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ANNEX

EVALUATION REPORT ON THE TENTH ROUND OF MUTUAL EVALUATIONS on the implementation of the European Investigation Order (EIO)

REPORT ON BULGARIA

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1. EXECUTIVE SUMMARY

The evaluation visit was organised in a professional manner. The evaluation team appreciated the friendly atmosphere and open discussions during the meetings, the timely provision of documents (national legislation and responses to the questionnaire) and the quick responses to additional questions after the evaluation visit.

During the on-site visit, the evaluation team had the opportunity to meet with Bulgarian representatives from various districts, who provided them with information on and explanations of the legal aspects of the application of the EIO, as well as the practical problems they have encountered.

The evaluation team concluded that practical application of the EIO in Bulgaria works well, both when it acts as the issuing state and when it acts as the executing state. However, there is still room for improvement on both the national and international levels, as indicated in the recommendations under point 24.2. of the report.

The most significant issue is connected with the judgment in case C-724/19, *HP*, where the CJEU held that Bulgarian law does not comply with Article 2, point (c)(i), of the EIO Directive in respect of its approach that no domestic court order is needed to issue an EIO for an investigative measure to be conducted abroad, even if in a national case the same investigative measure had to be authorised or ordered by a court. Bulgaria is currently discussing amendments to adapt its legislation on this matter.

Another issue is that according to the Bulgarian EIO Act, an EIO can be issued in proceedings brought by administrative authorities regarding acts punishable by virtue of infringing the rules of law and where the decision may give rise to proceedings before a court having jurisdiction in criminal matters. However, Bulgarian law does not define the competent authority to issue or execute such an EIO.

In executing EIOs, the Bulgarian authorities face the challenges set out in section 6.1, especially regarding the legal concept of a 'suspected person' (which does not exist in Bulgarian law), insufficient information on the facts and circumstances of the crime and the importance of the requested measure for the investigation (section G of the Annex A form), missing questionnaires in EIOs for hearings, and name inaccuracies.

A further challenge stems from the fact that Bulgarian law does not contain provisions implementing the EIO Directive's provisions on real-time bank account monitoring.

Under Article 18(1) of the EIO Act, the legal remedies provided for similar cases in Bulgarian law apply for the protection of the persons concerned when investigative measures or other procedural measures requested in an EIO are being carried out. According to Article 18(2) of the EIO Act, the substantive grounds for issuing an EIO can only be appealed in the issuing state, without prejudice to the guarantees of fundamental rights provided for in Bulgarian legislation. In this area, the biggest challenge for Bulgaria is modifying its legislation in line with the current CJEU case-law – namely the judgment of the Court of Justice of 11 November 2021, *Gavanozov II*, C-852/19 ('judgment in *Gavanozov II*'), especially concerning searches and seizures.

Bulgarian law does not require application of the speciality rule, so Bulgarian practitioners apply it only on a case-by-case basis. As the same goes for the EIO Directive, a recommendation to the European Commission has been made.

Specific investigative measures, i.e., temporary transfer, hearing by video or telephone conference, obtaining of information on bank and other financial accounts, covert investigations and interception of telecommunications (including cross-border surveillance), are regulated in Bulgarian law in line with the EIO Directive. The relevant provisions are laid down in the EIO Act, the Bulgarian Code of Criminal Procedure (CCP) and other specific acts (including the Special Intelligence Means Act and the Credit Institutions Act). While the legal regulation of the procedure for the Bulgarian judicial authorities when acting as executing authorities is very specific and comprehensive, it is much more general and concise with regard to cases where the Bulgarian authorities are the issuing authorities. Consideration has been given to whether this imbalance should be addressed through legislative amendments.

The absence of a definition of 'telecommunications' in the EIO Directive has led to a lack of a uniform practical understanding of what is meant by the term in Bulgaria. As a result, it is sometimes unclear which instrument for judicial cooperation is to be used (depending on the Member States' understanding of the term). However, the Bulgarian authorities take a pragmatic approach and always try to find the most effective solution in consultation with the other Member States. This is a horizontal issue and therefore there is a recommendation to the Commission.

As for the best practices, it is worth mentioning that Bulgarian practitioners send one comprehensive EIO covering all measures, which gives the executing authority complete information and makes it easier for the executing authority to judge whether all of the measures should be recognised and executed by one source or should be splitter up among its different authorities. Another best practice worth mentioning is the willingness of Bulgaria to accept English as the most commonly used working language, thus facilitating translation for issuing authorities in other Member States.

2. INTRODUCTION

The adoption of Joint Action 97/827/JHA of 5 December 1997[1] ('the Joint Action') established a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime.

In line with Article 2 of the Joint Action, the Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS) agreed after an informal procedure following its informal meeting on 10 May 2022 that the 10th round of mutual evaluations would focus on the European Investigation Order (EIO).

The aim of the 10th round of mutual evaluations is to provide real added value by offering the opportunity, via on-the-spot visits, to consider not only the legal issues but also – and in particular – relevant practical and operational aspects linked to the implementation of the EIO Directive. This will allow both shortcomings and areas for improvement to be identified, together with best practices to be shared among Member States, thus contributing to ensuring more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the EU.

More generally, promoting the coherent and effective implementation of this legal instrument at its full potential could significantly enhance mutual trust among the Member States' judicial authorities and ensure better functioning of cross-border judicial cooperation in criminal matters within the area of freedom, security and justice.

Furthermore, the current evaluation process could provide helpful input to Member States that may not have implemented all aspects of the EIO Directive.

[1] Joint Action of 5 December 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime.

Bulgaria was the fourth Member State to be visited during this round of evaluations, as provided for in the order of visits to the Member States adopted by CATS on 29 June 2022[2].

In accordance with Article 3 of the Joint Action, the Presidency has drawn up a list of experts in the evaluations to be carried out. Pursuant to a written request sent to delegations on 15 June 2022 by the General Secretariat of the Council of the European Union, Member States have nominated experts with substantial practical knowledge in the field.

Each evaluation team consists of three national experts, supported by one or more members of staff from the General Secretariat of the Council and observers. For the 10th round of mutual evaluations, it was agreed that the European Commission and Eurojust should be invited as observers[3].

The experts entrusted with the task of evaluating Bulgaria were Mr Felix Hofmeir (Germany), Mr Rafal Kierzynka (Poland) and Mr Radek Soukup (Czech Republic). Two observers were also present: Ms Anita Veternik (Eurojust) and Ms Mária Bačová (General Secretariat of the Council).

This report was prepared by the team of experts with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit to Bulgaria that took place between 14 and 16 March 2023, on Bulgaria's detailed replies to the questionnaire and follow-up questions, and on the national legislation provided by Bulgaria.

During the on-site visit, the evaluation team met with Bulgarian representatives of the following institutions: the Supreme Cassation Prosecutor's Office (SCPO), the Ministry of Justice, the National Institute of Justice, the Sofia City Prosecutor's Office, the Burgas District Prosecutor's Office, the Varna District Prosecutor's Office, the Lovech District Prosecutor's Office, the Varna Court of Appeal, and the Pernik Court of Second Instance and District Court of Sofia. After the on-site visit, a video conference (VC) was also held with a representative of the Bar Association.

[2] ST 10119/22.
[3] ST 10119/22.

3. TRANSPOSITION OF DIRECTIVE 2014/41/EU

Provisions implementing the EIO Directive were transposed into Bulgarian law by the European Investigation Order Act of 7 February 2018, which entered into force on 23 February 2018 ('EIO Act'). Prior to that, there had been no specific law on international cooperation and mutual legal assistance, but provisions on this matter had been incorporated into a chapter of the Bulgarian CCP. The EIO Act was amended by a law which was promulgated on 26 April 2022 and became effective on 27 July 2022. This law changed the competent authorities for the recognition of EIOs in Article 9(1) of the EIO Act due to the dissolution of the Specialised Prosecutor's Offices and the Specialised Criminal Courts, which had been competent for cases involving organised crime and organised criminal groups.

The Ministry of Justice has established a working group whose goal is to find the best solution for implementing the CJEU's judgments in the *HP* and *Gavanozov I* and *II* cases in Bulgarian law. A final decision has not yet been taken on what that solution should be. The group includes members from the Supreme Cassation Prosecutor's Office (SCPO), other prosecutor's offices, the Supreme Court of Cassation and representatives of academic society.

The EIO Act follows the EIO Directive quite closely. It is very detailed, comprehensive and easy to understand and therefore helps practitioners to apply the EIO Directive as both issuing and executing authorities.

4. COMPETENT AUTHORITIES

Bulgaria has not designated a central authority for the execution or issuing of EIOs. In the view of the Bulgarian prosecutors and judges, a central authority's involvement in transmitting official correspondence relating to EIOs would slow down execution. Nevertheless, the competent authorities can contact the Bulgarian Ministry of Justice and the International Department of the SCPO for support.

Under Article 5 of the EIO Act, the authority competent for issuing an EIO is determined by the stage of proceedings.

During pre-trial proceedings, the only authority competent to issue an EIO is the prosecutor at the PPO under whose leadership the investigation is being conducted. This can be a prosecutor at any level of the PPO. This also applies to tax offences, since PPOs are in charge of investigating tax crimes because Bulgaria's Tax Offices do not have investigators.

According to Article 5(2) of the EIO Act, an accused person, a defendant or a defence lawyer authorised by a defendant to implement the requisite defence may also apply for an EIO to be issued (though during the meeting with the representative of the Bar Association, the evaluation team was told that, in practice, lawyers have never requested that an EIO be issued). In such a case, the relevant prosecutor must assess the merits of the request, i.e., whether the EIO is necessary for the protection of the accused person. If the prosecutor does not issue the requested EIO, he or she should give a reasoned decision, against which the accused may submit an appeal. This decision can also be reviewed *ex officio* by a prosecutor from the prosecutor's office immediately above that of the prosecutor issuing the decision (Article 46(4) CCP).

According to Article 46(4) of the Bulgarian CCP, a prosecutor of more senior rank or a prosecutor at a higher-level prosecutor's office may also issue an EIO and thereby revoke in writing or amend the decision of any prosecutor reporting directly reporting to him or her.

The issuing of an EIO may also be requested by the investigative authorities, i.e., the police.

According to Bulgarian law, even if, in a national case, a given investigative measure would have to be authorised or ordered by a court, a Bulgarian public prosecutor issuing an EIO for the same investigative measure to be conducted abroad does not need to obtain a court decision before issuing the EIO for this measure. The CJEU judgment in *HP* held that this does not comply with Article 2, point (c)(i), of the EIO Directive. To implement this judgment in Bulgarian law, the Ministry of Justice established the working group mentioned on page 13 to discuss whether, in such cases, (1) the courts should be given exclusive competence to issue EIOs in the pre-trial phase, or (2) a public prosecutor may issue an EIO after the relevant court has authorised the measure requested.

During trial proceedings, the only authority competent to issue an EIO is the court conducting the trial.

The competent authority for recognising and executing an EIO during pre-trial proceedings is one of the following: a prosecutor from the district prosecutor's office (higher first instance level; the Bulgarian prosecutorial system is composed – from bottom to top – of regional offices, district offices, appellate offices and the SCPO) within whose judicial district the requested measure is to be carried out; a prosecutor from the district prosecutor's office which already possesses the evidence requested for transfer; or the Sofia City Prosecutor's Office (e.g. if there is no link to a specific judicial district). Likewise, during the trial phase, the authority competent to recognise and execute incoming EIOs is either the district court within whose judicial district the requested measure is to be carried out, the district court which already possesses the evidence requested for transfer, or the Sofia City Prosecutor's Office (Article 9 of the EIO Act).

In most cases, after an EIO has been recognised, the public prosecutor delegates execution to the investigator, who is also part of the prosecutor's PPO; the police are rarely involved in the execution of an EIO.

If, according to Bulgarian law, a measure requested by an EIO is subject to a particular regime, or to approval or permission by a court, Article 10(4) of the EIO Act stipulates that the execution of this EIO in Bulgaria must follow those national rules.

While the district prosecutor's offices/courts have been assigned general competence to recognise and execute EIOs, military district prosecutor's offices/courts have special competence within their jurisdiction.

The temporary transfer of persons held in custody is the only exception when it comes to the pre-trial/trial division of competence between PPOs and courts. Because of the severe impact on the personal rights of the detained person, the decision to recognise and execute this measure is the competence of the district court in both the pre-trial and the trial phase (Article 26(1) and (2) of the EIO Act). The physical surrender procedure is handled by the SCPO.

5. SCOPE OF THE EIO DIRECTIVE AND RELATIONSHIP WITH OTHER INSTRUMENTS UNDER THE NATIONAL FRAMEWORK

According to Article 4 and Article 2(1) of the EIO Act, the EIO covers all measures for gathering evidence, including evidence that is already in the possession of the requested Member State, and all investigative measures or other procedural measures. The only measures excluded from the scope of the EIO under Bulgarian law are:

- collection of evidence within a joint investigation team (JIT) (Article 4(1) of the EIO Act, in line with Article 3 of the EIO Directive);
- cross-border surveillance (Article 4(3), point 2, of the EIO Act, in line with recital 9 of the EIO Directive);
- seizure of property, which is subject to confiscation and forfeiture, provided that the request for confiscation of the property has not yet been made (Article 4(3), point 1, of the EIO Act, though the EIO regime applies if the property is to be mainly used as evidence).

EIO and 'other procedural measures'

Although Article 4(1) of the EIO Act extends the scope of the EIO to 'other procedural measures' which are unrelated to gathering evidence, most Bulgarian judicial authorities consider that the EIO does not apply to:

1) sending and service of procedural documents under Article 5 of the 2000 EU Mutual Legal Assistance Convention ('the 2000 EU MLA Convention');
2) spontaneous exchange of information under Article 7 of the 2000 EU MLA Convention;
3) restitution under Article 8 of the 2000 EU MLA Convention (transmission of an object obtained by criminal means with the aim of returning it to its legal owner, but only insofar as this object is not sought as physical evidence);
4) freezing of property with a view to its subsequent confiscation under Council Framework Decision 2003/577/JHA (insofar as said freezing does not concern necessary physical evidence);
5) freezing of property with the aim of compensating the victim of a crime;
6) provision of information from national criminal records;

7) provision of a judgment;
8) transfer of criminal proceedings based on Article 21 of the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters and the European Convention on the Transfer of Proceedings in Criminal Matters;
9) execution of requests made as part of the police cooperation described in Article 39 of the Convention implementing the Schengen Agreement ('the Schengen Convention'), including requests for consent to use as evidence the written information already provided by the requested party.

The reasoning behind this approach is that it is more expedient in practical terms, taking into account, in particular, that the EIO Act limits the number of authorities competent to recognise EIOs in Bulgaria (only district prosecutor's offices) compared to the number of authorities to which a normal MLA request can be addressed (all first-instance prosecutor's offices).

Therefore, although the EIO is applicable to procedural measures unrelated to gathering evidence under Bulgarian law, traditional MLA requests (mainly under the 2000 EU MLA Convention) are generally deemed preferable. But if an issuing state wishes to request both the gathering of evidence and other procedural measures which are instrumental to the gathering of evidence (e.g., the summoning of a witness for a hearing), Bulgaria deems it acceptable to request both through an EIO.

The Bulgarian authorities noted that when they, as the executing authorities, receive an EIO with a request to carry out measures unrelated to gathering evidence (e.g., service of documents), they try, including through consultations and discussion of the use of an alternative instrument, to ensure the execution of the order on an appropriate MLA basis.

The working group established by the Ministry of Justice is discussing adapting the EIO Act to reflect actual practice and altering Article 4(1) by omitting the phrase 'other procedural measures', thus limiting the scope of the EIO to the gathering of evidence. In practice, the competent Bulgarian authorities, when acting as the issuing authorities or when acting as the executing authorities, do not encounter particular difficulties in identifying the investigative measures for which an EIO can be issued.

Applicability of the EIO after a final and binding judgment

Under Bulgarian law (Article 5(1) of the EIO Act), the EIO is an applicable instrument only insofar as it is used for pending criminal proceedings during the pre-trial and trial phases. This applies to Bulgaria as both the issuing state and the executing state. Bulgarian law does not provide for the application of EIOs at the sentence execution stage.

If information is needed, Bulgaria does not consider this as evidence but as information, and resorts to the Swedish Initiative.

EIOs to locate persons and subsequent EIOs

There is no practice in Bulgaria of **issuing** an EIO to locate persons in order to transmit a subsequent request (e.g., an European Arrest Warrant (EAW) or a certificate in accordance with Framework Decision 2008/909/JHA). If it is necessary to locate a person, assistance is often sought from the International Operational Cooperation Directorate of the Ministry of Interior and the relevant partner police services abroad. The Bulgarian issuing authorities seek to distinguish the need for gathering evidence from the need to gather operational data/intelligence in another Member State bound by the EIO Directive. In the first case, an EIO is issued; in the second case, they seek to obtain the data through operational cooperation with police forces abroad.

Bulgaria has been involved as the **executing state** in cases where, after the Bulgarian authorities carried out the investigative measures specified in the EIO, the persons concerned were detained so that proceedings under the EAW scheme could be conducted. There have also been cases where, after a person was identified, an additional EIO was received – requesting a hearing and/or search and seizure.

If a Member State wants to request the (temporary) transfer of a person against whom a national arrest warrant exists for criminal prosecution or the execution of a custodial sentence, Bulgaria considers Council Framework Decision 2002/584/JHA on the European Arrest Warrant applicable, rather than the EIO Directive. No problems relating to the choice of legal grounds have arisen when Bulgaria has been the issuing state or when it has been the executing state.

When Bulgaria is the executing authority for EIOs with a request for a hearing, Bulgarian law requires that the relevant person be summoned in advance in order for the hearing to be conducted.

EIOs issued by an administrative authority

There have been no such cases – neither with Bulgaria as the issuing state nor with Bulgaria as the executing state.

Article 2(2), point 2, of the EIO Act stipulates that an EIO can be issued in proceedings brought by administrative authorities in respect of acts which are punishable under the law of the issuing state by virtue of being an infringement of the rules of law and where the decision may give rise to proceedings before a court having jurisdiction in criminal matters. However, Bulgarian law does not stipulate which authority is competent to issue or execute an EIO for the purpose of implementing an administrative decision or in administrative proceedings, and the prosecutor who is competent under Article 5(1) of the EIO Act does not participate in administrative proceedings. Thus, in administrative proceedings, Bulgaria cannot issue EIOs and has to seek administrative legal assistance (Naples Convention).

Likewise, Bulgaria is not able to execute EIOs relating to administrative offences under the EIO scheme because there is no competent authority defined in Article 9(1) of the EIO Act. Instead, it treats such EIOs as MLA requests, provided that the EIO in question confirms that the requesting administrative body is competent to issue an EIO, and the appropriate MLA agreement is applied *ex officio*.

EIO and cross-border surveillance

According to recital 9 of the EIO Directive, Article 4(3), point 2, of the EIO Act does not apply to cross-border surveillance as referred to in Article 40 of the Schengen Convention.

The applicability of the Schengen Convention (including Article 40) is disputed by Bulgarian courts and therefore requests for cross-border surveillance are executed by the SCPO as the only competent authority, based on the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, which is applicable for all Member States except Greece.

EIO and freezing orders

Article 4(3), point 1, of the EIO Act states that the Act does not apply when freezing property subject to confiscation, provided that the request for confiscation of the property has not yet been made. However, if the issuing authority clarifies that the seized property is to be used as evidence, Bulgaria processes the EIO under the EIO regime.

EIO and JITs

Article 4(1) of the EIO Act excludes cases in which a JIT has been set up from the scope of the Act. Such cases are governed by the 2000 EU MLA Convention and Council Framework Decision 2002/465/JHA. However, an EIO may be issued where a competent authority of a participating Member State requests the assistance of a non-participating Member State or if the requested measure does not fall within the remit of the JIT.

However, the Bulgarian authorities have not encountered any cases where an EIO has contained a request for prior consent for using the evidence gathered in the executing state by other states participating in the JIT.

6. CONTENT AND FORM OF THE EIO

6.1. Challenges

The Bulgarian authorities stated that, when acting as the issuing authority, they had not encountered any significant problems with filling in the EIO form.

When acting as the executing authority, however, they reported facing the following challenges:

(1) EIOs requesting the hearing of a person as a 'suspected person' pose a problem for the Bulgarian authorities because Bulgarian law does not recognise that legal status and distinguishes only between a witness and an accused person. In the Bulgarian system, an accused person has the right to prepare for three days before being heard, to receive all information on the case, to have a defence lawyer and to remain silent; and a person can only be assigned the status of 'accused' by a formal order from a prosecutor or an investigator. Therefore, the Bulgarian authorities must consult the issuing authority to establish whether the person concerned should be fully guaranteed the abovementioned rights applicable under Bulgarian law, and to determine whether the person is to be heard as a witness or as an accused person. For the latter, it is necessary that the person has been formally assigned the status of 'accused' by the executing authority. Bulgarian practitioners added that the abovementioned formal order must contain all of the facts concerning the accusation[4]. An EIO sent to a Bulgarian judicial authority should therefore contain assurances that the person concerned has been assigned the status of 'accused' according to the law of the issuing state.

Bulgaria therefore suggests making 'suspected person' and 'accused person' separate items in sections C and D of the EIO form.

[4] Article 219(1) CPC: 'Where sufficient evidence is gathered that a person is guilty of a publicly actionable criminal offence, and none of the grounds for terminating criminal proceedings are present, the investigative body shall report to the prosecutor and issue an order to charge the person as an accused party.'

(2) Bulgaria has encountered problems when the summary of the facts in section G of the EIO form has been incomplete or no connection has been established between the investigation conducted abroad and the persons/companies located on Bulgarian territory, meaning that the factual grounds for the requested measures and their link to the investigation are not clear. In order for executing states to be able to handle EIOs properly, section G must contain answers to the questions who, when, where, what and how, especially when the requested measures fall within the scope of the Special Means Act, because in such cases the public prosecutor has to apply for court approval, and when the offence in question does not have an equivalent in Bulgaria, because in such cases detailed and accurate facts are crucial to determining whether the offence is also punishable under Bulgarian law and how to proceed.

(3) In order to be able to conduct a comprehensive hearing, Bulgaria holds it necessary that EIOs requesting the hearing of a witness include questionnaires and clearly state the witness's relationship to the ongoing investigation.

(4) Misspelled names (see also section 6.2), incorrect dates of birth, etc. have sometimes made it necessary to consult with the issuing authorities, and in a handful of cases, the issuing authorities have not replied.

(5) There have been cases where insufficient information has been provided about the crime, or the contact details provided for the issuing authority have been incomplete. In the event of the latter, it is necessary to request additional information, including through Eurojust.

(6) In several cases, EIOs sent to Bulgaria for execution have lacked the necessary stamps and signatures.

6.2. Language regime

Article 7(3) of the EIO Act obliges the issuing Bulgarian authority to translate outgoing EIOs into an official language of the executing state or into another official EU language which the executing state has stated that it will accept.

According to Article 9(4) of the EIO Act, Bulgaria accepts EIOs in Bulgarian or English. EIOs in Bulgarian are preferred because if an EIO is received in English, it has to be translated into Bulgarian since that is the only permitted procedural language, but this can be accomplished very quickly if necessary. Translations into Bulgarian received from other Member States have been of poor quality in some cases; some have been prepared using non-specialised software, resulting in the translated text not making sense.

There have also been cases where the name of a natural or legal person has been incorrectly transcribed into Bulgarian. It would facilitate the execution of EIOs if they were to be sent with the person's name/company name/other documents or data written in Cyrillic letters in an annex. Furthermore, Bulgarian names consist of three parts (given name, father's name and family name), all of which are necessary to identify a person, and therefore all three should be included in the EIO.

6.3. Multiple requests in one EIO

When an EIO requests several measures involving more than one judicial district, the competent authority is defined by Article 9(2) as being the prosecutor's office or court within whose judicial district the most urgent measure is to be carried out. Therefore, there is only ever one judicial authority responsible for recognising and executing all requested measures contained in an EIO. The only exception are pre-trial phase EIOs combining the temporary transfer of a detained person with other measures. The former measure falls under the competence of the relevant district court; the latter under that of the relevant district prosecutor

In Bulgaria's view and based on its experience of issuing EIOs, the issuing authority should define and state in the EIO which investigative measure is the most urgent. If, in cases involving a pre-trial EIO, the various Bulgarian prosecutors involved do not agree on which measure is the most urgent, which rarely happens, the common superior PPO consults with them; if no agreement can be reached, the superior PPO decides which prosecutor has competence. Decisions can be reached in just a few days and, in urgent cases, within a single day. The competent prosecutor then recognises the EIO, orders and assigns its execution and coordinates all measures so that clear responsibility is established.

When executing an EIO requesting several measures during the trial phase, the Bulgarian courts can refer the case to the Supreme Court of Cassation to decide which court has competence according to the Bulgarian CCP. This happens quite often because of the costs arising from the execution of such an EIO. The decision is made on the basis of economic and procedural criteria, and it takes approximately one month for the Supreme Court of Cassation to issue its ruling.

Therefore, during the pre-trial phase, Bulgaria prefers receiving one EIO requesting multiple measures over receiving several EIOs, whereas during the trial phase, execution is faster if each measure is requested by a single EIO. However, both are possible and can be dealt with by the Bulgarian executing authorities

When acting as the issuing authority, Bulgaria prefers to compile one comprehensive EIO containing all the measures, rather than several EIOs each requesting only one measure. This ensures that all the measures are treated equally.

6.4. Additional EIOs and splitting EIOs

Additional EIOs

In one case, Bulgaria was asked to carry out investigative measures and then, subsequently, to hear several persons, including an accused person in respect of whom the investigative measures had established a reasonable suspicion of having committed a crime. However, the request for the hearings was not recognised because the executing authority is not in a position to make its own legal judgments on the gathered evidence and therefore cannot decide whether there is a reasonable suspicion that a person has committed a crime.

EIOs requesting measures requiring certain conditions do not pose a problem for Bulgaria as the executing state as long as it does not have to assess the merits of the case, because, as the executing authority, it is not permitted to deal with questions which have to be answered by the issuing authority.

As issuing state, Bulgaria has sometimes had to issue an additional EIO, e.g. in cases where new facts emerged or an additional suspect was identified. However, in such cases they provided a detailed explanation in the additional EIO that this EIO was connected with the previous one.

Splitting EIOs

The Bulgarian authorities do not ask issuing states to split EIOs requesting multiple measures into multiple EIOs each requesting a single measure since, as mentioned above, they prefer to have all the measures that need to be executed in one EIO.

If EIOs issued by the Bulgarian authorities are split by the executing authorities, this does not pose any difficulties for Bulgaria. So far, they have not been asked to split any of their EIOs containing multiple measures. However, they know that in some Member States, such EIOs are split.

6.5. Orally issued EIOs

Bulgaria neither issues nor accepts EIOs that have only been issued orally.

However, in urgent cases, action can be taken if the issuing state promises to send a written EIO afterwards, especially in fast-evolving situations on joint action days if officers of the issuing state are present.

7. NECESSITY, PROPORTIONALITY AND RECOURSE TO A DIFFERENT TYPE OF INVESTIGATIVE MEASURE

When Bulgaria is issuing an EIO, Article 6(1) of the EIO Act states that the EIO has to be necessary for and proportionate to the purpose of the criminal proceedings, and it must be possible for the investigative measures requested by the EIO to be carried out under the same conditions as they would be under Bulgarian national law in a similar case.

To prove necessity, the Bulgarian judicial authority assesses whether the investigation in Bulgaria would be incomplete without the proper inclusion of the evidence that the EIO seeks. The proportionality assessment is carried out based on the criteria set out in the CCP, which provides that specific investigative measures can be used only for certain categories of crimes under the Criminal Code (CC) or for crimes that carry a certain level of punishment.

There are no known cases where Bulgarian prosecutors have encountered problems in assessing necessity and proportionality as the issuing authority.

However, they did report encountering a case where execution of the EIO was refused for proportionality reasons, i.e., too low damage.

As the **executing authority,** no cases were reported in which the Bulgarian authorities raised objections regarding the necessity or proportionality of an EIO. According to Bulgaria, the reason for this is that it, as the executing authority, does not have knowledge of all of the evidence in the relevant criminal proceedings in the issuing state.

Concerning the recourse to different types of investigative or procedural measures, Bulgaria has completely transposed Article 10 of the EIO Directive into Article 15 of the EIO Act, according to which other measures can be used if those indicated in the EIO are not provided for in Bulgarian legislation or would not be available in a similar case under Bulgarian law, and on the condition that the alternative measure selected would achieve the same result as the measures indicated but by means that would encroach less on the privacy and legitimate interests and rights of the person. However, the issuing authority must first be informed, and it may decide to withdraw or supplement the EIO.

Recourse to different types of investigative measures is not permitted where the investigative measure indicated in the EIO is one of the following: the obtaining of information or evidence already in the possession of the executing authority; the obtaining of information contained in the systems for automatic processing of personal data used by the judicial authorities; the identification of persons holding a subscription of a specified phone number or IP addresses; investigative and procedural measures which do not violate individual rights or freedoms; and the hearing of a witness, expert witness, victim or accused person.

Bulgaria tends to resort to less intrusive measures after consultation with the issuing authority, especially when dealing with EIOs for searches of and seizure from banking institutions. The Bulgarian law on banking institutions allows the PPOs and courts to request documents without a search warrant. Bulgarian practitioners noted that their proposals for alternative measures were always accepted by the issuing state, and there had been no cases of EIOs being withdrawn.

However, in Article 15(4), point 3, of the EIO Act, there is no mention of a 'suspected person' because this concept does not exist in Bulgarian law (see section 6.1 above), and there is no mention of a 'third party' either. These differences between the EIO Act and Article 10(2), point (c), of the EIO Directive do not seem to be of any importance because these two categories of person can be subsumed under the category of 'witness'.

As issuing state, Bulgaria has encountered cases where the requested measure was replaced by another one, e.g. instead of a person being heard via VC, they were heard in person due to a technical problem.

8. TRANSMISSION OF THE EIO FORM AND DIRECT CONTACTS

Bulgaria has transposed Article 7(1), (2), (4) and (5) of the EIO Directive into Article 7 of the EIO Act.

To identify the competent executing authority, Bulgaria consults with the central authorities of other Member States or with EJN contact points, uses the Judicial Atlas on the EJN website and seeks assistance from Eurojust. However, as issuing authorities, Bulgarian prosecutors often transmit EIOs via the relevant national desks at Eurojust. Whereas the EJN, which in Bulgaria has seven contact points within the Office of the General Prosecutor of Bulgaria and 12 within the court system, is often involved in helping the Bulgarian authorities find out who the correct addressee is or in the event of difficulties during the recognition/execution of an EIO, Eurojust tends to be involved from the beginning in urgent cases, especially if there are deadlines which are imposed by the law, and in cases where coordination is needed, e.g. for joint action days.

Bulgaria has not had any negative experiences as the issuing state in cases involving multiple executing authorities.

Bulgaria considers the transmission of an EIO by electronic means to be sufficient and the sending of the original by post not to be obligatory (Article 7(1) and Article 14(1) of the EIO Act). Bulgaria uses electronic signatures to verify senders' authenticity, but EIOs are also processed without electronic signatures.

After an EIO has been transmitted, Bulgaria's initial approach is to communicate directly (e.g. via email, telephone, mobile applications) with the executing authorities, especially when coordination between several executing states is not required; when direct communication fails, or in more complicated cases or cases requiring coordination between several jurisdictions (e.g. joint action days), Bulgaria involves Eurojust in the communication process.

9. RECOGNITION AND EXECUTION OF EIOS AND FORMALITIES

The recognition and execution of EIOs has not posed any problems for Bulgaria as either the issuing or the executing state.

Nor has Bulgaria, as issuing or as executing state, encountered any problems with certain requested formalities being considered contrary to fundamental principles.

Bulgaria refuses recognition and execution of an EIO only if it has consulted the issuing authority to discuss the problems in advance. In most cases, this consultation will enable the Bulgarian authorities to establish the relevant facts that make recognising and executing the EIO possible.

Article 6(1), point 2, of the EIO Act ('applicability in a national case') has been interpreted by Bulgaria in a way that gave rise to the CJEU judgment in *HP*. Even if an investigative measure would, under Bulgarian national law, have to be authorised or ordered by a court, a Bulgarian prosecutor issuing an EIO for the same investigative measure to be carried out abroad does not have to obtain a court order before doing so. According to Article 4(1), point 1, of the EIO Act, prosecutors are competent to issue EIOs at the pre-trial stage – regardless of the nature of the measures requested and irrespective of the extent to which those measures interfere with the fundamental rights of the person concerned. Bulgaria has taken the view that nothing further is required of the issuing state, and the question of whether a court has to authorise the requested investigative measures or other procedural measures is a matter for the executing state alone.

The CJEU held in its judgment in *HP* that the above does not comply with Article 2, point (c)(i), of the EIO Directive. Bulgaria is therefore currently discussing amendments to its legislation, but this has not yet led to new provisions (see also sections 3 and 4).

The competent Bulgarian authorities must recognise an EIO transmitted in line with Article 7(1) of the EIO Act unless there are grounds for non-recognition, non-execution or postponement. The court must examine the case in camera or with a single-judge panel. If the EIO does not conform to the requirements under Article 3[5] of the EIO Act, the court must return it to the issuing state. A missing stamp does not necessarily lead to non-recognition. If the EIO is recognised, the recognition order and the EIO must immediately be transmitted to the relevant competent authorities for execution.

[5] **Article 3 of the EIO Act**
A European Investigation Order shall be issued in a standard form according to Annex 1 hereto and shall contain:
1. the particulars, signature and official stamp of the issuing authority;
2. the object of and reasons for issuing the European Investigation Order;
3. the necessary available information about the person in respect of whom investigative measures and other procedural measures will be carried out;
4. a description of the criminal act which is the subject of the investigation or proceedings, and the relevant applicable provisions of the criminal law of the issuing state;
5. a description of the investigative measures and other procedural measures requested and the evidence to be obtained.

According to Article 13(2) of the EIO Act, upon execution of an EIO, the competent authorities must comply with the formalities and procedures indicated by the issuing authority, unless otherwise provided for in the Act and provided that such formalities and procedures are not contrary to Bulgarian law. This sometimes poses problems for the Bulgarian authorities when acting as executing authorities, especially if a person has to be heard as a 'suspected person' – a concept unrecognised by Bulgarian law; but these problems can be solved by consultation with the issuing authority (see section 6.1(1), above).

At the request of the issuing state, the court or prosecutor may allow one or more authorities to assist in the execution of the EIO if such assistance is provided for in Bulgarian law or does not harm the vital national security interests of Bulgaria. However, the authorities of the issuing state present in the territory of the executing state (Bulgaria) are bound by Bulgarian legislation during execution of the EIO.

10. ADMISSIBILITY OF EVIDENCE

The Bulgarian authorities have not encountered any cases where the issuing authority had not completed section I of the EIO form and issues related to formalities later arose, nor any cases of refusal to comply with certain formalities due to their being considered contrary to 'fundamental principles of the law' of the executing state.

The preliminary ruling that led to the CJEU judgment in *HP* illustrates a problem regarding the admissibility of evidence. The ruling was prompted by the court's doubts about whether it could assess evidence gathered in execution of an EIO for obtaining traffic data where the EIO was issued by a prosecutor and no court procedure was carried out in the executing state to order the gathering of such evidence. Bulgarian law authorises only prosecutors to issue EIOs during pre-trial proceedings, and it does not require them to obtain a court decision before issuing an EIO for an investigative measure that would have to be authorised/ordered by a court in a national case.

Currently, when there is a need, during pre-trial proceedings, to disclose bank information, to use special intelligence means, to gather traffic data or to conduct searches or seizures, the competent authority – a prosecutor – issues and sends an EIO to the state on the territory of which the information, evidence or object is located. It is implicitly expected that the recognition and execution authority will refer this request to the court competent to grant the relevant permission. In the absence of any other national rules, this approach is still followed, but the risks of the validity of such an EIO being successfully challenged are increasing, and this is one of the reasons for the ongoing discussion on legislative amendments, including on the distribution of competence for issuing EIOs during the pre-trial phase.

When Bulgaria is the executing state, regardless of whether the issuing authority has implemented a court decision that orders or approves the execution of a certain type of investigative measure (a condition for issuing EIOs if the investigative measure is subject to a special regime or to the approval or permission of a court), the relevant provisions of the CCP apply (Article 10(4) of the EIO Act). This means that if, in a Bulgarian national case, a court decision would be necessary to carry out the requested measure, then approval or an order from the court must be sought for the EIO to be executed. This rule also applies in cases where judicial intervention is required not by the CCP, but by another law (e.g. the Credit Institutions Act in the event of a need to disclose banking secrecy).

11. CONFIDENTIALITY

The means of communication used to transmit EIOs must ensure the security and confidentiality of the information contained in them. However, there is currently no designated electronic communication network for direct transmission of EIOs and responses by the competent authorities.

Under Article 23 of the EIO Act, the competent Bulgarian authorities must take the necessary measures under Bulgarian legislation to ensure that due account is taken of the confidentiality of the investigation and take the necessary measures to guarantee the confidentiality of the facts and the substance of the EIO, except to the extent necessary to execute the investigative measure and other procedural measures. They must also take the necessary steps to ensure that banks do not disclose to bank customers or other third parties that information has been transmitted to the issuing state in accordance with Articles 30 and 31 of the EIO Act or that an investigation is being carried out.

In the context of Bulgarian pre-trial proceedings and during the execution of EIOs relating to pre-trial proceedings in another Member State, the investigative measures that a prosecutor has assigned or plans to undertake to gather evidence and find the objective truth in a case may not be disclosed beforehand, otherwise their execution will be pointless.

As the Bulgarian practitioners noted, it is undoubtedly necessary, in the context of some investigative measures, to offer some prior notification, such as when summoning a person for a hearing or when providing a person with information they are entitled to on the use of legal remedies against measures implemented in execution of an EIO – 'when those measures become applicable'. But even in these cases, prior familiarisation with the order itself is not necessary in order for the EIO to be recognised, since the rights of the parties to and participants in the criminal proceedings are guaranteed during the execution of the investigative measures or immediately thereafter.

The Bulgarian authorities have neither sent mor received notifications under Article 19 (2) of EIO Directive.

12. SPECIALITY RULE

After studying the Bulgarian EIO Act, it can be stated that it contains no provisions that regulate the issue of the speciality rule (though it is set out to a limited extent for temporary transfer in Article 26). However, it should be noted that the EIO Directive does not expressly regulate this issue either, and this may be why there is no uniformity among Member States as to whether the speciality rule is applicable in the context of the EIO.

The Bulgarian authorities stated that the speciality rule is set out in Article 26(9) and (10) of the EIO Act ('a transferred person shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the issuing state for acts committed or convictions handed down before the departure of said person from the territory of the Republic of Bulgaria and which are not specified in the EIO').

During the evaluation visit, it was communicated that although the EIO Act does not strictly stipulate the speciality rule, it is applied in practice. The Bulgarian authorities (as issuing authorities) do not request the consent of the executing state if they need to use the evidence obtained in other proceedings since, per their account, evidence requested in an EIO is not applicable as evidence in another criminal case except if the original criminal case was split into two sets of proceedings for technical or operational reasons. However, information obtained from the EIO e.g., a witness statement which indicates that another crime was committed, might be the trigger for another (separate) set of criminal proceedings being opened in Bulgaria. In this case, the evidence for these new criminal proceedings is requested again, via a new EIO.

Regarding the speciality rule, Bulgaria does not take a different approach to non-EU countries than to EU Member States; the same rules apply.

When Bulgaria is the executing state and provides evidence to another Member State based on an EIO, according to the Bulgarian authorities, that Member State is free to use that evidence even for other proceedings. If the Bulgarian authorities receive a request to permit multiple uses of evidence (for several sets of proceedings), they will agree. It was also noted that in such cases, it is sufficient to ask permission to use the evidence for other proceedings either via an MLA request or by letter instead of via an EIO, since the request does not relate to execution, only consent.

13. GROUNDS FOR NON-EXECUTION

Article 11 of the EIO Directive has been transposed into Bulgarian law mainly by Article 16 and Article 10(1) to (3) of the EIO Act. The latter provisions differ from the EIO Directive in some respects, as set out below.

In addition to refusing recognition and execution on the grounds for non-execution set out in Article 11 of the EIO Directive, the Bulgarian authorities also reported having refused – though only after an unsuccessful attempt to consult the issuing Member State – the recognition and execution of an EIO which did not state clearly which investigative measures should be carried out.

To try to avoid refusals, the Bulgarian authorities stated that, both as issuing and as executing authorities, they use all possible means of direct communication and prior consultation.

13.1. Dual criminality

Article 10(1) of the EIO Act (conditions for recognition) requires that the principle of dual criminality be applied to EIOs, thereby not only providing a ground for refusal under Article 16(1), point 8, of the EIO Act (grounds for refusal) but also stating a prerequisite, i.e. that the acts described in the EIO must also constitute a criminal offence under Bulgarian law, where – notwithstanding any differences in legal description – the constituent elements underlying the acts described and the offence under Bulgarian law coincide.

Article 16(2) of the EIO Act states that Article 16(1) does not apply to the measures contained in Article 15(4) (e.g., the obtaining of evidence already in the possession of the executing authority), making it equivalent to Article 10(2) of the EIO Directive. Article 10 of the EIO Act, however, does not contain a provision corresponding to Article 16(2) of the EIO Act, which exempts the measures mentioned in Article 10(2) of the EIO Directive from the requirement of dual criminality. However, according to Bulgaria, Article 10 of the EIO Act is, in practice, read in the light of Article 16(2) and Article 15(4) of the EIO Act, meaning that there is no difference with the EIO Directive.

In compliance with Article 11(1), point (g), of the EIO Directive, Article 10(2) of the EIO Act grants an exemption from the requirement of dual criminality for all categories of offences listed in Annex D to the EIO Directive if the offence is punishable by a custodial sentence or detention order for a maximum period of at least three years.

In contrast to Article 11(1), point (g), of the EIO Directive, Article 10 of the EIO Act does not state that it is the competence of the issuing authority to decide whether an offence falls within the categories listed in Annex D. This, in theory, could lead to problems and to this ground for refusal being applied incorrectly, but in practice, categorisation by the issuing state is neither reassessed nor disputed by the Bulgarian authorities.

In practice, Bulgaria has never invoked this ground for refusal as the executing authority, nor encountered it being invoked by an executing authority when acting, itself, as the issuing authority.

There have been cases in which an offence subject to criminal proceedings in Bulgaria did not constitute a crime in the executing Member State. For instance, an EIO was issued for the hearing of a witness, and the executing authority refused to execute the EIO without any prior consultation. However, according to Article 10(2), point(c), of the EIO Directive, this investigative measure must always be available under the law of the executing state.

In that regard, Bulgarian practitioners also noted that before issuing an EIO, they must assess whether the act in question, which constitutes an offence under Bulgarian law, is also a crime in the executing state and whether the investigative measure would be admissible (except those that must be available) in the executing state; consulting with EJN and Eurojust provides a valuable resource in this regard. However, it was remarked that there is not a high level of awareness among Bulgarian practitioners of the possibility of using EJN and Eurojust in such cases.

13.2. Ne bis in idem

Article 11(1), point (d), of the EIO Directive has been transposed into Bulgarian law by Article 16(1), point 3, of the EIO Act. The latter expands on the provisions of Article 11(1), point (d), of the EIO Directive by explicitly mentioning two situations where *ne bis in idem* is not applicable as a ground for refusal: (1) where the EIO aims to determine whether there is a possible conflict with the *ne bis in idem* principle, or (2) where the issuing authority has provided assurances that the evidence collected in the course of the execution of the EIO will not be used to prosecute or impose a sanction on a person against whom a case has been brought and concluded in another Member State for the same acts. The explicit mention of those situations in the Act provides clarity, even if those situations do not violate the *ne bis in idem* principle.

If doubts arise as to whether the *ne bis in idem* principle applies to a given case, the Bulgarian authorities apply Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings and send an informal request to the other Member State to gather information that will shed light on whether the *ne bis in idem* principle applies (Articles 481 and 482 of the CCP) before deciding whether to send an EIO or not.

To avoid parallel criminal proceedings in different Member States, the Bulgarian authorities – in exercising their discretion in accordance with Article 480 CCP – regularly decline to start mirror proceedings in Bulgaria when they receive an EIO concerning a crime that falls within Bulgarian jurisdiction too.

Bulgaria has both refused EIOs when acting as the executing state and had its EIOs refused when acting as the issuing state based on the *ne bis in idem* principle after more information has been provided.

13.3. Immunities or privileges

Article 11(1), point (a), first part, and (5) of the EIO Directive have been transposed into Bulgarian law by Article 16(1), point 1, (4) and (5) of the EIO Act.

But the EIO Act does not state that recognition or execution of an EIO may be refused in cases where there are rules on determination and limitation of criminal liability relating to freedom of the press and freedom of expression in other media, which make it impossible to execute the EIO (Article 11(1), point (a), second part, of the EIO Directive). Bulgarian law does, of course, guarantee freedom of expression, but there are no specific provisions on determination and limitation of criminal liability relating to it.

13.4. Fundamental rights (Article 6 TEU and Charter)

Article 11(1), point (f), of the EIO Directive has been completely transposed into Bulgarian law by Article 16(1), point 6, of the EIO Act.

Bulgaria has no practical examples of non-recognition or non-execution of EIOs based on this ground – neither as the issuing nor as the executing authority.

14. GROUNDS FOR POSTPONEMENT OF RECOGNITION OR EXECUTION

The execution and recognition of an EIO may be postponed based on grounds stipulated in Article 19 of the EIO Act, i.e. where the execution of the EIO might get in the way of the objective truth being revealed in an ongoing criminal investigation or where the evidence concerned is already being used in other proceedings, until that evidence is no longer required for that purpose.

After the ground for postponement has ceased to exist, the competent authorities must forthwith take the necessary measures for the execution of the EIO and inform the issuing authority by any means capable of producing a written record.

During the on-site visit, the Bulgarian authorities declared that statistics on postponement are not gathered, neither regarding Bulgaria as the issuing state nor regarding Bulgaria as the executing state.

Article 23(1) of the CCP establishes the principle of procedural legality, stating that 'where the conditions laid down in this Code are present, the competent public body shall be obliged to institute criminal proceedings'. The obligation to institute proceedings in Bulgaria could certainly affect the execution of an EIO concerning the same offence or at least pertaining to the same evidence, and result in its postponement. However, no statistics on the number of such postponements were presented.

As for the grounds for postponement, the Bulgarian authorities have not encountered any problems in this regard when acting as either the issuing or the executing state.

15. TIME LIMITS

With regard to the time limits for the recognition/execution of the EIO and for carrying out the investigative measure requested, the EIO Directive is seen as a major improvement on the previous convention-based legal framework, where time limits were barely provided. Even if the limits stipulated in the EIO Directive are solely instructive, in the sense that exceeding them generally does not affect the procedure (i.e., they are not deadlines), they are widely considered an effective tool for streamlining cooperation. Therefore, it is crucial to comply with these time limits consistently.

The Bulgarian authorities, in general, have not experienced any particular difficulties in complying with the time limits in practice.

Bulgaria as the executing authority

The EIOs accepted for execution in Bulgaria are executed within the stipulated time limits. However, in cases where there has been a delay due to the need for court authorisation, which is required for the execution of special investigative measures, or due to requests for and provision of documents by individuals/legal entities, the issuing state has been informed. A delay may also occur if a person to be heard cannot be summoned/heard.

Where a shorter time limit for execution has been requested, it is standard practice to notify the issuing state via Eurojust if that time limit cannot be met (due to the application of measures related to detention) because/if a large number of investigative measures have to be carried out.

In general, there are no significant problems with the execution of urgent EIOs. In isolated cases, problems with the execution of urgent EIOs have been encountered when investigative measures are requested on a specific date, but the EIO has not been received sufficiently in advance of that date.

During the on-site visit, the Bulgarian authorities stated that they have had problems with some jurisdictions abusing the concept of urgency. When 50 % of the EIOs being issued from one specific jurisdiction (RO) are marked as urgent, Bulgaria cannot trust that they truly are urgent.

Bulgaria considers a case to be urgent when an accused person is detained during the pre-trial phase whose detention is limited by the deadlines provided for in Article 63 of the CCP, or when there is a possibility that evidence will be irretrievably lost if the investigative measures are carried out too late.

Bulgaria as the issuing authority

Bulgaria reported encountering, as issuing state, cases where the stipulated time limits were exceeded, including a delay of over a year. In that case, the Bulgarian authorities **tried contacting the executing** authority directly but **no feedback was received**, and assistance was therefore sought from the Bulgarian national desk at Eurojust. They added that such cases are rare; no specific jurisdictions were singled out.

Bulgaria considers a case to be urgent when an accused person is detained during the pre-trial phase whose detention is limited by the deadlines provided for in Article 63 of the CCP, or when there is a possibility that evidence will be irretrievably lost if the investigative measures are carried out too late.

16. LEGAL REMEDIES

Under Article 18(1) of the EIO Act, the legal remedies provided for similar cases in Bulgarian law apply for the protection of the persons concerned when investigative measures or other procedural measures indicated in an EIO are being carried out. Pursuant to Article 18(2) of the EIO Act, the substantive legal grounds for issuing an EIO can only be appealed against in the issuing state, without prejudice to the guarantees of fundamental rights provided for in Bulgarian legislation.

Pursuant to Article 11(5) and Article 12(5) of the EIO Act, the EIO recognition order is subject to appeal before a court of appeal or a superior prosecutor in accordance with the procedure set out in the CCP. The law does not expressly provide for the possibility to appeal against an order refusing the execution of an EIO, and in accordance with section 3 of the Supplementary Provisions of the EIO Act, this should mean that such appeals are not permitted.

Decisions of an investigative body are appealable before a prosecutor. Decisions of a prosecutor that are not subject to judicial review, except decisions of the European Public Prosecutor and the European Delegated Prosecutors, as well as decisions of the prosecutor in investigations against the Prosecutor General or the Deputy Prosecutor General, are appealable before a prosecutor from a higher prosecution office whose decision is not subject to further appeal. An interview with Bulgarian lawyers revealed that there is very little awareness of the possibility to appeal against a prosecutor's decision to issue or not to issue an EIO.

However, the question of providing all parties concerned whose rights may be affected by the execution of an EIO with a legal remedy is particularly acute in the light of the current case-law of the CJEU – specifically, the judgment in *Gavanozov II*.

The judgment was influenced by the preliminary ruling in a case involving the execution of a court's EIO requesting searches and seizures at the premises of a third party not participating in the proceedings, as well as the hearing of a witness via VC.

It presupposes that Bulgarian law does not provide for legal remedies against the issuing of an EIO requesting the above measures and interprets the applicable EU law to the effect that it precludes legislation of a Member State which has issued an EIO but which does not provide for any legal remedies for the persons concerned. Accordingly, Article 6 of the EIO Directive read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that it is not permissible for the competent authority of a Member State to issue EIOs requesting those measures where the legislation of that Member State provides no legal remedy against the issuing of EIOs requesting such measures.

The standard imposed by the CJEU implies that any person subject to investigative measures involving procedural coercion (searches and seizures) or who may be subject to such coercion (forcible bringing in of a witness to be heard) must be provided with legal remedies. Therefore, the judgment has the potential to influence the practice of issuing/executing EIOs in many Member States, and it has prompted targeted studies of Member States' national legal systems, including under the auspices of Eurojust[6]. The effect of the judgment on Bulgaria is even more immediate as it specifically addresses Bulgaria's legal system. It is the main reason for the formation of an interdepartmental working group, by Order No. LS 13-25/2022 of the Minister of Justice, to discuss the need for and content of possible amendments to Bulgaria's legislation (the EIO Act and the CCP) to ensure compliance with the requirements of CJEU case-law.

However, the Bulgarian authorities stated that they have not tracked how many refusals to recognise/execute EIOs have been due to an absence of legal remedies in Bulgarian domestic law. The potential impact of such refusals on domestic investigations has likewise not been assessed.

[6] https://data.consilium.europa.eu/doc/document/ST-6052-2022-REV-1/en/pdf

Bulgarian practitioners noted that although Bulgarian law provides for the possibility of appealing against an EIO recognition order, they hold that the law does not provide for an obligation to communicate or serve the recognition order. To do so would be incompatible with the need to preserve the secrecy of the investigation in accordance with Article 23 of the EIO Act, and with the need to avoid disclosure of investigation materials in accordance with Article 198 of the CCP. In addition, interpreting Article 12(5) of the EIO Act as an obligation to communicate or serve the EIO recognition order would be incompatible with paragraph 6 of the same Article, according to which the EIO recognition order is to be sent 'immediately' for execution.

Guarantees of protection during the execution of an EIO should be sought mainly through Article 18(1) of the EIO Act. This provision – in accordance with the EIO Directive – is expected to open the path to legal remedies for the protection of all 'parties concerned' when investigative measures and other procedural measures provided for in similar cases in national law are being carried out. On the other hand, Article 18(2) of the EIO Act stipulates that the substantive grounds for issuing an EIO can only be appealed against in the issuing state, which means that, in the event that such remedies are used successfully, this would create a situation in which an EIO still pending in the executing state would have already been invalidated in the issuing state.

17. TRANSFER OF EVIDENCE

The EIO Directive's provisions on the transfer of evidence have been transposed into Article 17 of the EIO Act, according to which, where requested in the EIO and, if possible, under Bulgarian legislation, the evidence obtained as a result of the execution of an EIO or already available must be transferred to the issuing state without delay.

However, the transfer of the evidence may be suspended pending a decision regarding a legal remedy sought under Article 18 of the EIO Act, unless sufficient reasons are indicated in the EIO that the immediate transfer of the evidence is essential for the proper conduct of the investigation or for the protection of the rights of the person concerned. Notwithstanding the indication of such reasons, the transfer of the evidence is to be suspended if it would cause severe and irreversible harm to the person concerned.

When transferring the evidence, the competent Bulgarian authority must indicate whether it requires the evidence to be returned as soon as it is no longer required in the issuing state.

Where the evidence is relevant for other proceedings, the competent Bulgarian authority may, at the explicit request of and after consultations with the issuing authority, temporarily transfer the evidence on the condition that it be returned to Bulgaria as soon as it is no longer required in the issuing state.

Concerning practical problems involved in transferring material evidence, the Bulgarian authorities stated that, as issuing state, they had only encountered a few technical issues in cases where it was necessary to transfer e.g. a very large volume of documents or samples of drugs. However, after negotiation and clarification with the executing state on how to transfer different types of evidence, such issues have always been solved. In some cases, the official channels have been used.

Another example of a challenge encountered by Bulgaria involved evidence being transferred from the Netherlands. The evidence was very important computer data, but the computer was destroyed. The Bulgarian authorities therefore requested a second copy of the computer data and the hard drive. However, they had to involve Eurojust in order to get this evidence.

Evidence is transmitted to the issuing state most effectively by mail or email, by handing it over to officers from the issuing state when they leave Bulgaria, or by uploading or downloading it from the cloud. Bulgaria is part of the e-EDES project.

18. OBLIGATION TO INFORM - ANNEX B

The provisions of Article 16 of the EIO Directive have been incorporated into Bulgarian legislation under Article 20 of the EIO Act, and comply with the EIO Directive.

As the issuing authority, Bulgarian practitioners have stated that the Annex B form is usually sent. They have, however, encountered cases where the Annex B form was not forwarded (IT, FR, EL, NL). In such cases the executing authorities were contacted, since it is important for the Bulgarian authorities to know the date of receipt of an EIO so that they can see when the time period permitted for its execution started. In addition, under Article 16 of the EIO Directive the Annex B form must be sent. In one case Bulgarian practitioners had to contact the (NL) executing authority four or five times to obtain the required Annex B form, but assistance from Eurojust was required due to the lack of any response.

As the executing authority, Bulgaria sends an Annex B form whenever it receives an EIO. Some omissions in sending the Annex B form have, however, been identified. Bulgarian practitioners have also reported that there have been many cases in which an EIO was not sent directly to the competent Bulgarian authority, but was instead sent to Department 04 ('International') of the Single Point of Contact (SPOC). In such cases the SPOC has sent the Annex B form as a receiving authority, as opposed to an executing authority, and it forwards the EIO to the competent executing authority without delay.

In the Bulgarian authorities' opinion there is nothing to improve in the Annex B form.

19. COSTS

As the issuing authority

The Bulgarian competent authorities have not encountered difficulties while holding consultations with foreign authorities on whether and how the costs related to the execution of an EIO could be shared or the EIO could be modified. They have, however, encountered a case (a murder in which the remains of a body were burned on a rubber tyre), in which they requested that AT perform a DNA analysis, as only one lab could do so. Since the costs were too high the Bulgarian authority agreed to share expenses. Unfortunately, the AT institute that performed the analysis was unable to issue an invoice to the Bulgarian PPO, which needed this in order to pay the institute. Thus, it remains unpaid.

As the executing authority

The Bulgarian authorities reported problems relating to costs in a case involving search and seizure and obtaining computer data. In this case the Bulgarian authority contacted the issuing authority (FR) by email and proposed sharing expenses to cover material purchases (hard drives). The issuing authority did not even reply. Practitioners noted that this is still a pending case that has not been resolved. Therefore, the evaluation team advise them to involve Eurojust. The Bulgarian authorities also added that they always seek to be cooperative when executing an EIO, and would generally not bother another country to share costs unless they were excessively high. The EIO Directive does not, however, define what costs could be considered to be excessively high.

In assessing whether costs are excessively high, a comparison can be made with the costs typically incurred in a similar national case. For example, one criterion to determine an excessively high cost would be the need to perform time-consuming and highly specialised expert examinations. On the other hand, the costs for a statutory defence attorney are not considered to be excessively high. The issuing authority is informed in the event of excessively high costs.

The Bulgarian practitioners stated they had not encountered cases in which EIOs would have been delayed or would not have been executed due to excessively high costs as either issuing or executing authorities.

It was also pointed out that some EU jurisdictions (IT) practise the proportionality test solely based on a cost analysis. This approach appears to be too narrow and unilateral. The proportionality test must be multifaceted and comprehensive, or it will not reflect a holistic assessment of the case. Therefore the EU Member States should be advised to refrain from using such a simplified method.

20. COORDINATION OF THE EXECUTION OF DIFFERENT EIOs IN DIFFERENT MEMBER STATES AND/OR IN COMBINATION WITH OTHER INSTRUMENTS

According to Article 21 of the Eurojust Regulation, the Member States are obliged to notify the national representative of the existence of data on pending parallel pre-trial/trial proceedings in the same case in other states. In such cases Eurojust organises coordination meetings in which the participating national authorities exchange information, hold discussions and decide how to proceed with their national proceedings – separately or in a coordinated manner, by forming a Joint Investigation Team, by transferring criminal proceedings from one state to other states, by concentrating parallel criminal proceedings in accordance with Framework Decision 2008/948/JHA, etc. The aim is to find a solution that avoids the negative consequences of conducting parallel criminal proceedings and violating the *ne bis in idem* rule.

Bulgarian practitioners have encountered several cases in which Eurojust and/or Europol support or involvement was sought, e.g. in urgent cases, controlled delivery, parallel investigations, cases in which the law imposes strict deadlines, the simultaneous execution of investigative measures in several countries or cases in which the number or type of necessary investigative measures, or the deadline for carrying them out, was changed. The involvement of the abovementioned institutions made it possible to solve any issues.

21. SPECIFIC INVESTIGATIVE MEASURES

21.1. Temporary transfer

Bulgaria's national legislation regulates the issue of temporary transfer within the meaning of Articles 22-23 of the EIO Directive in **Article 26 and Article 27** of the EIO Act. While Article 26 treats the issue from the perspective of Bulgaria as the executing state, Article 27 deals generally with the question of transit in connection with the temporary transfer. The implementation of the EIO Directive appears to be successful and almost literal in certain passages.

Paragraphs 1-12 of Article 26 of the EIO Act provide detailed regulation of the procedure to be followed when an EIO has been issued for the temporary transfer of a person in custody in Bulgaria to the issuing state, where the presence of that person is required. Furthermore, the last paragraph (13) covers the application of mutatis mutandis, meaning that the same procedure (including the grounds for non-recognition and non-execution and the rules relating to costs) must apply to the temporary transfer of a person who is in custody in the issuing state when that person is required to be present on the territory of the executing state.

Temporary transfer is also briefly mentioned in the general part of the EIO Act – Chapter One, Article 2, entitled 'General Dispositions/European Investigation Order', which states that an EIO may be issued for both types of temporary transfer mentioned above.

It can be considered a good practice to clearly define the authority that is competent to recognise/execute incoming EIO (the district court within whose judicial district the person held in custody is located), as well as the authority competent to receive a transit application and to grant such transit (the SCPO). The district court examines incoming EIO in accordance with the procedure established by Article 50 of the Extradition and European Arrest Warrant Act, and it notifies the SCPO of the acknowledged transfer of the person held in custody, as well as of the conditions under which the transfer was recognised. The execution of an EIO may be refused if the person in custody does not consent, or if the transfer is liable to prolong the detention of the person in custody (Article 26 of the EIO Act).

If custodial criminal proceedings in Bulgaria are conducted by courts other than districts courts (usually regional courts), the district court competent for the recognition/execution of the incoming EIO must consult with the court conducting the criminal proceedings concerning the possibilities for and conditions of the temporary transfer, in order to avoid the risk of delays and difficulties in the Bulgarian criminal proceedings. The same applies to supervising prosecutors if custodial criminal proceedings are only at the pre-trial stage. Thus, although not explicitly stated in Bulgarian law, these judicial authorities with responsibility for custodial criminal proceedings have the possibility to influence a decision on temporary transfer if it concerns a person who is under custodial prosecution in criminal cases under their supervision by providing a written opinion.

The consent of the person in custody is an optional ground reason for refusal. Bulgarian legislation does not provide for any particular procedure to determine, before issuing and transmitting an EIO, whether a detainee will consent to his or her temporary transfer to another EU Member State. It follows that the person's consent is discussed on the basis of an EIO that has already been issued. When the person concerned disagrees with the temporary transfer, the recognition and execution of the EIO is not usually refused; the Bulgarian authority contacts the issuing authority and discusses the possibility of using another investigative measure by which the same aim could be reached (for example, a hearing by VC).

In their replies to the questionnaire, Bulgarian practitioners stated that no problems had arisen over which legal basis/instrument should be used for the temporary transfer (EIO or EAW). Although the requirement for temporary transfer can be included in an EIO or an EAW, the Bulgarian authorities (either as authorities of the issuing state or as authorities of the executing state) strictly distinguish the reason for temporary transfer.

If the temporary transfer of a person is sought because it would be necessary to execute a national order of detention for criminal prosecution/criminal execution, the EAW must be used. This is because there is a specific act for such proceedings in Bulgaria (the abovementioned Extradition and European Arrest Warrant Act).

If, however, the purpose of the temporary transfer is to ensure the participation of the person in custody in evidence-gathering facts without them being subject to procedural or penal coercion in the issuing state, an EIO can be issued. Such an EIO would be executed in Bulgaria under the EIO Act.

When the court permits temporary transfer on the grounds of the EIO Act (as well as when transit through the territory of Bulgaria is permitted), the SCPO exercises powers at the stage of the actual transfer.

Bulgarian practitioners have also stated that they are unaware of any problems in relation to the custody of a person who has been temporarily transferred to Bulgaria during the transfer. The grounds for detention that arose in the executing state would still be valid, and therefore it would not be necessary for the Bulgarian judicial authorities to issue another (national) detention order.

21.2. Hearing by video conference

Under Bulgarian national law, the issue of hearing by video conference (VC) is regulated by Article 28 of the EIO Act and Article 474 of the Bulgarian CCP.

A comparison with Article 24 of the EIO Directive shows that:

- The Bulgarian EIO Act allows for the video hearing of an **accused person, a witness or an expert witness,** while the EIO Directive states that this type of hearing can be carried out for **an accused person, a suspected person, a witness or an expert witness.**

  Regarding video hearings, Bulgarian practitioners have faced problems concerning the status of the person to be heard via VC. These problems arose regarding the hearing of a person specified in the EIO of another Member State as a **'suspect'** or 'accused person', because the procedural status of 'suspect' does not exist (and therefore is not regulated) in the Bulgarian CCP. A more detailed explanation of this matter (the absence of the concept of 'suspect' in Bulgarian law) is contained in section 6.1 above.

However, even if the legislation of the issuing state is familiar with the concept of a suspect and allows for them to be heard by VC, the rights and obligations of the person to be heard are also assessed under Bulgarian domestic law. This is important, since not every MS legal system recognises a suspect's procedural status, and that is also the case in Bulgaria. In such cases the Bulgarian authorities initiate consultations with the issuing authorities and ask to be notified of the rights and obligations of the person concerned. Then they compare how the rights and obligations in the issuing state overlap with the rights and obligations of the person under Bulgarian law and for instance establish how the rights of a suspect in DE correspond to those of the accused in Bulgaria. In other words, the nature of the rights and obligations of the person to be heard is much more important than how their procedural status is referred to in another MS. It is therefore recommended that a document listing the rights and obligations of the person to be heard under the law of the issuing state be sent together with the EIO, the subject of which is the hearing via VC.

VC hearings are organised only after an EIO has been recognised and a decision has been taken regarding the relationship between the procedural status of the person to be heard and how they will be treated. Therefore the executing authority (BG) is aware of what it should monitor; however, the interview is carried out by the issuing state, and as the Bulgarian practitioners have stated, they would not object to the issuing authority referring to this person as a suspect instead of the accused/defendant since it is not a Bulgarian hearing but a hearing for a foreign authority.

Bulgarian practitioners (judges, prosecutors) have explained how VCs work in practice when they act as executing authorities. Under Article 24(3) of the EIO Directive and Article 28(6) of the EIO Act, the Bulgarian authorities summon a person to appear for the VC hearing and verify the person's identity. Under Article 24(5), point (c), of the EIO Directive and Article 28(8)(3) of the EIO Act, the hearing is usually conducted directly by the issuing authority or under its direction, and in accordance with the legislation of the issuing state.

Although Article 24(6) of the EIO Directive and Article 28(10) of the EIO Act stipulate that the competent authority of the executing state '...shall only draw up minutes indicating the date and place of the hearing, the identity of the person to be heard, the identities and functions of all other persons participating in the hearing, any oaths taken and the technical conditions under which the hearing took place…' (i.e. not the content of the statement made by the person heard),

When Bulgaria acts as issuing state, they always make a sound recording of the hearing, because under Article 238(4) and (5) of the Bulgarian CCP the sound recording must be played in full to the person who was heard upon completion of the hearing, and additional explanations and testimonies must be reflected in the sound recording. The sound recording must end with a declaration by the person who was heard that the recording correctly reflects the explanations and testimonies provided therein.

In addition, pursuant to Article 237(4) of the Bulgarian CCP, which applies mutatis mutandis to making video recordings, the heard persons must certify with their signatures that their explanations or depositions have been correctly recorded. If the transcript is printed on several pages, the heard persons must sign each page. The Bulgarian authorities arrange for a transcript of the VC hearing to be made, and they then send it to the executing authority to be signed by the person concerned, after which it is sent back to the Bulgarian authorities. The lack of written rules in Bulgarian law and the EIO Directive on how to present the written testimony to the interviewed person for them to confirm/validate its contents and the fact that the testimony was transcribed correctly and fully in line with the statements made by the person concerned, is considered a problem by Bulgarian practitioners.

- A person heard as an accused has the right to refuse a video hearing.
  Under Bulgarian law, the absence of consent from the accused person does not affect the recognition of an EIO. Nevertheless, under Article 28(3) of the EIO Act, the execution of an EIO **may be** refused if the accused person refuses to be heard via videoconference. Due to the wording of the cited provision of the law, the basis for refusing to execute an EIO is optional (it does not always lead to the refusal to execute an EIO). In practice Bulgaria has not seen any cases where the accused disagreed with a video hearing. However, if the accused did not give their consent, there would be no obstacle for them to testify immediately and be heard in a standard manner, with the consent of the issuing state. In such cases the Bulgarian judicial authorities would not explicitly request that the issuing state send a new EIO.

- Under Bulgarian law, a person heard as a witness is not obliged to testify, and an expert witness is not obliged to give a conclusion in the cases provided for in Bulgarian legislation or in the legislation of the issuing state (Article 28(4) and (5)). In practice there have been no cases in which a witness refused to testify by video conference due to circumstances other than those specified in Article 121 of the CCP (the right to remain silent), for example only because of the method by which the hearing is conducted. If a witness did not refer to the circumstances in Article 121 of the CCP, there would be no obstacle for them to testify immediately and be heard in a standard manner, with the consent of the issuing state. In such cases it is assumed that the issuing state is willing to conduct the hearing by VC, and that can take place immediately.

  The issue of the video hearing of an expert would arise at the trial phase, and the relevant court would be competent to execute such an EIO. As regards the video hearing of an expert in the pre-trial phase, Bulgarian practitioners have not encountered such EIOs.

- Grounds for the refusal (non-recognition or non-execution) of an EIO [Article 28(3)], the procedure for summoning and verifying the identity of a person who is to be heard [Article 28(6)], the possibility for the issuing state to provide technical means [Article 28(7)] and rules for holding a hearing via video conference [Article 28 (8)–(11)] are laid down in accordance with the EIO Directive.

Article 474 of the CCP permits the judicial authority of another state to conduct a video hearing of an individual who appears as a witness or expert in the criminal proceedings and is located in Bulgaria, as well as a hearing of an accused party; a necessary condition for which being that this hearing does not run counter to the fundamental principles of Bulgarian law. A hearing via video conference involving the accused party or a suspect may only be conducted with their consent.

Vice versa, an individual located abroad may be heard by a competent Bulgarian authority or under its direction through a video conference, where the legislation of said state so admits. The hearing must be conducted in compliance with Bulgarian legislation and the provisions of international agreements to which Bulgaria is a party, wherein the above means of hearing have been regulated. In the pre-trial period, such video hearing is carried out by the National Investigation Service and within a trial proceeding in a court.

Bulgarian colleagues additionally explained that an accused person has the right to participate in the investigative measure (e.g., hearing a witness) and ask questions if the hearing is held before a judge. In the pre-trial period of criminal proceedings, a public prosecutor or an investigative body can permit such participation by an accused person, but that is not a typical situation.

The Bulgarian authorities have stated they have not encountered difficulties regarding where the hearing via VC occurs (prosecutor's offices, courtrooms, police stations) since February 2018. The level of Bulgarian video/technical equipment is fully sufficient (VC devices are available at all levels of the judiciary, including regional levels).

According to Bulgarian specialists, problems were noted abroad, where some Member States could not technically provide a video hearing due to the limited number of VC facilities. For example, an EIO requesting the hearing of three witnesses was sent to Belgium. Nevertheless, the witnesses had difficulty appearing on the agreed date. In addition, it was impossible to postpone the VC hearing, since they had only one conference room, which needed to be reserved two months in advance.

Another such problem occurred in relation to the VC hearing in Italy, where the company responsible for organising VCs were not flexible in cases where dates or times had to be changed.

In one case related to France, there is still no solution. The Bulgarian authority requested permission to hear a witness with disabilities, but the judge is reluctant to conduct the VC hearing from his home.

Lastly, technical issues and the compatibility of video facilities pose another problem. The Bulgarian colleagues would also like to see more frequent use of internet applications for video hearings (e.g., Microsoft Teams, Webex, etc.).

In a single reported case, the receiving authority did not comply with Article 7(6) of the EIO Directive, but returned the EIO to the issuing authority in Bulgaria. In this case the Bulgarian authority requested a VC hearing of a witness in Italy. The Bulgarian judge sent the EIO to the Palermo Prosecution Office, since in Italy the competent authority for its recognition is the public prosecutor of the district in which the measure is to be executed. However, the prosecutor from Palermo sent the EIO back to Bulgaria, stating that the competent authority was the Prosecutor's Office in Naples. Thus, the EIO was corrected and sent to the Prosecutor's Office in Naples; but it was returned to Bulgaria once again, stating that the competent Prosecutor's Office was in Palermo. Thus, the judge contacted the higher-level prosecutors in Naples and Palermo to resolve the dispute, and eventually it was concluded that the competent prosecutor was in Palermo. As a result, the EIO was again sent to the Palermo prosecutor, who contacted the judge and stated that he would prefer to have the EIO in German. Surprisingly, he later requested that the EIO be provided in Italian. Then the EIO was recognised, and the date was set for the VC hearing. Another problem, however, was that the judges of the Bulgarian Senate could see no one other than the Bulgarian witness. Another problem arose when, after 30 minutes of waiting, they were told that the Italian judge would not be coming, which led to the termination of the VC hearing. When the Bulgarian judge requested a new date, the Italian judge replied by email with a refusal. He finally accepted a new date, but only after intervention by the Italian contact point.

Nevertheless, Bulgarian practitioners have noted that they have also had many positive experiences with Italy or Belgium.

21.3. Hearing by telephone conference

The rules governing hearings by telephone conference are contained in **Article 29** of the EIO Act, which stipulates that the issuing authority may issue an EIO to hear a witness or an expert witness by telephone conference if the person to be heard is located on the territory of another Member State, and it is not possible for that person to appear in person, after having examined other suitable means. Article 25 of the EIO Directive has been properly implemented.

The national legislation of Bulgaria mentions hearing by telephone conference as one of the ways to protect witnesses with specific protection needs (Article 139(10) of the Bulgarian CCP: 'Interviews of witnesses with specific protection needs must be conducted after measures have been taken to avoid contact with the accused party, including videoconferencing or **telephone conferencing**, in accordance with the provisions of this Code.'

In practise, Bulgarian authorities (as issuing authorities) are aware of the difficulties connected with hearing witnesses possessing a secret identity. There was a case in Bulgaria where the national legislation of the executing state did not regulate hearing by telephone conference for protected witnesses (the situation was resolved by mutual agreement via video hearing, during which the voice and image of the witness were distorted/changed).

Bulgarian colleagues do not register any EIOs requesting that they conduct a hearing by telephone conference.

Upon enquiry by the evaluation team, they confirmed that it is not in line with Bulgarian law for foreign judicial or police authorities to conduct hearings by telephone conference without the involvement of the Bulgarian judicial authorities. They know that some Member States allow for such a procedure (e.g., Sweden), but it is not practiced in Bulgaria. Therefore, if any person is to be interviewed in Bulgaria for criminal proceedings conducted in another state (even if only by telephone), an EIO must be sent to Bulgaria.

21.4. Information on bank and other financial accounts and banking and other financial operations

Articles 26 and 27 of the EIO Directive are implemented in full (and almost verbatim) by **Articles 30 and 31** of the Bulgarian EIO Act. These two legal provisions lay down the rules and conditions for issuing EIOs where the objective is to obtain information on bank accounts, other financial accounts and banking and other financial operations from both banks and non-banking financial institutions.

Article 30(3) of the EIO Act refers to Article 56a, of the Bulgarian Credit Institutions Act regarding the procedure for obtaining information from banks.

During the evaluation meeting with Bulgarian practitioners, the mechanism for requesting information on bank and other financial accounts/banking and other financial operations under Bulgarian national law was briefly presented.

The electronic information system containing data on bank account numbers and international bank account numbers (IBAN) kept by banks, payment institutions and electronic money institutions, account titleholders and persons possessing the right of disposal over accounts, distraint against bank accounts as well as deposit box holders and persons authorised by them is maintained by the Bulgarian National Bank (BNB). Therefore, any bank evidence is provided by the BNB in Bulgaria, and not by individual banks operating in Bulgaria. The PPOs have access to the bank register - one person from each public prosecutor's office is authorised to have direct access, and that person can verify whether or not the person in question has a bank account. If more detailed information is required, a request must be sent to the BNB, where a special department handles such requests. According to Article 56a(3)(1) of the Credit Institutions Act, (banking) information must be available to the judicial authorities (courts, Prosecutor's Office, investigative bodies).

Under Article 31(2) of the EIO Act, only the courts are competent to order the disclosure of information on banking and other financial operations. Thus, if Bulgaria executes an EIO requesting banking evidence (information) in pre-trial proceedings, the competent Bulgarian (district) public prosecutor is not entitled to order a disclosure; they must request permission or a court order.

It must be emphasised that this procedure applies only to bank information that constitutes bank secrecy within the meaning of Article 62(2) of the Credit Institutions Act – 'Bank secrecy is the facts and circumstances concerning balances and operations on accounts and deposits held by clients of the bank.' For other types of banking information (such as information concerning who is the holder of a certain account, what and how many accounts that person has, for provision of copies of documents available in the client's bank file, including information on persons who have the right to dispose, for the provision of concluded contracts, information on the presence/absence of electronic banking, information on the addresses from which the account has been accessed, etc.) the procedure laid down in Article 159 of the CCP is applied. That does not require court permission, and such information can be acquired upon request by the authorities conducting the pre-trial proceedings (the public prosecutor/investigating authority).

The last sentence of Article 30(4) of the EIO Act, as well as the last sentence of Article 31(4) of the EIO Act, which relate to obtaining information on bank or other financial accounts and operations, allow for non-recognition and/or non-execution of the EIO, if the execution of such a measure is prohibited by Bulgarian legislation in a similar case.

Bulgarian law does not consider the amount of money in a bank account to be evidence. Thus it is not possible to apply for the freezing of an amount of money in a bank account in the form of an EIO; the relevant freezing order must be used.

In practice, there has not yet been an EIO in Bulgaria in which another Member State requested monitoring of a bank account. If Bulgarian colleagues received such an EIO, they would not know how to process it, because there is a lack of regulation in Article 32 of the EIO Act. In domestic cases only static information on bank accounts for some previous period are requested; moreover, the real-time monitoring of accounts is not even regulated under the Internal Special Intelligence Means Act.

It is noteworthy that on 24 February 2021 the Bulgarian Centre for the Study of Democracy published[7] a note by Dr Maria Yordanova on the obstacles pertaining to the execution of EIOs by the BG authorities. This paper points out that one obstacle is the fact that conflicting national legislation does not allow for the real-time monitoring of banking and financial operations, since the Credit Institutions Act does not provide for such a possibility (there are no corresponding provisions in the Act). However, the Bulgarian EIO Act provides for the issuance of an EIO in order to monitor banking and financial operations in real time (Article 32(1), point (1)). Thus, when requested, investigative measures regarding information on banking and other financial operations can only be executed up to this limit. The prevailing expert opinion is that under the Credit Institutions Act bank secrecy can only be disclosed for past operations (Article 62(6), point (1), of the Credit Institutions Act, in conjunction with Article 31 of the European Investigation Order Act). If the aforementioned information is fully true, this shortcoming should be corrected by Bulgarian legislation.

[7] https://csd.bg/blog/blogpost/2021/02/24/the-european-investigation-order-eio-the-bulgarian-experience/

Having scrutinised this, it must be noted that the question of the admissibility of evidence that can be gathered or transferred by an EIO is an overall problem. In the doctrine, the EIO has been considered to be an instrument that is not free from conceptual weaknesses that could hamper its cross-border efficiency. In particular, the EIO Directive was criticised for its absence of rules facilitating the mutual admissibility of evidence gathered using the EIO, which is the key to its effectiveness (see for instance Kusak, M., 'Mutual admissibility of evidence and the European investigation order: aspirations lost in reality', *ERA Forum 19*, 391–400 (2019)). Nevertheless, if there are steps to undertake on the national level, these should be carried out, as in the aforementioned example.

21.5. Covert investigations

All methods and means of covert investigation are specified in Article 172-177 of the Criminal Procedure Act and also in Articles 5–10c of the Special Intelligence Means Act ('the SIM Act').

Article 5 of the SIM Act – **Observation** (visual and using technical devices)
'…shall be used to detect and record various aspects of the activities and behaviour of persons or objects in their movement, sojourn at various places, or in the event of changes in a particular situation'.

Article 6 of the SIM Act - **Tapping** (acoustic, or by technical or other means)
'…shall be used to intercept the oral, telephonic or electronic communications of monitored persons'.

Article 7 of the SIM Act - **Surveillance** (*visual and using technical devices*)
'…shall be used to detect, reveal and record the movements of monitored persons'.

Article 8 of the SIM Act - **Penetration**

'…shall be used to ascertain, using technical devices, the presence of actual data on the premises or in items used by monitored persons'.

Article 9 of the SIM Act - **Marking** (*using technical devices and substances*)

'…shall be used to mark objects and articles in order to detect their movement, procurement, or place of storage'.

Article 10 of the SIM Act - **Interception of mail** (*using technical devices and chemical substances*)

'…shall be used to ascertain the contents and recipients of the mail of monitored persons and facilities'.

Article 10a of the SIM Act - **Controlled delivery**

'…shall be performed by an intelligence body and shall be used by an investigating or body within the limits of their competence in the presence of uninterrupted strict control on the territory of the Republic of Bulgaria or another country within the context of international cooperation, during which a controlled individual imports, exports, carries or effects transit through the territory of the Republic of Bulgaria of an object that is the object of a criminal offence, with a view to detecting those involved in a cross-border crime'.

Article 10b of the SIM Act -**Trusted transaction**

'…the conclusion of an apparent sale or another type of transaction involving an item by an undercover officer, with a view to gaining the trust of the other party involved in the transaction'.

Article 10c of the SIM Act - **Undercover officer**

'An **undercover officer** is understood to be an officer of the State Intelligence Agency or an officer of the competent service

- under the SIM Act,
- under the Ministry of Interior Act (MoI Act),
- under the Defence and Armed Forces of the Republic of Bulgaria Act (DAFRB Act) and
- under the Military Intelligence Act (MI Act),

who is authorised to establish or maintain contact with a controlled person in order to obtain or discover information regarding the commission of a serious intentional crime and regarding the organisation of criminal activity.

Serious intentional crime – 'is any crime for which the law provides punishment by imprisonment for more than five years, life imprisonment or life imprisonment without substitution (Article 93(7) of the Bulgarian CC).'

A covert investigation (CI) can only be conducted by undercover officers, each with their own identification number. The concept of a 'false identity officer' is not known and not applied under Bulgarian law; nevertheless, it could be applied based on a request from another Member State.

CIs within the meaning of Article 29 of the EIO Directive are regulated in Article 33 of the Bulgarian EIO Act, entitled 'Investigation by an undercover officer'.

Unlike the EIO Directive, which uses the term 'officers acting under covert or false identity', Article 33(1) of the EIO Act uses the term 'officers acting under covert identity'. Article 33 otherwise transposes the EIO Directive exactly.

In Bulgaria, the competent authorities for the recognition and execution of incoming EIOs for CIs are prosecutors of relevant district / military district / specialised prosecution offices in the pre-trial proceedings and district / military / specialised criminal courts / in the trial proceedings (this issue is regulated in more detail in Article 9(1) of the EIO Act).

In Bulgaria the competent authorities for issuing EIOs for CIs are the relevant district/military prosecution office in the pre-trial proceedings and the relevant district/military courts in trial proceedings (this issue is regulated in more detail in Article 5(1) of the EIO Act).

According to Article 476(4) of the Bulgarian CCP, the SCPO is competent to file requests with other states for investigation through an undercover agent, for controlled deliveries and for cross-border observations, and also to rule on such requests by other states.

As regards the involvement of a foreign undercover agent from another MS for criminal proceedings conducted in Bulgaria, Bulgarian practitioners have not used foreign agents in their undercover investigations. They have noted that this would theoretically be possible if a court permitted it in advance, based on an agreement between the Bulgarian Ministry of the Interior and the foreign competent authority. Bulgaria has, however, had cases in which their undercover agent operated on the territory of another Member State.

In practice, the Bulgarian authorities have encountered some cases in which the execution of an EIO was complicated by differences in national (Bulgarian) law specifically, and a court that was competent to grant an authorisation refused to grant it due to the fact that the conventional methods of investigation had not been exhausted [Article 172(2) of the CCP: '... where the relevant circumstances cannot be established in any other way or this would entail exceptional difficulties'].

Another example:

An EIO was sent to Bulgaria for the granting of authorisation (by the competent court) to an officer from another Member State in order to act on Bulgarian territory with the aim of uncovering the activities of a criminal organisation. This EIO did not state if the officer had signed a declaration in writing that he was familiar with the duties and tasks of the specific investigation, which is a requirement of Bulgarian law and is a prerequisite for admission of the application of this special intelligence means – Article 173(3) of the CCP.

Because the use of agents and other forms of covert investigation on the territory of Bulgaria (on the basis of foreign EIOs) are not used on a daily basis, there is an absence of practical experience with this tool of international judicial cooperation. There is more experience with the use of Bulgarian undercover officers abroad for the purposes of criminal proceedings conducted in Bulgaria – EIOs are used for such cases.

21.6. Interception of telecommunication

Articles 34 and 35 of the Bulgarian EIO Act regulate the procedure for the interception of electronic communications (IEC). These two articles represent the full (almost verbatim) implementation of Articles 30 and 31 of the EIO Directive.

Articles 30 and 31 of the EIO Directive use the term '**interception of telecommunications**'. Articles 34 and 35 of the Bulgarian EIO Act repeatedly use the term '**interception of electronic communications**' (even the title of Chapter Five of the Bulgarian EIO Act reads 'INTERCEPTION OF ELECTRONIC COMMUNICATIONS').

However, in response to the questionnaire, Bulgarian authorities stated that the legal term for the interception of telecommunications is '**interception of electronic messages**' in the Bulgarian EIO Act. During the evaluation visit, it was explained by Bulgarian colleagues that this was only a matter of incorrect translation. They agreed that terminology is very important for this legal topic and that the Bulgarian law must be interpreted in line with the EIO Directive.

As in the case of the EIO Directive, the term 'telecommunications' is not strictly defined in Bulgarian national law. In the opinion of Bulgarian practitioners, this type of communication is made/enabled via an electronic device designed for communication (typically a mobile phone). Therefore, if two persons were sitting together in the same place (for example, in a car) and communicating directly with each other without using an electronic device (mobile phone), and their mutual communication were to be recorded (for example, by a bugging device placed somewhere in the vehicle), that would not be understood as an 'interception of telecommunications' under Bulgarian law. Only theoretically, if the two persons sitting together in the same car were to communicate with each other via electronic devices (mobile phones), and such communication were intercepted, that would constitute the 'interception of telecommunications'. However, such a situation is difficult to imagine in practice.

In the case of international judicial cooperation, if the Bulgarian judicial authorities **are required** to provide assistance or cooperation in the IEC, an EIO must be sent. This applies whether the interception is only to be carried out or initiated on the territory of Bulgaria or whether the aim is to continue an interception that has already been initiated in another Member State.

The competent authority for the recognition and execution of an EIO from another Member State issued for an IEC shall be determined in accordance with Article 9(1) of the EIO Act[8].

The national criteria for assessing whether the IEC requested via an EIO would be authorised in a similar domestic case are set out in Article 172 of the CCP, which stipulates that 'special intelligence means' (this term is defined in paragraph 1 and also includes observation and interception) must be used where required for the investigation of serious criminal offences, and where the relevant circumstances cannot be established in any other way, or if they would lead to exceptional difficulties.

Under Bulgarian law (Article 6 of the SIM Act), the interception of telephone communications (including telephone landline) and electronic communications is subject to the same legal regime and is carried out through the operative method of 'tapping' (Article 2(3) of the SIM Act), for which permission from the court is required in order to apply special intelligence means. The difference between the two types of communications affects the purely operative manner of implementing the interception, and not the legal approach.

From the Bulgarian authorities' reply to the questionnaire, it was unclear whether Bulgaria, as executing state, is in practice able to transmit the intercepted telecommunications immediately to the issuing state (under Article 34(6)(1) of the EIO Act, Bulgarian law theoretically permits such immediate transmission). However, during the on-site visit, the Bulgarian practitioners clarified that they prefer the immediate transmission of intercepted telecommunications, i.e. the Member State that issued the EIO can conduct the interception itself. In such cases the issuing state is responsible for controlling the content of the interception, for example, whether or not communications between the accused and the defence counsel are intercepted.

Article 9(1) of the EIO Act - The following authorities in the Republic of Bulgaria shall be competent to recognise an EIO issued by a competent authority of another Member State:
(amended, SG No. 32/2022, effective 27.07.2022) in a pre-trial proceeding: a prosecutor of the relevant district prosecution office or military district prosecution office within whose judicial district the relevant investigative measure or other procedural measures are requested to be carried out, of evidence which is already in possession is requested to be transferred, or a prosecutor of the Sofia City Prosecutor's Office.

2. (amended, SG No. 32/2022, effective 27.07.2022) in a trial proceeding: the relevant district court or military court within whose judicial district the investigative measure concerned or other procedural measures are requested to be carried out, of evidence which is already in possession is requested to be transferred, or the Sofia City Court.

If no cooperation on the part of the Bulgarian judicial authorities is required for the IEC to be carried out on Bulgarian territory, it is sufficient to send the Annex C form. The Bulgarian authorities have no proposals for improvements concerning Annex C.

As regards the obligation of the Bulgarian judicial authorities to inform the person whose telecommunications traffic has been intercepted (after the interception has been completed), this is regulated by law (the SIM Act). There is a special bureau in charge of controlling the legality of the use of special investigative means. If the IEC has been carried out in accordance with the law, it is used as evidence, and the person whose communications have been intercepted learns about it, since the recording forms part of the evidence with which they have the right to become acquainted. On the other hand, if the interception was not carried out in accordance with the law, the bureau informs the person ex officio and launches an investigation into illegal interception.

The issue of **cross-border surveillance (CBS)** was also discussed in the context of IEC.

According to Bulgarian practitioners, the EIO Directive does not cover CBS, and therefore the EIO form cannot be applied to this tool of judicial cooperation. Therefore, if another Member State wants to use a CBS in Bulgaria, it must submit a classic MLA request. In such a request, however, the requesting judicial authority should not refer to Article 40 of the Schengen Agreement, as this only regulates police cooperation, and not judicial cooperation. The legal basis for the CBS request sent to Bulgaria should be the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Article 17). In practice, if a request for CBS referring to the Schengen Agreement is sent to Bulgaria, the Bulgarian court will usually issue the relevant authorisation as if it had been requested under the Second Additional Protocol - the Bulgarian judicial authorities always try to find a positive solution.

Generally speaking, under Bulgarian law, the main difference between CBS and IEC is that CBS does not involve any recording of communications of persons crossing the Bulgarian border, only the movement of persons or items across the Bulgarian border (and further, e.g. inland). However, if another Member State requests any form of recording of communications, it should send either an EIO requesting IEC on the territory of Bulgaria (if the cooperation of Bulgarian judicial authorities is asked for) or the Annex C form (if no cooperation is required from Bulgarian colleagues).

The situation in which two persons sit in a car and talk to each other directly, without mobile phones, while the vehicle has a device installed in it for the interception and recording of the (direct) conversation, and during the recording (authorised by the court in the requesting state), they cross the Bulgarian border towards the interior, has been identified as a special case. In the opinion of Bulgarian practitioners, in such a case the requesting state should only send the Annex C form, although even such a procedure was described as 'risky'. According to them, it also depends on whether the sending of an Annex C form is permitted under the law of the issuing state, depending on how it interprets the concept of telecommunications.

Special competence and the procedure for the continuation of CBS, specified in Articles 34i-34q of the SIM Act ('Use and application of special intelligence means in relation to international cooperation in criminal matters') were also mentioned by the Bulgarian practitioners. Competence is assigned to the SCPO and the Sofia City Court. Specifically, Article 34k of the SIM Act allows for the application of special intelligence means by a competent authority of a foreign state and by a foreign undercover officer. If it is known in advance that (when) the surveilled/observed person or item will cross the Bulgarian border, but it is not known exactly at which point, the MLA request/EIO is sent to the SCPO.

For urgent cases, when permission has not been obtained, the SCPO is once again notified, a request is immediately sent, and the Sofia City Court is informed (Article 34o of the SIM Act).

21.7. Other investigative measures

Under Article 160 of the CCP, in pre-trial proceedings in domestic cases, search and seizure must be performed with authorisation from a judge of the respective court of first instance or a judge from the court of first instance in the area where the action should occur and upon the prosecutor's request.

In urgent cases, where this is the only possible way to collect and keep evidence, the pre-trial authorities may perform a physical examination without authorisation, and the record of the investigative action must be submitted to the judge by the supervising prosecutor forthwith, but not later than 24 hours afterwards. In court proceedings, a search and seizure shall be performed following the decision of the court trying the case.

Concerning the issuance of an EIO for conducting search and seizure in another Member State, the practice is that Bulgarian prosecutors issue and forward the EIOs without the judge's authorisation or validation. Bulgarian practitioners have noted that they could not ask the judge to authorise such measures on the territory of another MS due to their lack of authority, since it is not provided for in their CCP. Therefore, when they send such EIOs, they expect the necessary procedures to be carried out in the executing state (i.e., the judge in the executing state will issue the authorisation).

When Bulgaria acts as executing state, it is not necessary for a court order to be attached, although some MSs do attach one.

Controlled delivery

A controlled delivery is an operative method performed by an intelligence body. It is used by an investigating body within the limits of their competence in the presence of uninterrupted strict control on the territory of Bulgaria or another country within the context of international cooperation, and consists of the import, export, carrying or transit through the territory of Bulgaria by a controlled individual of an item which is the object of a criminal offence, with a view to detecting those involved in cross-border crime.

This investigative measure is infrequently applied, although Bulgarian practitioners provided the expert team with one example where they encountered some issues, namely controlled delivery related to the trafficking of drugs (cocaine) to the Netherlands. The case was coordinated in advance with a colleague from the Netherlands, who requested that a Bulgarian prosecutor replace the cocaine with a similar-looking material. Therefore, the cocaine was replaced, and the criminals did not doubt that they were transporting cocaine.

When the delivery reached the Netherlands, it was necessary to carry out search and seizure operations. However, a colleague from the Netherlands informed the Bulgarian prosecutor that they could not take action against the person on its territory because the delivery did not contain drugs (since the entire delivery had been replaced with a similar material). Ultimately the person in question was not arrested, since the EIO was refused due to the absence of court authorisation based on the *Gavanozov* case. Thus, the Bulgarian prosecutor decided to transfer the proceeding to the Netherlands, which later conducted a search and seizure and found hundreds of thousands of euros in cash.

As the Bulgarian proceeding was about contraband for smuggling, they could not use this cash as evidence in their case, because they did not have jurisdiction to investigate money laundering in the Netherlands. Therefore, the Bulgarian prosecutor contacted Eurojust for consultations, and negotiated with the Netherlands authority, so the NL authorities launched an investigation into money laundering in the Netherlands.

22. STATISTICS

Bulgaria gathers summary statistics on the number of incoming and outgoing EIOs, although no information is collected on the number of incoming and outgoing EIOs that are executed, on refusals of execution and on cases of postponed execution or the postponed transmission of gathered evidence. During the on-site visit the BG authorities pointed out that the lack of statistics on refusals is the result of the low number of such decisions, pertaining mainly to special investigative measures. The statistics, including those on incoming and outgoing EIOs, are gathered and summarised on a quarterly and annual basis. The statistics from the year that follows the entry into force of the transposing law (2019) until the end of the last completed reporting period at the time of preparation of the report are presented below.

Statistics on incoming and outgoing European Investigation Orders (EIOs)		
Period	**Incoming EIOs**	**Outgoing EIOs**
2019	807	846
2020	843	981
2021	1 024	1 254
First half year of 2022	562	626
TOTAL:	**3 236**	**3 707**

23. TRAINING

The practitioners are systematically and regularly provided with training on the EIO. In addition, the topic of the EIO has traditionally been included in training programmes for magistrates from the time of the statutory regulation of the EIO Directive in their national law in 2018.

The National Institute of Justice (NIJ) is the leading training provider. Part of the training relating to international legal cooperation in which Bulgarian magistrates have participated has been provided under the auspices of the European Judicial Training Network (EJTN). In addition, the Prosecutor's Office of the Republic of Bulgaria maintains its own internal training programme, in which the topic of the application of the EIO was very seriously covered, especially in 2018 and 2019, when the practice on the application of this (then new) institute was formed.

The NIJ is fully responsible for the initial training of magistrate candidates. EIO-related issues are included in this training. In 2018 the NIJ organised training for 80 people - 29 candidates for junior judge, 33 candidates for junior prosecutor and 18 candidates for junior investigator. In 2019, 78 persons - 32 candidates for junior judge, 33 candidates for junior prosecutor and 13 candidates for junior investigator. In 2020 training was organised for 83 persons - 28 candidates for junior judge, 34 candidates for junior prosecutor and 21 candidates for junior investigator. In 2021 training was provided for 101 participants, including junior judge candidates, 38 junior prosecutor candidates and 32 junior investigator candidates. In 2022 the figure was120 participants, including 45 junior judge candidates, 58 junior prosecutor candidates and 17 junior investigator candidates.

As concerns ongoing training, these are also organised by the NIJ, the Prosecutor's Office, EJTN and ERA. In 2018, 6 training sessions were organised, in which 77 prosecutors and 5 investigators participated. In 2019 8 training sessions attended by 87 prosecutors and 1 investigator were held, and in 2020, there were 5 training sessions in which 39 prosecutors and 4 investigators participated. In 2021 there was no training on this topic, and in 2022, 1 training session was held for 18 prosecutors and 3 investigators.

Apart from planned training, the NIJ is active in publishing manuals and research reports, which help upgrade the excellence of the justice practitioners in the field. For instance, it issued 'The standards for a judge in a district court and a court of appeal - general and specific competencies in the field of international cooperation in criminal matters', 'The standards for prosecutors and investigators', including the chapter on the EIO, the Handbook on Judicial Cooperation in Criminal Matters in the EU, including an analytical overview of EU acts on mutual recognition in criminal matters. The topic of the European Investigation Order is developed in a separate section of the handbook, including a systematic presentation of national legislation, EU law and the case law of the CJEU. All the books are published electronically on the NIJ e-learning portal (www.nij.bg).

The NIJ also provided training on involving Eurojust and EJN networks in complex cases or in cases where several MSs are involved. Such collaboration is very often used in practice. The EJN contact points are also contacted if it is challenging to identify competent authorities due to their complicated system (DE).

24. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

24.1. Suggestions by Bulgaria

Bulgarian practitioners would like to mention that the Ministry of Justice has finalised the draft legislative amendments to the EIO Act and the CCP. The amendments aim to address the findings of the CJEU in *Gavanozov II* and in *HP*, and to create a legal framework that ensures that measures to collect evidence referred to in the EIO will, by virtue of the subsidiary application of the CCP, be subject to legal remedies equivalent to those provided in a similar national case, and also to clarify the allocation of jurisdiction when a prosecutor issues an EIO, which in similar national cases should be permitted by the courts. The proposed amendments will be forwarded to stakeholders for consultation as a first step, before being submitted to the National Assembly for consideration and adoption.

As a good practice in Bulgaria, which directly concerns the application of the EIO Directive, Bulgarian practitioners would like to point out the functioning of the National Judicial Network for international cooperation in criminal matters, which is composed of 11 judges. All judges from the Network are EJN contact points designated by the Supreme Judicial Council to assist their colleagues in international cooperation in criminal matters. The members of the Network help Bulgarian magistrates daily – judges, prosecutors and investigators, to apply the EIO Act and the Directive as they help with various aspects of the implementation of the EIO, such as providing information on the law, speeding up the execution of EIOs, finding competent authorities to execute EIOs, etc. Members of the Network participate in different seminars to enhance their knowledge of the EIO, and are lecturers in various seminars organised by the National Institute of Justice on different subject matter. They share knowledge with their colleagues, not only on a national, but also on an international level.

The example of best practices in applying the EIO Directive is the initiative of the National Institute of Justice and the Escuela Judicial - the Spanish School for Judicial Training - for joint simulated online trials. On 25-26 May 2021 and 15-16 November 2022, more than 300 Bulgarian and Spanish candidates for junior judge held mock trials carried out via VC for the execution of 12 EIOs exchanged between the trainees in advance. They were devoted to 'Conducting a video conference for the hearing of a witness'. Spanish EIOs were issued in criminal investigations of robbery, and Bulgarian EIOs were issued in court trials in money laundering and robbery cases. After the execution of the EIOs, participants and their Bulgarian and Spanish tutors discussed the scope, application, issuance, submission, recognition and enforcement of EIOs, specifics at the national level in both countries, and analysed hypothetical cases. During the 'documentary' and 'alive' parts of these trials, the future judges from both countries learned more than they would have from textbooks, and they gained personal experience on how the EIO Directive works in practice. More importantly, they had personal experience contacting each other directly and trusting each other, which are the grounds of EU cooperation in criminal matters.

The lecturers in both judicial schools and the European Judicial Training Network team congratulated the simulated trials.

24.2. Recommendations

Regarding the practical implementation and operation of the EIO Directive, the team of experts involved in assessing Bulgaria was able to review the system in Bulgaria satisfactorily.

After this report has been adopted by the Working Party concerned, Bulgaria should conduct an 18-month follow-up to the recommendations referred to below.

The evaluation team saw fit to make several suggestions for the attention of the Bulgarian authorities. Furthermore, based on the various good practices, related recommendations are being proposed to the EU, its institutions and agencies, and also Eurojust and the EJN.

24.2.1. Recommendations to Bulgaria

Recommendation 1: According to the Bulgarian EIO Act, an EIO can be issued in proceedings brought by administrative authorities regarding acts punishable by virtue of being infringements of the rules of law and where the decision may give rise to proceedings before a court having jurisdiction in criminal matters. However, Bulgarian law does not define the authority that is competent to issue or execute such an EIO. Therefore, the evaluation team recommends removing the legal loophole regarding defining competent authorities for the issuing or execution of an EIO concerning administrative proceedings, as mentioned above (section 5).

Recommendation 2: It is recommended to train practitioners on the possibility of using the EJN in cases where they need to analyse whether the offence under Bulgarian law is also a crime in the executing state, and whether the investigative measure would be admissible in the other Member States. (section 13.1.)

Recommendation 3: The judgment of the CJEU in *Gavanozov II* implies the standard that any person who is subject to investigative measures involving procedural coercion (search and seizure) or may be subject to such coercion (forcibly bringing in a non-appearing witness for hearing) must be provided with legal remedies. The Bulgarian law reveals shortcomings in meeting those standards because it does not provide for any legal remedy against decisions ordering the carrying out of searches and seizures or the hearing of witnesses, or against the issuing of an EIO. Whereas the second part of this judgment (remedies of a person that may be subject to procedural coercion) raises many doubts, as it confuses the immanent coercive nature of some investigative measures with the coercion occurring as the consequence of disobedience to the orders and decisions of the judicial authorities; the first part of the judgment concerning coercive measures, however, is clear. Bulgaria is recommended to comply with this obligation as soon as possible (section 16).

Recommendation 4: Bulgarian executing authorities should always send Annex B to the issuing authorities. This obligation is stipulated under Article 16 of EIO Directive (section 18).

Recommendation 5: Bulgaria should amend the EIO Act to include special written rules to get written confirmation/validation by an interviewed person of the correctness and completeness of the content of the testimony made by video-conference (section 21.2.).

Recommendation 6: Bulgarian law does not fully comply with the EIO Directive's provisions in the area of real-time bank account monitoring, due to the absence of such provisions in domestic law. Therefore, Bulgaria is strongly recommended to correct its domestic law in line with the EIO Directive (section 21.4).

Recommendation 7: In its judgment in *HP*, the CJEU held that Bulgarian law does not comply with Article 2, point (c)(i), of the EIO Directive in respect of its approach that no domestic court order is needed to issue an EIO for an investigative measure to be conducted abroad, even if in a national case the same investigative measure had to be authorised or ordered by a court. Bulgaria must adjust its law to this judgment. The options that are currently being discussed within the established working group could provide a solution to this problem (sections 4 and 21.7).

Recommendation 8: Statistics are an essential source of information on the practical use of EU legal instruments, although this information is incomplete without the systematic gathering of statistical data. The Bulgarian authorities properly and methodically collect raw statistics on the EIO, which is an obvious advantage. However, in addition to simple statistics on outgoing and incoming EIOs, the Bulgarian system could be upgraded by gathering at the central level some data on the quality of cooperation based on this instrument. As a result, it is recommended that Bulgaria upgrade its statistics system by gathering data on refusals of execution of the EIOs, both incoming and outgoing, and also on the number of incoming EIOs executed not as an EIO but as an MLA request. This would bring added value to the quality of Bulgaria's statistical system (section 22).

24.2.2. Recommendations to the other Member States

Recommendation 1: Fill in the EIO form diligently by providing a sufficient description of the offence in section G, primarily related to those investigative measures for which the executing authorities must apply for court approval (section 6.1.).

Recommendation 2: Execute EIOs in a timely manner. Issuing authorities have to provide complete contact details and avoid inaccuracies in the personal data (sections 6.1. and 6.2.).

Recommendation 3: When an EIO asks for the interview/hearing of a person, especially a witness, a questionnaire must be enclosed. Without a questionnaire, there is a high risk that not all necessary questions will be asked (section 6.1.).

Recommendations 4: Ensure that all practitioners know that they may not refuse to recognise EIOs if the offence in the issuing state is not an offence in the executing state regarding measures that must always be available, and it is always necessary to hold consultations with the issuing authority before refusal of an EIO (section 13.1.).

Recommendation 5: So-called urgent EIOs are treated differently from regular ones. The collected details on the urgency modalities are available in the EJN document: 'Competent authorities, languages accepted, urgent matters and scope of the EIO Directive'. Indeed, the real urgency of the case may only be appropriately recognised by the issuing authority, as it is alone in having full access to the case. However, mutual trust, the basis of effective mutual recognition, requires that Member States not abuse this mechanism. Therefore, all Members States are recommended to thoroughly examine the urgency of the given EIO before transferring it to the executing state (section 15).

Recommendation 6: To make mutual cooperation smoother, it is necessary to always respond to correspondence from the issuing state, and provide it with the required feedback, and not to remain silent (e.g., about costs, when execution is greatly delayed, etc.) (sections 15 and 19).

Recommendation 7: Ensure that executing authorities always send Annex B – if the EIO is forwarded to another executing authority, Annex B should be sent by the first receiving authority - stating to which other authority the EIO has been forwarded – and also by the second receiving authority – stating that the EIO has reached the authority that is competent to execute it. The issuing state needs to know the date of receipt of the EIO and the identity and contact details of the competent executing authority. Only after Annex B has been received can the issuing authority begin direct communication with an informed person within the executing authority. This obligation is stipulated as obligatory in Article 16 of the EIO Directive (section 18).

Recommendation 8: It has often been noted that the provisions of Article 6 of the EIO Directive on proportionality cause problems in practical application. The proportionality test must be multifaceted and comprehensive, or else it will not reflect a holistic assessment of the case. Therefore, the EU Member States are recommended to refrain from a simplified scrutiny (section 19).

Recommendation 9: The Member States should ensure that their PPOs and courts strictly adhere to Article 7(6) of the EIO Directive and do not send EIOs back if they do not hold themselves competent for recognising and executing the EIO (section 21.2.).

Recommendation 10: Since not each MS legal system recognises the procedural status of a suspect, it is recommended to attach to the EIO or to state in section I of the EIO the rights and obligations of the person concerned under the law of the issuing state and thus allow the executing state to compare those with their legislation and identify with which procedural status the person in question should be heard under the law of the executing state, and take the necessary procedural steps to provide them with the required legal safeguards/protection (section 21.2.).

Recommendation 11: Since remote communication is in growing demand, consider the development of VC facilities, including the use of generally available VC applications (section 21.2.).

24.2.3. Recommendations to the European Commission

Recommendation 1: The Commission is invited to provide (more detailed) clarifications in its future legislative work with regard to:

- the term 'telecommunications' (a number of states have implemented the concept differently) (section 21.6.);
- the speciality rule and its application (section 11);
- which extent the EIO Directive applies to the possible approval of evidence already in the hands of the issuing authority [see Article 10(2), point (a), of the EIO Directive] (section 7);
- which extent the EIO Directive applies also to gathering evidence during the phase after the final judgment (execution proceedings), and also in proceedings to decide whether the suspended sentence should be revoked (section 5).

Recommendation 2: The Commission is invited to consider making the form more user-friendly and to formulate Annex C more broadly, so that it is applicable not only to notifications of the interception of telecommunication carried out without technical assistance from notified states, but also to other measures where no assistance from the recognising state is required (section 21.6.).

Recommendation 3: The Commission is invited to clarify the application of the EIO Directive in relation to Article 40 of the Schengen Convention in respect of surveillance with a GPS tracking device or in cases where a device for audio surveillance has been placed and/or a technical device for the recording of audio/video has been installed (section 21.6.).

Recommendation 4: The Commission is also invited to outline 'search and seizure' in the EIO Directive and in the EIO form properly and to make it clear whether the scope of the EIO encompasses VC for taking part in court trials and execution proceedings (section 21.7).

Recommendation 5: Finally, the Commission is invited to provide more EU-wide training on the EIO (especially for specific investigative measures) via the EJTN (section 23).

24.3. Best practices

1) In cases in which several measures must be executed in one Member State, the Bulgarian practise in the pre-trial phase of sending one comprehensive EIO which covers all the measures, gives the executing authority full information on every measure that needs to be executed in its Member State. This makes it easier for the executing authority to judge whether all of the measures should be recognised and executed by one authority or – if necessary – whether the EIO should be split up and recognised and executed by different authorities. For this reason, there should be also a comprehensive EIO covering all the measures, if the issuing authority sends EIOs to more than one executing authority in one Member State, and – necessarily – this EIO should contain information on which executing authorities it is going to be sent to and why (section 6.3).

2) The Bulgarian willingness to accept English as the most commonly used working language in the EU as a second accepted language facilitates translation for issuing authorities in other Member States, because it is easier and faster to have documents translated into English than into other languages – this practice expedites the recognition and execution process, even though Bulgarian law makes it necessary to translate English EIOs into Bulgarian in order to process them (section 6.2.).

3) In the pre-trial as well as in the trial phase of proceedings, the Bulgarian approach of contacting the issuing authority before refusing the recognition or execution of an EIO and of discussing the legal issues, giving the issuing authority the chance to clarify whether there has been a misunderstanding, and the positive experience Bulgaria gathered from such consultations shows the importance of direct contact and consultation between issuing and executing authority (section 9).

4) Bulgaria's approach of using the possibilities provided by Eurojust in urgent and complex cases, especially in cases where measures need to be coordinated in several countries, can be recommended to all Member States (section 8).

5) It is a best practice to assess – as Bulgaria does – whether a request can be executed on the basis of other tools of mutual legal assistance (e.g., the 2000 EU MLA Convention) if according to the law of the executing state the execution of a measure does not fall within the scope of the EIO, and therefore cannot be executed as an EIO (section 5).

Monday 13 March 2023

Arrival of the evaluation team in Sofia

Internal meeting of the evaluation team

Tuesday 14 March 2023

9:00-9:15	Arrival at the SCPO. Welcoming speeches**;**
9:15-10:30	Presentations; the national framework of and practice on the issue and execution of an EIO, training activities of the National Institute of Justice**,** summary of the
10:30-10:45	Coffee break
10:45-12:00	Continuation with presentations
12:00-13:00	Lunch break
13:00-16:30	Meeting with practitioners on the implementation of the EIO Directive, Q&A, discussion;
18:00-19:30	Internal meeting of the evaluation team

Wednesday 15 March 2023

9:00-10:30	Meeting with practitioners on the implementation of the EIO Directive, Q&A, discussion;
10:30-10:45	Coffee break
10:45-12:00	Meeting with practitioners on the implementation of the EIO Directive, Q&A, discussion;
12:00-13:00	Lunch break
13:00-14:45	Meeting with practitioners on the implementation of the EIO Directive, Q&A, discussion;
14:45-15:00	Coffee break
15:00-16:30	Meeting with practitioners on the implementation of the EIO Directive, Q&A, discussion;
18:00-19:30	Internal meeting of the evaluation team

Thursday 16 March 2023 *(Falcone Hall)*

9:00-11:00	Meeting with practitioners on the implementation of the EIO Directive, Q&A, discussion;
11:00-11:15	Coffee break
11:15-12:30	Wrap-up meeting
16:00–17:30	Internal meeting of the evaluation team

Friday 27 January 2023

9:00-11:00	Internal meeting of the evaluation team

ANNEX B: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	LANGUAGE OF X COUNTRY OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
BNB		Bulgarian National Bank
CBC		Cross-border surveillance
CI		Covert investigation
CJEU		Court of Justice of the European Union
CCP		Code of Criminal Procedure
EAW		European Arrest Warrant
e-EDES		e-Evidence Digital Exchange System
EIO		European Investigation Order
EJTN		European Judicial Training Network
JIT		Joint Investigation Team
MLA		Mutual legal assistance
NIJ		National Institute of Justice
PPO/s		Public Prosecutor's Office/s
SCPO		Supreme Cassation Prosecutor's Office
VC		video conference