

To:

Mr. Boyko Borissov
Prime Minister of the Republic of Bulgaria

Mrs. Ekaterina Zaharieva
Deputy Prime Minister and Minister of Foreign Affairs

Mrs. Tsetska Tsacheva
Minister of Justice

Copy to:

Mr. Roumen Radev
President of the Republic of Bulgaria

Mr. Sotir Tsatsarov, Prosecutor General

Mr. Lozan Panov
Chairman, Supreme Cassation Court

Mr. Dimitar Glavchev
Chairperson, National Assembly

Mr. Danail Kirilov
Chairperson, Legal Committee in the National Assembly

Mr. Ognyan Zlatev
Head, European Commission Representation in Bulgaria

POSITION STATEMENT

Rule of Law and Judicial Reform in Bulgaria

We know that it is in the best public interest and, in particular, fundamental to the proper functioning of the economy, that Bulgaria has a true separation of powers with, inter alia, independent, impartial, and efficient judiciary and prosecution that work first and foremost for the benefit of society. The alternative is an institutional system ruled not by law, but by the seemingly arbitrary acts of individuals in power. We already raised our voice in that regard, sending a letter to the Bulgarian authorities on the 25th of January 2016. Now, we want to reiterate our position.



We firmly believe that the lack of an impartial and efficient judiciary and prosecution is unquestionably one of the single most significant impediments to economic growth in Bulgaria, to attracting foreign investors and to establishing a level playing field for all economic actors, whether foreign investors or Bulgarian entrepreneurs – current or potential.

It is our duty, therefore, as representatives of some of the largest foreign investors in Bulgaria and of many local Bulgarian businesses, to take a stance and make the voice of business heard on the issue of judicial reform in Bulgaria.

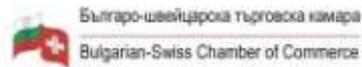
Thus, we voice our support for the general principles behind the conclusions and recommendations made in the report of analysis of the Bulgarian prosecution office prepared under the auspices of the Structural Reform Support Service of the European Commission released on 20 December 2016.

We welcome the important steps made with the changes to the Constitution and the Judiciary Act introduced in 2015 and 2016. However, it is our firm conviction that these changes were only the beginning, as they do not really address certain fundamental concerns. Indeed, judicial reform in Bulgaria is far from complete. The process must continue in earnest, for the simple reason that this is a pre-condition for the Bulgarian nation to achieve true prosperity, a condition so fundamental that no more compromises should be tolerated.

The following are some of the most important elements that we believe must underpin real and substantive judicial reform; a complete reform that would benefit tremendously the economy and Bulgarian society as a whole:

➤ **Independence of the judiciary:** All political actors appear to agree that the judiciary should be independent, but there is insufficient political will to carry out the reforms necessary to ensure that judges are fully and completely independent from political influence. In addition, the prosecution should not have a role (through the Plenum) in the judges' career and the courts' organisation. While the reforms from last year made significant strides by dividing the Supreme Judicial Council into two Colleges, at the end of the day, the judiciary's susceptibility to political influence is inherent in the very structure of the judicial college, under which the politically-appointed quota is still very strong, even though such influence can still be exercised. The final step of giving judges full and undisputed autonomy was not taken. Instead, channels for possible political influence remain open and the aberration where the courts would depend on certain matters from the prosecutorial corps (through the plenum of the council) was preserved – notwithstanding a political accord between the main political parties suggesting the opposite.

We appeal that the judiciary be made fully independent on all institutional matters – both from any possible political influence and from the prosecution office, by taking the necessary final steps to a full and complete judicial reform.



➤ **Transparency and accountability of the prosecution:** One fundamental concern with the latest judicial reform is that the prosecution was left virtually as uncontrolled as before. We absolutely support the independence of the prosecution but also wish to emphasize that a real separation of powers must have appropriate checks and balances - independence without accountability should not exist in a truly democratic society, as it undermines the very foundation of democracy. We are deeply concerned by the lack of sufficient accountability on the part of the Bulgarian prosecutor's office, which creates the perception of dependence of its actions on the decisions, possibly arbitrary, of one or more individuals.

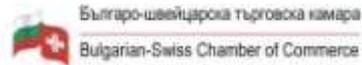
Indeed, virtually nowhere else in Europe is the prosecution not only independent in its daily work, but also independent from the very state and the society it is meant to serve. We believe that wider public debate is merited as to whether the prosecution should be separated from the judiciary and accountable to the executive and/or the legislative branches of power (through further decentralization, reporting obligations, and real sanctions for arbitrary investigations, for instance), so that the prosecution in Bulgaria is ultimately accountable to society.

The lack of judicial control over the prosecutor's decisions in the pre-trial phase together with the absence of real accountability of the prosecution are the primary cause of the pervasive sense of lawlessness and impunity eroding Bulgarian society, which in turn contributes to Bulgaria largely lagging behind other EU members from Eastern Europe in all socio-economic aspects.

The guiding principles behind the organization of the prosecution should be functional independence, efficiency, consistency (in prosecutorial decisions), and transparency; as well as accountability to bring it all together. In this regard, the report released on 20 December 2016 by the experts of the Structural Reform Support Service of the European Commission has made some very useful suggestions, which should be developed further.

The Code of Criminal Procedure and the Criminal Code should be modernized, giving greater powers and responsibility to the prosecution as well as more internal and structural autonomy and accountability. This is undeniably needed for successful prosecution of all crimes - especially high-profile and corruption crimes but also all types of frauds, especially those committed using the Law on Commerce and the Company Register. Indeed, we should not forget that with great power comes great responsibility.

There should be public (to the extent possible), internal guidelines and rules within the prosecution office, with which all prosecutorial decisions will have to comply, replacing the antiquated and effectively arbitrary principle of "internal conviction" of prosecutors, so that there is real transparency and consistency in the prosecutorial decisions. Institutional safeguards must be introduced to ensure field prosecutors' independence and ability to drive investigations are based on objective assessment of facts, with only the necessary



involvement/guidance by the administrative head/senior prosecutors to ensure just and consistent enforcement.

➤ **Enhancing the efficiency and effectiveness of the judicial process:** We believe that the unacceptable delays in completing the pre-trial phase and resolving the case in court in countless instances constitute a severe problem undermining the system as a whole. Additionally, the general principal of random allocation of cases in both the prosecution and the courts needs to be reinforced with more internal accountability and transparency in order to ensure that casework distribution cannot be manipulated, which is absolutely necessary for a fair and efficient judicial system.

➤ **E-justice and Legal Education Reform:** We are convinced, and our legal experts agree, that the development and implementation of a true e-justice system and the modernization of the legal education in Bulgaria and the improvement of its quality are absolutely essential for the judicial reform to be truly comprehensive and successful.

We may not be in the best position to tell the political actors whether and which fundamental constitutional changes are required, or in which ways the goal of achieving real and complete judicial reform should be pursued. It is our duty, however, to work without waver toward the establishment of an environment of real legal security and predictability, fairness, and equal treatment for all investors and entrepreneurs. An environment where even those who only dream of establishing their own business have reason to believe it is worthwhile to try, and that the legal system will support their efforts, not hinder them in the interests of a few. To this end, Bulgaria needs an independent, efficient, and transparent judicial system that provides equal justice to all under the laws of our country.

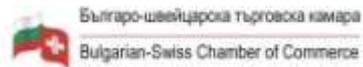
The judicial reform is the mother of all reforms. When it is finally carried out and completed, this will enhance Bulgaria's economic growth potential and will bring about real prosperity and justice for its people.

Sincerely,

Advantage Austria, Ulrike Straka, Austrian Trade Commission in Bulgaria

American Chamber of Commerce in Bulgaria, Dr. Krassimira Chemishanska,

President



British Bulgarian Business Association, John Munnery, Chairman

Bulgarian-Swiss Chamber of Commerce, Boni Bonev, Chairman

Canadian-Bulgarian Business Network, Alex Nestor, Vice President for Bulgaria and Europe

Confindustria Bulgaria, Maria Luisa Meroni, President

French-Bulgarian Chamber of Commerce and Industry, Stephan Delahaye, President

Norwegian Bulgarian Business Group, David Hampson, Acting Chairman