotion were opened by the end of October 2013, for a total of 335 positions. The SJC reports that from January to June 2013 more than 10 analyses were prepared showing the possibilities to move vacant positions from authorities which are working below capacity to authorities which are overloaded, and fill in the positions via competitions.[9]

One of the key deficiencies identified in successive CVM reports has been the shortcomings in the appraisal system.[10] The SJC prepared a new draft Appraisal Methodology in October which it will discuss with judicial authorities and the Civil Council. The SJC seeks to put in place a more accurate and consistent appraisal system.

At the same time, the outcome of key appointment procedures – especially those for the higher positions within the magistracy – continues to be the source of controversy. The fact that the media and observers have been able to predict appointments with accuracy, months before the actual procedure, casts doubt on the extent of real competition. In addition, successful candidates can often be shown to have personal or other connections which undermine the credibility of the process. In some cases, political figures have made public statements favouring the appointment of particular individuals to posts in the judiciary, sometimes obliging the candidate to publicly disavow the connection.

The Constitutional Court

Although the Constitutional Court is not strictly part of the judiciary, it holds a key function in terms of ensuring the rule of law and respect for Constitutional norms. When Parliament needed to elect two seats to the Constitutional Court in September 2012, it adopted rules similar to the procedure for electing the parliamentary quota of the SJC. Four nominations were made for the two positions. Two of these nominations drew almost immediate negative criticism, in one case for a perceived lack of professional background, in the other because of reports of integrity problems. These issues were reported to the Legal Committee of Parliament but do not appear to have featured in the hearings.

[8] The Bulgarian Helsinki Committee: http://www.bghelsinki.org/bg/novini/press/single/pressobshenie-bhk-napuska-grazhdanskiya-svet-km-vss/

[9] The SJC reports that 141 vacant positions in the judiciary in courts, prosecutor's offices and investigation services which were not overloaded were cancelled and, respectively, 88 new positions for judges were opened in overloaded courts and courts with medium workload and 53 in overloaded prosecutor's offices.

[10] Technical report SWD(2012) 232 final, pages 12-13.

Parliament's decision to elect the two candidates who had attracted such criticism led to immediate national and international criticism.[11] The Commission, amongst others, highlighted the need for thorough checks of allegations of corruption, trade in influence and conflict of interest, and the shortcomings in this case. A second hearing by Parliament made little advance in terms of addressing the allegations. With further revelations appearing in the media, the Prime Minister and President urged the candidate to step down, but Members of Parliament defended their decision. On the day of the oath taking, the Bulgarian President left the ceremony in protest of the candidate assuming office, stating that he had received information from the Prosecution office on an investigation into the candidate dating back to 2010.[12] As a result, the Chair of the Constitutional Court terminated the ceremony.

Parliament initiated a second procedure to fill the vacant position for the Court. This time, there was only one candidate for the vacancy, but again allegations appeared of financial irregularities. Parliament conducted only a formal check of asset declarations and conflict of interest declarations, rather than a verification of their accuracy. The Prosecution announced it would launch an inquiry, but the candidate was later cleared in court of any wrongdoings.

Prosecutor General

In its CVM report of July 2012 the Commission noted that the forthcoming election of a Prosecutor General would be a particularly important opportunity to offer a good example in terms of "a transparent, competitive process based on criteria of integrity and effectiveness."[13] The Supreme Judicial Council elects the Prosecutor General. New rules were adopted ahead of the election in December 2012.

For the first time, more than one candidate took part in the procedure. All three candidates presented concepts for reform of the Prosecution and had solid professional backgrounds. However, the proceedings were once again subject to controversy, firstly on the extent to which the SJC considered allegations of possible tax evasion by one of the candidates, and secondly on last-minute changes in procedure.[14]

Inspectorate to the SJC

The Inspectorate was highlighted in the 2012 report as an important institutional advance, though one lacking in consistent strategic targeting.[15] The Inspectorate has continued to conduct a series of inspections over the past year (see below), but its work has been hampered by the fact that the position of Chief Inspector has not been filled in due time at the end of 2012. [16] The fact that this delay appears to have been motivated by the difficulty of finding a

[11] The European Commission, on 30 October and, after the vote, on 31 October, expressed concern that signals on possible integrity issues had not been addressed during the hearing by Parliament, underlining the importance of the highest standards of professionalism and integrity.
[12] The Prosecution did not state what the state of the investigation was and if action on the matter had been taken since 2010.
[13] COM (2012) 411 final, page 21.
[14] The procedure prompted a reaction from the Bulgarian Union of Judges questioning its compliance with the constitution. http://www.judgesbg.org/images/Statement_Prosecutor_SJC-27Dec2012-EN.pdf
[15] COM (2012) 411 final, page 7.
[16] The Chief Inspector is elected by a 2/3 majority in the National Assembly for a term of 5 years. The term in office of the Chief Inspector lasted until the end of 2012, but pending the election of a new Chief Inspector, the incumbent stayed in office until October 2013 when she officially resigned.

majority in Parliament has reinforced concerns that the appointment would not be made on the basis of a transparent and merit-based nomination procedure. On 18 December 2013 the Legal Affairs Committee of the National Assembly finally announced a deadline for nomination of candidates for the post, but the deadline (27 December) was very short and drew criticism from the Bulgarian Union of Judges.[17] Eventually, only one candidate was proposed by the close of the deadline, which prompted further protests from independent observers.[18]

2.2.2 Political criticism of judicial decisions

The Commission's July 2012 CVM report noted that independence had come in question following a series of direct political criticisms of individual judges.[19] The report mentioned the example of a dismissal of the President of the Union of Judges as well as the fact that the SJC had not taken clear action to protect judicial independence. The individual judge concerned by this case appealed the dismissal successfully and was reinstated as a judge, although some disciplinary proceedings are still pending. Another high-profile example was the decision by the Ministry of the Interior to name police operations after judges who had not imposed detention measures on arrested suspects. This practice was terminated by the Ministry of the Interior during the second half of 2013.

2.2.3 Case allocation

It appears that the public perception of the independence of the judiciary remains low.[20] At different times cases raised in the public debate have touched on the choice of cases pursued by the police, the investigation phase, and the trial phase. Steps can however be taken to make the opportunities for the system to be influenced more difficult. Transparency, clear procedures and a consistent approach to law and practice all put the spotlight on irregularities and inconsistencies which need to be explained. In this context, the issue of case allocation has gained a symbolic as well as a practical significance.

The system of random allocation of cases in courts is based on IT software accredited and developed by the SJC. Random case assignment is established in Bulgaria and forms part of the legal framework of the procedure in all litigation. It is not the only issue to take into account when allocating cases – the need to ensure a comparable workload between judges and acknowledge of the benefits of specialisation are also important. But the risk exists that the system is open to manipulation and it has been highlighted by observers as a major source of concern.[21] In March 2013, the SJC, together with the Inspectorate and NGO representatives, carried out inspections of the implementation of the principle of random case allocation in the Supreme Administrative Court, Supreme Court of Cassation and Sofia City Court. However, the report was delayed by the SJC and the Council were unable to agree conclusions with the NGOs which had taken part.

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[17] In an open letter to the National Assembly of 26 December 2013 the Bulgarian Union of Judges appeals for the disclosure of the reasons for determining such a short deadline. At that point no nominations had yet bene made. See http://www.judgesbg.org/images/BJA_General_Inspector_26_dec_2013_EN.pdf

[18] http://www.bili-bg.org/425/news_item.html

[19] COM (2012) 411 final, page 6.

[20] See e.g. the latest figures provided by the World Economic Forum http://reports.weforum.org/the-global-competitiveness-report-2013-2014/

[21] For further background, see e.g. Judicial Reform Review 2013 of the Bulgarian Institute for Legal Initiatives (http://www.bili-bg.org/cdir/bili-bg.org/files/INDEX_FINAL_ENGLISH.pdf) p. 84.

Several aspects of the Bulgarian system of random case assignment have been criticised. The checks carried out in the three courts showed that the software used could be vulnerable to unauthorised interference, whether in the initial phase of allocation or later through manipulation of the archive. Limiting the random assignment to the reporting judge – while the composition of the rest of the panel depends upon the discretion of the administrative head of the courts – undermines the effectiveness of random allocation in courts where judging by panels of judges are the rule, such as in the Supreme Administrative Court. In addition, there seems to be no uniform protocol covering the way in which the system as a whole is integrated into administrative procedures, for example allowing the litigating parties to check on the application of the random assignment system.[22]

The Supreme Judicial Council has explained to the Commission in November 2013 that it will move forward in this area in two stages. The first stage would be to adapt the existing software so that every time an allocation was triggered, a copy would be sent in real time to a central repository in the Council. This would allow for a trace to be kept of the use of the system.[23] A second stage would be part of the e-justice project, with a single system to be developed by the end of 2014. The Council considered that it was unlikely that there would be time to consult outside experts on the first stage, but that this was foreseen for the second stage. In parallel, the Council would also be developing a common methodology to ensure that the system was used in the same way in all courts and prosecution offices.

III THE LEGAL FRAMEWORK

3.1. Penal Code

Revision of Bulgaria's Penal Code has been a consistent recommendation of CVM reports.[24] A new Penal Code has been under preparation since 2010. In its 2012 CVM report, the Commission recommended setting a target for the completion of work on the new Penal Code, and for its implementation. A new draft has been under preparation in the course of 2013[25], and the Ministry of Justice published a draft law for public consultation at the end of 2013. The Bulgarian Government adopted a draft to send to Parliament on 15 January 2014.

The draft new Penal Code is designed to modernise the criminal justice system, including introducing new crimes in areas like terrorism and shifting away from custodial sentences for relatively minor crimes. The new draft also has a stronger focus on combating organised crime. It has been cited as addressing the recommendations of the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism. Some elements have benefited from the advice of international experts. The new law may also address some of the shortcomings and weaknesses in the existing code identified by Bulgaria's Prosecution office (see below). [26]

[22] During a mission in September 2013, the Commission saw a protocol in force in Plovdiv which seemed clear and transparent, but which was not in use nationwide.
[23] One abuse cited in the past has been that the system is triggered several times, until the "right result" appears.
[24] See e.g. technical report SWD(2012) 232 final, page 9.
[25] The review of the General Part of the initial draft of the new Penal Code was completed in the end of 2012. 19 chapters from the Special Part of the initial draft of the new PC were reviewed and discussed from the beginning of 2013 until May 2013. Under the new government, additinal working groups were set up to continue the work.
[26] According to the Bulgarian authorities, the new draft Penal Code offers a number of new solutions to important penal law issues. They are of the view that its structure has been improved with a view to better

3.2. Judicial Systems Act

Amendments to the Judicial Systems Act are currently under preparation. The new act foresees that e-justice will be introduced across the judicial system. It will build on the work of the SJC to introduce the concept of “reasonable workload” and of 'individual workload". To this end, an obligation will be introduced for the administrative head to produce an annual individual statistical report on the workload of each magistrate and to submit a report to the SJC. The past 3 years should be taken into account in the performance appraisal, provision of incentives and disciplinary liability of the magistrates.

The new law is also to address the issue of competitions for judicial posts. These would be organised on a more regular basis. In the cases of closures of courts, prosecution offices and investigation bodies or of positions inside these bodies, the SJC would open the respective positions in a different judiciary body of an equal rank, if possible in the same appellate area and would reappoint without a competition.

On disciplinary proceedings it would be obligatory that both the mover of the proposition and the person facing a disciplinary sanction shall be heard by the SJC. The disciplinary panel would not draw conclusions to the detriment of the person who faces a disciplinary sanction if the magistrate concerned had not been heard. Under the new JSA, administrative heads would also provide the SJC twice a year with information about failures to comply with the time limits for issuing decisions and motives.

IV THE JUDICIAL REFORM PROCESS

4.1. Judicial Reform Strategy

4.1.1. Update of the 2010 strategy on judicial reform

After the May 2013 elections the new Minister of Justice launched a process to review the state of play and update the existing strategy on judicial reform in Bulgaria. The updated strategy is being prepared on the basis of inputs received from independent NGOs, which were asked to propose an updated set of priorities and objectives for the coming years. The new strategy should cover a broad range of issues including human resources, workload management, the number and location of courts, prosecutors' offices and investigatory services (the judicial map). It should also address the role of administrative heads, the integrity and disciplinary process, interaction between the prosecution and other institutions during the pre-trial phase, alternative dispute settlement methods, and the use of experts. The strategy is to be adopted in 2014 after consultation of the relevant stakeholders.

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ordering of the norms and facilitating their systematic comprehension and interpretation by the law-enforcement bodies. New draft provisions apparently aim at speeding up procedures on the apprehension of criminals. Thedraft law for the first time lays down a legal definition of 'complicity' and intends to modernise the concept of recidivism. The rules on forfeiture of illegally acquired assets reportedly have been amended in accordance with international commitments. Provisions on expedited procedures have also been amended with the reported objective to increase the incentive for defendants to cooperate with the investigation service. Other aspects have sparked criticism on the grounds of possible restrictions on NGOs and investigative journalism.

While changes in the general legal framework may in some cases be necessary to ensure the sustainability and effectiveness of the judicial reforms, a number of issues are of a more organisational or managerial nature, in the sense that they do not depend on new legislation but can be resolved in the context of existing legal rules. In the short term, progress on these types of issues is largely in the hands of the Supreme Judicial Council, given its wide-ranging powers over the organisation of the justice system, including the overall human resources management, recruitment, appraisal and promotion of judges and prosecutors, and the handling of integrity and disciplinary matters. In these areas previous CVM reports have identified a number of issues to be addressed.

4.1.2. Functional review and action plan of the prosecution

The prosecutors' offices play a central role in the judicial process. In its report from July 2012 the Commission recommended that the new Prosecutor General to be elected in autumn 2012 should have a mandate to reform the prosecution on the basis of an independent functional audit.[27] Such an audit of the structure, procedures and work organisation of the prosecution was carried out and presented by the new Prosecutor General in July 2013. The audit was designed to provide a comprehensive and in-depth review and identifies a number of concrete shortcomings in the existing prosecutorial structures.

In response to the functional audit an action plan for the reform of the prosecution offices has been launched, covering an 18-month period from September 2013 to March 2015. The action plan was proposed by the Prosecutor General and approved by the Supreme Judicial Council in July 2013.[28] It is generally coherent with the challenges identified in the functional audit and envisages a comprehensive overhaul of the services which will provide a roadmap for future action.

One of the features of the audit is that it identifies both strengths and weaknesses. Positive practices in the Prosecution include oversight of the quality of the investigation and prosecutors are considered to be well aware of existing court practice. Prosecutors actively participate in court proceedings at the first, appellate and cassation instances. Weaknesses at procedural level include the fact that there is a long period between the moment a crime is committed and the initiation of criminal proceedings, which impedes the gathering of evidence.

In terms of management, the audit pointed to serious concerns over the structure of the central Prosecution office. Cooperation between different sectors was identified as a problem, with each department working only on crimes within its competence, without seeking a common outcome. There were major differences in workload between different prosecution offices, with a misallocation of resources.

Examples of envisaged measures include: internal restructuring of the central prosecutors' offices, the national investigatory service (NIS) and the administration of the Prosecutor General as well as streamlining the structure of local prosecutors' offices (including the military prosecutors' offices the number of which are proposed reduced from 5 to 3). This will be complemented with a rationalisation of staff numbers in the prosecutors' offices so as to

[27] COM (2012) 411 final, page 20.

[28] These decisions do not appear to have been made public, although the Prosecutor General has referred to specific elements in recent press articles.

equalise workload, improved appraisal and disciplinary procedures for prosecutors and improved training. In addition, the action plan provides for a review of internal and inter-institutional regulations, better use of ICT, measures to enhance the capacity of the prosecution to guide investigations, including by strengthening access to in-house expertise, and steps to improve external communication. The action plan includes a detailed timetable for completion of the various measures envisaged leading up to the final deadline of 1 March 2015.[29]

Several measures have already been launched including plans for the restructuring of the Prosecutor General's administration and the military prosecutors' offices as well as the setting up of a specialised unit to investigate corruption charges against magistrates. The reorganisation of the Prosecutor General's administration involves a reduction in the number of managerial posts and a general rationalisation of the organisation. The problem of fragmentation will be addressed by organising the service into larger units. In order to preserve the possibility of specialisation, ad hoc joint teams can be created allocating cases to the most relevant prosecutors.

The role of the Inspectorate under the Prosecutor General's office will also change, ensuring a clear separation between audits and ethics on the one hand, which will be the focus of the Inspectorate, and criminal questions on the other, which will no longer be within its responsibilities. Previously the Inspectorate also handled preliminary investigations when there was evidence of crimes committed by magistrates. After an investigation of the Prosecution's Inspectorate, dealing with corruption investigations against magistrates, its Head was reportedly dismissed for lack of proper case management and disciplinary proceedings are reportedly ongoing. It was revealed that there was a large number of investigations under way with no apparent conclusions, and concerns were raised of undue pressure against magistrates. Investigations of magistrates will now be carried out by a joint team of prosecutors and officials from the State Agency for National Security (see below).

4.2 Integrity in the judiciary

Ensuring the integrity, accountability and independence of the judiciary is a key objective of judicial reform. This objective may be pursued at many levels and through a variety of means. Past CVM reports have underlined, in particular, the importance of effective rules for appraisal and promotion of magistrates based on merit, well-functioning and unbiased disciplinary procedures to detect and address irregularities in an even-handed manner, and recourse to the criminal justice system wherever criminal behaviour is suspected.[30] As mentioned above, a number of key appointment procedures have shown that addressing integrity issues continues to be a challenge for the institutions involved.

4.2.1. New unit to investigate magistrates involving prosecution and SANS

In October 2013 a new specialised inter-departmental unit comprising personnel from the prosecution and the national security agency (SANS) was established to investigate crimes

[29] Some of the initiatives contained in the Prosecutor General's action plan will require decisions at political level (budgetary measures, judicial map, procedural legislation) or will have to be coordinated with other bodies (police etc.). However, others are of a more organisational/managerial nature and fall within the discretionary competence of the Prosecutor General and the Supreme Judicial Council.

[30] Most recently. COM (2012) 411 final, page 6.

committed by magistrates. The new unit is headed by a prosecutor at the Supreme Cassation Prosecutor's Office and also has participation from SANS and the City of Sofia Prosecutor's Office. All cases or signals involving suspected crimes by prosecutors, judges and investigators will be redirected to this unit. The investigations will be organised in teams of prosecutors assisted by SANS investigators. The teams will continue to function throughout the court proceedings in order to ensure the necessary follow-up and support for the prosecution.

The new approach is designed to enhance the effectiveness of investigations by allowing the prosecution to maintain a higher level of confidentiality in the preparation of cases. The information channels will be shortened, with the objective of avoiding leaks, i.e. a situation where the suspected magistrate is in one way or the other alerted to the investigation being prepared. Such information leakages can potentially have serious consequences for the outcome of investigations as they may give the subject of the investigation time to break off the suspected activity and hence make it more difficult to collect evidence. It is still too early to assess the impact of the new unit. There will be a need for attention to be given to guaranteeing accountability of the new structure, given the involvement of SANS.

4.2.2. Inspectorate to the Supreme Judicial Council

An important element of the judicial reform in Bulgaria was the establishment in 2007 of an Inspectorate to the Supreme Judicial Council. The Inspectorate was given the power to inspect all judicial bodies, including courts, prosecution offices and investigating services.

Over the period between June 2012 and September 2013 the inspectorate carried out inspections of criminal procedures in 22 district and regional courts and of civil and administrative cases in 30 such courts. In addition, 29 regional and district prosecutor's offices were inspected. The Inspectorate also carried out inspections of the SCC, the SAC, the Sofia CC and the SCPO in order to check the system of random case allocation. Following its inspections, the Inspectorate is mandated to issue recommendations to administrative heads or the SJC for remedial or possible disciplinary action.

Acting either *ex officio* or on signals from citizens, state bodies or other legal entities, the Inspectorate to the Supreme Judicial Council seems to have wide discretion in carrying out its inspections. However, experience so far indicates that the Inspectorate takes a formal rather than a qualitative approach to inspections. For example, the Inspectorate will analyse statistics on the compliance with deadlines or check the application of random case allocation, but it rarely checks the quality of case files nor does it take into account workload issues in a systematic manner. As a consequence, the conclusions reached by the inspectorate in an area like random allocation do not seem to address the issues in full. In addition, issues related to the integrity or ethical behaviour of magistrates are generally not dealt with by the Inspectorate, as the Inspectorate considers that they fall outside the remit of its competence. These factors limit the Inspectorate's impact in terms of addressing the wider shortcomings affecting the judicial system in Bulgaria.

4.2.3. Disciplinary procedures

The Supreme Judicial Council is the competent authority for disciplinary procedures against judges and prosecutors. Disciplinary sanctions vary from reprimands, to reduction in salary to

dismissal. A review of practice shows that the largest group of disciplinary proceedings are initiated at the request of Administrative Heads (15 cases in 2013). The Inspectorate of the Supreme Judicial Council can also refer cases for disciplinary action on the basis of its inspections (8 cases in 2013). Finally, the Prosecutor General and the Supreme Judicial Council itself can also initiate disciplinary action (3 and 9 cases respectively in 2013).[31]

For the Supreme Judicial Council to initiate disciplinary proceedings on its own initiative, the case has to be backed by at least one fifth of its members (i.e. five).[32] The Supreme Judicial Council has established a practice of monitoring electronic and printed media for stories indicating unethical behaviour by magistrates. When such stories are identified the ethics committee of the Supreme Judicial Council may carry out inspections on its own initiative to verify the existence of a possible violation of the ethical code or other regulations. Such inspections may then form the basis of a disciplinary procedure initiated by the Supreme Judicial Council.[33]

All cases are assessed by three-member disciplinary panels consisting of members of the Supreme Judicial Council (the defendant has the right to be heard and to submit written evidence), after which the panel provides an opinion to the full council. The plenum of the SJC decides on the proposal by a simple majority vote.[34] The defendant can appeal to the Supreme Administrative Court (SAC). It is often the case that disciplinary decisions taken by the SJC are overturned by the SAC. [35]

A review of existing disciplinary cases over the period 2009-2013 carried out by the Supreme Judicial Council notes a degree of inconsistency in disciplinary practice over the period and indicates that the problem is partly connected to the absence of objective standards for the assessment of workload in the various bodies of the judiciary. The lack of such standards provides room for subjective decisions in individual cases.[36]

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[31] Bulgaria reports that over the period July 2012 to September 2013 the SJC adopted decisions to apply sanctions in 22 disciplinary cases, ranging from reprimands to dismissals, demotions and reductions in remuneration.

[32] It is not clear whether any objective criteria are used to make this assessment.

[33] Between July 2012 and October 2013 the ethics committee of the SJC reviewed 15 such stories. In 12 cases it launched an investigation: 4 cases were terminated following inspection, 2 cases were still under review, and in 6 cases disciplinary proceedings were initiated. (SJC, Nov. 2013.)

[34] According to independent experts, the procedure whereby members of the SJC both initiate and rule on disciplinary cases could be questioned in regard to Article 6 ECHR, which requires separation between prosecution and adjudication. Hence, concerns have been expressed that the same SJC members can sometimes be both proposing and deciding on disciplinary measures. Another point of criticism from experts has been that the participation of prosecutors in the disciplinary decisions concerning judges may undermine judicial independence.

[35] Concerning appeals from 2012, three SJC decisions were repealed by the SAC (including 2 dismissals), whereas 5 complaints were rejected as unfounded and 2 cases were still pending by December 2013. The number of appeals concerning SJC decisions has fallen from 10 in 2012 to 4 in 2013. Of these four cases the SAC had repealed the SJC's decision in one case, whereas the other 3 cases (concerning dismissals) were still pending.

[36] This problem has also been raised in previous CVM reports as well as by many independent observers. See for example the Judicial Reform Review 2013 of the Bulgarian Institute for Legal Initiatives, which concludes that: "unification of disciplinary practice with regards to the same violations is necessary. Its extraordinary diversity and inconsistency at the moment leave an impression of subjectivism." (p. 78) There are cases of disciplinary proceedings being used in an apparently arbitrary and disproportionate manner allegedly to target certain magistrates. One prominent example widely reported in the media concerned the proposal to dismiss the President of the Bulgarian Union of Judges in 2012 on grounds of non-compliance with the deadline for publication of motivations for court sentences in three cases (Ibid, p. 82).

4.3 Effectiveness of the judiciary

Effectiveness of the judiciary encompasses its independence, efficiency and quality. The efficiency of judicial proceedings depends on an effective management of the various organisations that make up the judicial system: courts, prosecution offices and investigatory services. As the main authority in charge of the judicial system, the Supreme Judicial Council plays a key role in promoting effectiveness, as do several of its members in their own capacities, in particular the Prosecutor General and the Presidents of the Supreme Court of Cassation and the Supreme Administrative Court.

4.3.1. Recruitment, appraisal and promotion

There are recruitment competitions for junior judges. In addition, there is a separate entry possibility for candidates with some years of experience as practicing lawyers, based on an entrance exam. For the latter procedure it has been raised as a criticism that appointments require neither the completion of training at the National Institute for Justice nor prior practicing at court (e.g. through an internship as junior judge). This seems to have created some scepticism about the procedure in particular with regard to its application at the higher instance courts. However, as a principle, the possibility for candidates with other expertise to enter the courts is generally regarded as positive, as is the change of the procedure to include a formal entrance exam.

As regards promotions, at the beginning of 2013, the Supreme Judicial Council reinstated the practice of open competitions for posts in the judiciary and also introduced stricter conditions for the use of secondments.[37] Secondment is generally considered to have been used on a scale which undermines normal appraisal and promotion exercises, transferring judges to more senior positions without proper appraisal and employing the judges concerned on an uncertain basis.[38] The new rules would aim to limit the circumvention of the normal mechanisms of magistrates' career development and introduce positive practices to second judges only when a judicial authority finds it hard to perform its functions in circumstances when a magistrate is absent. As the JSA provides that secondment is within the exclusive powers of administrative heads, the SJC cannot declare the new rules mandatory, but the Council to can set standards which the administrative heads are expected to observe. Secondments are to be entered in a Register of seconded magistrates. The Register includes all secondments, periods and grounds justifying a decision of an administrative head to second a specific magistrate. A second part of the Register is to be set up which will include the position to which a magistrate needs to be seconded.

In the area of appraisals the problem has in the past been a lack of sufficiently clear standards, resulting in a situation where most magistrates receive the same very good marks, so that appraisals become useless as an indicator for promotions. A draft for a unified methodology

[37] For two years preceding 2013, no competitions were held, with the result that posts were mostly filled via secondments.

[38] In principle, the decisions on the secondment of magistrates are made at the sole discretion of the respective court presidents and, given the absence of clear criteria and procedure for secondment, the decision making underlying the choice of those to be seconded and the place to which they are to be seconded has often been unclear in the past. For a discussion, see *Judicial Reform Review 2013* of the Bulgarian Institute for Legal Initiatives (http://www.bili-bg.org/cdir/bili-bg.org/files/INDEX_FINAL_ENGLISH.pdf) p. 24

has been prepared in autumn 2013 and sent in consultation with the various stakeholders. In the meantime, the Supreme Judicial Council has taken some intermediate steps, one of which has been the introduction of a more detailed qualitative analysis by the Nominations and Appraisals Committee of the Supreme Judicial Council of each case based on additional reference information and documentation about individual magistrates.[39] It is too early to assess the concrete results of these steps.

4.3.2. Workload management and the new judicial map

One of the main challenges facing the Bulgarian judiciary concerns the persistent disparities in workload that exist between the various courts. An excessive workload has an inevitable consequence in terms of slowing down the judicial process in the large courts situated in the main cities. Meanwhile other courts – for example the military courts but also other courts in the rest of the country – have lesser or even very minimal workload in some cases.[40] The imbalances reflect in part the difficulties of changing long established structures, as difficult and unpopular decisions are required on the allocation of posts between courts and closing down courts with insufficient workload.

In the past there was very limited progress on this issue.[41] However, the new Supreme Judicial Council elected in the autumn of 2012 cited workload management as a priority and initiated a number of steps to address it. In the short-term the main measure adopted by the Supreme Judicial Council has been to reinstate the practice of filling vacant posts via open competitions and to reallocate the about 500 currently vacant positions to the courts in accordance with an analysis of relative workload.[42] The process should be finalised by 2014.

The reallocation of the 500 posts is based on a simple analysis of relative workload in the various courts. However, in the medium term, the Supreme Judicial Council aims to be able to allocate human resources in a more systematic way throughout the country based on objective criteria. Hence the importance of the work on-going to develop a methodology which would allow work to be fairly and equally allocated among magistrates and courts in line with a commonly agreed workload norm.[43]

The stated long-term ambition is the presentation of proposals for a more comprehensive reform of the 'judicial map' of Bulgaria (i.e. the number and location of courts) in order to create a more efficient structure. This is a long-term objective as such reforms reportedly require broader legal changes and have to be based on a comprehensive analysis.[44] However,

[39] This procedure has reportedly resulted in a large number of rejected promotions. The magistrates concerned have the possibility to object, following which the case is referred to the plenum of the Supreme Judicial Council. From October 2012 to September 2013 there were 30 objections, of which 15 were upheld by the SJC - leading to a renewed assessment by the NAC - and 15 were rejected.

[40] The excessive workload in some courts is not only a problem for the expediency of court proceedings but can also potentially play a role in weakening the independence and impartiality of the judiciary. This is because a widespread inability to comply with existing deadlines is effectively putting judges in breach of their professional obligations, which creates a risk of disciplinary action being used as a means of pressuring magistrates. This risk is compounded by the lack of consistency in disciplinary action as mentioned above.

[41] SWD (2012) 232 final, page 14.

[42] This number includes promotions and transfers between posts.

[43] Currently, information only exists on the number of cases relative to the number of personnel and the workload analysis therefore does not take into account the complexity of cases nor other work performed by the courts. The workload norm is aiming to remedy these shortcomings.

[44] Bulgaria reports that a preparatory study is in progress and should be finalised towards the end of 2014.

a first step is expected to be taken in 2014 with a reform of the military courts, where it seems that there is a consensus that current structures are unjustified given recent reductions in the size of the military. The analytical work has been finalised and a decision is expected in the first quarter of 2014. The military court reform will be an important test case where experience can be gathered for later reforms in other courts, including the necessity of close coordination between reforms of the courts and the prosecutors' offices.

4.3.3. Delays in court proceedings

One of the continuing problems identified in Bulgaria is the frequent delays in the publishing of motivations for cases. Such delays compromise the effectiveness and transparency of the judicial process and may undermine access to justice by hampering the possibilities for effective appeal. The problem is inherently linked to the issues of workload discussed above but in the short term may also be addressed through managerial measures in individual courts, or indeed disciplinary measures.

In 2013 the Supreme Judicial Council started systematically to review delays in court proceedings based on information from the Inspectorate and the Ministry of Justice and to give recommendations on this basis to administrative heads of the respective courts for the resolution of the problems.[45] In general, the administrative heads are responsible for monitoring delays in court proceedings and for carrying out remedial action.

The Supreme Judicial Council has organised several general meetings to promote dialogue between the various relevant authorities on delays in the processing of criminal cases. As a result, the need for further measures has been identified including legislative changes to reduce the formalism of criminal proceedings and regulate the use of court experts, training of magistrates in specialised fields such as tax and corruption crimes, fraud with EU funds, etc.[46]

4.3.4. Use of witnesses and expertise

The system for using expert witnesses in Bulgaria is heavily regulated, as the only expert witnesses that are admitted to speak for the prosecution during the trial phase in court are those included in an official list at Court. Although the prosecution can use experts to help the investigation in the pre-trial phase, they cannot be further presented as admissible evidence in the trial phase.

The ability to present expert testimonies of a good quality in support of a case is a key element of an effective trial and the issue of expertise has been raised as a concern. The qualifications of expert witnesses is especially relevant in corruption, organised crime and financial crime cases, where the accounting and economic expertise becomes crucial in order to detect and demonstrate bookkeeping violations, trace financial flows, detect economic links between companies and individuals and reveal the ultimate beneficial owner of economic activities.

It also means that, contrary to procedural rules in other Member States, the prosecution has very limited freedom on the choice of experts and qualified members of different public

[45] This practice implements a new provision in Judicial Systems Act (Article 60m) which went into force in October 2012. The reviews will take place on a 6-monthly basis.
[46] Information received from the SJC, Nov. 2013.

bodies that would be able to provide a high-level expertise cannot be used by the Prosecution before the Court, except in exceptional cases where a very specific kind of expertise is not available on a Court list. This constraint of choices, combined with the limited financial means available to the prosecution for the remuneration of experts, can put the prosecution at a disadvantage compared to the defence.

Witness protection

Withdrawal of witness statements as a result of external pressure, or killings in some cases, is amongst the main risks in organised crime cases. Taking into account the Bulgarian context in relation to organised crime, witness protection is therefore of primary importance. Difficulties of getting witnesses to testify in organised crime cases is considered to be one of the factors hampering effective action in such cases.[47]

4.3.5. Consistency of jurisprudence

Bulgaria needs to align its case-law in civil and criminal cases. Contradicting legal provisions due to the law-making process, reluctance to rely on legal interpretation by superior courts and a preference of applying legal provisions only in the strictest formal sense have been referred to as contributing to the problem of inconsistent case law.[48]

Some limited organisational measures have been taken or promoted in order to create the basis for a more coherent legal practice. For example, at national conference on 4 October 2013 convened by the President of the Supreme Court of Cassation (SCC), a number of measures were promoted to ensure more transparent and efficient court proceedings. The measures include regional conferences to review case law, whereby discrepancies involving several districts can be brought to the attention of the SCC, as well as strengthening the communication offices of courts to ensure wider publicising of court decisions. In June 2013 it became possible to make searches via the public website of the SCC in the Court's case law on the basis of reference data and parameters.

Prosecutors' offices also need to be aware of the existing case law and strive to bring cases to court that are in line with it. As part of the action plan for the reform of the prosecution, it is envisaged to set up an analytical judicial and prosecutorial case law unit in the Prosecutor's office. If properly staffed such a unit may contribute to a greater quality of cases in the future.

4.3.6. E-Justice

E-justice has been recognised by Ministers of Justice as an important element in the modernisation of the Bulgarian justice system. Significant efforts are needed to upgrade document management systems so as to provide effective E-justice solutions for both the administration and citizens. However, some progress is being made. A project co-financed by EU funds[49] aims to improve the Unified Information System for Combating Crime (UISCC) and integrate the existing information systems into it. The system allows for real-time tracking of procedural steps taken in in regard to cases, including the opening of pre-trial proceedings, preparation of acts by prosecutors and investigators, the trial phase at all the

[47] See below.
[48] Independent experts consulted by the Commission.
[49] Under the Operational Programme for Administrative Capacity

three levels of the court hierarchy, enforcement and execution of punishments, and analysis of proceedings. The UISCC will also provide unified statistics on the work and interaction between different institutions so as to help identify problems and speed up procedures. The system is being implemented in several stages and is expected to be fully operational in the course of 2014. In addition, another project currently in progress with support from the European Social Fund and involving the Supreme Judicial Council, the Supreme Administrative Court and the Ministry of Justice aims to put into operation an e-voting system for direct election of members of SJC from the judicial quota as well as a centralised system for random case allocation within a unified portal of the e-justice.

4.3.7. The reform of the Investigative services

According to the General Prosecution's analysis, the National Investigative Service (the position of the "sledovateli") has an extremely low workload compared to other prosecution services (on average, only 0.4 cases per year are brought to court per sledovatel). The General Prosecution intends to introduce a caseload comparable to other services and review their functioning. In the meantime, some personnel have been detached to the Special Prosecution dealing with organised crime.

4.3.8. Reform of the Ministry of the Interior

The reform of the Ministry of the Interior has been engaged by the new government. Part of this involves the merger of the special police units on organised crime – CDCOC – and the security services (SANS), on the basis that corruption and organised crime can be tackled more effectively in this way (see below).

Other measures have also been taken to reverse the concentration of power in Ministry of the Interior in order to concentrate on its core functions – including divesting state owned companies under the authority of the Ministry in areas like private security – and to take some steps to limit potential political interferences on sensitive investigative services (including special investigative means). Another priority is to redeploy staff from administrative to operational functions (in effect, to halve the figure of 30% of staff currently engaged in administrative tasks). The Ministry seeks to be more effective in the fight against property crime and attacks on persons. Part of the reform also involves increased transparency (public reporting every 6 months), to help restore public confidence.

V COMBATTING CORRUPTION

Bulgaria is considered to have one of the highest corruption risks among EU Member States.[50] Tackling high-level corruption is one of the core benchmarks of the CVM, and reports have consistently pointed to shortcomings in terms of the prevention, investigation, and dissuasion through bringing emblematic cases to justice.[51] This is also reflected in public opinion surveys

[50] Center for the Study of Democracy, Corruption and anti-corruption in Bulgaria (2012-2013), Policy Brief No. 43, November 2013. According to the Corruption Perceptions Index 2013 published by Transparency International, Bulgaria ranks second highest among the EU Member States with regard to the perceived level of corruption. (http://www.transparency.org/cpi2013)
[51] SWD(2012) 232 final, p. 19.

which indicate a low level of trust in public institutions in Bulgaria.[52] Bulgaria has implemented a number of anti-corruption strategies, but these have not succeeded in improving Bulgaria's effective track record.

5.1. High-level corruption

Neither Parliament nor the Government has presented comprehensive initiatives to fight high-level corruption. Some specific steps have been taken though, such as the creation of a specialised unit between the Prosecution office and the State Agency for National Security (SANS) to investigate crimes committed by magistrates discussed above.[53] Also, following legislative changes in June 2013, the competence of the State Agency for National Security (SANS) has been extended in a number of ways with regard to investigations into high-level corruption. These changes further build on steps that have been reported in previous years, such as the establishment of joint-investigation teams, specialised training, separate units in the prosecution offices and further specialisation of police investigators.[54] Regardless of earlier efforts, the general picture is characterised by a lack of progress in bringing high-level corruption cases to conclusion in the courts, such as in a number of cases of former Ministers. More recent examples of corruption related investigations exist, but it is still too early to assess the handling of these cases which are still ongoing. The recent analysis of corruption related cases carried out by the Prosecution pointed to the fact that corruption cases involving persons in top positions are initiated only sporadically and usually only after the dismissal of the respective minister or the Government.

CVM reports have consistently underlined that an important factor in the effective fight against high-level corruption is the appointment of individuals with integrity and independence to lead the relevant - investigating, prosecuting and judicial – institutions, as well as providing them with a mandate to carry out investigations into high-level cases in an independent manner. As mentioned earlier, appointments in Bulgaria have not always been free of controversy. The most emblematic recent case of a controversial appointment appeared in the context of a sudden reform of the security sector in June 2013, without a public or a parliamentary debate. Already, the decision to shift competencies from the Ministry of the Interior to SANS was an important decision, where justification only came after the event and where the precipitate decision-making has never been explained. This was coupled with the particularly controversial appointment to the leading role of Chair of SANS. The appointment of a partisan political figure to such a position would always stoke controversy, and in this particular case all the more so due to the lack of a debate or integrity checks. The appointment led to nation-wide protests, where the appointment was seen as illustrating broader problems with the the rule of law. Eventually, the nominee stepped down and the government acknowledged that the appointment had been a mistake, but the situation left a legacy of mistrust. Opinion polling suggested that trust in the National Assembly dropped to 11% in October 2013.[55]

In its 2012 report, in the light of weak track record on high-level cases, the Commission recommended carrying out an independent analysis of case failures covering weaknesses in

[52] See e.g. theBulgarian country profile in the World Justice Project Rule of Law Index 2012-2013, http://worldjusticeproject.org/sites/default/files/WJP_Index_Report_2012.pdf, p. 71.
[53] Section IV.
[54] SWD(2012) 232 final, p. 20.
[55] http://alpharesearch.bg/userfiles/file/1013_Public_Opinion_Alpha%20Research.pdf

both investigation and prosecution. In response, the Minister of Justice requested informal input from French and German experts on the matter. Recommendations were issued, which Bulgaria is reportedly still studying (see below). As mentioned above, the Prosecution has also carried out an analysis of reasons for failures in the investigation and prosecution of corruption. It concludes that a substantial part of the cases resulting in acquittal have been initiated without justification and generally should not have been submitted to court. This holds good mainly for proceedings with a subject of criminal acts with blank elements in the *corpus delicti*.[56] In fact, according to the analysis, the practice of qualifying administrative and disciplinary violations as general criminal breach of trust offences or economic offences by unknown perpetrators – without it being sufficiently clearly defined what exact crime has been committed and therefore on what grounds the indictment is based – has been the reason for a large number of acquittals. The Prosecution in its analysis also draws the conclusion that where failed cases are concerned the impartiality of the involved magistrates may come into question, and that in some cases there are grounds for concern about political pressure and other external influence.

Corruption cases of high public interest have seen little progress. Four cases against a former Minister are ongoing. One case involving possible illegal wiretapping by Ministry of Interior officials remain pending after first announcements were made by the Prosecution. The investigation was announced of a high-ranking official from the Ministry of Interior on grounds of bribery but he has to date not been indicted. One Member of Parliament has been indicted for money laundering. The case against another MP for trading of influence has seen delays. One case of possible electoral fraud has led to the indictment of one civil servant. One highly publicized asset forfeiture case is on hold awaiting an interpretative decision by the Supreme Court of Cassation.[57]

5.2. The fight against corruption at all levels

As noted in the Commission's 2012 CVM report, the level of concern about corruption in Bulgaria is considerable, with 95% of Bulgarians defining corruption as a major problem.[58] A number of studies indicate that the situation has not improved since then.[59] In the period 2012–13, personal experience of corruption in Bulgaria did not change, with 14 % of the adult population reporting experience of corruption transactions at least once per year. One study argues that bribes have in effect become part of the price for certain administrative services.[60] There is evidence that the level of corruption negatively affects the general business climate

[56] That is, not specifying the particular criminal act having been committed.

[57] Concerning EU fraud cases, OLAF currently has 30 investigations and coordination cases where Bulgaria is the country involved and Structural and Agricultural Funds are concerned. These cases are mainly focused on possible irregularities and fraud with the Public Procurement carried out by certain beneficiaries and to the existence of conflict of interest between different stakeholders responsible for the correct disbursement of the EU funds. Furthermore, OLAF is monitoring 39 cases where judicial or financial recommendations for actions have been addressed to the responsible national authorities.

[58] Flash Eurobarometer 351 of July 2012.

[59] Transparency International, Corruption Perceptions Index 2013; United Nations Development Programme, Human Development Index; Center for the Study of Democracy, Corruption and anti-corruption in Bulgaria (2012-2013), policy Brief No. 43, November 2013.

[60] Center for the Study of Democracy, Corruption and anti-corruption in Bulgaria (2012-2013), policy Brief No. 43, November 2013.

of the country.[61] Findings in the 2013 Special Eurobarometer Survey on corruption confirm the magnitude of the challenge.[62]

5.2.1. Anti-corruption strategy

In its last report from July 2012 the Commission recommended Bulgaria to carry out an independent evaluation of the national anti-corruption strategy and its impact.[63] Bulgaria reports that an assessment is now in progress as part of a broader project carried out for the Inspectorate General under the Council of Ministers. The project, which is co-financed by OPAC, will draw on experience from other EU Member States, evaluate measures under the current Bulgarian strategy, provide an assessment of its impact, prepare proposals for an improved reporting of internal inspections in the public administration, analyse the effectiveness of the current system of asset declarations of public officials and propose a mechanism for processing and reporting irregularities. It will also prepare proposals for legislative changes to improve the general system of internal control in the public sector.[64] The deadline for completion of the project is September 2014. It can be expected that this will result in both legislative and administrative measures to be followed up by the government and legislators.

Whereas there is no unanimously accepted concept of corruption in Bulgarian legislation, the existing provisions of the penal code do contain the most relevant measures to address corruption.[65] However, corruption crimes still represent only a very small share of the total number of revealed and punished offences in Bulgaria. Given the perception of a high prevalence of corruption, also echoed in expert opinion, this raises questions about the effectiveness of the system.[66] The analysis carried out by the Prosecutor's office concluded that, with regard to corruption, penal policy is falling short, and expectations that improved provisions in substantial penal law will result in more efficient prosecution of corruption were not justified. While legal changes may be helpful, analysis points to the problem lying as much with inefficient practices within the prosecutorial and investigating services and in wider administrative structures.

The fact that political changes in Bulgaria generally lead to widespread changes at the administrative level also tends to have a negative impact on the fight against corruption. Observers, including law enforcement counterparts from other Member States, have expressed concern that a series of personnel changes made after May 2013 had serious practical consequences for the pursuit of organised crime and corruption. In addition, such changes reinforce a perception that officials responsible for impartial decisions in the interests of the law are in fact politically dependent. There haves been a large number of changes in

[61] The 2013 Global Competitiveness Report lists corruption as the most problematic factor for doing business in Bulgaria. http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf p. 138.
[62] Forthcoming.
[63] COM(2012) 411 final, p. 21.
[64] Source: Bulgarian authorities.
[65] The current provisions on bribery and trading in influence provide a fairly sound basis for the prosecution of various corruption offences, according to the Council of Europe's Group of States against Corruption (GRECO). http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%297_Bulgaria_One_EN.pdf
[66] See "Corruption and anti-corruption in Bulgaria 2012-2013", Center for the Study of Democracy, Policy Brief No 43, November 2013, p. 10. Only 42 persons were convicted of bribery in the first half of 2013 representing 0.3 per cent of the total number of convicted persons.

staff, including in important positions concerning the fight against corruption. [67] The issue of staff selection and appointments also has a general relevance in the law enforcement sector in Bulgaria, since the lack of continuity in key posts erodes acquired experience and institutional capacity.

5.2.2. Inspectorate General to Council of Ministers

The Inspectorate General to the Council of Ministers, acts under the Prime Minister's authority and coordinates Bulgaria's anti-corruption efforts within the public administration. Current functions of the Inspectorate General include:

- coordinating and guiding the work of inspectorates
- developing a methodology for the evaluation of the inspectorates' work
- drafting methodological guidance on interaction with specialised competent authorities
- exercising control functions concerning conflict of interests
- monitoring corruptive practices in the central government
- assessing the risk of corruption

In the period January 2012 – June 2013 the Inspectorate General carried out 28 planned inspections and 44 *ad hoc* inspections. In addition to the Inspectorate General, there are also internal inspectorates in the various ministries, so in total 505 planned inspections were carried out in addition to 1,610 *ad hoc* inspections. *Ad hoc* inspections often take place in response to tip-offs about irregular practices, e.g. suspicions of corruption or conflicts of interest. In 2012, 488 inspections were carried out to check conflicts of interests. As a result of these inspections 33 cases were sent to the prosecutor's office for investigation. Also in 2012, general risk assessments were carried out by 8 inspectorates concerning corruption risks in their respective administrations. The checks resulted in recommendations concerning improved awareness raising, corruption risk monitoring, staff mobility and whistle-blowing. The internal inspectorates perform a central role in controlling corruption risks in the state administration but still have limited capacity. Work is on-going to develop the system as part of a project co-financed by OPAC looking at the Bulgarian National Anti-Corruption Strategy (see above).

5.2.3. Borkor

In November 2009, Bulgaria adopted an integrated strategy for countering corruption and organised crime. Successive Bulgarian Governments have seen the anti-corruption project Borkor as a key element in this fight against corruption. Borkor has only analytical responsibilities, it does not have operational powers. The detection of weaknesses is its main task, and since 2010, this has been defined in terms of assessing the weaknesses in both the legislative framework and the institutional environment in Bulgaria.

The Borkor project is being developed and implemented by the Centre for the Preventing and Countering Corruption and Organised Crime. Borkor is presented as "a complex cybernetic model for centralised planning and development of measures and systems of measures against

[67] This includes changes at the regional level - see Center for the Study of Democracy, in *Latest Political Appointments and the Capacity of Law Enforcement to tackle Corruption and Organised Crime in Bulgaria*, November 2013.,

corruption." In February 2013, Borkor presented to the Government a report about the first project for developing a preventive system against corruption in public procurement. [68] Another stage would come with a first test run of its IT systems is expected to be carried out by early 2014. At the same time, an internal debate in the government about its activities has concluded that the scope of activities of the project should be broadened, and has entrusted Borkor with the task to make preliminary analyses of all new legislation, before it enters Parliament. It remains difficult to assess Borkor, as fully developed and measurable results are still missing. Certainly in the area of corruption, the Commission has not been informed of any tangible advances which have resulted from its work.

5.2.4. Anti-corruption efforts at the local level

Every regional governor has a council against corruption, whose functions are to increase awareness on combating corruption and to assist to the regional government.

Councils are composed of representatives of public institutions (either technicians or persons holding managerial positions in bodies such as tax revenue agency, agricultural agency, police) and civil society at regional level (such as the academic community, trade unions, and NGOs). Although mainly having an advisory and analytical role, the regional anti-corruption councils can also receive complaints, which are submitted to a committee.

In practice, these councils do not have any possibility to examine administrative irregularities in depth. Apparently the Councils have no guidelines on how to operate, no expert secretariats, and no access to the information of other institutions. They essentially act as a mailbox and spread information to the general public on signals that could potentially have revealed corruption cases. There appears to be a lack of separation between their role in spreading prevention strategies and their role with respect to individual cases, where clearly they are not organised on the confidential and professional basis which would be required to take these forward.

5.2.5. Conflict of interest (CPACI)

Bulgaria's Commission for Prevention and Ascertainment of Conflicts of Interest (CPACI) is the core body dealing with identifying and sanctioning conflicts of interest. CPACI's mandate covers conflict of interests for individuals holding public offices. It can follow up on signals or complaints received, on requests by individuals concerned, or act ex-officio. In practice, most signals that are being followed up by CPACI come from citizens. Few come from the local administration or are a result of ex-officio checks. On average, it takes CPACI 4 months to establish whether a conflict of interest exists.

To date, it has proved difficult for CPACI to identify conflicts of interest, especially in more sensitive cases. According to a report presented by Parliament, 146 out of 860 case files remain pending. In 92 out of 103 cases of established conflict of interest the court has rejected the Commission's findings. There have also been important cases reported in the media where CPACI has not been in a position to explain why they were not taken up. Currently, functioning of the CPACI is even more difficult, as the Chair resigned following allegations

[68] See http://borkor.government.bg/bg/page/437. According to information provided by Borkor, object of analysis are around 80,000 cases of public purchasing accomplished in the last five years in Bulgaria. The study has not been seen by the Commission services.

of political influence and one of its members has left to become Deputy Minister of Justice. The controversy has had damaging effects on the reputation of the Commission, which is now subject to a parliamentary enquiry commission. New members to CPACI need to be chosen by the Prime Minister and by Parliament.

In its 2012 report the Commission pointed out that the effectiveness of the law on conflict of interest may be hampered by a rather complex appeal system.[69] When a conflict of interest has been declared by the Commission, this decision can be challenged at two instances before the administrative courts. Once the decision is finally validated by the Court (in average after two years) the Commission can then launch the sanction proceedings. This decision can also be challenged before the administrative court, and a second instance exists as well. As a result of this cumbersome two-tier procedure, 4 court decisions can exist on the same issue before sanctions may finally be imposed.

5.2.6. Public procurement

Past CVM reports have identified public procurement procedures as an important risk area for corruption. The rules on ex-post checks by the State Financial Inspection Agency and the National Audit Office were reinforced in 2011. The scope of the ex-ante checks by the Public Procurement Agency have also been modified to cover EU co-financed projects and negotiated procedures without prior publication. However, the limited scope of these ex-ante checks raises questions as to their effectiveness. In particular, the checks do not cover decisions of contracting authorities to apply derogations to the application of EU procurement legislation, nor do they cover the technical specification of the tenders. More generally, there are doubts about the effective enforcement of the rules and the consistent application of sanctions in case of irregularities.

In addition to the above concerns, frequent legislative changes in combination with a complicated legal and regulatory landscape means that there are serious problems concerning legal certainty. These concerns are compounded by the limited administrative capacity in many parts of the public administration due to a lack of sufficient qualified staff and experts, high staff turnover and a lack of supporting structures for smaller contracting authorities. Important delays in the treatment of appeals related to public procurement also appear to follow from limited capacity in the judicial system. Although some progress has been achieved in e-procurement the system still has limited functionalities, and at this stage it is not yet possible to submit tenders electronically.[70]

VI TACKLING ORGANISED CRIME

Organised crime continues to be a major challenge for Bulgaria. With one notable exception,[71] there has been very little progress on the investigations of over 150 murders which can be defined as contract killings. The specialised prosecution and court have not been able to focus on serious organised crime cases.

[69] COM (2012) 411 final, p. 18.
[70] E-procurement can play an important role in increasing transparency in public procurement procedures.
[71] A court case against a group accused and in first instance convicted of organising and carrying out contract killings.

According to the Ministry of the Interior, between July and November 2013, police have led operations against contract killers groups, has dismantled laboratories of synthetic drugs and cannabis greeneries and were also active against smuggling of cigarettes, drugs and alcohol. Whilst it does not provide a full picture of Bulgarian's organised crime, the Europol 2013 Activity Report[72] nonetheless lists a few cases involving Bulgarian organised crime groups. It also gives examples of cooperation of Bulgarian law enforcement in the context of Europol. Independent experts report that after a phase of "pure" criminal organised activities, with a special impact of violent deeds, organised crime in Bulgaria would now seem to invest in the legal economy. Strategies focusing on "traditional" criminal activities and on a widespread number of isolated individual cases of petty or medium-level corruption therefore risk missing a dimension of growing importance. Corruption as an enabling factor for organised crime is also considered to be of particular importance in an effective response to organised crime.[73]

Earlier CVM reports have put the emphasis on the need for a comprehensive analysis of shortcomings in the existing set-up and an independent analysis of problematic cases. Such an analysis was launched late last year, with the support of experts from other Member States, but has been the subject of delays and no conclusions have yet been made public.[74] Several national initiatives have been completed in order to follow up and further develop the analytical basis for assessing the causes of case failures. These efforts have resulted in the identification of a number of shortcomings, many of which overlap with those identified by the international experts. Bulgaria reports that the various analyses are currently being evaluated by the Ministry of Justice in cooperation with the relevant institutions, with a view to developing an action plan.

6.1. SANS

The relevance of stability and effectiveness in the organisation of work against organised crime was illustrated by the decision to transfer the Directorate responsible for combatting organised crime (CDCOC) from the Ministry of Interior to the National Security Agency (SANS). Although involving security services in this work is not out of line either with previous Bulgarian practice, nor with some other Member States, no explanation was given at the time and the precipitate nature of the change created further uncertainty. Subsequent concerns over possible operational implications, for example in regard to the communication with other Member States' law enforcement bodies, have reinforced the impression that the changes were not fully thought through and could have been better prepared.

[72] https://www.europol.europa.eu/sites/default/files/publications/europolreview2012_0.pdf

[73] Organised crime in Bulgaria is reported to enjoy political patronage through corruption in public administration, the judiciary, police and customs. "Study to examine the links between organised crime and corruption", Philip Gounev and Tihomir Bezlov, Center for the Study of Democracy, 2010.

[74] According to the Bulgarian authorities, the analysis identified deficiencies related to a number of areas including: certifying witnesses; bank secrecy; gathering of evidence; indictment; coordination and cooperation among investigation bodies and prosecution; special investigation devices; training, specialisation and qualification of investigation bodies and prosecutors; problems with professional integrity and replacement of prosecutors/investigators; international legal assistance; case postponement/non-appearance of participants in the process, submission of medical certificates of accused and defendants/difficulties with summons; returning the case to pre-trial stage due to procedural breaches; delaying the case to a higher court instance due to a slow drafting of motives for the sentence by first-instance court/delayed submission thereof; disqualification; expert examinations; theft of evidence.

On 14 June 2013, the newly elected Bulgarian parliament adopted a new bill on the security sector. The law merged the Chief Directorate Combating Organised Crime with the State Agency for National Security (SANS). It will regulate the functions and activities of the institutions, the interaction and control of their activity. SANS now deals with organised crime committed by local and transnational criminal structures, the customs, currency, tax and social insurance systems, human trafficking, cybercrimes, intellectual property, counterfeiting of money, payment instruments or official documents and frauds with EU funds – where these crimes are deemed to have an impact on national security, a dividing line which does not seem clear. This also means that SANS investigates high-level corruption. SANS can now also detain and search persons.

Amendments to the Special Surveillance Means (SSM) Act were also adopted (effective August 9, 2013), aiming at better regulating the collection of data and evidence. A State Agency for Technical Operations (SATO) was set up as a specialised body with the Council of Ministers. Under the amendments, SATO is separated from the requesters under the SSM Act. The previous subordination to the Minister of the Interior is eliminated. A National Bureau for Control of Special Surveillance Means is reinstated as an independent permanent state body, whose members are elected by the National Assembly.

Experts have noted that SANS now appears as a "hybrid" institution: on the one hand, it is entrusted with intelligence powers and, on the other hand, with criminal investigation and police powers. Hence, there could be a risk of confusion between intelligence and investigation powers, with the possibility that investigations on organised crime could potentially become less autonomous and independent. This issue becomes especially relevant since SANS' competence now also includes investigations against judges and prosecutors. Also, the reform of the National Security Agency reportedly has given rise to some concerns with regard to its possible impact on operational police cooperation.

The controversy over SANS' new responsibilities was compounded by the appointment of a new SANS Director. Clearly, the recommendations of the Commission about appointments based on a clear procedure which allows a real competition and puts the emphasis on merit and integrity is highly relevant for such posts (see above). The Commission made public statements to this end. The appointee stood aside and Parliament reversed its decision in the wake of these and other reactions. Overall, these events have left a difficult legacy in terms of confidence amongst the public and amongst Bulgaria's partners, which the authorities will have to work hard to overcome, needing to show that the new structure is both efficient and accountable.

6.2. Asset forfeiture

The forfeiture of assets is a key tool in the fight against organised crime. A revised Asset Forfeiture law was adopted in May 2012. The July 2012 CVM report noted that the legislation as finalised by Parliament raised a number of issues, and would require vigorous implementation by the Bulgarian authorities at all levels if the law were to be effective.[75]

[75] COM (2012) 411 final, p. 13.

It is still too early to assess whether the new law has made asset forfeiture a more effective tool for Bulgarian criminal justice.[76] CEPACA, the body dealing with assets confiscation, expects to have 4 cases under the new law in court by the end of the year. The combination of a threshold of 125,000 EUR for the difference between earned and actual wealth – high by EU standards – and a period of investigation of 10 years, means that some important cases may fall outside CEPACA's scope is problematic. While CEPACA can go back 10 years in time, it cannot investigate initial wealth (so for example income declared 11 years ago cannot be checked). There is no reversed burden of proof. Furthermore, CEPACA seems overloaded with smaller cases. CEPACA has to investigate when a person is indicted for certain crimes. The list is very long and does not allow a concentration on organised criminal activities. In the meantime, procedures under the old law are also at risk, as the Supreme Court of Cassation has been asked by the Ombudsman to issue an interpretative decision on possible conflicting case law related to asset forfeiture. Consequently, the bulk of on-going court cases are reportedly on hold pending the decision of the Court. These cases are at risk also because of statute of limitations. For example, one case related to a highly publicised organised crime case is on hold.[77]

6.3. Joint teams

The need for effective structures and efficient cooperation between police, prosecution and other administrative authorities has been highlighted in past CVM reports.[78] The more general use of joint teams between different law enforcement authorities and administrations is in line with past recommendations, notably given the complexity of some of the crimes at stake (such as money laundering). For example, an agreement was signed in September 2013 setting up joint teams between the prosecution and CEPACA. It will be used systematically in the case of money laundering cases but can also be proposed for tax fraud. According to this agreement:

- When a person is brought to justice as defendant in relation to certain categories of crimes, the investigating prosecutor shall immediately send a written notification to the Territorial Director of CEPACA;
- Joint teams can be established in order to enhance the detection of particular property acquired from illegal activity and tracking its movements.
- Mutual exchange of information is foreseen.

The National Revenue Agency is also part of joint teams and regular meetings with representatives of the Ministry of Interior and the Prosecutor's Office take place in order to discuss cases. Likewise, the Bulgarian authorities reports that joint teams have been set up between the police and Customs Agents for investigations launched at the border by Customs officials where special investigative means were needed, under the co-ordination of the Prosecutor's Office. This kind of inter-departmental co-operation helps to address problems with coordination identified in past CVM reports. If cases are led by a proactive prosecutor steering the investigation and co-ordinating the activities of all the agencies involved, this can

[76] Bulgaria reports that the amounts forfeited has steadily increased over the years from 9 million BGN in 2011, to 12 million BGN in 2012 and an expected 15 million BGN in 2013. However, these figures refer to cases under the old rules and cannot be used as an indication of the efficacy of the new regime.
[77] The question appears to be whether there needs to be a causal link between criminal offense and conviction. Therefore, the case may have implications for non-conviction based confiscation.
[78] COM(2011)459final, p. 8-9.

lead to progress in addressing difficult cases requiring a range of expertise. It is still too early to assess the impact of these changes on the concrete progress of cases.

6.4. Specialised Court and Prosecution

The specialised court and prosecution dealing with organised crime started work in in January 2012. They deal with all cases of organised crime, but as the July 2012 CVM report pointed out, the risk is that they cannot thereby prioritise on key strategic cases.[79] Although the specialised prosecution and court have started functioning[80] it is still too early to assess its impact. It appears that the prosecution office attached to the specialised court, in particular, is faced with a heavy caseload, including a large number of relatively minor cases. The scope of its work seems to be determined in such a way that disproportionate attention is given to cases concerning minor offences, and the prosecution reportedly does not have the necessary discretionary powers to prioritise heavy and complex cases in order to address such cases effectively.[81]

[79] COM(2012) 411 final, p.12; SWD(2012) 232 final, p. 32.
[80] At 15.10.2013 the Specialised Criminal Court (SCC) included 10 judges on the payroll, as well as three delegated judges. From 01.07.2012 to 15.10.2013 the court has launched proceedings on 2,595 cases. 208 persons were tried over the period – including 187 sentenced and 21 acquitted. A total of 107 verdicts of imprisonment were ruled and have been carried out.
[81] The prosecution service is in principle obliged to deal with all incoming cases in a comprehensive way.