

Cooperation and Verification Mechanism Reports on Bulgaria and Romania

Why does the Commission report on progress in judicial reform and the fight against corruption in Bulgaria and Romania?

At the accession of Bulgaria and Romania to the European Union on 1 January 2007, certain weaknesses remained in both Member States in the areas of judicial reform and the fight against corruption, and in the case of Bulgaria in the fight against organised crime. These weaknesses could prevent an effective application of EU laws, policies and programmes, and prevent Bulgarians and Romanians from enjoying their full rights as EU citizens.

Therefore, the Commission undertook to assist Bulgaria and Romania in remedying these shortcomings and to regularly verify progress against specific benchmarks set for this purpose, through the Cooperation and Verification Mechanism (CVM). These benchmarks are interlinked and should be seen together as the expression of a long-term political commitment of the two countries to their own citizens, as well as to the other Member States. The monitoring process of the CVM, together with the opportunities provided by EU funds and the constructive engagement of the Commission and many Member States, has provided valuable support to encourage, advance and consolidate reform in Bulgaria and Romania. In January 2017 the Commission set out the remaining steps needed to achieve the CVM's objectives, providing concrete recommendations to both Member States which would allow them to fulfil the benchmarks, if completed.

What are the CVM benchmarks for Romania?

- Benchmark 1: Ensure a more transparent and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes.
- Benchmark 2: Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken.
- Benchmark 3: Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption.
- Benchmark 4: Take further measures to prevent and fight against corruption, in particular within local government.

What are the CVM benchmarks for Bulgaria?

- 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.

How does the Commission report on progress in Bulgaria and Romania?

The Commission regularly assesses progress in judicial reform and the fight against corruption in Bulgaria and Romania, and in the fight against organised crime in Bulgaria. The Commission's assessments and its formal reports are based on a careful analysis and monitoring, drawing on a continuous dialogue between the Bulgarian and Romanian authorities and the Commission services. The reports also benefit from contacts with Member States, civil society, international organisations, independent experts and a variety of other sources. Each Commission report, as well as its methodology and conclusions, is subsequently discussed with the Council of Ministers and has been consistently endorsed in Council Conclusions. The Reports and methodology are also presented to the European Parliament.

What are the next steps for Romania?

The last report in January 2017 identified specific recommendations to be fulfilled. This report notes that progress has been achieved on a number of these recommendations.. In particular, the recommendation to set up the system for checks on conflicts of interest in public procurement (PREVENT) has been satisfactorily implemented. The Commission also notes progress on other recommendations, subject to practical implementation. At the same time, the Commission notes that the reform momentum in the course of 2017 was lost overall, slowing down the fulfilment of the remaining recommendations, with a risk of re-opening issues which the January 2017 report had considered as fulfilled. Challenges to judicial independence are a serious source of concern.

On this basis, the Commission cannot conclude that any of the benchmarks are at this stage satisfactorily fulfilled, though progress has brought some benchmarks closer to this point. The Commission remains of the opinion that with loyal cooperation between State institutions, a political steer holding firm to past achievements and with respect for judicial independence, Romania will be able to fulfil the remaining outstanding CVM recommendations, and

therefore satisfactorily fulfil the benchmarks, in a near future.

The Commission invites Romania to implement the necessary actions and fulfil all recommendations, and will assess progress again towards the end of 2018.

Recommendations in January 2017 CVM Report:

1. Put in place a robust and independent system of appointing top prosecutors, based on clear and transparent criteria, drawing on the support of the Venice Commission.
2. Ensure that the Code of Conduct for parliamentarians now being developed in Parliament includes clear provisions on mutual respect between institutions and making clear that parliamentarians and the parliamentary process should respect the independence of the judiciary. A similar Code of Conduct could be adopted for Ministers.
3. The current phase in the reform of Romania's Criminal Codes should be concluded, with Parliament taking forward its plans to adopt the amendments presented by the government in 2016 after consultation with the judicial authorities. The Minister of Justice, the SCM and the High Court of Cassation and Justice should finalise an action plan to ensure that the new deadline for the implementation of the remaining provisions of the Code of Civil Procedures can be respected.
4. In order to improve further the transparency and predictability of the legislative process, and strengthen internal safeguards in the interest of irreversibility, the Government and Parliament should ensure full transparency and take proper account of consultations with the relevant authorities and stakeholders in decision-making and legislative activity on the Criminal Code and Code for Criminal Procedures, on corruption laws, on integrity laws (incompatibilities, conflicts of interest, unjustified wealth), on the laws of justice (pertaining to the organisation of the justice system) and on the Civil Code and Code for Civil Procedures, taking inspiration from the transparency in decision-making put in place by the Government in 2016.
5. The Government should put in place an appropriate Action Plan to address the issue of implementation of court decisions and application of jurisprudence of the courts by public administration, including a mechanism to provide accurate statistics to enable future monitoring. It should also develop a system of internal monitoring involving the SCM and Court of Auditors in order to ensure proper implementation of the Action Plan.
6. The Strategic Judicial Management, i.e. the Minister of Justice, the SCM, the HCCJ and the Prosecutor-General should ensure the implementation of the Action Plan as adopted and put in place regular common public reporting on its implementation, including solutions to the issues of shortages of court clerks, excessive workload and delays in motivation of decisions.
7. The new SCM should prepare a collective programme for its mandate, including measures to promote transparency and accountability. It should include a strategy on outreach, with regular open meetings with assemblies of judges and prosecutors at all levels, as well as with civil society and professional organisations, and set up annual

reporting to be discussed in courts' and prosecutors' general assemblies.

8. Ensure the entry into operation of the PREVENT system. The National Integrity Agency and the National Public Procurement Agency should put in place reporting on the ex-ante checks of public procurement procedures and their follow-up, including ex post checks, as well as on cases of conflicts of interest or corruption discovered, and the organisation of public debates so that the government, local authorities, the judiciary and civil society are invited to respond.
9. The Parliament should be transparent in its decision-making with regard to the follow-up to final and irrevocable decisions on incompatibilities, conflicts of interests and unjustified wealth against its members.
10. Adopt objective criteria for deciding on and motivating lifting of immunity of Members of Parliament to help ensure that immunity is not used to avoid investigation and prosecution of corruption crimes. The government could also consider modifying the law to limit immunity of ministers to time in office. These steps could be assisted by the Venice Commission and GRECO19. The Parliament should set up a system to report regularly on decisions taken by its Chambers on requests for lifting immunities and could organise a public debate so that the Superior Council of Magistracy and civil society can respond.
11. Continue to implement the National Anti-corruption Strategy, respecting the deadlines set by the government in August 2016. The Minister of Justice should put in place a reporting system on the effective implementation of the National Anti-corruption Strategy (including statistics on integrity incidents in public administration, details of disciplinary procedures and sanctions and information on the structural measures applied in vulnerable areas).
12. Ensure that the National Agency for the Management of Seized Assets is fully and effectively operational so that it can issue a first annual report with reliable statistical information on confiscation of criminal assets. The Agency should put in place a system to report regularly on development of administrative capacity, results in confiscation and managing criminal assets.

What are the next steps for Bulgaria?

The last report in January 2017 identified specific recommendations to be fulfilled. This report notes that significant progress has been achieved on these recommendations. While political uncertainty led to some delays in the implementation of reforms early in the year, since May the reform process has again taken on momentum, even if final outcomes are still to be seen, notably in areas requiring legislative reform and government action, such as in the fight against corruption. In the judiciary, important developments have also taken place this year, notably with the election of a new Supreme Judicial Council, the impact of which should begin to show in the coming year.

While the Commission cannot yet conclude that any of the benchmarks are at this stage satisfactorily fulfilled, it remains of the opinion that, with a

continued political steer and a determination to advance the reform, Bulgaria should be able to fulfil the remaining outstanding CVM recommendations, and therefore satisfactorily fulfil the benchmarks, in the near future.

The Commission invites Bulgaria to implement the necessary actions and fulfil all recommendations, and will assess progress again towards the end of 2018.

Recommendations in January 2017 CVM Report:

1. Ensure a transparent election for the future SJC, with a public hearing in the National Assembly before the election of the members of the parliamentary quota, and giving civil society the possibility to make observations on the candidates.
2. Establish a track record of transparent and merit-based appointments to high-level judicial posts, including the upcoming appointment of a new President of the Supreme Administrative Court.
3. To improve the practical functioning of the ISJC and the follow-up by the Supreme Judicial Council to the inspectorate's findings, in particular on integrity issues, consider soliciting external assistance, for example from the SRSS and/or Council of Europe.
4. Adopt amendments to the Criminal Procedure Code and the Criminal Code to improve the legal framework for the prosecution of high-level corruption and serious organised crime.
5. Publish a report for public consultation detailing the progress made implementing the national judicial reform strategy and setting out the remaining steps to be taken. Establish a mechanism for continued public reporting of progress for the remaining duration of the strategy's implementation.
6. Address the workload situation in the busiest courts based on the new workload standards, and agree a roadmap for the reform of the judicial map in parallel with the development of e-justice.
7. Establish a roadmap for the implementation of the recommendations of the SRSS report concerning the reform of the Prosecutor's Office and its interactions with other institutions, including a mechanism for the reporting of progress to the wider public.
8. Establish a roadmap for the implementation of the recommendations of the study, including a mechanism for the reporting of progress to the wider public.
9. Adopt a new legal framework on the fight against corruption in line with the intentions set out in the anti-corruption strategy, and ensure its implementation. Set up an effective anti-corruption authority.
10. Adopt and implement a reform of the law on public administration to strengthen the internal inspectorates in the public administration.
11. Building on the analysis of past cases, establish a roadmap between all relevant institutions to address shortcomings in the investigation and prosecution of high-level corruption cases, including a mechanism for the reporting of progress to the wider public.
12. Establish a mechanism for public reporting on progress in high-level cases which are in the public domain. General Prosecution to report – whilst respecting the presumption of innocence – on investigations and indictments. Supreme Court of Cassation and Ministry of Justice to

report on convictions as well as the enforcement of sentences.

13. Carry out an external review of the ex ante checks of public procurement procedures and their follow-up, including ex post checks, as well as on cases of conflicts of interest or corruption discovered and remedial measures taken to address identified shortcomings.
14. Put in place risk-based measures to address low-level corruption in high risk sectors within the public administration, taking inspiration from what has been done in the Ministry of Interior. Continue the efforts in the Ministry of Interior.
15. Establish a mechanism for public reporting on the implementation of the national anti-corruption strategy covering the remaining duration of the Strategy's implementation.
16. Establish a mechanism for public reporting on progress in high-level cases which are in the public domain. General Prosecution to report – whilst respecting the presumption of innocence – on investigations and indictments. Supreme Court of Cassation and Ministry of Justice to report on convictions as well as the enforcement of sentences.
17. Adopt the necessary amendments to the law on confiscation of criminal assets and ensure the Illegal Asset Forfeiture Commission continues to operate independently and efficiently.

Does the Commission provide financial and technical support to help with the reforms?

The Commission supports the efforts of Bulgaria and Romania in achieving the CVM objectives through funding under the European Structural and Investment Funds.

There were already a number of projects in the anti-corruption and judicial reform area in the 2007-2013 period. In the 2014-2020 period the Administrative Capacity Programme (ESF) will provide funding of about €103 million for judicial reform projects in Romania, including €35 million specifically for anticorruption, and €35 million to support improvements in public procurement. ERDF resources up to €15 million will be invested in capacity building and technical assistance in public procurement, in fraud prevention for Management Authorities and in the Fight Against Fraud Department (DLAF).

In Bulgaria, during the 2007-2013 programming period €51 million was allocated under the Operational Programme for Administrative Capacity for the judiciary. Under the new programming period 2014-2020 a priority axis for the judiciary has been included in the Operational Programme for Good Governance with an allocation of €30.2 million. In addition to this, in 2016 Bulgaria asked for the assistance of the European Commission's Structural Reform Support Service (SRSS) to prepare an independent analysis of the Prosecutor's Office. As a result, a report on the functioning of the prosecution was prepared by experts from Germany, Spain, The Netherlands and the United Kingdom, also proposing recommendations. The development of further technical assistance projects under the auspices of the SRSS could be considered to further assist the Bulgarian authorities.