

The European Commission report on Bulgaria: The key findings

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These are the key findings of the set of reports on Bulgaria adopted officially by the European Commission on July 23 2008.

“Despite good efforts to establish necessary institutions and introduce required procedures and processes, there are few results to demonstrate that the system is actually functioning correctly,” the report says.

“It would have been unrealistic to assume that deep seated change would be quick. However, despite the efforts of the Bulgarian Government, progress has been slower and more limited than expected and the need for verification and cooperation will continue for some time.

“The judicial system and the administration need serious strengthening. This is a long haul exercise.”

Bulgaria has made an effort to set up institutions and introduce procedures and processes which could, if the institutions are properly staffed and the processes effectively managed, deliver the results expected of a functioning judiciary and administration, free from corruption and the threat of organised crime.

Considerable efforts have gone into setting up institutions and processes. However, this reform has not yet produced sufficient results, the report says.

“The adoption of laws, the introduction of procedures and the creation of institutions is necessary but not sufficient – the laws have to be implemented and the institutions have to work effectively to produce more concrete results.”

On judicial reform, the report says that the shortcomings of the Penal Code and the Penal Procedure Code remain. The Penal Procedure Code adopted in 2006 has not been instrumental in improving the efficiency of the pre-trial phase.

Roles and responsibilities are not sufficiently precise or well defined to facilitate co-operation between the different actors. Important cases are sent back to the prosecution on the basis of small procedural flaws. Delays in trials are frequent and there are no procedural safeguards to prevent courts from delaying decisions.

“The Penal Code is outdated and is part of the reason why the judiciary is overloaded.”

The new State Agency for National Security has already shown a first track record of investigations, this has not yet translated into the effective treatment of cases in the legal system.

“The administrative capacity of both law enforcement and the judiciary is weak.”

The police do not have enough well trained staff or equipment to investigate complex cases. There has been limited progress on the computerisation of the judiciary. There is insufficient reliable information and data on investigation, indictment and judgements of cases.

On local corruption, the report finds that there was little follow-up – few investigations and sentences - to widespread allegations of corruption and vote buying at the November 2007 local elections. These practices were allegedly repeated during local by-elections in at least two towns in early June 2008.

“There are signs of corruption in the health and education sectors. Despite awareness raising activities, no complaints have been filed and no whistle blowers have emerged.”

The report says that there is little control or monitoring of conflict of interest in public procurement.

“A strategic approach to fighting local corruption is missing. The anti-corruption Commission of the Council of Ministers has not been active in this regard.

"The fight against high level corruption and organised crime is not producing enough results," the report says.

While there has been movement on a few cases and widespread publicity given to the 'war on corruption', these cases represent a negligible share of such crimes.

The statistical information provided is not reliable and sometimes contradictory.

Bulgaria has made little progress in freezing or confiscating financial assets resulting from criminal activities.

Allegations of corruption and fraud are affecting the delivery of EU financial assistance programmes. Bulgaria needs to substantially strengthen its capacity to correctly manage EU funding. This has meant that several EU funding programmes have had to suspend or freeze activities.

The report says that Olaf, the EU anti-fraud agency, reports that procedural blockages, slow progress of cases through the judiciary, leaks of confidential information and alleged influence on the administration and judiciary are impeding the rapid and effective resolution of corruption and fraud cases.

The report says that some fundamental improvements are needed, although the first priority should be to deliver results irrespective of structural deficiencies. "This requires continued political will and determination."

The report says that steps need to be taken to facilitate a more effective administration of justice.

Adjustments need to be made, including to the Penal Procedure Code, to improve efficiency in the pre-trial phase, reduce delays and establish safeguards in relation to delays.

A thorough reform of the Penal Code is needed, including a better differentiation between minor offences and serious crime and an update of definitions to take account of new forms of criminality.

"It is important that a more effective law on conflict of interest and asset control be established – the current draft is not sufficient to achieve its purpose. Once a revised law is adopted it needs to be implemented as soon as possible."

The newly established Supreme Judicial Council needs now to assume responsibility for the reform process and take steps to ensure that the judiciary delivers expeditious and effective decisions.

The Inspectorate of the Supreme Judicial Council still has to establish a track record of pro-active investigations into procedural deficiencies and disciplinary cases which should then be followed up swiftly by the Supreme Judicial Council.

The report says that law enforcement needs to be better organised to handle complex cases. The investigative role of SANS needs to be clarified and clearly separated from its intelligence role.

Parliamentary oversight must be established, not to interfere in the investigative activities, but to ensure normal accountability. The role of investigating magistrates and their authority over special investigations needs to be clarified.

"The lack of respect for confidentiality and for the protection of witnesses during the pre-trial and trial phase is a recurring problem which needs to be rectified."

The police need better trained staff and the necessary equipment to investigate complex cases.

The computerisation of the judiciary needs to be completed and more efficient case management systems introduced at the pre-trial stage.

"Bulgaria needs to strengthen its capacity to fight fraud and exercise adequate financial control," the report says.

"Equally important, conflict of interest and unwanted influence need to be contained systematically. This is particularly important so that Bulgaria can continue to benefit from EU funding. The absence of convincing results under the current structures is striking and needs to be addressed urgently.

In its conclusions, the report says that "Bulgarian citizens deserve access to the full benefits of EU membership which should contribute to strengthening the rule of law and eliminating corruption.

"Progress in meeting the benchmarks set under the Co-operation and Verification Mechanism and in dispelling doubts about Bulgaria's ability to deal with corruption and organised crime will allow Bulgarians to reap these benefits and enhance their confidence in the rule of law."

It would have long term positive effects on the Bulgarian economy.

"Bulgaria has responsibilities vis à vis other member states, for example as part of Justice and Home Affairs policy as well as in the common management of EU funds.

“Adequate administrative capacity and effective control of conflict of interest, fraud and financial irregularities is a necessary condition for Bulgaria to fully benefit from EU pre-accession and structural funds.”

These funds, the report says, are the “practical expression of the Union’s solidarity with Bulgaria” and it is in everyone's interest to see them being used to support Bulgaria's less favoured regions.

A clear strategy and an unequivocal commitment at all levels to reform the system are needed.

“This is not simply a question of giving new institutions and processes time to prove their effectiveness.

“Even with the existing structures – and despite their deficiencies – Bulgaria should be able to show results in the fight against organised crime and corruption, to prevent conflicts of interests and to deal convincingly with alleged connections between part of the political class, business and organised crime.

“To ensure the efficient absorption and delivery of EU funds Bulgaria needs not only to enhance substantially its administrative capacity but also drastically curb opportunities for high level and petty corruption and vigorously fight organised crime.”

The July 23 report notes that the February report under the Co-operation and Verification Mechanism highlighted the significant amounts of assistance Bulgaria had received in recent years from members states and the EC in either financial terms or technical expertise.

“This assistance has not always delivered expected results and there is a growing sense of frustration amongst member states who have offered support, because of lack of transparency and results in their dealings with the Bulgarian administration and poor results.”

The report adds: “EC is ready to work in co-operation with Bulgaria and the other member states to provide this assistance – but it requires that those on the receiving end provide access to information and use the advice strategically and effectively so as to move forward with reform”.

It concludes: “The Commission strongly encourages Bulgaria to intensify its reforms and to maintain its close cooperation with the other member states and the Commission so that the significant remaining challenges can be tackled successfully together. Bulgaria can count on the full and active support of the Commission in this process”.