



Weekly Briefing

Bulgaria external relations briefing:
**European Commission took a Decision for Repealing the Mechanism
for Cooperation and Verification of Progress in Bulgaria**
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European Commission took a Decision for Repealing the Mechanism for Cooperation and Verification of Progress in Bulgaria

Summary

On September 15, 2023, the European Commission repealed the Cooperation and Verification Mechanism (CVM) regarding Bulgaria and Romania. It was established for the two countries in 2006, before their accession to the EU as a transitional measure to facilitate progress in the field of judicial reform, the fight against corruption, as well as (for Bulgaria) organized crime. The Commission has now revoked the two decisions that created this mechanism. According to the Bulgarian Prime Minister, this is a historic decision, with which another barrier has been removed for Bulgaria to be on an equal footing with the rest of the European Union countries in every respect. The hope of the Bulgarian government is that this decision will contribute to the removal of the remaining other two obstacles to Bulgaria's full European integration - the country's acceptance into Schengen area and accession to the Eurozone.

On 15 of September the European Commission formally terminated the Cooperation and Verification Mechanism (CVM) for Bulgaria and Romania.¹ The Cooperation and Verification Mechanism was introduced when Bulgaria and Romania joined the European Union in 2007 as a transitional measure to facilitate progress in the areas of judicial reform, the fight against corruption and (for Bulgaria) organized crime. The Commission has now repealed the two decisions establishing this mechanism.²

President Ursula von der Leyen said: *“I would like to congratulate Bulgaria and Romania on the significant progress made since their accession to the EU so far. The rule of law is one of our core common values as an alliance and the two Member States have delivered on important reforms in recent years. Today, we recognize these efforts by terminating CVM. Work can now continue in the framework of the annual Rule of Law Evaluation Cycle, as for all other Member States.”*³

Just two days earlier in her Address 2023 about the State of the Union, Ursula von der Leyen said that she *“would like to thank Bulgaria and Romania in particular for their leading*

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32023D1785>

² Ibidem.

³ https://bulgaria.representation.ec.europa.eu/novini-i-sbitiya/novini-0/ek-oficialno-prekrati-mekhanizma-za-strudnichestvo-i-proverka-za-blgariya-i-rumniya-2023-09-15_bg?etrans=en

*role in implementing good practices in the field of asylum and return (of refugees – EK). They proved it: Bulgaria and Romania are part of our Schengen area. Let's let them in without taking any longer!"*⁴

Thus, the official termination of the CVM for Bulgaria and Romania became a sign loaded with political expectations regarding the soon resolution of the issue of the two countries' admission to the Schengen area.

What was actually the meaning of the existence of the Cooperation and Verification Mechanism for Bulgaria and why its abolition is celebrated in Bulgaria as a historic decision and a step towards the country being on an equal footing in the EU?

Cooperation and Verification Mechanism for Bulgaria

In its monitoring report of 26 September 2006 on the state of preparedness for EU membership of Bulgaria and Romania, prior to the accession of Bulgaria to the Union, the European Commission identified a number of issues, in particular as regards the accountability and efficiency of the judicial system and law enforcement bodies in Bulgaria, where further progress was still necessary in order to ensure the capacity to implement and apply the measures adopted to establish the internal market and the area of freedom, security and justice.⁵

On 13 December 2006, the Commission adopted a Decision 2006/929/EC establishing a mechanism for cooperation and verification of progress in Bulgaria to address **six specific benchmarks** in the areas of judicial reform and the fight against corruption and organized crime. That Decision states that it is to be repealed when all the benchmarks have been satisfactorily fulfilled.⁶

What were 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.

⁴ https://bulgaria.representation.ec.europa.eu/novini-i-sbitiya/novini-0/rech-za-sstoyaniето-na-syuza-2023-plen-tekst-i-videozapis-2023-09-13_bg?etrans=en

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32023D1785>

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006D0929>

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 organized 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.⁷

The Decision 2006/929/EC required Bulgaria to regularly report to the Commission on the progress made in addressing the benchmarks. The Commission communicated to the European Parliament and the Council its own comments and findings on Bulgaria's report for the first time in June 2007, and have reported on a regular basis since then. Each report by the Commission has been the result of a careful analysis, drawing on close cooperation with the national authorities, as well as on input from civil society, and other stakeholders and observers.⁸

In January 2017, the Commission undertook a comprehensive assessment of progress over the ten years of the mechanism, which gave a clear picture of the significant progress made by Bulgaria since the establishment of the cooperation and verification mechanism. On that basis, the EU Commission set out a clear path towards the conclusion of the mechanism, based on **seventeen key recommendations**, which clarified the requirements that Bulgaria still needed to comply with in order to finally satisfy all the six benchmarks laid down in the Decision 2006/929/EC.⁹

Given the progress made, the Commission considered that the fulfilment of those recommendations would be sufficient to close the cooperation and verification mechanism, provided that there would be no developments in the meantime clearly reversing the course of progress. Many of the recommendations focused on building internal safeguards to ensure the irreversibility of results and to demonstrate that ongoing reforms would be continued and progress consolidated, even without the mechanism.¹⁰

⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006D0929>

⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32023D1785>

⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017DC0750&qid=1678958045792>

¹⁰ Ibidem.

The Recommendations for Bulgaria from the January 2017 CVM Report were the following:

- Ensure a transparent election for the future Supreme Judicial Council, 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.

- 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.

- To improve the practical functioning of the Inspectorate to the Supreme Judicial Council (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 Structural Reform Support Service and/or Council of Europe.

- 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 organized crime.

- 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.

- 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.

- Establish a roadmap for the implementation of the recommendations of the Structural Reform Support Service 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.

- Establish a roadmap for the implementation of the recommendations of the study, including a mechanism for the reporting of progress to the wider public.

- 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.

- Adopt and implement a reform of the law on public administration to strengthen the internal inspectorates in the public administration.

- 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.

- 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.

- 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.

- 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.

- Establish a mechanism for public reporting on the implementation of the national anti-corruption strategy covering the remaining duration of the Strategy's implementation.

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- 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.¹¹

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

¹¹ https://ec.europa.eu/commission/presscorner/detail/en/MEMO_18_6363

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 close to €30 million. In addition to this, the European Commission's Structural Reform Support Service was active in providing technical support to the Bulgarian authorities in areas related to the CVM.¹²

A first assessment of progress on the 17 recommendations was adopted in November 2017, but the Commission at that time could not yet conclude that any of the benchmarks were satisfactorily fulfilled.

However, in its report of November 2018, the Commission welcomed progress in Bulgaria towards the swift conclusion of the cooperation and verification mechanism, and concluded that three of the benchmarks could be considered to be provisionally closed. These **three benchmarks** were regarding the judicial independence, the legislative framework and the organized crime.¹³

The Commission notably took account of the progress made by Bulgaria since its accession in amending its constitutional and legislative framework to improve safeguards for judicial independence, as well as the transparency and the efficiency of the judicial process. In addition, the amendments to the constitution of Bulgaria in 2015 brought about a reform of the Supreme Judicial Council and a stronger judicial inspectorate. Those amendments have now been in place for a number of years.

Then the Commission announced that it is confident that Bulgaria – if it pursues the current positive trend – will be able to fulfil all the remaining recommendations and thereby the outstanding benchmarks. This will enable the CVM process for Bulgaria to be concluded before the end of the Commission's mandate then headed by President Jean-Claude Juncker.¹⁴

Unfortunately, this did not happen at that stage and the CVM continued to be applied to Bulgaria during the mandate of the next European Commission.

Finally In its October 2019 CVM report, the Commission concluded that Bulgaria had fulfilled the remaining CVM recommendations satisfactorily, and that Bulgaria had made sufficient progress in meeting its commitments at the time of its accession to the EU and that all benchmarks as well as the seventeen recommendations of the report of January 2017, had been satisfactorily complied with and can be satisfactorily closed. The Commission notably

¹² https://ec.europa.eu/commission/presscorner/detail/en/MEMO_18_6363

¹³ https://ec.europa.eu/commission/presscorner/detail/en/IP_18_6364

¹⁴ https://ec.europa.eu/commission/presscorner/detail/en/IP_18_6364

took notice, among other things, of the comprehensive reforms of the general anti-corruption institutional framework that were carried out over the previous two years.

In addition, the Commission noted in the conclusions of the report of October 2019 a **list of specific commitments** made by the Bulgarian government. Those specific commitments notably included the putting in place of procedures concerning the accountability of a Prosecutor General in line with recommendations by the Venice Commission, along with the commitment to amend the Judicial System Act in order to repeal the provisions requiring the automatic suspension of magistrates in the event of a criminal investigation against them, as well as the provisions obliging magistrates to report their membership of professional associations. Bulgaria also committed to continue its cooperation with Council of Europe bodies in the field of **anti-corruption**.

The report of October 2019 also underlined Bulgaria's efforts to internalize monitoring at the national level through a Coordination and Cooperation Council (the 'post-monitoring council') responsible for overseeing the continued progress of reforms.

So, Bulgaria still needed to continue working to implement **specific commitments** listed in the conclusions of the report, a work that has been completed in June 2023. Since then, Bulgaria was no longer monitored or reported upon under the CVM and it is monitored within the annual Rule of Law Cycle with the Commission's annual Rule of Law Report.

At that time the government of Boyko Borisov declared that Bulgaria would stop being monitored under the Mechanism, but however this happened in practice officially four years later.

As it was underlined above, the last commitment for Bulgaria was the creation of a mechanism for effective accountability and criminal liability of the Prosecutor General and his deputies, as well as judicial control of the prosecutor's decisions.

Following up on the specific commitments noted in the report of October 2019, in February 2020, the Bulgarian Parliament adopted the aforementioned amendments to the Judicial System Act, leaving the specific commitment to put in place procedures concerning the accountability of a Prosecutor General as the only outstanding commitment from the report of October 2019.

In fact a **framework for the investigation against the Prosecutor General** and his or her deputies was established in the context of the Recovery and Resilience Facility, in close cooperation with the Commission and with the consultation of the Venice Commission.

On 4 May 2022, the Council of the European Union approved the proposed Recovery and Resilience Plan for Bulgaria, which includes among its milestones Bulgaria's commitment on the entry into force of the legislative amendments to safeguard the effectiveness of criminal

proceedings and improve the accountability and criminal liability of the Prosecutor General. On 26 May 2023, the Bulgarian Parliament adopted the law putting in place procedures concerning the accountability of the Prosecutor General and his or her deputies.

The law entered into force on 6 June 2023, thus finalizing the last outstanding specific commitment under the report of October 2019. The Prime Minister of Bulgaria informed the Commission by letter of 26 June 2023 about the measures taken to fulfil the specific commitments that were listed in the conclusions of the 2019 report under the cooperation and verification mechanism, as well as further measures to continue upholding the rule of law.¹⁵

Therefore, all benchmarks set out in the Decision 2006/929/EC, and clarified through the seventeen recommendations of the report of January 2017, as well as the specific commitments of the report of October 2019, **have been satisfactorily complied with.**

According to the Acts of Accession, which are the legal basis for the CVM decisions, the *"Commission shall inform the Council in good time before revoking the safeguard measures [the CVM], and it shall duly take into account any observations of the Council in this respect"*. Therefore, when the Commission considers that the benchmarks have been fully met it can conclude that it is possible to revoke the CVM.

On 5 July 2023, the Commission informed the Council about its intention to repeal Decision 2006/929/EC establishing a cooperation and verification mechanism for Bulgaria and definitively close the mechanism. This was also communicated to the European Parliament.

By a letter of 26 July, the Council took note of the Commission's intention to formally close the cooperation and verification mechanism for Bulgaria and Romania.

The process to terminate the CVM began with a note dated 6 July 2023 from the European Commission informing the Council and the European Parliament of its intention to repeal the Cooperation and Verification Mechanism for Bulgaria and Romania. On July 19, 2023 The Council sent a letter to the EC with a decision of Committee of Permanent Representatives of EU Governments, in which it reports progress in the area of rule of law in Bulgaria and Romania and the EC's intention to terminate the CVM.¹⁶

On September, 15, 2023, the final decision of the Commission was to withdraw the decision to create the mechanism that ceases to exist.

"The termination of the Cooperation and Verification Mechanism is a recognition and unreserved assessment that with the work of the government and the National Assembly, the

¹⁵ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32023D1785#ntc4-L_2023229EN.01009101-E0004

¹⁶ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32023D1785#ntc4-L_2023229EN.01009101-E0004

Bulgarian side managed to implement fundamental and sustainable reforms in the field of the rule of law, which clearly demonstrate the ability of our country to fulfill its obligations of a predictable and reliable member of the European Union. This is also recognition of the long-term activity and efforts of Bulgarian citizens and civil society. They motivate us to remain focused and to work purposefully on the realization of our national priorities for the successful completion of the European integration process of Bulgaria in the European family", said the Deputy Prime Minister and Minister of Foreign Affairs Maria Gabriel.¹⁷

Bulgarian Prime Minister Nikolay Denkov officially expressed gratitude to the European Commission and the heads of European countries for having assessed the progress of Bulgaria and Romania in terms of the implementation of the rule of law and for removing the special verification mechanism of our country. In his words: *"Another barrier has been removed to be equal with the rest of the European Union countries in every respect. We need to get rid of the others soon - to be accepted into Schengen area and join the Eurozone."*¹⁸

Conclusion

The government's plan is for Bulgaria to be accepted into the Schengen area by the end of this year.

However Bulgaria and Romania continue to be outside the Schengen. The reason is Austria's veto against both countries, as well as the Netherlands' veto against Bulgaria only. And while Bulgaria does not seem to take drastic maneuvers to change this situation, neighboring Romania has taken decisive action towards Austria. Bucharest has blocked Vienna's participation in NATO meetings, and two Austrian army officers have been waiting in Brussels for weeks for accreditation into the alliance. Earlier, Romanian Prime Minister Marcel Ciolacu warned that if Austria vetoed Schengen again in December, Bucharest would appeal to the Court of Justice of the EU and ask the European Council, European Commission and European Parliament to be a party along with Romania in the process.¹⁹

At the beginning of October 2023, the Bulgarian Prime Minister was on a working visit to the Spanish city of Granada, where the Third Meeting of the European Political Community was held. The forum brought together leaders from across the continent who discussed two main topics – support for Ukraine and the fight against illegal migration. During this meeting in talks with the European leaders, Nikolay Denkov was assured that Bulgaria will receive

¹⁷ <https://www.mfa.bg/bg/news/38454>

¹⁸ <https://www.gov.bg/bg/prestentor/novini/premierat-akad-denkov-premahnata-e-oshte-edna-bariera-dabadem-ravnopravni-v-es>

¹⁹ <https://bnr.bg/horizont/post/101884909>

strong support for its accession to the Schengen area, if by the end of the year what is expected of it is done.²⁰

Austria's motive for not agreeing both Balkan countries to join Schengen area is not working as intended. Austria wants two big changes - first, to review the Schengen rules because it has a problem at the moment. At the moment, all the borders around it are closed, including with Germany. The second problem is the Berlin Agreement. That is, the requirement that the refugees return to the place from where they entered. This mechanism does not work at all.

On October 27, 2023, Prime Minister Nikolay Denkov presented Bulgaria's arguments for its accession to the Schengen area at the meeting of the European Council in Brussels.

The Bulgarian Prime Minister expressed hope that with the latest changes in the Bulgarian legislation, the Netherlands will be convinced to support the expansion of Schengen. Dutch Prime Minister Mark Rutte commented that if the EC gives a positive assessment of Bulgaria's efforts in December, then his country will withdraw its objections.²¹

At the same time, the EC confirmed its full support for Bulgaria's entry into Schengen *"You have our full support for Schengen. All the conditions for admission to the Schengen area have been met"*, said the Vice-President of the European Commission, Vera Jourova. She also noted as a great positive the termination of the Cooperation and Evaluation Mechanism for Bulgaria and Romania.²²

Whether and when Bulgaria will take the next step towards being an equal member of the European Union by being admitted to Schengen area and the Eurozone remains to be seen in the near future.

²⁰ <https://www.vesti.bg/bulgaria/premieryt-denkov-obiasni-koga-bylgariia-shte-poluchi-podkrepa-za-shengen-6180342>

²¹ <https://euronewsbulgaria.com/news/21115/denkov-ubezhdava-evropeyskiya-suvet-che-sme-gotovi-za-shengen>

²² <https://www.gov.bg/bg/prestentor/novini/ek-potvardi-palnata-si-podkrepa-za-vlizane-na-balgariya-v-shengen>