

Did the Cooperation and Verification Mechanism Achieve the Goal Bulgaria and Romania to Achieve Effectiveness with the Judicial Reform and the Fight Against Corruption?

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Abstract.

The membership of Bulgaria and Romania in the European Union was linked to the Cooperation and Verification Mechanism in the Field of the Judiciary and Corruption, and concerning Bulgaria, the fight against organised crime. In 2018, Bulgaria was able to show the political will to tackle organized crime and subsequently dropped out of the monitoring mechanism. After 12 reports full with assessments and recommendations, in its latest report in 2019 Bulgaria is removed from the list of countries for surveillance, but Romania monitoring should continue. The question remains whether the Mechanism has achieved the objective of effective judicial reform and fighting corruption in Bulgaria, and will the European Parliament and the Council approve the EC proposal? Time will tell soon!

Keywords: cooperation and verification mechanism, reforms, judicial system, corruption, EC reports

No country can boast that it has eradicated corruption and created preventative conditions for it not to be reborn. At a press conference on June 6, 2011 Swedish-born EU Commissioner for Home Affairs Cecilia Malmström stated: "There is no country without corruption in the European Union"... and "Four out of five EU citizens believe that corruption is a major problem in their country."

Bulgaria's accession to the European Union in 2007 has been linked to a Cooperation and Verification Mechanism (CVM) which purpose was to assess the country's progress in three areas:

- Reforms in the judiciary;
- Fighting corruption and
- Controlling the organized crime.

The same conditions were imposed on Romania, but with the exception that it would be monitored only for reforms in the judiciary and the fight against corruption, without organized crime. From 1 January 2007, the European Commission (EC) regularly draws up and announces its progress reports on the two sides in the envisaged areas. The committee's findings over the years have found different preferences in one or the other sphere of observation in both countries, but their result has always been insufficient to drop the mechanism.

The Cooperation and Verification Mechanism was established by EC Decision 2006/929 / EC of 13 December 2006 and aims to monitor Bulgaria's progress towards specific objectives in the areas of judicial reform and the fight against corruption and organized crime. The mechanism comes into force after the country's accession to the European Union in 2007. The aim is to help Bulgaria establish an impartial, independent and effective judicial and administrative system, to help overcome some of the shortcomings in the area of judicial reform and the fight against corruption and organized crime.

The initial reports on Bulgaria can definitely be described as objectively critical. The report of July 2009-2010 reflects that serious deficiencies in case law persist, both with regard to the prosecution and the court:

"The judicial system in Bulgaria lacks initiative and professional capacity. Complex investigations lack direction and purpose, and the procedures are too formal and lengthy and often fail in court. "

In its report for the period July 2010-July 2011, the EC stated that the Cooperation and Verification Mechanism had been challenged and criticized, but at present the widespread view is that *"it contributes to promoting change in a positive direction"*.

In 2011, Bulgaria and Romania completed their preparations for the full implementation of the Schengen acquis with a view to regulate the abolishment of border controls at the internal borders. Although the Schengen implementation procedures were followed, the two countries' attempt to join the Schengen

area was unsuccessful. Finland and the Netherlands voted against with the motive that Bulgaria and Romania should show better performance in the areas of justice and home affairs, which is a motive to block the vote. They believe that there is no irreversible process in the fight against corruption, there is no specific evidence that this is happening, backed up by facts and figures, which will ensure that criminals and corruption do not invade the European Union's internal market.

The Schengen area or the Schengen zone is an area of 4 312 099 km² with a population of over 400 million people¹. The Schengen rules include the provision of a common policy for short-term third-country nationals, coordination of external border controls, police and judicial cooperation.

Issues in the judicial system remain at the forefront of the 2012 interim Cooperation and Verification Mechanism report. In particularly important cases of public resonance, the necessary steps have not been taken to carry out the detailed analysis that underlies the changes that are expected with the amendments to the Judiciary Act. The EC takes note of Bulgaria's progress in the following six indicators set for monitoring:

1. Amend the constitution by removing all ambiguities regarding the **independence and accountability** of the judiciary.
2. Guaranteeing transparency is also an effective litigation. Adoption of a new law on the judiciary and a new Code of Civil Procedure and their impact on the pre-trial phase.
3. Improving professional accountability and efficiency.
4. Achieving professional and impartial investigations into allegations of high-level corruption and publicizing the assets of high-level officials.
5. Taking measures to prevent and combat border corruption and local self-government.
6. Measures in the integrated strategy to target serious crime, money laundering and confiscation of property of criminals.

The recommended six measures in the distant 2012 continue to be a particularly topical problem for civil society for change. On February 1, 2013, the France Press Agency published an article entitled "Euroreport is moving Bulgaria away from Schengen entry", based on information from diplomatic sources in Copenhagen. The agency recalls that "*Sofia and Bucharest must join the Schengen agreement, which practically means that any problems of one country can be transferred to the other.*"

Over time, reports and their content have become increasingly routine and have important political implications for Bulgaria and Romania's accession to the Schengen border area.

The January 2017 the Cooperation and Verification Mechanism report reviews the ten year outcome of its implementation. The achievements and the emerging challenges are outlined and formulated in 17 recommendations for Bulgaria, the implementation of which will mean the completion of the implementation of the mechanism. The report further states that the speed of the process will depend on the implementation of the recommendations in an irreversible manner. The first evaluation of the implementation of the seventeen recommendations was given in the November 2017 report, which concluded that the achievements were not sufficiently convincing and that the indicators were satisfactorily fulfilled.

On 13 November 2018, the European Commission announced another progress report on Bulgaria's Cooperation and Verification Mechanism². The report, like previous reports, follows the steps taken by the judiciary and the competent Bulgarian institutions with regard to the commitments made to make progress in the fight against corruption and organized crime. The report assesses the implementation of the 17 recommendations to Bulgaria, with the pledge that, if positive, this will allow the Cooperation and Verification Mechanism process to be completed before the end of the term of this committee chaired by Jean-Claude Juncker. This position is also supported by Frans Timmermans, the Executive Vice President-Designate of the European Commission. The conclusion of the report is that several recommendations have been implemented and a number of others are quite close to the implementation stage. The Commission accepts that three of the six indicators - "the independence of the judiciary, the legislative framework and organized crime - **can be considered suspended**". This assessment is of a timely nature and the Commission is required to continue the monitoring. Bulgaria needs to continue with concrete results in order to consolidate its progress in providing the necessary guarantees that reforms will continue.

In addition, the Commission report notes a particularly worrying trend - "**the significant deterioration of the media environment in Bulgaria in recent years**". Freedom of expression, transparency and information to society are fundamental values of democracy. Affecting democracy and its principles and values creates a societal risk and a negative impact on the independence of the judiciary. According to the report, the ability of the media and civil society to demand accountability from the authorities in a pluralistic environment without

¹ The name of the Schengen Agreement derives from the name of the Schengen village of Luxembourg and was signed on 14 June 1985 on board the Princess Maria-Astrid ship by five of the ten Member States of the then European Economic Community (EEC) - France, West Germany and the Benelux - Belgium, the Netherlands and Luxembourg. The Treaty implementing the Schengen Agreement was signed on 19 June 1990 and its full implementation begins in July 1995.

² Bulgaria Progress Report 2018[COM(2018)850]
 Technical Report on Bulgaria for 2018 [SWD (2018) 550]

pressure is an important part of the basis for continued reform, the reach of the goals of Cooperation and Verification Mechanism and better governance in general.

The Commission is convinced that Bulgaria will continue the reforms and will closely monitor progress so that it can further evaluate the results achieved before the end of its current term. The mechanism verifies the extent to which Bulgaria and Romania are taking the necessary measures to comply with the minimum European standards in the field of rule of law and the fight against corruption.

The President of the European Commission, Jean-Claude Juncker, has fulfilled his promise to propose the removal of the monitoring by the end of his term. It chose to announce the report on the Cooperation and Verification Mechanism just days before the 2019 local elections in Bulgaria. The report concludes that "progress is sufficient to fulfil the commitments" the country made in 2006 when it joined the European Union.

Unlike Bulgaria, the report on Romania is not positive, saying that "there is no such progress". The EC decision to suspend monitoring for Bulgaria and to continue the monitoring for Romania raises the need for some objective reasoning on the following indisputable facts:

1. Both countries are admitted at the same time as EU member states.
2. Both countries are under the same scrutiny - Cooperation and Verification Mechanism for judicial reform, the fight against corruption and, concerning Bulgaria, and the fight against organised crime.
3. During these 12 years of observation, the two countries are in a one-way competition to eliminate monitoring, which was not acceptable to Member States.

These three strong Member States' positions over the years suggest that monitoring can only be cancelled at the same time for both countries. The latest 2019 report from the European Commission raises one crucial question:

Why did the EC not announce itself the termination of the monitoring of Bulgaria, what right it has, and prefer to give the last word to the Member States?

As Jean-Claude Juncker said when presenting the report: "*We will carefully hear the views of Parliament and the Council before taking a decision.*" For now, France and Germany's positions are expected to be against the failure of the mechanism. Other parties are expected to accede to this negative opinion, ie. to block the fall of EC monitoring.



A number of media channels have emphasized in their publications that the chief of law and EC Vice-President Frans Timmermans, did not want to present the end of the surveillance over Bulgaria, as did Justice Commissioner Vera Yourova. The presentation was announced by Migration Commissioner Dimitris Avramopoulos, who is not directly involved in the surveillance.

Although the report proposes to abolish the mechanism, the European Commission acknowledges that:

- Very little has been achieved in the fight against

corruption and in the judicial reform;

- The termination of the Mechanism and the transfer of control in the hands of Bulgarian government will also remove the last impetus for meaningful change;
- The proposed new monitoring mechanisms for the rule of law call into question the level of effectiveness and duration of monitoring.

Unlike the 2018 report, which explicitly noted that "progress is sufficient to fulfil commitments" under three of the recommendations, the 2019 report notes more than ten times that the Bulgarian government has committed itself to certain problem solving measures. There have always been measures, it remains for the EC to note that they have achieved the intended design with efficiency, that there is public accountability, transparency and accountability to the public.



Reforms in the judiciary and the fight against corruption continue to take the lead in the latest Euro report. "*Achieving strong stable results in terms of final convictions in corruption cases at the highest levels of government is **still pending***"... "Citizens should be able to have full confidence that such institutions [Agency for Combating Corruption and the prosecution] act impartially, in full respect of due process and fundamental

rights, including the presumption of innocence." The cited text of the report gives the most comprehensive and accurate assessment of Bulgaria's progress in this field.

The report notes the high level of distrust of the procedure for the election of a new Attorney General, the ongoing reform of the prosecutor's office, changes to the law, the continuing problems with the implementation of the decisions of the European Court of Human Rights (ECtHR) and the lack of a guarantee for an effective investigation by the Attorney General.

The Cooperation and Verification Mechanism is not only a stumbling block to the accession of the country in Schengen zone, but it is also binding the entry of Bulgaria into the Banking Union and the porch of the Eurozone. The report is full of facts and recommendations that have been highlighted as problems for the last 12 years. Even the high hope that the Commission to Combat Corruption and Seize Illegal Acquisition (CCCSIA) will run at high speed is not justified, as there are no high-level convictions yet, and property declarations have proven patent for a new failure at the highest levels of government.

In several places, the report on Bulgaria stresses that monitoring will continue from 2020, when a new Rule of Law Review Cycle, the media situation and the proper functioning of the authorities in order to safeguard will come into force of the European Budget under the control of the newly elected European Prosecutor. It is recommended that Bulgaria set up a Council to monitor the implementation of the commitments made to the European Commission and, in the future, to conduct a dialogue on the new comprehensive rule of law monitoring mechanism with all 27 EU Member States.

Is there a link between the visit of the Attorney General Sotir Tsatsarov and the candidate for new Attorney General Ivan Geshev to the White House and the fact that only couple of days later the European Commission announced that it will remove the monitoring of Bulgaria's progress in reforming the judiciary and fighting corruption. It is undoubted that the reform of the prosecutor's office will not be imposed by Brussels and the fight against corruption will not start from Washington.³

Will the Cooperation and Verification Mechanism go in the history of Bulgaria and Romania after the creation of a new monitoring tool for Member States on compliance with the rule of law from 2020? We will receive the answer by the end of the year, and we will evaluate the effectiveness of the new mechanism at the end of next year.

The positive for Bulgaria and Romania will be that the problems with corruption have extended to other EU Member States, compared to the 2014 EC reports, when a similar initiative is taken every two years to monitor all European countries in their fight against corruption. For some unknown reason, this mechanism existed only for a year and was silently dropped.

The expectation is that the new European Parliament will adopt a more sustainable and effective tool that not only identifies but also regulates these processes in the search for accountability and sanctions of Member State governments for the rule of law, transparency and accountability of the judiciary and control over the use of EU funds, and last but not least, the fight against corruption and the return to democratic values.

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³https://www.capital.bg/politika_i_ikonomika/redakcionni_komentari/2019/10/25/3981096_predade_li_brjuksel_progresivnata_chast_ot_bulgaria/