

EN

EN

EN



EUROPEAN COMMISSION

Brussels, 20.7.2010
SEC(2010) 948

SUPPORTING DOCUMENT

Accompanying the

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

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

BULGARIA: Technical Update

{COM(2010) 400 final}

TABLE OF CONTENTS

1. Benchmark 1: Adopt Constitutional amendments removing any ambiguity regarding the independence and accountability of the judicial system	4
<ul style="list-style-type: none">• <i>The National Assembly to adopt amendments to the Bulgarian Constitution</i>• <i>The National Assembly to make necessary changes to the Judicial System Act</i>• <i>The Inspectorate to be set up and functioning, first results to be published and evaluated</i>	
2. Benchmark 2: Ensure a more transparent and efficient judicial process by adopting and implementing a new judicial system act and the new civil procedure code. Report on the impact of these new laws and of the penal and administrative procedure codes, notably on the pre-trial phase	6
<ul style="list-style-type: none">• <i>Adopt the new Civil Procedure Code</i>• <i>Adopt the new Judicial System Act reflecting the amendments to the Constitution and the recommendations of the peer review experts</i>• <i>Establish a monitoring system for all new codes</i>• <i>Report at regular intervals on the findings of this monitoring process, notably as regards the pre-trial phase, the execution of judgements and sentences</i>• <i>Amend the relevant codes and legislation if necessary</i>	
3. Benchmark 3: Continue the reform of the judiciary in order to enhance professionalism, accountability and efficiency. Evaluate the impact of this reform and publish the results annually	7
<ul style="list-style-type: none">• <i>Establish a transparent and fully functioning decision making process on disciplinary investigations by the future Inspectorate with the Supreme Judicial Council (SJC)</i>• <i>Ensure complete and overarching application of the Code of Ethics for magistrates, especially procedures for review, investigation and dismissal/prosecution for violations</i>• <i>Monitor the application of the system of competitive examination for recruitment and performance evaluation of magistrates</i>• <i>Annually publish findings of the evaluation of the reform of the judicial system, in particular on how specific problems related to professionalism; accountability and efficiency have been addressed</i>• <i>Introduce random case handling software in the prosecution services</i>• <i>Enhance the training on the implication of these new laws</i>	
4. Benchmark 4: Conduct and report on professional, non-partisan investigations into allegations of high-level corruption. Report on internal inspections of public institutions and on the publication of assets of high-level officials	11
<ul style="list-style-type: none">• <i>Associate Member States' experts to provide assistance and guidance as regards improving the quality of investigations and reporting on this</i>• <i>Streamline and coordinate the institutional set-up of bodies empowered to fight corruption</i>• <i>Establish administrative arrangements to safeguard whistle-blowers</i>• <i>Implement fully the legislation on the independence of the inspectorates in the public administration and ensure more pro-activeness in their investigative role</i>• <i>Report on the implementation of measures taken to prevent and fight influence in the investigation and prosecuting entities, in particular sustain cases of suspension/dismissal/initiation of criminal proceedings against alleged corrupt law enforcement bodies</i>• <i>Ensure the establishment of a credible checking mechanism for asset declarations as well as effective sanctions in case of false or inaccurate declarations</i>	
5. Benchmark 5: Take further measures to prevent and fight corruption, in particular at the borders and within local government	12
<ul style="list-style-type: none">• <i>Implement disciplinary sanctions and a policy of zero-tolerance, particularly in the Veterinary Service, customs, the Road Executive Agency and other relevant services</i>• <i>Establish electronic payment systems and a system of shifts at random for officers employed at the borders</i>	

- *Conduct at regular intervals audits and checks, publish the findings and ensure their follow-up*
 - *Report on investigations into inexplicable wealth*
6. Benchmark 6: Implement a strategy to fight organised crime, focussing on serious crime, money laundering as well as on the systematic confiscation of assets of criminals. Report on new and ongoing investigations, indictments and convictions in these areas 14
- *Associate Member States' experts to provide guidance and assistance as regards improving the quality of investigations and reporting on this*
 - *Hand over an action plan to implement the strategy to fight organised crime and implement it with reports at regular intervals*
 - *Fully implement relevant legislation on confiscation of assets of criminals*
 - *Report regularly and audit internally the new and on-going investigations, indictments and convictions*
 - *Implement the new legislation to combat money laundering*

Note:

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

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

During the period of two and a half years of existence, the Inspectorate has inspected all courts in four out of five appellate regions; namely Burgas, Veliko Tarnovo, Varna and Plovdiv.¹ By the end of 2010 the Inspectorate plans to complete the *scheduled inspections* of all the judicial bodies in Bulgaria. A number of *thematic* and *ad hoc inspections* targeted specific subjects of concern² and recommendations were issued thereupon.

On the basis of inspections carried out so far, the Inspectorate established an overview of the situation within the judiciary in Bulgaria and identified courts and prosecution offices which warrant improvement. In cases where shortcomings were identified, the Inspectorate issued recommendations and followed up on compliance. The joint working group of the Supreme Judicial Council (SJC) and the Inspectorate established in December 2009 was instrumental in ensuring follow-up to the recommendations of the Inspectorate and contributed to harmonising disciplinary practice. In February 2010, the joint group was institutionalized as a *Commission on the Analysis and Follow-up to the ISJC recommendations*. The Commission oversees the implementation of the measures recommended by the ISJC in reference to *scheduled inspections*, *thematic inspections* as well as *ad-hoc inspections* initiated upon signals. Based on the findings of the ISJC's inspections in the appellate regions, the Commission suggests measures, whose application is controlled by *follow-up inspections*. The increase in a number of follow-up inspections focused on qualitative analysis of court's work is commendable. The efforts to ensure follow-up to the findings of the ISJC respond to the European Commission's recommendation and should be continued.

The Inspectorate reports tangible improvements in courts where the Inspectorate's recommendations have been applied by the administrative heads. The policy of notifying the main findings and recommendations to the Supreme Judicial Council and other relevant judicial bodies (in addition to courts and prosecution offices concerned) aims to unify and enhance professional standards within the judiciary.

During the reporting period,³ 46 disciplinary proceedings were initiated by the Supreme Judicial Council, out of which 6 were proposed by the Inspectorate, 10 by the respective administrative heads and 30 by the SJC members.

Bulgaria reports a total of 70 proceedings completed in the reporting period.⁴ This comprises 32 disciplinary proceedings initiated before August 2009. Disciplinary

¹ In the reporting period, the Inspectorate carried out *scheduled inspections* of the Criminal Division of the Sofia Appellate Court, the Plovdiv Appellate Region, the Pazardzhik District Court, Smolyan District and Regional Courts. The following inspections were underway: the Sofia Regional Court, Civil College of the Sofia City Court, Varna Appellate, District and Regional Courts, Vidin District and Regional Courts, Belogradchik and Kula Regional Courts.

² Examples of thematic inspections include: management, organisation and administration of judicial bodies; control by administrative heads of correct application of new legislative provisions; non-unitary application of certain provisions of the Civil Procedure Code; enforcement order proceedings.

³ August 2009 – May 2010. For any other periods referred in this report, precise dates are provided.

⁴ Bulgaria reports the following disciplinary sanctions in cases completed in the reporting period: disciplinary dismissals (8 cases), dismissals from the position of administrative heads (5 magistrates),

measures are decided by disciplinary panels composed of randomly selected SJC members. They are based on individualised assessment and can be appealed before the Supreme Administrative Court.

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

Bulgaria introduced amendments to the *Penal Procedure Code* (PPC) with a view to enhancing the efficiency of the penal procedure, in response to a recommendation by the Commission of July 2009. The amendments, submitted to the National Assembly in November 2009, were adopted in April 2010 and entered into force on 28 May 2010.⁵

The amendments to the PPC aim to simplify the penal procedure, reduce its excessive formalism and improve the celerity of judicial proceedings. One of the amendments provides a possibility to appoint a reserve defence counsel when the defendant's lawyer cannot be present at a hearing.⁶ This amendment is designed to prevent undue delays in hearings and can be applied by courts if there is an interest to carry out hearings within the stipulated deadlines. First instances of application of this procedure in cases of high public interest have been reported following its entry into force on 28 May.

The revised PPC extended certain investigative powers to police officers. Data collected under the Special Intelligence Means Act, witness testimonies and statements by defendants made before a defence counsel at the pre-trial phase as well as evidence collected by the European Anti-Fraud Office have become admissible evidence. Another amendment introduced the possibility (under certain conditions) to conduct hearings of witnesses by means of videoconference or telephone conference.

The new PPC streamlines the pre-trial phase. Under the current provisions, police officers submit collected evidence to the investigative police officers and notify the public prosecutor. The requirement of a sufficient level of evidence has been abolished. In addition, the reporting procedure was simplified by eliminating the requirement for police to draw up a conclusion on the investigation. Prosecutors are now entitled to challenge the referral of cases back to the pre-trial phase.

The revised PPC also enhances the rights of the parties in trial by including the right of defendants to receive translations of the main documents and extending the rights of victims in pre-trial proceedings. The revised PPC introduced the possibility for

reduction of remuneration (11 cases), demotion in rank (17 magistrates), referral to administrative head for sanction (14 cases) which resulted in 31 orders by administrative heads for admonition, reprimand or censure of magistrates. 1 proceeding was terminated.

⁵ Three provisions regarding the creation of a reserve defence counsel, evidence from unidentified witnesses, eliminating the judicial review of investigations exceeding 1-2 years were challenged at the Constitutional Court. The fact that the Constitutional Court has not yet pronounce a sentence did not have an impact on the entry into force of the provisions concerned.

⁶ Article 94 paras 9.4, 9.5, 9.5 of the PPC stipulate the procedural modalities for the appointment of a reserve defence counsel (a defendant can choose a reserve lawyer from a list provided by the court).

witness' testimonies of minors to be read out without the mandatory requirement for them to be examined at trial phase as well as a number of additional guarantees for the protection of under-cover agents and anonymous witnesses.

The above mentioned provisions address to a certain extent concerns regarding the administration of evidence in Bulgaria. The excessive formalism of the penal procedure is reduced but not eliminated. For example, spontaneous declarations of witnesses before the police, the investigating authority or a prosecutor have no value if not delivered in front of the accused party and its defence counsel or a judge. Such a requirement can create significant difficulties in cases involving numerous witnesses and defendants.

Bulgaria reports that the *expedited procedure and plea bargaining* contributed to quicker completion of judicial proceedings. Plea bargaining is reportedly used more frequently than the expedited procedure. In the revised Penal Procedure Code, the provision excluding from the field of application of the expedited procedure in relation to crimes resulting in death or serious bodily injury or committed in a state of alcoholic intoxication (introduced in 2009) has been revoked. If the defendant confesses and the court decides to apply the expedited procedure, the court is obliged to apply a penalty range reduced by one third.⁷ In cases of serious crimes (e.g. murder), this may lead to imposing sanctions which do not correspond to the social danger of the committed crime. Bulgaria should continue to monitor and assess the implementation and impact of the new provisions.

The monitoring system for *the Penal, Civil and Administrative Procedure Codes* is based mainly on thematic inspections. Between July 2009 and May 2010 the Inspectorate to the Ministry of Justice inspected 10 courts on implementation of the *Penal Procedure Code* regarding the duration of the trial phase in corruption cases and judicial practice. Close monitoring of the effective implementation of the amended Penal Procedure Code provisions, which entered into force on 28 May 2010, will need to be further ensured. For the same period, the Inspectorate completed thematic inspections in 6 courts, 8 enforcement offices and 2 private enforcement agents on the application of the *Civil Procedure Code* with respect to first instance proceedings, precautionary proceedings, enforcement proceedings and compulsory enforcement and in 4 courts on the application of the *Administrative Procedure Code*. As a follow-up to the inspections, amendments to the Civil Procedure Code and the Ordinance on the samples of documents used by courts were proposed.

A draft act amending the *Administrative Procedure Code* has been prepared for submission to the Council of Ministers and adoption by the Parliament. The amendments include reattribution of first-instance jurisdiction in a number of administrative cases from the Supreme Administrative Court to the district administrative courts and other changes in jurisdiction of appeals. These amendments will contribute to balancing the workload between the Supreme Administrative Court and the 28 district administrative courts.

Bulgaria prepared important draft amendments to the *Judicial System Act*.⁸ The key amendments refer to the status, appraisal and appointments of judges and

⁷ Article 58a of the Penal Code and Article 373 Penal Procedure Code on expedited procedure.

⁸ The draft amendments are yet to be adopted by the Council of Ministers and will be subsequently forwarded to the Parliament.

prosecutors.⁹ The draft amendments strengthen the responsibilities of the SJC in ensuring transparency and accountability of the judicial system. The amendments include proposals for supplementing the functions and powers of judiciary bodies, including the Supreme Judicial Council, its Inspectorate as well as the Inspectorate within the Ministry of Justice.

Bulgaria started to address the Commission's recommendation by taking steps to enhance the *unification of jurisprudence*, notably by regular publication of interpretative rulings of the Supreme Cassation Court (SCC) and the Supreme Administrative Court (SAC)¹⁰ and of the SCC's bulletin containing all interpretative rulings and judgments of the respective panels. In addition, regular meetings on issues related to the unification of jurisprudence and trainings for judges are being pursued. To maximise the impact of the newly amended PPC, it will be important to accompany the legislative reform with a wide range of non-legislative measures, such as drafting guidelines or providing trainings for judges and prosecutors. Furthermore, a broad dissemination of interpretative decisions of the SCC and the SAC will be necessary. The introduction of the *Central Web-based interface for publishing judicial acts* will be of added value in harmonising jurisprudence. An effective control system will need to be put in place to ensure timely publication of all court decisions.

In April 2010, Bulgaria introduced some amendments to the Penal Code to ensure compliance with the amended provisions of the Procedural Code. Some steps were taken to prepare the reform of the Penal Code. On 23 June, the Government adopted a new Concept on Penal Policy. A working group entrusted with preparation of an overall revision has been set up and held several meetings. The Government sees the revision of the Penal Code as a long-term process. It should be backed by a broad public consultation and enjoy a wide public and political support. A revision of penal policy, including the modernisation of the Penal Code and a differentiation between criminal offences, is nonetheless urgent and has been recommended in the Commission's July 2009 report.

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

On 23 June, the Bulgarian Government adopted a *Strategy to continue Judicial Reform in the conditions of full EU membership*. The Strategy sets an ambitious and comprehensive vision for reform of the judiciary and builds upon measures taken earlier. While acknowledging the existing shortcomings of judicial practice, the Strategy draws special attention to institutional strengthening and mobilisation of the capacity of the judiciary to improve the quality of justice and the efficiency of the system. The strategy focuses on three priority objectives: better management and good governance within the judiciary, placing the citizens in the centre and countering corruption in the judicial system. The priorities outlined in the Strategy

⁹ More details provided under Benchmark 3.

¹⁰ Since August 2009, the SCC has issued five interpretive rulings and has initiated seven further interpretive cases. Over the same period the SAC issued four interpretative rulings. Four other cases have been initiated.

will be implemented through a set of measures to be defined in a detailed Action Plan.

The Strategy received broad support of politicians, the judiciary and civil society. The success of reform will depend on its effective implementation by all institutions involved. A swift elaboration and implementation of an Action Plan accompanied by appropriate monitoring and evaluation mechanisms will be important to the success of the Strategy.

Bulgaria took measures to streamline the process of appraisal of judges and prosecutors. These steps go in line with the measures recommended by the Commission in July 2009. It introduced specific performance indicators to the existing *appraisal system*, strengthened the central role of the SJC's Commission for Proposals and Appraisal (CPA) and introduced a functional separation of appraisal of judges and prosecutors. The evaluating commissions take into account feedback on the performance of the magistrates concerned and are obliged to take into account ISJC findings regarding their performance. The appointment and appraisal decisions will be made through an open vote and supported by a motivation. Members of the SJC will be excluded from voting on matters where they could be in conflict of interest. Entrusting an overview of the appraisal to a single central body (the SJC) and issuing guidelines on the numerical marking will play an important role in achieving a uniform application of the assessment.

To enhance the transparency and professionalism of the *appointments* to senior positions, the SJC initiated enquiries regarding all signals concerning participants in competitions for administrative heads. The SJC now requests written motivations from candidates who apply for administrative heads' positions at own initiative and reasoned opinions on candidates supported by other magistrates. It is too early to assess the implementation of this new approach in practice.

The Ordinance adopted by the SJC and the draft amendments to the Judicial System Act will contribute to improving the objectivity and transparency of the appraisal and appointment procedures. The results of putting new procedures in place will have to be closely monitored in future.

Other draft amendments to the JSA introduce changes in the organisational structure of the courts and the prosecution offices. The SJC will be charged with preparing an annual analysis of workload in courts and prosecution offices and on this basis take measures to re-balance personnel schemes or even close some courts or prosecutors offices with insufficient workload. The already ongoing initiative to analyse and evaluate the workload in courts and prosecution offices constitutes a first step in this direction.

Anticipating certain forthcoming amendments, the SJC adopted a number of structural measures to be implemented by the administrative heads with a view to improving the celerity of judicial proceedings. Recommendations included scheduling court hearings at shorter intervals and shortening the time for each court sitting. The SJC reported positive impact of these measures.

Bulgaria continued monitoring a number of high public interest cases, some of which are also monitored by the European Commission. Out of 50 cases monitored by the SJC, 54% were reportedly completed with a sentence. Furthermore, the SJC monitors 13 opened cases on offences committed by organized crime groups. The SJC reports a disciplining effect on the cases monitored.

Public accountability remains an important challenge of the judiciary. Since July 2009, Bulgaria has been able to develop a first track record in following up to complaints and alleged violations of the judiciary's ethical code. The Ethics Commission of the SJC initiated - on its own initiative - cases of alleged ethical violations or corruption reported in the media and examined altogether 80 complaints and signals alleging violations of ethical rules by magistrates. Following the adoption of the unified *Code of Ethics* in May 2009, ethics commissions at the district and appellate levels as well as within the supreme instance were set up. An impact analysis of the Code of Ethics is scheduled for 2011, once the training process is completed.

Since July 2009, a number of important cases of trade in influence affected the reputation of the Bulgarian judiciary. The response of the disciplinary and judicial authorities to these cases has been mixed. In response to the case concerning alleged trade in influence in high-level judicial appointments, the SJC imposed disciplinary sanctions against 18 magistrates for illegitimate contacts: 11 of them were demoted, a 20% salary cut for two years was applied in the case of one magistrate, 3 magistrates were dismissed and 3 were removed from their positions. However, no criminal investigations against the involved magistrates were launched. Two elected members of the SJC, who were involved in the case, submitted their resignations and returned to the previously held positions. An amendment to the Judicial System Act (JSA) of December 2009 introduced the legal basis for disciplinary responsibility of members of the Supreme Judicial Council in the same way than for ordinary magistrates. The SJC initiated disciplinary proceedings against the two of its members. One of them was dismissed while the proceedings against the second one are still ongoing.

In another case regarding allegations of trade in influence and mismanagement at the Blagoevgrad District Court, no disciplinary proceedings by the SJC nor criminal investigations were launched despite a critical inspection report. The incumbent administrative head of the court in question was not re-appointed.

In a third large scale case regarding allegations of trade in influence in relation to securing valuable real-estate property by magistrates' relatives, a more proactive reaction by disciplinary and judicial authorities could be noted. The Ethics Commission of the SJC initiated disciplinary proceedings against all magistrates concerned. Criminal investigations were launched in parallel.

A bilateral assistance project developed recommendations for a system to collect complaints concerning magistrates. The recommendations included an information campaign on types of complaints, procedures for submitting them, creating a mechanism for their monitoring and follow-up on a local level as well as setting-up of a centralised electronic registry of received corruption signals regarding the judiciary.

The Supreme Judicial Council approved a model for courts' websites and introduced a central web-based interface for the publication of judgments. As of July 2009, all courts were required to publish all judgments; however, random checks revealed that courts do not systematically comply with this requirement. The SJC does not have yet an effective system to control the respect of the requirement to timely publish all the sentences. Further steps to fully address the Commission's recommendation of July 2009 still need to be taken.

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

Bulgaria has stepped up its efforts to fight *high-level corruption*. Cases against former Ministers, former Members of Parliament and other high-level officials were initiated and some of these cases have reached court.

At the central level, an inter-ministerial Commission for the Prevention and Counteraction of Corruption¹¹ within the Council of Ministers develops national anti-corruption policy. In September 2009, the role of the Commission was extended through a new mandate. The organisation of the Commission's work and the administrative and technical services are carried out by the Directorate "Chief Inspectorate", which is directly subordinate to the Prime Minister. Further work is required to monitor the progress in the fight against corruption at the central and local level, as recommended in the July 2009 report.

The lack of effective control at the administrative level to prevent and detect fraud continued to pose problems. The Commission's recommendation to promote proactive *ex-officio* investigations of corruption by administrative authorities has not yet been addressed. Administrative controls are not performed systematically and the quality of signals from public administration is reportedly low. Certain improvements were reported with respect to the quality of signals from the institutions managing EU funds.

Bulgaria reports that the law on the prevention and detection of conflicts of interest in force since January 2009 lead to a number of signals, inspections, disciplinary proceedings and sanctions. At the same time, few situations of conflict of interest are being pursued and sanctioned. The control bodies are not effective in detecting conflict of interest as they lack the sufficient capacity and functional independence. No steps have been taken to develop guidelines for the implementation of the conflict of interest law recommended by the Commission.

The General Inspectorate to the Council of Ministers, tasked with following-up signals on conflict of interest and verifying conflict of interest declarations, does not have sufficient capacity and tools at its disposal to carry out these functions effectively. Between August 2009 and May 2010, 10 enquiries on conflicts of interest were carried out (for 300 declarations received). In 8 of these cases no irregularities were found. The Parliamentary Committee on Anti-corruption, Conflicts of Interests, and Parliamentary Ethics (CACCIPE) set up in July 2009 initiated several *ex-officio* inspections, which revealed that five Members of Parliament (MPs) did not submit their declarations before the deadline. An inspection on the contents of the actual declarations is ongoing. The Committee received nine signals on Ministers and MPs. Six cases were terminated as the

¹¹ The Deputy Prime Minister and Minister of the Interior holds the chairmanship of the CPCC. Deputy Chairperson is the Deputy Prime Minister and Minister of Finance. The members of the Committee are: Minister of Justice; Minister of Education, Youth and Science; Minister of Health; Minister of Economy, Energy and Tourism; Minister of Regional Development and Public Works; Chairperson of the State Agency of National Security; Secretary of the Security Council with the Prime Minister; Secretary of the Council of EU Funds Management with the Prime Minister.

Committee did not find a conflict of interest. Final decisions in other three cases have not yet been taken.

The law on the prevention and detection of conflict of interests contains a special provision on the protection of *whistle-blowers*, in order to protect the identity of the whistle blower. The staff in charge of checking signals is obliged to protect any relevant documents from unauthorized access. No further administrative safeguards to protect whistle-blowers have been put in place. The Commission's recommendation in this regard remains unaddressed.

As a follow-up to a recommendation by the Commission, the establishment of a special agency in charge of detecting and preventing conflicts of interests is foreseen for 2011. The different control bodies which are currently in charge of implementing the law continued to be passive rather than pro-active in establishing possible fraud and corruption cases. To ensure public transparency, it is important that declarations on conflicts of interests are published systematically.

In response to the Commission's recommendation, in March 2010, Bulgaria adopted amendments to the Administrative Act aiming to strengthen the capacity of inspectorates by giving them the right to conduct checks at their own initiative. Checks have become reportedly more regular and in some cases led to disciplinary sanctions and forwarding cases to the prosecution.¹² The Prime Minister intends to create a working group to develop a methodology for the efficiency of the administration and a methodology for assessing corruption risks.

Since their establishment in 2008, there have been no structural changes of the *joint teams specialised in the EU fraud*. In November 2009, the teams were transferred to new premises, which facilitates communication with the main record-keeping offices within the Prosecutor's Office and the Ministry of Interior. In 2010, the competences of the joint team on EU fraud were enlarged to a wider range of offences in relation to fraud and other crimes related to EU budget. In 2010, the joint teams on EU fraud report better results in terms of number of cases in pre-trial proceedings, indictments and court sentences compared to 2009.¹³ At the same time, investigative practice can be improved. Links between related cases and aspects of organised crime should be systematically explored. The possible implication of senior public officials in fraud schemes must be fully clarified. Altogether, it is important that the possibilities of the law are used in an effective way to sanction fraud with EU funds. Severe sentences in two emblematic cases related to EU funds were issued in first instance, though no detention orders were imposed. An amendment to the Penal Code introduced more severe punishments in EU fraud cases¹⁴, however the general level of penalties for

¹² The Inspectorate of the Customs Agency carried out 256 inspections upon signals and 15 planned inspections. As a result, 31 disciplinary sanctions were applied and 9 signals on criminal offences were forwarded to the prosecution. The National Audit Office carried out 91 inspections in relation to the law on disclosure of financial interests of senior public officials, which led to an audit against one official. The NRA audits (108) led to detection of 39 cases of organised fiscal fraud amounting to BGN 190 million. The inspections performed by the Inspectorate of the Ministry of Education led to 7 disciplinary proceedings against the heads of Regional Inspectorates (conflict of interest) and 2 penal decrees against two public school headmasters. The Ministry of Interior's (MoI) Inspectorate imposed 107 disciplinary sanctions and 22 sanctions were imposed on the proposal of other MoI bodies.

¹³ Between January and May 2010, the prosecution filed 134 indictments compared to 125 in 2009. The number of court sentences registered in 2010 (55) is higher compared to 28 reported in 2009.

¹⁴ Articles 202, 212, 248a, 254b PC.

EU fraud cases remains low compared to standards in other EU Member States. In addition, it appears that the most appropriate provisions in the Penal Code, which allow for substantial penalties, general fraud and document fraud are rarely pursued in an effective way.

As reported earlier, legislative changes have effectively reduced *transparency regarding the ownership of company assets* as the Commercial Registry Code no longer requires the registration of subsequent changes in the acquisition and transfer of shares after a first registration. This decrease in transparency has a negative effect on financial investigations. Bulgaria is considering reacting to these shortcomings by obliging firms to announce every changes of ownership within 7 days.

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

In line with the Commission's recommendation, Bulgaria adopted an *Integrated Strategy for Prevention and Counteraction of Corruption and Organised Crime*. Some steps to ensure implementation of the Strategy have been taken.¹⁵ The Strategy is to be implemented through an action plan adopted on 17 March 2010 and an integrated model for prevention and countering organised crime and corruption.¹⁶ The modalities of implementation of the action plan were decided by Government on 9 June 2010. It is too early to assess the real impact of the Strategy at this stage.

Responding to the Commission's recommendation, 28 regional anti-corruption councils formed at a local level are reportedly being strengthened, by including in their composition representatives of local governments, territorial structures of the ministries, judiciary, civil associations and businesses. Further work is required to fulfil the Commission's recommendation on this matter. The Ministry of Interior implemented a number of preventive measures, including awareness raising campaigns and better identification at the border checkpoints. Bulgaria reported several initiatives designed to combat local-level corruption such as installing of video surveillance systems at the borders or carrying out anti-corruption awareness raising campaigns.

Based on the agreement signed in August 2009, the Customs Agency and the National Revenue Agency (NRA) report to have access to their respective registers, database and information systems. An up-to-date module is still being implemented. Supervisory teams composed of employees of the Customs Agency and the NRA carried out joint inspections of border check points and audits of high risk tax payers. A number of pre-trial proceedings were initiated against local government officials and charges have been brought against six mayors.

A system for evaluating corruption risk in the health area and an electronic register for corruption signals have been implemented in the public health structures. The Medical Audit Executive Agency was established in December 2009 to deal with

¹⁵ See also under Benchmark 6.

¹⁶ The so-called BORKOR project.

complaints and corruption signals.¹⁷ A partnership with the civil society has been forged to improve governance and counter corruption in the field of education.

In relation to *land swaps* prohibited by law of January 2009, civil society requested either a referendum on annulling state and municipal land swaps by passing a law revoking land swaps deals or obliging beneficiaries of land swaps to pay the real market price. On 5 August 2009, the Government issued an order suspending the examination of applications for exclusion of forest acquired by private natural or legal persons by means of swap from the forestry stock. This moratorium has been confirmed by the Resolution adopted by the National Assembly on 3 September 2009. Bulgaria reports two pre-trial proceedings and one investigation opened as well as one case pending before court. Criminal proceedings were opened against a former minister of agriculture.

Several reports on vote-buying have been recorded on the occasion of the European and the national elections in July 2009. The prosecution identified 87 cases of trading in votes, which led to 11 convictions and one acquittal.¹⁸

The Commission's analysis of the implementation and control system for *public procurement* revealed significant shortcomings.

Frequent changes in the legal framework and in implementing procedures in the last year presented considerable challenges to contracting authorities. This legal instability affected the capacity of the control bodies to develop consistent practice and made it difficult for courts' to elaborate coherent jurisprudence on appeals in public procurement cases.

The ex-ante and ex-post controls carried out respectively by the Public Procurement Agency (PPA)¹⁹ and the Public Financial Inspection Agency (PFIA)²⁰ reveal very high rates of irregularities, which reach up to 100% of tenders controlled *ex-ante* and 60% of tenders controlled *ex-post*.

The main problems in the field of public procurement are linked to conflict of interest, local favouritism and frequent recourse to direct attribution of contracts in situations where tender procedure should be applied. The law on prevention and detection of conflict of interest lacks efficient implementation structure and therefore does not offer adequate protection against conflict of interest. In the context of the implementation of EU funds, services of the Commission have pointed to those weaknesses on several occasions and transmitted a number of concrete suggestions for corrective action.

Fines applied as a result of irregularities detected in ex-post controls are rather low and not sufficiently dissuasive. Disciplinary sanctions can be suggested by the PFIA but their application falls under the discretion of the public administration concerned. Very few signals on corruption in public procurement are detected by administrative authorities and forwarded to the prosecution and no regular feedback on the judicial

¹⁷ The Medical Agency dealt with 78 complaints (including 9 signals of corruption) and 5 signals were found well-founded. The Agency inspected 88 medical institutions (28 acts on administrative violations identified) and six regional health insurance funds.

¹⁸ 27 investigations are still pending, 15 had been terminated and in 6 cases indictments were filed.

¹⁹ Since January 2009 until June 2010, the Agency carried out ex-ante controls in 310 tender procedures.

²⁰ During the reporting period, the PFIA issued 2102 actors for administrative violations.

follow-up to these signals is ensured.²¹ Neither the Public Procurement Agency nor the Public Financial Inspection Agency has the explicit power to carry out ex-officio checks and the ex-ante and ex-post control systems in practice are entirely signal based. The ex-ante and ex-post control system lacks a strategic approach based on risk analysis and targeted controls. This constitutes a fundamental weakness of the control system as some contracting authorities can avoid controls if no signals on them are received. Given the limited resources and staff capacity, the control bodies are in a position to control only a small percentage of all the tenders carried out in Bulgaria. Establishing a plan of inspections would generate a disciplinary effect, while targeting inspections to vulnerable areas would help to address the most blatant irregularities.

The Public Procurement Agency took measures to provide the contracting authorities with guidance such as practical manuals and training, however, the insufficient staff capacity prevents it from fulfilling this function to full avail.

The current system of remedies does not offer sufficient guarantees for the appealing bidders as it rarely leads to suspension of tender procedures. Bulgaria took steps to address this problem by adopting amendments to the Public Procurement Act, which were adopted by the Parliament and entered into force on 13 July. The new law introduced a *standstill period* during which the contract cannot be concluded.²² The two-instance review proceedings as well as the character of appeal authorities are maintained. A one-month time limit is provided to each of the authorities to pronounce the ruling. The possibility for interim measures, including measures to suspend the procedure for the award of the public contract, is preserved. . At the same time, the obligation to pay a guarantee of 1% of the amount of the contract is withdrawn. The scope of Public Procurement Agency's ex-ante controls is expanded to cover procedures for the award of services and supplies contracts financed with EU funding whose value is equal to or exceeds BGN 1 000 000.²³

6. BENCHMARK 6: IMPLEMENT A STRATEGY TO FIGHT ORGANISED CRIME, FOCUSING ON SERIOUS CRIME, MONEY LAUNDERING AS WELL AS ON THE SYSTEMATIC CONFISCATION OF ASSETS OF CRIMINALS. REPORT ON NEW AND ONGOING INVESTIGATIONS, INDICTMENTS AND CONVICTIONS IN THESE AREAS

Bulgaria has stepped up its efforts to fight organised crime in an effort to restore confidence in public institutions. Arrests of well-known criminal figures in targeted operations were carried out. In some cases, court procedures have been initiated. At the same time, collecting qualitative evidence during the pre-trial phase remains a serious problem, as are lengthy procedures and frequent delays at the trial phase. Some well-known organised crime cases did not progress during the reporting period.

²¹ Up to date, the Public Financial Inspection Agency reports having forwarded 480 corruption signals to the prosecution. Since 2006, the Commission for the Protection of Competition reports having forwarded only 12 signals on corruption to the prosecution.

²² The duration of the standstill period will be 14 days (Directive 2007/66/EC requires 10 days) from notification of the interested candidates or tenderers on the award decision.

²³ Under the law prior to amendments of 13 July 2010, contracts for supplies of goods and services were subject to ex-ante control only if an irregularity was found at the same contracting authority within a period of two years.

The Ministry of Interior carried out a number of operations targeting organised groups specialised in kidnapping, prostitution and drug dealing. The criminal and investigative police worked on the investigation in close cooperation with SANS and with the support of administrative bodies, such as the National Revenue Agency (NRA), the Customs Agency, and the tax authorities. SANS reported receiving more signals from the financial institutions, which enabled it to pursue several money laundering cases.

Responding to the Commission recommendation to set up specialised structures for prosecuting high level corruption and organised crime and to make the ad hoc structure of joint investigation teams on organised crime permanent, *joint teams specialized in organized crime and corruption* were established in October 2009. The members of the teams are seconded by their respective agencies (Ministry of Interior, the prosecution, State Agency for National Security). While the teams are permanent, its members change depending on the investigation carried out. There are no clear criteria on which cases are assigned to the teams. Bulgaria assesses the work of these teams as effective and reports the first results in connection to indictments against persons accused of being members of organised crime groups.

Bulgaria reports the creation of *specialised units* within five district courts.²⁴ In addition, the idea to set up *specialised courts* or *specialised panels* to try organised crime cases was launched in May 2010. The Strategy for the reform of the judiciary proposes a thorough debate with all competent actors. The creation of specialised structures should respect procedural rights and be consistent with the Bulgarian judicial organisation. In particular, issues such as the status and functioning of such specialised structures within the judicial system, criteria on which judges and prosecutors would be selected as well as choice of cases assigned should be discussed.

The *structural reforms* of both of the State Agency for National Security (SANS) and the Ministry of Interior (MoI) at the end of 2009 clarified the respective competences of the criminal police in the MoI and SANS. The cooperation between the two institutions appears improved, notably through an exchange of information and joint investigations carried out in the framework of joint teams under the leadership of the prosecution.

A Parliamentary Commission for supervising SANS was put in place and received first reports from the head of SANS, mainly on budgetary and staffing matters.

The structural reform of SANS was combined with reorganisation of the Agency's priorities, which currently include the protection of the national security, counteraction and neutralization of risks and threats with reference to critical infrastructures, the democratic processes and the constitutional order. The main responsibility in combating organised crime was transferred back to the Ministry of Interior. The reform of the Ministry of Interior led to the establishment of the Chief Directorate *Combating Organized Crime*²⁵ as an independent structure under the direct subordination to the Minister of Interior. Bulgaria reports a number of arrests of well-known figures in targeted operations against organised crime groups and an

²⁴ Turgovishte, Yambol, Blagoevgrad, Sofia and Pleven. Two judicial panels have also been set up at the Military Appellate Court and at all military courts – in the cities of Plovdiv, Sliven, Pleven, Varna, while the Sofia Military Court has four panels.

²⁵ This department initiated 46 pre-trial proceedings and detected 5 organised crime groups.

increase in the number of indictments regarding organised crime cases. It remains to be seen whether the quality of evidence collected in the course of investigations carried out by the police in cooperation with the prosecution will be sufficient to provide solid basis for proving organised crime activities.²⁶

In response to a recommendation by the Commission, the Government proposed a draft Act on the Forfeiture of Illegally Acquired Asset in December 2009. The draft suggested introducing a non-conviction based civil seizure and forfeiture of assets derived from illegal activities, based on a combined system of criminal and civil law.²⁷ It also provided for the increase of the competence of the agency in charge of carrying out investigations and forfeiture procedures and extending the target group to which the law applies. The draft law has been revised several times and should reach Parliament before the end of the year following an opinion by the Council of Europe's Venice Commission.

Since July 2009, the Commission for the Establishment of Property Acquired through of Criminal Activity (CEPACA) reports further progress. During the reporting period, CEPACA initiated 147 proceedings. 118 decisions to impose freezing of assets were filed in court amounting to BGN 356 800 000. 22 court decisions on first instance and 14 in second instance were reported. For the same period, only two court decisions became effective, for a sum of BGN 270 236.

The effectiveness of CEPACA is weakened by the fact that it starts its activities at the very late stage. As noted in the previous report of the Commission, a timely freezing of assets in organised crime cases has an important deterrent effect. To achieve this effect, the freezing of assets must be carried out as early as possible. The currently applicable legal framework allows the freezing of assets only at the time of indictment. As a result, freezing of assets often loses its operational effect. The planned amendments seem not to address this matter.

Bulgaria facilitated some investigations into *unexplained wealth* by amending the Law on Income Tax on Natural Persons. Consequently, as of 1 January 2010 it is mandatory to declare all loans over BGN 10 000. As the deadline for tax declarations for 2009 passed only on 30 April 2010, the effect of the measure cannot yet be assessed.

Investigations into unexplained wealth over BGN 500 000, carried out by the Money Laundering Counteraction Section of the Supreme Cassation Public Prosecutor's Office in close cooperation with the authorities of the tax administration, are still in process. They are initiated mostly on signals, ex-officio investigations continue to be carried out on a small scale. SANS and CEPACA jointly developed a Manual on the investigation of money laundering. No developments regarding the prohibition of cash payments for real-estate transfers were reported. A pro-active approach of the prosecution on money laundering is particularly needed. Yet, few ex-officio investigations are carried out, as generally the prosecution acts only upon specific signals from administrative control authorities.

²⁶ Bulgaria reports a total of 765 pre-trial proceedings in relation to organised crime have been initiated in the reporting period, and charges brought against 523 persons involved in criminal activities. In a recent organised crime group case, two main defendants were acquitted in first instance due to lack of evidence proving their leadership of an organised crime group.

²⁷ The use of a non-conviction based civil proceedings as a means of recovering the proceeds of crime can be found in common law countries (Australia, Ireland, Italy, United States, UK and South Africa) In continental Europe forfeiture or confiscation is generally part of the criminal procedure.

According to available data at the Supreme Cassation Public Prosecutor's Office out of 21 cases related to money laundering submitted to court during the reporting period, 5 involve also charges pursuant to Article 321 of the Penal Code (organized criminal group) and another 8 cases involve charges for other predicate crimes (without corruption-related offences). The main defendant in a SAPARD money-laundering case has been sentenced to 10 years of imprisonment.

Since the beginning of the year three public killings took place. The perpetrators in these cases have not yet been arrested.

Some steps were taken towards setting up of the *Unified Information System for Combating Crime*. The system connecting the databases of the Ministry of Interior, the prosecution and the courts is expected to be operational in 2013.