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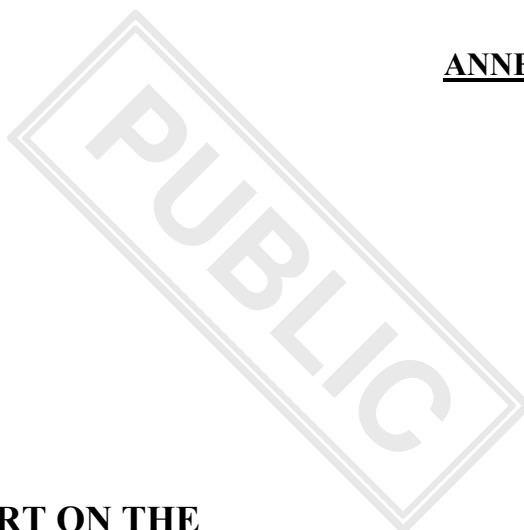
NOTE

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Subject: EVALUATION REPORT ON THE NINTH ROUND OF MUTUAL
EVALUATIONS

9th round of Mutual Evaluations on mutual recognition legal instruments in
the field of deprivation or restriction of liberty - REPORT ON BULGARIA



**EVALUATION REPORT ON THE
NINTH ROUND OF MUTUAL EVALUATIONS**

**Ninth round of mutual evaluations on mutual recognition legal instruments in
the field of deprivation or restriction of liberty**

REPORT ON BULGARIA

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1. EXECUTIVE SUMMARY

The preparatory work and the evaluation visit to Bulgaria took place in a welcoming atmosphere thanks to the excellent preparation by the Bulgarian authorities and the proactive support provided by the Ministry of Justice (MoJ), which coordinated the exercise.

During the visit the Bulgarian authorities and representatives did their utmost, in a frank and open manner, to provide the evaluation team with information and clarifications on legal and operational aspects of the European arrest warrant (EAW), the transfer of prisoners, the European Supervision Order (ESO) and alternative sanctions. The evaluation team met the relevant bodies with responsibilities in the field of the four Framework Decisions which are the subject of the ninth round of mutual evaluations: the MoJ, the judiciary, lawyers and police officers in charge of SIS. The evaluation also included a visit to Plovdiv Appeal Court, which was very interesting and helped the team to gain a better understanding of the situation at operational level.

The MoJ as central authority does not take part in the application of mutual recognition instruments as such. The competent authorities are judicial: prosecutors and courts. The MoJ will only intervene to assist, mainly when there are difficulties identifying the competent judicial authority in the other Member State, or to give guarantees regarding prison conditions.

Moreover, Bulgaria follows the principle of direct contact between the competent judicial authorities. The Bulgarian practitioners' favourite channel to exchange information with their counterparts is via the SIRENE bureau. This is explained by the fact that up to now there is no secure EU mechanism to exchange information among European judicial authorities. In practice the Bulgarian judiciary sends its official communication, either as scanned email attachments or by fax, to the SIRENE bureau, which then forwards it.

Due to the decentralised use of mutual recognition instruments and the direct contact between judicial authorities, the MoJ faces difficulties in gathering data. Bulgarian law provides for the courts to send to the MoJ, each year, judgments related to each of the Framework Decisions which are the subject of this mutual evaluation round. But there is no standard way to transfer these judgments and the deadlines laid down by law are not always complied with. Therefore, statistics in the use of mutual recognition instruments may be lacking or fragmented. This hampers a clear view of the use of mutual recognition instruments in Bulgaria.

In parallel, Bulgaria's courts have a strong case management system. In this system each legal act has a specific code. This means that any judgments related to the use of a mutual recognition instrument can be found by entering the code referring to the relevant provisions. The software is used to provide statistics twice a year to the Supreme Judicial Council (SJC). The MoJ does not have access to this case management system.

According to the practitioners whom the team met, the EAW works well and refusals are an exception. When visiting Plovdiv Appeal Court, the experts were pleased to learn that EAW cases are prioritised and that the Bulgarian judges are allocated sufficient time in their planning and human resources to reach decisions in EAW cases within the time limits prescribed by law. Furthermore, the average case processing time to render a final decision on EAW has been reduced from 38 to 27 days over the last six years.

As issuing authority, Bulgaria faces the consequences of the CJEU's judgments in cases C-648/20 and C-206/20. The CJEU, assessing Bulgaria's issuance of EAWs, ruled that the requirements inherent in the effective judicial protection that must be afforded to a person who is the subject of an EAW for the purpose of criminal prosecution are not satisfied where both the EAW and the judicial decision on which that warrant is based are issued by a public prosecutor but cannot be reviewed by a court in the issuing Member State prior to the surrender of the requested person by the executing Member State. This jurisprudence renders an EAW impossible to execute if it has been issued by a Bulgarian prosecutor in accordance with applicable law during the pre-trial/investigation phase of the criminal proceedings.

This affects not only the possibility for the Bulgarian prosecution service to issue new EAWs, but also affects all the alerts created in the SIS based on EAWs issued according to the current legislative framework.

In reaction Bulgaria set up an inter-ministerial working group, involving magistrates, representatives of the Bar and academics, which concluded that there was a need to amend the Extradition and European Arrest Warrant Act. The evaluation team can only agree on this point, but also considers it necessary to find a legally practical way to keep on issuing EAWs and to secure the pending EAWs while waiting for the new law to enter in force.

Additional information requests regarding EAWs issued by the Bulgarian authorities are mostly focused on detention conditions in Bulgaria. Several executing Member States ask for guarantees in this area and the MoJ is in charge of sending a reply. The Bulgarian authorities have underlined that detention conditions in Bulgaria comply with ECHR standards and the CJEU's case law. The replies given by MoJ usually lead to the surrender of the person sought and refusals due to detention conditions are rare. Moreover the evaluation team praised the general statement used with Germany to guarantee the detention conditions of the person sought. Experts believe that Bulgaria should try to implement the approach of issuing a more general guarantee/statement in regard to other Member States, especially with Member States that usually ask for comprehensive guarantees and focus on general aspects.

Proportionality when issuing an EAW was another point of interest. The Bulgarian authorities recognise that the principle is not expressly mentioned in the law but derives from the EU legislation and the Code of Criminal Procedure. While the Bulgarian magistrates said that proportionality is always taken in account when issuing an EAW and less intrusive measures are always used, the representative of the practising lawyers questioned that statement. In parallel the evaluation team noted that during the fourth round of mutual evaluation, dedicated to the EAW, experts made a recommendation focusing on the principle of proportionality. Therefore the evaluation team considers it useful to reiterate the recommendation of implementing common criteria regarding the principle of proportionality, and preferably to include the principle in the Extradition and European Arrest Warrant Act (EEAWA).

When executing an EAW for the prosecution of Bulgarian nationals or persons permanently residing in Bulgaria, Bulgarian law requires the Bulgarian authorities to obtain in advance from the issuing State a guarantee that the surrendered person will serve their sentence in Bulgaria¹. All the practitioners the team met explained that these guarantees lead to requests for additional information and slow down the process. Moreover, experts consider that requesting the guarantees in advance goes beyond Article 5(3) of Framework Decision 2002/584/JHA, which provides for the possibility for the judicial authority to directly mention this point in its decision. In order to speed up the process, the evaluation team recommends that Bulgaria consider amending its law to remove the requirement for advance guarantees.

The evaluation team had the opportunity to meet the police officers working in the International Operational Cooperation Directorate (IOCD) and operating the Schengen Information System (SIS). Experts were very positive about the high education and qualification levels of these police officers. They also praised the quality check made when issuing an EAW and the systematic double alert made in SIS and Interpol. During this meeting the evaluation team was also informed about the difficulty of obtaining a Bulgarian translation of the EAW within 72 hours. Experts consider that a solution to this difficulty is for Bulgaria to accept the EAW in another language, at least in English.

Regarding Framework Decision 2008/909/JHA it is important to underline that the Bulgarian implementing law² entered in force on 1 January 2020. Therefore its application is quite new and the practical difficulties experienced to date are obviously limited. Generally speaking, Bulgarian practitioners stated that the use of this mutual recognition instrument works correctly.

¹ EEAWA Article 41(3)

² Recognition, Enforcement and Forwarding of Judicial Instruments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty Act

The main issue discussed was the difficulty of complying with the deadline of 30 days³ to transfer the sentenced person after the final decision of the Bulgarian court. Bulgarian authorities always translate the judgment together with the certificate before transferring a prisoner. However, the translation of Bulgarian judgments can take time as some of them count more than a hundred pages. Bulgarian practitioners suggested that one idea to facilitate compliance with the deadline could be to translate the executive part of the judgment as a first step, and the reasoning part only if the issuing State expresses a need for it, as a second step.

Regarding the link between the EAW and the transfer of prisoners, the evaluation team learned that the Bulgarian legislation⁴ provides for the possibility to enforce a sentence in Bulgaria if the court has decided to refuse the surrender in accordance with Article 4(6) of the EAW Framework Decision.

At the issuing stage, the criteria to decide whether to issue an EAW or a certificate result only from practice. Therefore experts recommend to include such criteria in the existing guidelines.

The mutual recognition instruments implemented in Bulgarian legislation by reference to FDs 2008/947/JHA and 2009/829/JHA are clear for most Bulgarian practitioners. The transfer of probation measure is not used much and European Supervision Order (ESO) appears not to be used at all. The main reason for this situation appears to be a lack of sufficient awareness among practitioners, even though the National Institute of Justice (NIJ) offers a specific training module on all the Framework Decisions covered by this round of mutual evaluations. Several Bulgarian authorities voiced a desire for more training in this area, both at national and EU level, but also combined training involving magistrates, prison staff, police officers and also practising lawyers.

³ Article 15(1) of Framework Decision 2008/909/JHA

⁴ Article 44(8) to (13) of the EAWA

The Bulgarian practitioners are well accustomed to the EU tools for promoting judicial cooperation. Eurojust and the EJM contact points are known and used appropriately, as are the Commission handbooks related to Framework Decisions 2002/584/JHA and 2008/909/JHA. Moreover, Bulgaria has set up an informal domestic network of judges working in the field of international cooperation in criminal matters. The network helps the Bulgarian judges to find additional support when there is a need to use a mutual recognition instrument.

Taking all factors into account, the evaluation team appreciates Bulgaria's practice in the use of mutual recognition instruments. Bulgarian legislation must evolve due to the CJEU's judgments in cases C-648/20 and C-206/20. Also, the law could be amended to delete the need for prior guarantees when surrendering a Bulgarian, add the proportionality principle and accept EAWs in another language. The evaluation showed that Bulgarian practitioners are firmly attached to the principle of mutual trust and execute requests sent by other Member States in a timely manner while finding innovative ways of answering questions about detention conditions. Moreover Bulgaria disseminates knowledge via numerous training courses proposed by the NIJ and via the network of practitioners in international cooperation in criminal matters that it has established. The general opinion of the evaluators is therefore positive.

2. INTRODUCTION

The adoption of Joint Action 97/827/JHA of 5 December 1997 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 Joint Action 97/827/JHA of 5 December 1997, the Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS) decided at its meeting on 21 November 2018 that the ninth round of mutual evaluations would be devoted to the principle of mutual recognition.

Due to the broad range of mutual recognition legal instruments and to their wide scope, it was agreed at the CATS meeting on 12 February 2019 that the evaluation would focus on the following mutual recognition instruments:

- Framework Decision 2002/584/JHA on the EAW and the surrender procedures between Member States ('EAW');
- Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ('custodial sentences');
- Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions ('probation and alternative measures');
- Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle on mutual recognition to decisions on supervision measures as an alternative to provisional detention ('ESO').

At the above CATS meeting it was also agreed that the evaluation would focus only on those specific aspects of such instruments which Member States felt warranted particular attention, as set out in detail in 6333/19, and on the legal and operational links between FD 2002/584/JHA on the EAW and FD 2008/909/JHA on custodial sentences.

Referring to FD 2008/947/JHA on probation and alternative measures and FD 2009/829/JHA on the ESO, it was decided that the evaluation would be of a rather general nature and would try to establish the reasons that have led to those two Framework Decisions being applied only infrequently.

The aim of the ninth mutual evaluation round is to provide real added value by offering the opportunity, via on-the-spot visits, to consider not only the legal issues but also – in particular – relevant practical and operational aspects linked to the implementation of these instruments by practitioners in the context of criminal proceedings. This would allow both shortcomings and areas for improvement to be identified, together with best practices to be shared among Member States, thus contributing towards ensuring a more efficient and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the Union.

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

Furthermore, the current process of evaluation could provide useful input to Member States that may not have implemented all aspects of the various instruments.

Bulgaria was the thirteenth Member State to be evaluated during this round of evaluations, as foreseen in the order of visits to the Member States adopted by CATS on 13 May 2019 and subsequently amended upon proposal of some Member States and in the absence of any objections⁵.

⁵ 9278/19 REV 2

Nevertheless due to the travel restrictions, the consequences of the public health crisis, some preparatory work was done by videoconference and the onsite evaluation took place in a second step, as agreed by CATS on 12 November 2020.

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. Member States have nominated experts with substantial practical knowledge in the field pursuant to a written request sent to delegations by the General Secretariat of the Council of European Union on Friday 17 May 2019.

The evaluation team consists of three national experts, supported by one or more staff from the General Secretariat of the Council and observers. For the ninth round of mutual evaluations, it was agreed that the European Commission, Eurojust and EJM should be invited as observers.

The experts entrusted with the task of evaluating Bulgaria were Mr Jakob Willaredt (DK), Ms Michaela Burešová (CZ) and Ms Dana Maria Roman (RO). The following observers were also present: Mr Jean-Pascal Thoreau (Eurojust), together with Mr Mathieu Bertola from the 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 preparatory work by videoconference on 9 December 2020,
- the evaluation visit that took place in Bulgaria between 13 and 17 September 2021,
- and on Bulgaria's detailed replies to the evaluation questionnaire, together with its detailed answers to the ensuing follow-up questions.

3. FRAMEWORK DECISION 2002/584/JHA ON THE EUROPEAN ARREST WARRANT (EAW)

3.1. Authorities competent for the European arrest warrant (EAW)

3.1.1. A limited role for the central authority

In accordance with the notifications sent to the GSC⁶, the central authority is the MoJ. More precisely, within the MoJ, it is the Directorate for International Legal Cooperation and European Affairs that performs the functions of the central authority. This Directorate is divided into 2 units: Cooperation in Criminal Matters and Cooperation in Civil Matters. The Cooperation in Criminal Matters Unit includes 13 experts (11 of them are lawyers) and performs tasks in relation to all the aspects of judicial cooperation. It handles the negotiation of treaties, relations with numerous entities (e.g. EU, United Nations (UN), Council of Europe) and judicial cooperation within the EU.

The role of the MoJ as central authority according to the EAW Framework Decision is quite limited; its main aim is to help find the right judicial authority. When a Bulgarian judicial authority or the issuing Member State is unable to identify its judicial counterpart the MoJ will take charge of the transmission of the EAW. The MoJ is also competent to transmit the EAW if the issuing Member State has designated the MoJ as the receiving authority.

The Bulgarian authorities underlined that recourse to the assistance of the MoJ is extremely rare, and in recent years there have been virtually no such cases, including when an administrative authority is responsible for obtaining an EAW in the other Member State.

They attribute this to the strengthening of the role of the EJN and the accessibility of its website, as well as the work of the national contact points, the experience gathered since 2007 and the improvements made to the training of magistrates in the application of EU instruments.

⁶ 17078/06 and the notification made on 26 August 2019.

3.1.2. *Competent authorities to issue an EAW*

The Bulgarian authorities described the following steps for issuing an EAW:

- The court (trial stage) or the prosecutor (pre-trial stage and for sentenced persons) issues an EAW.
- The EAW in Bulgarian is sent to the SIRENE bureau of the IOCD and an alert is entered into SIS II.
- Upon receiving information about the detention of the requested person or his/her whereabouts in an EU Member State, a translated EAW is sent directly to the competent authority in the executing Member State.

If guarantees regarding detention conditions are required they are provided by the MoJ.

- If the executing Member State decides to execute the EAW, the MoJ (Directorate-General for Security) is informed and a surrender plan is proposed. The Supreme Prosecutor's Office's 'International' Department issues a decree ordering the transportation of the requested person to Bulgaria.

When needed, the MoJ requests transit.

- Upon arrival of the person the court decides on the measure of detention within 72 hours (EAW for pre-trial and trial stage) or the sentenced person is transported to the prison (EAW for an enforceable sentence).

3.1.3. *Authorities competent to execute an EAW*

The Bulgarian authorities described the following steps for executing an EAW:

According to Article 42 of the EAWA, the EAW can be received either by the courts or by the police/prosecution service.

1) - If the EAW is received via SIRENE/INTERPOL.

In this bureau a point of contact operates 24/7 and can contact the competent prosecutor. It must also be highlighted that prosecutor's offices have prosecutors on duty at all times. This allows the Bulgarian authorities to process EAWs speedily.

- The EAW is sent to the District Prosecutor's Office where the requested person was located/apprehended. The prosecutor orders the arrest of the person and files the EAW with the competent district court.

The police detain the person for 24 hours and immediately notify the relevant district prosecutor. The prosecutor checks whether the EAW complies with the form, content and translation requirements. Then the prosecutor may order the person to be detained for up to 72 hours. If the warrant is not translated, the prosecutor sets a deadline for the issuing State to send a translation and, if the issuing State fails to send the translation within the deadline, the prosecutor has to release the person. In case of release from arrest the prosecutor will always impose the coercive administrative measure of prohibition to leave Bulgaria, and the border police are informed thereof. The prosecutor cannot extend the arrest beyond 72 hours or ask the court for a detention order.

2) - If the EAW is received directly at the district court where the requested person is located/apprehended, the court orders the arrest of the person.

- The district court decides on the judicial measures to be taken (provisional detention or supervision) in order to ensure the person's participation in the EAW proceedings and schedules a hearing within seven days of the arrest.

During the hearing the prosecutor supports the request for the surrender of the person if the prosecutor considers that the prerequisites for doing so are fulfilled. At the hearing, the prosecutor refers to any criminal proceedings pending against the person in Bulgaria, to allow for the postponed surrender or provisional surrender of the person where appropriate. If there are circumstances or evidence which justify the non-execution of the EAW or lead to the termination of the proceedings, the prosecutor may present them in the course of the hearing.

- If the requested person agrees to be surrendered and does not withdraw that consent within three days, the district court orders the surrender to the issuing State.

The court checks that consent has been voluntarily given and that there is no ground for refusal under Article 7 of Framework Decision 2002/584/JHA, nor pending criminal proceedings, etc.⁷

- The district court's decision can be appealed within five days of the announcement of the decision. The decision of the appeal court is final.

- The court informs the MoJ and the 'International' unit of the Supreme Prosecution Cassation Office which orders the Directorate-General for Security to surrender the person to the issuing State.

3.1.4. *The Supreme Prosecution Cassation Office*

The General Prosecutor of the Supreme Prosecution Cassation Office (SPCO) has the capacity to issue Orders to facilitate the application of the law. Prosecutors must follow these Orders.

Within the SPCO, Unit 4, named 'International', deals with international matters: international legal assistance, transfer of proceedings under criminal cases and exchange of information, extradition and the EAW. In 2021, a new unit was created, dealing with the protection of the financial interests of the EU and cooperation with the EPPO.

⁷ According to Article 19 paragraphs 2, 3 and 5 of the EAWA, SG No. 46, 3.06.2005

The SPCO exercises supervision over all prosecutors. It can also act as an advisor for them and is therefore available whenever necessary. The representative of Sofia City prosecution office confirmed that cooperation with SPCO is efficient and that they receive timely replies when they contact it.

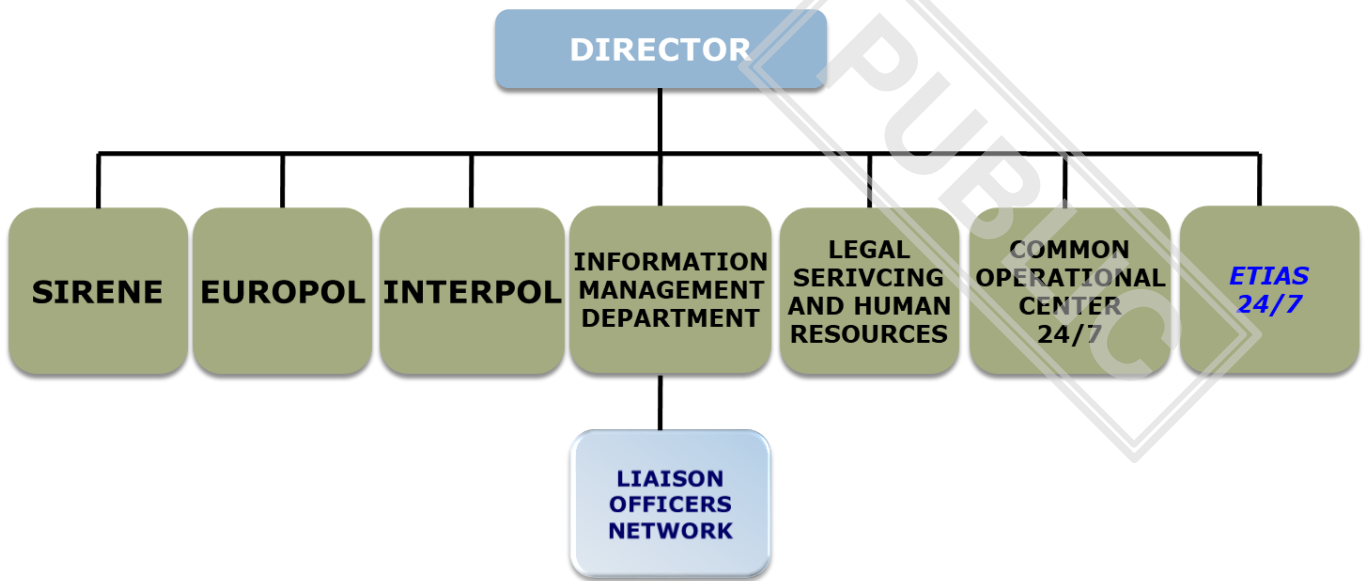
The SPCO has a website available to all prosecutors with a section dedicated to international cooperation. SPCO has set up a network, under its supervision, of Bulgarian prosecutors specialised in international criminal matters, who are also involved in organising training courses (including as temporary trainers at the NIJ). The SPCO website features an interactive map allowing users to swiftly find the competent point of contact in this network.

Order n°1774, as supplemented by Order n°2-19, of the General Prosecutor of the SPCO, contains instructions on how to issue and execute an EAW. It could therefore be seen as guidelines. This Order is available only to prosecutors.

3.1.5. *The IOCD*

The International Operational Cooperation Directorate is under the responsibility of the Ministry of the Interior. It operates SIS II and is responsible for international searches for wanted persons through SIS. The IOCD is therefore an interface between the SIS and the Bulgarian judicial authorities. It comprises, notably, the SIRENE bureau (25 persons) responsible for entering and deleting information in the SIS system and the wanted persons bureau (10 persons).

The Bulgarian authorities provided the following flowchart:



The IOCD is always available thanks to a system of having police officers on standby. It allows for a swift reaction in case of emergency.

3.1.5.1. Bulgaria as issuing State

Prosecutors and judges send the EAW to the SIRENE bureau, which carries out a quality check on the form. If it finds issues, it contacts the issuing authority in order to correct the EAW form. The representatives of the SIRENE bureau explained that the most common mistakes are technical, usually consisting of an inadequate description of the crime.

When the EAW is clear, the police officer fills in an A-form in English. The translation is directly produced by the police officer. Then he or she creates the alert in the SIS and at the same time an Interpol alert. In parallel, the local police create a national alert (linked to the Bulgarian arrest warrant).

The representatives of the IOCD explained to the team that no electronic link between the SIS alert and the national alert exist. This means that when the person sought is arrested the SIRENE bureau deletes the SIS alert and informs the local police, who will delete the national alert.

According to the IOCD, when other Member States flagged Bulgarian alerts it was because of double criminality issues. These mainly related to offences like driving without a licence or under the influence of alcohol. Moreover, the IOCD informed the evaluation team that certain Member States had already flagged Bulgarian SIS alerts based on EAWs issued by a prosecutor with reference to the CJEU judgment in case C-648/20 and its ruling in case C-206/20.

Police officers expressed a need for information from the judiciary about Bulgarian EAWs following the CJEU's case law in C-648/20 and C-206/20. (cf. 3.5.3.)

3.1.5.2. Bulgaria as executing State

A police officer at the IOCD checks around 50 new SIS alerts every day. When an alert could be legally problematic the A-form is put aside. Each week a prosecutor comes and checks the A-forms that have been put aside. This prosecutor will decide which alerts must be flagged and which ones comply with the rules. When asked by the evaluation team, the police officers stated they did not need guidelines from the prosecution office to assess the different alerts. The experts deem the IOCD's training and experience sufficient.

When the Bulgarian authorities flagged alerts, it was generally because of double criminality issues. The most important one relates to driving under the influence of alcohol: the alcohol limit is lower in some Member States like Poland or Romania.

When a police officer on ordinary duty in the field stops a person and checks their identity, the police officer is immediately informed, through the system available at the scene, of any international alert. In such cases the officer calls the police station, where another police officer who has access to different databases checks if the alerts come from the SIS, Interpol, etc.

If the person wanted in the SIS is arrested, the police have the right to detain her/him for 24 hours. The case is then presented to the prosecutor who can order detention of this person for up to 72 hours. The police officers at the IOCD mentioned that there is no common practice among prosecutors regarding when these 72 hours begin. Some prosecutors add the 72 hours to the first 24 hours, others make the 72 hours start from the arrest and some others make the 72 hours start when they are informed of the case.

Regarding this specific point, the Supreme Prosecution Cassation Office's representative explained to the evaluation team that in such cases they advise prosecutors to set the beginning of the 72 hours at the arrest of the person sought.

Within these 72 hours the issuing Member State has to provide a translation of the EAW into Bulgarian⁸. In some Member States it is difficult to find a translator for Bulgarian within this short timeframe. Often the issuing State has to translate the EAW into English and then the English version is translated into Bulgarian. This takes time and could lead to mistakes in the translation. The police officers at the IOCD stated that from a practical point of view it would not be a problem to accept an EAW in English. They believe it would enhance the process.

Bulgaria does not keep statistics on how many persons are released because the translated EAW has not been received by the Bulgarian authorities within 72 hours, but the evaluation team was informed that such cases are rare.

3.2. The principle of proportionality

3.2.1. As issuing authority

The EEAWA does not make explicit reference to the principle of proportionality. Even if it is not written in the Bulgarian law, the MoJ stated that this principle is incorporated into Bulgarian standards through the application of European legislation. The MoJ added that by virtue of Article 66 of the EEAWA, the provisions of the Code of Criminal Procedure apply to matters not covered by the EEAWA. And from the MoJ's point of view no cases have been identified from which to conclude that this principle needs to be explicitly included in the EEAWA.

When issuing an EAW, judges and prosecutors in Bulgaria use the following criteria: the seriousness of the offence, taking into account the danger posed by the act and by the perpetrator, and the damage caused by the crime. They also assess the probable penalty which would be imposed if the person sought were found guilty and whether this penalty would be a deprivation of liberty. Moreover they consider the possibility of detaining the person in Bulgaria after his/her surrender and the interests of the victims of crime, which should be adequately protected.

⁸ Article 42(5) of the EEAWA

The main principle taken into account when deciding which international legal instrument to use is whether the person is wanted for trial in Bulgaria, in which case an EAW should always be issued. The same reasoning is applied if the participation of the person in the proceedings is necessary for other reasons.

The Code of Criminal Procedure⁹ allows the use of videoconference interrogation when the person to be interviewed is abroad. The visit to Plovdiv Appeal Court confirmed the availability of videoconference equipment for magistrates. In practice, the following acts of investigation can be done by videoconference: conducting an interview with the defendant, or between the defendant and a witness. A European Investigation Order (EIO) will be used for the forensic psychiatric examination or other investigative measures for revealing the objective truth in the case.

The opinion of the MoJ and magistrates on the respect of proportionality when issuing an EAW was questioned by the practising lawyers' representative. According to this practitioner there is no legal framework for proportionality in Bulgaria and no proportionality test is done by the Bulgarian magistrates. To support her reasoning she gave the evaluation team several examples:

- In a criminal case where her client was abroad she specifically asked for an interview by videoconference. She did not receive any reply to her request for a year.
- In another case she mentioned, an EAW was issued against a refugee. However the offence in question was not one that would never be punishable by imprisonment. After the surrender, the person received a suspended sentence. She therefore argues that magistrates failed to take into account the probable penalty which would be imposed.
- In numerous cases the practising lawyers' representative stated that prosecutors overuse the national arrest warrant even if the person is not a fugitive. She added that accusing a person in her/his absence creates a legal presumption that the person is a fugitive. Thus it allows the use of an EAW when less restrictive measures could be taken.

⁹ Under the conditions set out in Article 138(7) of the Code of Criminal Procedure

The competent national authorities are aware of the Commission's 'Handbook on how to issue and execute a European arrest warrant' and are familiar with it. The Commission's handbook is published on the SJC's website, in the National Criminal Cases Network Section. Thus it is available to all the judiciary.

The Bulgarian authorities also mentioned difficulties with the UK. In some refusals to execute an EAW, the reason given is the disproportionate nature of the action taken by the Bulgarian judicial authorities in relation to the amount and nature of the penalty imposed.

3.2.2. As executing authority

The Bulgarian authorities explained that the lack of proportionality is not listed as a separate ground for non-execution under national law or Framework Decision 2002/584/JHA. The judges explained that the court's possibilities as executing authority to assess the proportionality of an EAW are very narrow and are essentially limited to assessing the presence of mandatory and optional grounds for non-execution.

3.3. Exchange of information

3.3.1. Principle of direct contact between judicial authorities

According to the EEAWA, the Bulgarian judicial authorities (court and prosecutor's office), in applying Framework Decision 2002/584/JHA, may communicate directly with the judicial authorities of the Member States, insofar as this is provided for in their legislation. Direct contact is also provided for in cases where the Bulgarian judicial authorities are acting as issuing authorities.

In rare cases, the MoJ receives requests for assistance from a Bulgarian judicial authority to locate the competent authority of the executing Member State. In such cases, the MoJ's practice is to provide a link to the EJM website and some brief practical explanations of its use. It was noted that after such a clarification is given, repeated requests are no longer received. Occasionally a Bulgarian judicial authority might ask the MoJ for guidance on how to handle international cooperation in a specific criminal case. The MoJ considers such requests are subject to the independence of the judiciary. Thus it will advise the judicial authority to refer to the EJM contact points.

Similar observations can be shared in cases where Bulgaria is the executing State. For example, assistance in examining an EAW issued by another MS may be requested when, despite the efforts of the Bulgarian executing authority, the requested information has not been received or it is considered that the information should be provided by or through the MoJ of the other Member State.

The only increase in communication between the MoJ and some Member States is a consequence of the ruling of the ECtHR in the Neshkov case and of the ruling of the CJEU in the Aranyosi/Căldăraru case, relating to the requirements for guarantees as to the conditions in places of imprisonment, in so far as the administration of prisons and pre-trial detention facilities falls within the remit of the MoJ.

The importance of the Bulgarian desk at Eurojust was also stressed. When an ‘action day’ is organised the Bulgarian desk receives in advance the EAWs and sends them to the prosecution office in Bulgaria (which coordinates all investigative measures) in order to help the issuing authorities to identify and locate the person sought and then to forward the EAWs to the competent body.

From a general perspective, the Bulgarian authorities stated that there were no serious difficulties or obstacles to the exchange of information. They admitted that there were some delays in communication and inconsistencies in the information published on the EJN’s website regarding contact addresses (postal or email) or authorities with whom communication should take place. They highlighted that, especially in view of the COVID-19 pandemic, information is exchanged by email, which speeds up interaction but at the same time requires the database with the email addresses of judicial and central authorities to be kept up to date.

3.3.2. *Bulgaria as executing State*

It is important to underline that there is no legal requirement in Bulgaria to obtain the original EAW in order to initiate the proceedings. A possible situation in which the original could be requested is when the copies received electronically are of a poor quality or illegible. With the more widespread use and availability of new technologies, Bulgarian practitioners assume that this will no longer be a problem. With this in mind, they would encourage wider use of email instead of fax machines.

3.3.2.1. Most common type of information deficits

Bulgarian courts as executing authority are most often confronted with insufficient information about the crime(s) of which the person sought is accused. This information should be included in the EAW to assess whether the crime is in the list of the 32 so-called 'European crimes' for which double criminality is not required, or whether it falls within the range of crimes for which the issue of double criminality should be investigated.

In rare cases the person is not fully identified and there is a need to clarify his/her identity and the extent of his/her involvement in the crime under investigation.

When the surrender is requested in order to serve an effective sentence, details are required as to the time when the sentence entered into force (became final). Where such a sentence has been handed down *in absentia*, the additional information relates to the notification of the person about the criminal proceedings or the judgment, the participation of defence counsel in the *in absentia* proceedings, and the possibility of a retrial with the person present.

In cases where an EAW is issued for the purpose of prosecuting/conducting criminal proceedings against a Bulgarian citizen or person permanently residing in Bulgaria, guarantees are required from the issuing State that the person will be returned to Bulgaria to serve the prison sentence imposed. Pursuant to Article 41(3) of the EAWA these guarantees need to be given by the issuing State before the Court takes its decision. Bulgarian practitioners explained that a request for such guarantees could lead to delays due to late replies. Nevertheless, the Bulgarian judges stated that such difficulties are easy to overcome.

The MoJ has also identified cases where information has been requested on the entry into force of the sentence, the summoning of the person, the right to reopen the proceedings or the possibility of review in the event of conviction *in absentia*. In one case at the end of 2019, additional information was requested on the capacity of the issuing State to provide and guarantee adequate supportive treatment for persons requested for surrender who suffered from serious chronic illnesses. The lack of any response resulted in the refusal to surrender the person. In 2020, additional information was requested from the district court in two cases in relation to the possible imposition of a life sentence (Article 5(2) of Framework Decision 2002/584/JHA).

3.3.2.2. Channel to request additional information

When shortcomings are identified they are overcome by applying Article 15(2) of the EAW Framework Decision, meaning by direct contact with the issuing authority. In practice the request for additional information is translated into the language of the issuing MS and sent to the email and/or fax number indicated in the EAW.

The request is made on the basis of a ruling made by the court during a hearing, which may also be initiated by the prosecutor. The prosecutor and the defence counsel must take a position on its necessity. As regards the role of the prosecutor in requesting additional information, the practice varies: the prosecutor may, on his/her own initiative, take measures to fill in gaps, except where they relate to the translation of the EAW or to unmet parts of the form; the prosecutor may request and collect the necessary information where the EAW has been received through the SIS, the EJN system or INTERPOL, and submit it to the court.

In isolated cases, the MoJ has received requests from court to send requests for additional information. Usually the reason given for this is delayed response and the court's wish to address the request through the central authority of the issuing Member State.

The channels of Eurojust and the EJN are also helpful and allow effective and quick contacts with the issuing authority.

Eurojust is consulted when there is no reply and there is a risk that the time-limit for execution of the EAW will expire, and in cases where the information requested is specific and requires further clarification or elaboration. The Bulgarian desk at Eurojust is also used in many urgent cases for obtaining various types of supplementary information or documents, such as: a return guarantee according to Article 5(3) of the EAW Framework Decision; final verdicts; clarification in complicated cases; information about the role of the accused/suspected person in the criminal proceedings as a whole; when, where and how the offence in question was committed; what prison conditions are like; information about health-related problems which jeopardise actual surrender; whether the accused person has been notified about the criminal proceedings against him/her; clarification of the legal and factual situation; requests for a defence lawyer from the issuing Member State to be assigned to assist the wanted person in the executing State; how long the person was detained in the executing Member State, and so on.

The Bulgarian authorities mentioned that magistrates make frequent use of the SIS to exchange information. It is considered to be the preferred channel to exchange information because up to now there is no secured EU mechanism to exchange information among European judiciary. In practice the Bulgarian judiciary sends its official communications, as a scanned copy via email or by fax, to the SIRENE bureau, which forwards it. Bulgarian practitioners therefore underline the importance of the National SIRENE Bureau.

3.3.2.3. Consequences following a request for additional information

In principle, no time limits are set for obtaining additional information from the issuing authorities, but the letter to the issuing authority usually contains a request for urgency, given that the EAW execution procedure is limited to 60 days. In most cases, these requests are treated with urgency by the issuing authorities and the overall 60-day deadline is met.

Compliance with the deadlines is also usually achieved thanks to the help of the EJM contact points (15 judges) and, in urgent or more complex cases, the assistance of the Bulgarian National Desk at Eurojust.

According to the Bulgarian authorities there are still delays in receiving information, both in the issuance and in the execution of EAWs, from Greece and Cyprus.

Bulgarian practitioners also shared cases where the EAW issued for prosecution against a Bulgarian national or resident in Bulgaria lacked the guarantees from the issuing authority required under Article 41(3) of the EEAWA (Article 5(3) of the EAW Framework Decision). In these cases, the Bulgarian judicial authorities require these guarantees from the issuing authority, and go through the SIRENE Bureau to obtain them. In general, no delays are identified in such requests and the requested information is usually received within the time limits set by the executing authority. However there are cases where the requested guarantee is not provided by the issuing Member State, which leads to non-execution of the EAW.

When deadlines are exceeded Eurojust is informed. Under the EEAWA such information is sent directly to Eurojust. Around three or four times per year the Bulgarian desk receives a notification of delays in taking a court decision on the surrender of a person sought. The reasons mentioned for such delays are health problems or the disappearance of the person sought when less severe restraint measures were imposed (like bail or home arrest).

3.3.2.4. Follow-up information

Normally, the Bulgarian competent authorities inform the issuing authority *ex officio* of any relevant information regarding the execution of the EAW, by sending the decision to surrender. If further information is requested, it is provided to the issuing authority in a timely manner.

Also, according to the established practice, during the actual surrender of a person from Bulgaria to another country, the escorting officers provide their foreign colleagues with copies in Bulgarian of the decision allowing execution of the EAW, as well as a reference to the period of detention in connection with the execution of the EAW issued for that person. This obligation stems from the EEAWA¹⁰.

¹⁰ Article 54(1) in conjunction with Article 26(3)

Bulgarian practitioners added that exchanges of information could happen to establish clearly the length of detention of the person sought before his/her surrender, or any other relevant information. Especially in the situation related to the spread of COVID-19, there was a significant amount of correspondence related to the health status of persons and the employees responsible for them during their surrender.

3.3.3. *Bulgaria as issuing State*

3.3.3.1. *Types of unnecessary requests for additional information*

Bulgarian practitioners mentioned some cases in which a Member State had asked for additional information they considered unnecessary. In one case the executing authority asked the Bulgarian court to indicate and present evidence of the guilt of the person sought. The Bulgarian court explained that such a request could not be executed because it would violate the impartiality principle, which in turn would be a ground for withdrawal of the case.

The Bulgarian national authorities stated they face great difficulties due to the fact that court decisions and additional supporting information are required. Ordinary decisions tend to be about 10-15 pages long. But in several cases, court decisions (especially in appeal cases) are very long: sometimes 200 or more pages together with the required additional documents. The translation of these documents into the language of the executing MS takes time, is costly, leads to a delay in the execution of the EAW and unnecessarily burdens the proceedings.

According to the MoJ, the additional information requested mainly relates to the prison conditions in Bulgaria. Information on the factual situation and the current Bulgarian legislation is also requested.

3.3.3.2. *Follow-up information*

As requesting authorities, the national authorities of Bulgaria also receive necessary follow-up information that they have requested.

3.4. Grounds for refusal

3.4.1. *Refusal in the event of a potential risk of violation of fundamental rights in relation to detention (EAW Framework Decision Article 1(3))*

3.4.1.1. Assessment of detention conditions

3.4.1.1.1. As executing State

Bulgarian practitioners stated that they prioritise the principle of mutual trust. Nevertheless in a few cases the Bulgarian judicial authorities, when acting as executing authorities, have sent requests for guarantees as to the conditions in the places of imprisonment in the EAW-issuing Member State. This practice is not very developed and practical experience in this field is not extensive.

The Bulgarian courts stated that they assess the potential risk of violation of fundamental rights in relation to detention conditions on the basis of the case law of the ECtHR. They apply the standards to be met by detention facilities as set out in the judgments of the Court, such as *Mursic v. Croatia*, *Sylla*, *Nollomont v. Belgium*, *Torreggiani and others v. Italy*, etc.

Bulgarian courts also draw information on conditions at detention facilities in the individual Member States from information provided by the European Organisation of Prison and Correctional Services (Europris). They use the Europris' website as a source of information on the conditions of imprisonment at different locations in European countries.

In case of suspicion that the conditions do not meet the requirements, information should be requested from the issuing authority – for example, whether the persons in the places of detention or imprisonment have the minimum necessary living space of four square metres, whether the necessary sanitary and hygienic conditions are present, whether there is access to a private bathroom, access to fresh air and daylight, whether detainees are able to take a walk in the fresh air and for how long. The questions usually asked concern the material side of the person's accommodation in the places of detention or imprisonment, and not so much the education and rehabilitation work that should be done with them (mainly in prisons).

Bulgaria's case law on requests for information about prison conditions in the issuing Member State is quite limited; the issue generally does not seem to arise in cases of surrender from Bulgaria. One case of refusal was mentioned, but this case related more to the specific health conditions of the person sought than systemic deficiencies in the issuing Member State. In another case the court relied, as a guarantee, on the fact that the issuing State was a Member of the EU and had signed the relevant instruments.

As a source of information about the conditions of detention in the issuing EAW country, the courts in Bulgaria most often use the database from the website of the EJM – specifically the section on EAW detention conditions. This section includes both information on detention conditions in EU Member States such as the size of the premises, sanitation (access to toilet and bathroom facilities), length of stay of detainees outside, etc.) and reports from various institutions in Europe concerning these conditions.

The Bulgarian authorities explained that the assessment of detention conditions may be initiated at the request of the person sought, but the prosecutor and the court may also make the assessment *ex officio*.

3.4.1.1.2. As issuing State

As prisons are under the responsibility of the MoJ, this ministry is competent for providing the executing State with information on detention conditions. But the Bulgarian authorities mentioned urgent cases in which guarantees had been provided by the judicial authority. Such guarantees were not accepted by the executing Member State and their confirmation by the MoJ was required.

The Bulgarian authorities consider that the executing State usually allows sufficient time for them to send any additional information requested about detention conditions.

The exchange of information is carried out mainly by email. A written response is prepared by the relevant Deputy Minister of Justice and a letter from the Director-General of the Directorate-General for the Execution of Sentences is attached. Correspondence is translated into the language of the executing State. In some cases, guarantees may also be incorporated in the text of the Deputy Minister's letter.

When preparing the guarantees, the requirements of the requesting institution have to be observed, providing information according to the form and the questions in the request. In general, the guarantees focus on the density of population in the relevant prison, compliance with the rule of at least four square metres of living space without furniture, the type of furniture, the availability of separate bathrooms, access to outdoor areas and the possibilities for various activities related to the educational and correctional goals of the sentence of ‘imprisonment’, as well as access to running water, food, and mechanisms to protect the inmates from violation of their rights. When transferring persons from another MS to Bulgaria, information is also provided about the pre-trial detention facilities (the rules and requirements for accommodation are the same as in the places of imprisonment). Persons in pre-trial custody are compulsorily accommodated separately from those sentenced to imprisonment.

The Bulgarian courts do not have mechanisms or any obligation under the EEAWA to monitor what happens to persons surrendered at the request of foreign judicial authorities that have provided guarantees. Bulgaria considers that such a tracking mechanism could be implemented by the central authority of the executing Member State, but there should be explicit referral to this effect by a person with a legal interest. Bulgaria’s experience shows that the task is often undertaken by diplomatic representatives and civil society organisations.

The MoJ mentioned that some Member States follow up on guarantees given by the Bulgarian authorities. In 2015, the consular services of Austria and Germany took a keen interest in whether the guarantees given were respected. In this regard, consular officials have also visited the prisons where the surrendered persons were held. Similar requests were made by the UK authorities before Brexit. An on-site visit to a Bulgarian prison was arranged for a prosecutor from the Crown Prosecution Service, in order to see first-hand the conditions and the work of the prison administration in this regard.

However, such requests for on-site visits have not been made in recent years, and the follow-up on safeguards has been more in the context of pending criminal proceedings and allegations of violations by the person’s defence counsel.

Furthermore, a representative of the Directorate-General for the Execution of Sentences (MoJ) explained to the evaluation team that foreign prisoners are all incarcerated in Sofia prison and that the four square metres are provided for by law¹¹ and as a matter of fact in Bulgaria, except in one facility.

3.4.1.2. Consent of the person sought

The person's consent to his/her surrender is a ground for applying the urgent procedure for his/her surrender to the issuing Member State¹². The consent will be taken into account by the court, insofar as this is an indication that he/she is not afraid of the conditions under which he/she will be detained in the issuing State.

In practice the Bulgarian courts consider the consent of the person sought to his/her surrender as prevailing over a potential risk of poor detention conditions in the issuing State.

Nevertheless if there is evidence of problems with the other conditions, additional information will be requested and assurances will be sought about the specific place where the person will be detained; notably if the prison meets the requirements of the ECHR and the European standards for conditions in places of imprisonment.

3.4.1.3. Delays or refusal in the case of disputes relating to prison conditions and Bulgarian solutions to these problems

Requests for additional information on detention conditions can lead to delays or refusals.

The Bulgarian authorities gave several examples involving the United Kingdom as executing State. The judicial authorities from this former Member State request guarantees as a standard. As soon as the person is found or arrested, the UK authorities ask for guarantees regarding detention conditions in Bulgaria. It has also be mentioned that there are significant delays in the execution of the EAW, which significantly exceed the deadlines provided for in FD 2002/584/JHA. Some cases are under consideration for more than a year and are still pending.

¹¹ Article 43(4) of the Execution of Penalties and Detention in Custody Act (EPDCA)

¹² EEAWA art. 45

Some English judicial authorities have rejected EAWs. After assessing the information provided they considered that the living conditions in the prison due to receive the person sought did not comply with Article 3 of the ECHR. Moreover, following those refusals, the UK authorities did not inform the Bulgarian MoJ if they were enforcing the sentence in the UK. This means that there is a risk of impunity in these cases.

The Bulgarian authorities also mentioned five separate cases (two from the UK and three from the Netherlands) where the executing jurisdiction had requested extremely detailed information on the opportunities for inmates to have social contacts and engage in activities. Additional information had been duly provided.

To speed up the process when executing Member States request additional information on detention conditions the MoJ has developed a specific mechanism. When sending a response to a request for guarantees about specific place of imprisonment, a standardised text is used. It allows a quick response within two to three working days, given the need for translation.

To facilitate the communication with the executing authority in the United Kingdom and find support, Bulgaria has established contacts with a Legal Liaison Officer. The assistance of the National Desk at Eurojust is also used in some cases.

The Bulgarian authorities have reached an operational agreement with Germany to provide a general/standardised guarantee on the basis of the provisions of the Bulgarian Execution of Penalties and Detention in Custody Act (EPDCA), requiring the accommodation of sentenced and/or detained persons in accordance with the requirements of the ECHR and European standards for conditions in places of imprisonment. The latest version of this general guarantee (drafted in 2020) expressly specifies that the person will have enough square metres and good treatment, and how she/he can defend her/his rights. After the provision of the general guarantee, the German authorities no made inquiries in each individual case. Currently the MoJ is disseminating this agreement to all the Bulgarian practitioners.

When the executing authorities refuse to execute a Bulgarian EAW, the Bulgarian authorities explain that they have two options:

- when the surrender is requested for an investigation, either they suspend the criminal proceedings and request the person's surrender again with guarantees that he/she will be put in place of detention where the conditions are in accordance with the European standards, or they conduct the criminal proceedings in the person's absence if there are prerequisites for this;
- when the surrender is requested to enforce a sentence, either they send a follow-up request with guarantees that the person will be put in a place of detention with conditions that meet the European standards, or they request the executing Member State to enforce the penalty imposed by the Bulgarian court in accordance with Framework Decision 2008/909/JHA.

According to the MoJ Article 62(1)(p. 1 to 5) the MoJ's Director-General for the Execution of Sentences may, if necessary in order to comply with the requirement of a minimum living area in the sleeping room for each prisoner of not less than four square metres, transfer the person to another place of deprivation of liberty, taking into account his/her wishes. The MoJ explained that this legislation, and already established practice, guarantee the requirement that the requested persons will be put in places of deprivation of liberty where the conditions are in accordance with the ECHR requirements and the European standards.

Notwithstanding all these measures, some Member States refused to execute EAWs because of detention conditions in Bulgaria. Conversely, as executing State there was only one case in which a Bulgarian court refused to surrender a person because of detention conditions in the issuing State.

3.4.2. *Refusal in the event of judgment in absentia*

3.4.2.1. Lack of information regarding in absentia judgments

The National Network of Judges is not aware of any cases since FD 2009/299/JHA entered into force in which the Bulgarian judiciary has encountered difficulties as regards the grounds for refusal in the event of a decision rendered *in absentia*. However some practitioners mentioned a refusal by the Netherlands to enforce an EAW issued by the Regional Prosecutor's Office in Sofia.

Most of the Bulgarian courts, acting as executing authorities, complained about the lack of details in the EAW form. They mentioned a huge exchange of information in relation to *in absentia* judgments with a lot of pending questions (Was the accused person notified about the prosecution and trial? Was the person represented by a defence lawyer? Had the person been given the opportunity to appeal the judgment? Had the person had a right to re-establish criminal proceedings after his/her surrender, and was there any guarantee for that? etc.).

Regarding this issue, the Bulgarian authorities mentioned an example with EAWs issued by Romania. Usually Romanian EAWs contain a general statement that the person was duly summoned to trial, but in practice the summons may be served to any person staying at the address. In such cases the Bulgarian authorities request additional information.

Generally speaking, the Bulgarian authorities consider that the issuing authority should provide more detailed information whenever Article 4a of the Framework Decision on EAW is applied, by carefully filling in the relevant section of the EAW form.

The Bulgarian practitioners found the EAW certificate sufficient in regard to *in absentia* judgments. A representative of the Bulgarian judges indicated that a separate section in the form in which a detailed description of how the person was informed about the trial proceedings could be a good option. Experts agree on the importance of the description of how the person is informed about the trial proceedings and recall that the box d) 4 of the certificate allows for such description.

3.4.2.2. Impact of the *Tupikas*¹³, *Zdziaszek*¹⁴ and *Ardic*¹⁵ judgments

The practitioners explained to the evaluation team that the CJEU's case law in the *Tupikas*, *Zdziaszek* and *Ardic* cases had not created an increase in requests for additional information.

13 CJEU: *Tupikas*, C-270/17 PPU, 10 August 2017, ECLI:EU:C:2017:628

14 CJEU: *Zdziaszek*, C-271/17 PPU, 10 August 2017, ECLI:EU:C:2017:629

15 CJEU: *Ardic*, C-571/17 PPU, 22 December 2017, ECLI:EU:C:2017:1026

3.4.3. *Other grounds for refusal*

3.4.3.1. *Difficulty in assessing ne bis in idem issues*

The Bulgarian judicial authorities encountered difficulties because of failure by the issuing authority to describe clearly, precisely, and in detail on the EAW form the offence for which the person was prosecuted and his/her surrender requested. These issues were overcome after requests for additional information and clarifications from the issuing authority or after the EAW was supplemented. This point appeared as an isolated problem and the Bulgarian authorities mentioned it would be solved via Eurojust or contacts with the issuing Member State.

3.4.3.2. *Issues linked to double criminality*

The Bulgarian judicial authorities consider, when filling in an EAW form, that the issuing authority must describe the objective and subjective features of the offence, as well as the specific actions of the person which fall under a certain rule of national law within the issuing State and constitute a criminal offence. They highlighted that what is really important is the description of the facts more than the number of an Article in domestic criminal legislation. The description should be made in simple and comprehensible sentences, which should then be translated into the language of the executing State.

The Bulgarian authorities mentioned several cases in which the translation of the EAW itself had been inaccurate and misleading.

3.4.3.3. *No specific difficulties linked to the CJEU's extensive jurisprudence*

The Bulgarian authorities did not mention other difficulties linked to the CJEU's extensive jurisprudence and its grounds for refusal.

3.5. Further challenges

3.5.1. *Transit*

Transit of the person sought is an extremely important topic for the Bulgarian authorities. Traditionally Bulgaria uses the assistance of two or three Member States (Austria, France and Germany) as countries of transit. Bulgaria considers that it has established good operational contact with its EU counterparts and receives timely assistance from them.

The Bulgarian transit process starts with a request prepared by the Directorate General for Security, under the responsibility of the MoJ. This request is forwarded to the Directorate for International Legal Cooperation and European Affairs which assess it and share it with the necessary documents to the MS of transit. Following the approval of the plan by the MS of transit, the approval is sent to the SPCO and Directorate General for Security. Then, by a decree, SPCO orders the Directorate General for Security to carry out the approved plan. All practical arrangements are usually communicated via the SIRENE bureau in the IOCD.

From a practical point of view, the Bulgarian police have not identified any difficulties or problems in organising transits. However it was underlined that sometimes agreements to plan transit are received late. Additionally, the ten days allowed to carry out the actual handover of the person could be very short because of weekends.

The Directorate-General for Security, explained that, in rare cases, when the person sought is not a Bulgarian citizen and the temporary travel documents issued to replace the identity documents do not comply with the requirements of the country through which the transit is to take place, the plan for reception of the person is blocked. In this regard, the MoJ believes it would be beneficial to create a form of identity document for the detainee that would be common to all EU MSs.

Moreover the Bulgarian authorities mentioned cases in which the escorting officers had not been provided with documents reflecting the period of detention of the person in the executing MS and/or documents related to his/her health condition or his/her personal belongings.

3.5.2. *Follow-up on CJEU case law*

The International Law and EU Law Directorate at the Ministry of Foreign Affairs informs the MoJ *ex officio* about the jurisprudence of the CJEU, including the initiation and development of cases related to mutual recognition instruments. The activities of the CJEU are also followed by the experts in the MoJ who participate in the working parties of the EU Council that deal with cooperation in criminal matters (CATS, COPEN, JHA Counsellors), where the case law of the CJEU, including on EU mutual recognition instruments, is presented and discussed on a regular basis.

New court decisions are discussed within the MoJ with a view to assessing the need for legislative action. When such a need is identified the competent authorities are consulted and a working group is set up to draft legislative texts.

It was also mentioned that implementing legislation has been amended to reflect the changes made to the relevant mutual recognition instruments and the adoption of the EU legal framework on procedural safeguards for suspects and accused persons in criminal proceedings.

When asked about the *Petruhhin*¹⁶ case law, the MoJ replied to the evaluation team that it is always applied, and that the MoJ coordinates the reply with the local prosecution office. The MoJ also stated that it always replies when it is requested by the executing State.

3.5.3. *Outcome of the CJEU's judgments in C-648/20 and C-206/20*

One of the most important legal issues discussed during the onsite evaluation was the outcome of the CJEU's judgment in case C-648/20, and the related CJEU ruling in case C-206/20 of 24 June 2021, on effective judicial protection in the event of the prosecutor issuing an EAW.

The CJEU, assessing the Bulgarian issuance of EAWs, ruled that the requirements inherent in the effective judicial protection that must be afforded to a person who is the subject of an EAW for the purpose of criminal prosecution are not satisfied where both the EAW and the judicial decision on which that warrant is based are issued by a public prosecutor but cannot be reviewed by a court in the issuing Member State prior to the surrender of the requested person by the executing Member State.

According to this recent jurisprudence from the CJEU, all already pending Bulgarian EAWs for prosecution and any EAWs issued in future do/will not meet the legal requirements of the Framework Decision on the EAW. This basically means that these EAWs are invalid and the executing Member State is unable to execute them.

¹⁶ Case law of the CJEU in C-182/15

It is important to note that the decisions of the CJEU do not affect the prosecutors' competence to issue EAWs for the execution of a sentence or the competence of the courts to issue EAWs during court proceedings.

Following the decisions of the CJEU Bulgaria quickly decided to convene an inter-ministerial working group, involving magistrates, representatives of the Bar and academics. The task of the working group is to analyse and propose legislative amendments that would provide an effective judicial remedy allowing persons wanted under an EAW to participate in criminal proceedings prior to their transfer from the executing State. Unfortunately the parliamentary situation during the onsite evaluation was not conducive to considering the adoption of a new law in the coming months.

While waiting for these amendments, the evaluation team proposed a practical solution to the Bulgarian practitioners: prosecutors could ask courts to endorse the EAWs by virtue of the CJEU's case law and hierarchy of norms; conventions taking precedence over national law.

While some representative of the prosecutors stated it was worth trying this approach, others replied that the Constitution does not allow prosecutors to create law. The Bulgarian judges whom the team met explained that Bulgarian law does not provide for such practice and that they would not approve to any judicial control of the EAWs submitted.

As mentioned above, the IOCD informed the evaluation team that the problem had already led to other Member States flagging Bulgarian SIS alerts based on these EAWs. (cf. 3.1.5.1.)

3.5.4. Practical problems link to the COVID-19 pandemic or other diseases

A major problem during the pandemic in arranging surrender/transfer of convicts and the related transits was the lack of scheduled flights and bans on travel and border crossing in some countries. During the COVID crisis, transfers to or from countries close to Bulgaria (e.g. Austria and Hungary) were carried out overland, with transit through Romania.

In the implementation of the EAW procedures and transfers under Framework Decision 2008/909/JHA and the related transits through third countries, the Directorate-General for Security at the MoJ faced difficulties in carrying out the surrender in countries during national lockdowns related to COVID-19 or where other restrictive measures had been imposed by health authorities on their territory.

Moreover, before organising a surrender, the Directorate-General for Security requires a negative COVID-19 test. It was explained to the evaluation team that this is needed in order to comply with the safety measures when travelling by land and air, both for escorting officers and for civilians in the immediate vicinity.

If there are detainees infected with COVID-19, tuberculosis or other contagious diseases, the MoJ's Directorate-General for Security is required to promptly notify the International Department of the SPCO and the IOCD at the Ministry of the Interior, so that they can take actions in order to extend the deadline for transfer and to notify the foreign country for the health status of the person(s). Once the reasons for non-implementation of the procedure are no longer applicable, immediate operational measures are taken to draw up a new surrender plan. If necessary, it may also be possible to ensure the presence of a doctor in the team responsible for receiving/transferring the person.

3.5.5. *'Voluntary appearance' of the person sought*

The Bulgarian authorities questioned the cases of the so-called 'voluntary appearance' of the wanted person for his/her surrender. There have been cases of non-appearance of requested persons for surrender, often after the convoy has left Bulgaria for the other MS.

In some cases, with Spain and UK (Scotland), the person's absence was established at the airport of the executing State on arrival of the Bulgarian delegation. Such incidents generate additional costs for the issuing State and have a direct impact on mutual trust between the judicial, police and security authorities of the Member States, which is not in the interests of good cooperation and creates preconditions for obstruction of justice. Furthermore, according to the evaluation team this practice is not in compliance with Article 12 of the Framework Decision on the EAW.

In one case with the UK, the escape of the wanted person was followed by a nearly two-year search before he was captured and surrendered to the Bulgarian authorities.

The Bulgarian authorities estimate that their national law ensures good practice. When a decision to surrender is pronounced the executing judicial authority is obliged to impose a measure of ‘detention in custody’ on the wanted person until his/her actual surrender to the issuing Member State. In this way, the appearance of persons sought during the surrender is ensured, without the risk of the criminal prosecution being thwarted.

Bulgarian law¹⁷ provides that the detainee may ask the district court to replace the provisional detention by another measure. Discussion with practitioners showed that this possibility is almost never used. Moreover electronic monitoring is not used in practice in such situations.

3.5.6. *Other practical difficulties*

A representative of the Sofia City Court prosecution office mentioned that generally speaking there are no difficulties with EAWs. This practitioner also explained that in some cases lawyers try to push for legal aid in the issuing State and have access to the case file in the issuing country. This slows down the process. This opinion was not shared by the judges’ representative from Sofia City Court.

During the visit to Plovdiv Appeal Court the evaluation team asked the Bulgarian magistrates about their practice in case of competing EAWs. None of the practitioners present during this meeting mentioned the use of Eurojust in such cases. Nevertheless the representative of SPCO, a former member of the Bulgarian desk in Eurojust, highlighted that pursuant to Article 46(2) of the EEAWA in case of competing EAWs the court may consult Eurojust in making a decision. This practitioner added that she had experienced such situation and that the Court had followed the advice given by Eurojust. Although seeking the advice of Eurojust is mentioned in the law, the experts did not find any such recommendation in the Bulgarian guidelines and believe it would be advisable to mention it.

¹⁷ According to Article 43(7) of the EEAWA, SG No. 46, 3.6.2005 (amended SG No. 86/2005)

3.6. Statistics regarding EAW

3.6.1. Way to gather data

According to Bulgarian law it is mandatory for courts to send all judgments related to EAWs to the MoJ each year. The MoJ registers this data in specific electronic files.

Discussions with the MoJ revealed that these judgments are sent in different ways: by post in paper or scanned via email. No standard way to transfer data has been set up and courts do not always send it within the deadline legally defined. This complicates the MoJ's task of keeping statistics.

Moreover, the MoJ has its own statistics, as does the Directorate-General for Execution of Sentences. These two bodies do not compare or merge their statistics in order to get a fuller picture.

In parallel, the courts have a strong case management system. In this system each legal act has a specific code. This means that any judgment concerning EAWs can be found by making a search with the code referring to the EAW provisions. The software is used to provide statistics to the Supreme Judicial Council twice a year. The MoJ does not have access to this case management system.

3.6.2. Statistics presented in Plovdiv

During the meeting in Plovdiv Appeal Court the evaluation team was provided with several statistics regarding EAWs. Two tables in particular attracted the attention of experts:

Number of EAW cases between 1 January 2015 and 31 December 2020

District court	Approved	Rejected	Dismissed	Total
Plovdiv	48	11	2	69
Haskovo	115	13	1	129
Stara Zagora	25	4	1	30
Pazardzhik	33	3	2	38
Kardzhali	9	1	-	10
Smolyan	6	-	1	7
Total	236	32	7	275

Following this table more than 85% of the EAWs sent to the district courts under Plovdiv Appeal Court's jurisdiction are executed. Moreover, the Bulgarian practitioners explained that the majority of cases refused are EAWs issued for enforcement of a sentence and after the refusals the courts agreed to enforce the sentence in Bulgaria. That means that nearly all the EAWs sent to the district courts mentioned in the table end with the surrender or imprisonment of the person sought.

The second table presents the average duration of EAW cases at the district courts under Plovdiv Appeal Court's jurisdiction:

Average duration of EAW cases between 1 January 2015 and 31 December 2020

District court	Average number of days
Plovdiv	29
Haskovo	24
Stara Zagora	36
Pazardzhik	34
Kardzhali	28
Smolyan	15
Average duration	27

These figures demonstrate that EAWs are judged in a timely manner, before the deadline of 60 days set by Framework Decision 2002/584/JHA¹⁸. This situation can be explained by two factors. Firstly Bulgarian law has set short deadlines for courts to assess an EAW. Secondly, these cases are prioritised and the judges in district courts have enough time allocated to these cases, in order for them to set hearings within the legal deadlines related to EAWs. Moreover, the Bulgarian judges informed the evaluation team that the average duration of EAW cases six years ago was around 38 days – today it is 27 days. This decrease in duration can only be explained by the prioritisation and the optimisation of the procedure for handling EAW cases.

¹⁸ Article 17(3) of Framework Decision 2002/584/JHA

3.7. Conclusions

3.7.1. *General considerations*

The overall impression of Bulgaria's application of the Framework Decision on the EAW is positive. The procedures for executing and issuing EAWs are clearly regulated and structured in the Bulgarian EEAWA (SG No. 46, 3.6.2005). Both executing and issuing Bulgarian judicial authorities have wide experience in dealing with EAW matters. The national and European Union legal frameworks are well known and applied by the practitioners, and detailed guidelines for the prosecutors have been issued by the Prosecutor General's Office.

Visits to local authorities and talks with a wide range of actors in the various processes gave evidence of a system that runs efficiently and in which mutual trust is essential.

By initiating practical court procedures and allocating sufficient time for the judges and prosecutors to handle these cases expediently, Bulgaria has established a well-functioning system in which the vast majority of cases with Bulgaria as executing State are handled within the legal deadline; including at appeals level. In fact, over the last six years the average case-processing time for executing EAWs has been reduced from 38 to 27 days.

The EAW is the only Framework Decision for which the implementing legislation has designated a central authority (the MoJ). Its role respects the limited competences regulated by the FD, and where it is slightly broader (in matters regarding detention conditions, with the competent authority in its coordination), it does not go beyond the standards laid down in EU law.

At the level of both practitioners and policymakers, it was clear that the Bulgarian authorities are familiar with the recent case law of the CJEU. Especially the recent judgment in case C-648/20 and the court's ruling in the case C-206/20 have created a need for immediate action from the Bulgarian authorities. The Ministry of Justice has reacted fast, and a broad ministerial working group of both practitioners and independent experts has been established to analyse the legal implications of the decisions of the CJEU and to make proposals for amendments to Bulgarian legislation that will provide an effective judicial remedy for persons sought by means of an EAW for participation in criminal proceedings, prior to their transfer from the executing State.

As these recent judgments by the CJEU render both the current and any future arrest warrants issued by a prosecutor for participation in criminal proceedings impossible to execute, this issue must be dealt with urgently.

The role of the IOCD in regard to checking both outgoing Bulgarian EAW alerts in the SIS and alerts made by other Member States, here with the assistance of a prosecutor, is characterised by thoroughness and professionalism on the part of dedicated officers. Moreover, the IOCD acts as a facilitator of communication and advises foreign partners which judicial authorities should be contacted. Also, there is a clear interest and a campaign for training by the IOCD, with a team of experienced police officers who visit the regional offices, and training courses organised at special premises every two years. Thus the IOCD's activities should be emphasised as examples of good practice, providing valuable assistance to the judicial authorities.

Statistical data is collected and processed at two levels: the electronic system of the courts (which allows classification and identification of various types of cases and also production of statistical data) and the system put in place by the MoJ (which receives, by law, copies of decisions issued in the application of Framework Decisions 2002/584/JHA and 2008/909/JHA and, upon request, gathers data for the questionnaire of the Commission, along with a registry system which allows for cases to be classified under specific categories). Coordination of the two systems could possibly enhance the effectiveness of the reports.

The Bulgarian authorities make significant efforts to execute EAWs, apply the principle of mutual recognition efficiently and ensure the surrender of sought persons, observing the deadlines under the FD. This finding also stems from the judicial statistics, which show a large percentage of EAWs executed and a limited number of appeals against the decisions rendered by first instance courts. A balance between the need for the prompt execution of the EAWs and the thoroughness of the examinations performed by the magistrate is a requirement for all executing authorities.

3.7.2. *Bulgaria as issuing State*

Following the above-mentioned decisions by the CJEU in cases C-648/20 and C-206/20 the requirements inherent in the effective judicial protection that must be afforded to a person who is the subject of a EAW for the purpose of criminal prosecution are not satisfied where both the EAW and the judicial decision on which that warrant is based are issued by a public prosecutor but cannot be reviewed by a court prior to the surrender of the requested person by the executing Member State.

Of course criminal cases continue to emerge; Bulgarian prosecutors need to issue EAWs and alerts continue to be entered into SIS II. Obviously, legislative intervention is the best remedy, but it will be a lengthy process and ongoing cases will be affected. In the meantime Bulgaria is encouraged to find a practical legal solution to make the pending and any future arrest warrants subject to review by a court prior to the surrender.

Furthermore, the Bulgarian authorities need to ensure the systematic substitution of any pending EAWs in the SIS that do not meet the requirement of effective judicial control. This should be done as quickly as possible in order to avoid a person arrested on a Bulgarian EAW being released by the executing Member State. As mentioned earlier in the report, the IOCD informed the evaluation team that certain Member States had already flagged some Bulgarian SIS alerts following the decisions by the CJEU.

Bulgaria receives quite a few requests for additional information/guarantees in regard to prison conditions. The focal point for these requests is the MoJ. Providing the specific answers on an individual case-by-case basis is a delaying and time-consuming process. The development of a standardised guarantee, minimising the need for specific case-related information is commendable, and should be implemented in regard to other countries than Germany, whenever possible.

In the fourth round of mutual evaluations, the application of the principle of proportionality was a recommendation for Bulgaria. Considering the follow-up answer¹⁹, experts believe that in the meantime the subject has been discussed extensively in various contexts at EU level. Therefore Bulgaria is in a position to decide on the issuance of some form of regulatory measures to ensure that this principle is observed when issuing EAWs.

The Bulgarian authorities encountered difficulties in taking over the surrendered person because some executing Member States do not put in place sufficient measures to ensure the presence of the person sought at the time of the surrender. This is the practice of ‘voluntary appearance’ of the person in connection with the actual handover in the executing State. This practice may lead to poor application of the Framework Decision. Member States should therefore consider taking measures to ensure surrender actually takes place.

3.7.3. *Bulgaria as executing State*

The Bulgarian authorities are obliged by law to release a person arrested on an SIS alert if the translated arrest warrant is not received within 72 hours²⁰. Furthermore, the Bulgarian authorities only accept arrest warrants in the Bulgarian language. The Bulgarian language requirement combined with the strict deadline creates a risk of release of wanted persons, as the deadline can be difficult to meet in the issuing State, for practical reasons. The evaluation team therefore recommend that Bulgaria consider also accepting EAWs in other languages, at least in English.

In respect of the detention measures, the 24 hours spent under police arrest are not always deducted from the 72 hours arrest ordered by the prosecutor, which leads to uncertainties, possible infringement of fundamental rights and a degree of arbitrary treatment. Some legislative or institutional intervention would be advisable. Therefore the Bulgarian authorities are encouraged to implement common guidelines for prosecutors as regards the starting time of the 72 hours’ detention ordered by the prosecutor in surrender cases.

¹⁹ 14111/11

²⁰ Article 42(5) of the EEAWA

According to Bulgarian law, the Bulgarian authorities are obliged to request in advance a guarantee from the issuing Member State for the return of Bulgarian nationals or persons permanently residing in Bulgaria, prior to surrendering them for prosecution²¹. The specific request for such a guarantee before the decision to surrender is a delaying factor, and there is no obligation under the Framework Decision on the EAW to ask for the guarantee in advance. Article 5(3) of the Framework Decision on the EAW stipulates that the surrender may be subject to the condition that the person after being heard is returned to the executing Member State in order to serve there the custodial sentence passed against him in the issuing Member State. This means that there is no requirement for a specific guarantee in advance.

Against this background, the Bulgarian authorities are encouraged to consider amending the EEAWA, Article 41(3), in order to abolish the requirement for a guarantee for return prior to the decision to surrender. The specific requirement for return must instead be stated in the decision of the court to surrender the person.

The information most frequently reported to be insufficient by the Bulgarian magistrates is the description of the offence. While recognising that, in cases when a double criminality check is necessary, a detailed description of the facts is needed, when the issuing authority has checked one of the offences from the list this practice seems questionable. Also, requesting the guarantee of return for Bulgarian nationals before handing down the decision of surrender is contrary to the Framework Decision. Both practices delay the procedure.

²¹ EEAWA article 41(3)

4. FRAMEWORK DECISION 2008/909/JHA ON THE APPLICATION OF THE PRINCIPLE OF MUTUAL RECOGNITION TO JUDGMENTS IN CRIMINAL MATTERS IMPOSING CUSTODIAL SENTENCES OR MEASURES INVOLVING DEPRIVATION OF LIBERTY FOR THE PURPOSE OF THEIR ENFORCEMENT IN THE EUROPEAN UNION

The Bulgarian law implementing the Framework Decision 2008/909/JHA entered in force on 1 January 2020. This Bulgarian law is called the Recognition, Enforcement and Forwarding of Judicial Instruments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty Act. The Act was subsequently notified to the GSC on 27 January 2020²².

Given how recently Framework Decision 2008/909/JHA was implemented, the Bulgarian judiciary is currently improving its knowledge of this mutual recognition instrument and the practical implications.

4.1. Authorities competent for the recognition of the judgment and execution of the sentence

The Bulgarian procedure for the recognition of the judgment and the execution of the sentence is entirely judicial.

4.1.1. As executing authority

The District Court where the sentenced person has his/her residence is the competent authority to enforce foreign EU judgments imposing custodial sentences. When the place of residence of the person in Bulgaria is unknown or he/she does not live in the country, Sofia City Court is competent to recognise the judgment.

If the judgment is sent to the wrong district court it is *ex officio* forwarded to the relevant court. In that case, the competent court is required to notify the competent authority in the issuing State that it has received the judgment.

²² ST 5770/20

After receipt of the judgment and the certificate, the court initiates recognition proceedings and schedules a public hearing within 14 days to examine the case. The participation of a prosecutor and a lawyer is mandatory.

Within 14 days following the decision to recognise the judgment, the prosecutor or the defendant can file an appeal to the appeals court.

After the recognition of the judgment, the court transmits a certified copy of the decision to the competent prosecution office to take the necessary measures for the enforcement of the sentence according to the procedure established by Bulgarian law and/or for proceeding with the transfer. A certified copy of the final decision is sent to the SPCO and to the MoJ.

The sentenced person is surrendered to an officer from the Directorate-General for Security at the MoJ by the executing State on a date agreed between the SPCO and the competent authority of the executing State through the IOCD of the Ministry of the Interior.

4.1.2. *As issuing authority*

The court of first instance which issued the judgment imposing a custodial sentence or a sentence involving deprivation of liberty is the authority competent for forwarding the certificate and the judgment to the competent authority of the executing State.

The procedure described by the Bulgarian practitioners is as follows:

- The court that has sentenced the person at first instance or the prison management informs the prisoner about the right to request a transfer. Apart from the sentenced person a transfer can be initiated by the court *ex officio*, the prosecutor or the executing MS.

- The court, in an open court session, gives the sentenced person the opportunity to consent to the transfer and hears his/her opinion. The opinion of the sentenced person can also be provided in writing. If the sentenced person is not fluent in Bulgarian an interpreter will be appointed.
- If the sentenced person agrees or the court decides so, it sends the certificate to the executing Member State.
- After the issuing authority is informed that the decision to execute the certificate is final, the SPCO 'International' Department issues a decree ordering the Directorate-General for Security at the MoJ to carry out the surrender of the sentenced person.

4.1.3. *Principle of direct contact between judicial authorities*

According to the law, the competent authorities can communicate directly with each other, and Bulgarian practitioners use the channels of Eurojust or the EJM when necessary. The Bulgarian desk at Eurojust is often needed to translate all the necessary information to be provided to the issuing (sentencing) Member States. Usually the requests are very urgent due to the short deadline for the court ruling; by law within 14 days the Bulgarian court should take its decision on recognition.

Given that the Atlas on the EJM website was only updated in the beginning of November 2020, in some cases it was necessary to communicate between the MoJ and the competent authority of the issuing MS. The MoJ expects these cases to become less frequent as the relevant information is now already available on the EJM website.

4.1.4. *No central authority designated*

Bulgaria has not designated a central authority for the implementation of Framework Decision 2008/909/JHA.

The MoJ, as the authority responsible for the implementation of EU instruments in the field of justice, is ready to give methodological instructions and assist at the request of the relevant judicial authority. Also, given the established obligation for referral *ex officio*, the Ministry is obliged, upon receipt of a communication, to forward it to the competent national or foreign judicial/administrative authority. Where a judicial authority requires the MoJ to act as a mediating authority, given the time limits and protection of the interest of the sentenced person, the communication is carried out through it.

4.2. Documents required for recognising the judgment and executing the sentence

4.2.1. As executing State

Bulgarian legislation does not require the translation of the foreign judgment. If necessary, after consultations, the competent authorities of the two Member States may specify the parts of the act subject to translation²³. According to Article 6(1) of the relevant Act,²⁴ when Bulgaria is an executing State the costs related to the recognition and enforcement of judicial acts shall be borne by the Bulgarian State with the exception of the costs of the transfer of the person.

Bulgarian law²⁵ allows the district court *ex officio* or the sentenced person to request the competent authority of the issuing State to send the judgment together with the certificate. The Bulgarian authorities do not have any information yet on the difficulties experienced by judicial authorities in exercising this possibility.

²³ Article 4(3) of the Recognition, Enforcement and Forwarding of Judicial Instruments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty Act

²⁴ Recognition, Enforcement and Forwarding of Judicial Instruments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty Act

²⁵ Article 7(4) of the Recognition, Enforcement and Forwarding of Judicial Instruments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty Act, SG No. 45, 7.6.2019

Moreover Bulgaria has not yet identified good practices with any of the issuing countries in the area for negotiating translation costs, as the law has only recently entered into force.

4.2.2. *As issuing State*

So far no information is available about cases of additional documents being requested on a regular basis from the executing State.

It should be mentioned that in practice, the Bulgarian practitioners always send a translation of the Bulgarian judgment with the certificate.

4.3. Criteria to assess the facilitation of social rehabilitation

4.3.1. *Criteria to assess social rehabilitation*

Bulgarian legislation²⁶ provides for different criteria when assessing the social rehabilitation of the convicted person, relating to the nature of the family, linguistic, cultural, social, economic or other ties (for example, education).

According to the practitioners the following criteria are the most important:

- does the person have a family in the country concerned or another supportive environment - friends, classmates, colleagues who would help him/her reintegrate in society after being released from prison?

- does the person speak the language of the country in order to be able to communicate both in places of imprisonment and when carrying out re-educational work, and to be able to cope in social situations after his/her release?

²⁶ Article 10(3) of the Recognition, Enforcement and Forwarding of Judicial Instruments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty Act

4.3.2. *Exchange of information between issuing State and executing State*

4.3.2.1. Bulgaria as executing State

As executing State, the Bulgarian authorities consider the information included in the certificate to be sufficient in half of the cases.

In other cases, the additional information requires mainly concerns the exact description of the crime(s) for which the person has been sentenced to imprisonment, as the criminal offences in different countries often differ. The Bulgarian judges consider that the certificate should indicate the circumstances in which the crime was committed, such as the date, place and extent of the requested person's involvement in the crime; it should also correctly indicate any crime for which double criminality is not required.

4.3.2.2. Bulgaria as issuing State

The National Network of Judges has no information about the executing authorities having requested information from the Bulgarian courts in the course of proceedings for the transfer of sentenced persons.

None of the Bulgarian courts have received, in their capacity as issuing authorities, an opinion from the executing State under Article 4(4) and (5) of the Framework Decision on mutual recognition of judgments in criminal matters. If such an opinion is received, it should be discussed by the Bulgarian court when deciding whether to withdraw the decision. In the event that such an opinion is received, it is not binding for the issuing authority and does not always lead to the withdrawal of the certificate.

This lack of information is due to the fact that in Bulgaria there is no unified system in which to keep track of the development and implementation of various international legal instruments, including the request for transfer of sentenced persons and the EAW.

The Bulgarian competent authorities, as issuing authorities, should consult with the enforcement authorities to determine whether the transfer of a sentence will help to facilitate the social reintegration of the person, when needed. In practice the judges explained there had been no need to consult the executing State on the basis of Article 4(3) of Framework Decision 2008/909/JHA.

According to the Bulgarian practitioners they had never caused a delay in responding to a request for information from the executing State.

4.3.2.3. Practical arrangement on a bilateral basis

The Bulgarian authorities explained that since the implementation of Framework Decision 2008/909/JHA was so recent, it was not yet possible to assess whether there was a need to establish a practical arrangement with other MSs. That position appears understandable.

4.3.3. Opinion and notification of the sentenced person

4.3.3.1. Procedure followed

4.3.3.1.1. Bulgaria as executing State

When Bulgaria is the executing State, the sentenced person has the opportunity to express his/her opinion on a possible transfer, orally or in writing, during a Court session.

Taking into account the person's age and physical and mental condition, the court may, at its discretion, hear the person's legal representative.

The law provides the mandatory participation of a lawyer, appointed either by power of attorney or by the court after being designated by the relevant bar association.

The court must inform the person of her/his right to consent to a transfer to the executing State and explain the legal and practical consequences of exercising that right.

4.3.3.1.2. Bulgaria as issuing State

When Bulgaria is the issuing State, the court has to appoint a public defender for hearing the opinion of the sentenced person, following the provisions of the Code of Criminal Procedure that apply in a subsidiary manner.

The decision to recognise and enforce the transfer of the sentence, which is announced immediately to the parties, is subject to appeal to the higher court (the Court of Appeal) within 14 days, which should consider the case in open court session within five days of receiving the case.

4.3.3.2. Importance of the sentenced person's opinion

The opinion of the sentenced person is to be taken into account when deciding whether to send the judgment and certificate. Nevertheless this opinion is not the only criterion that the court will assess. It will be taken into account together with all other prerequisites for recognition and enforcement of judicial acts of other States.

4.3.3.3. Information given to the sentenced person

The court notifies the person in an understandable language of the judgment together with the certificate, using the notification form in Annex II to the Framework Decision on the mutual recognition of judgments in criminal matters. The notification form is transmitted to the competent authority of the executing State for the purpose of notifying the person when they are on its territory.

If the sentence of the person is adapted, the prisoner receives updated information with the decision by the court. This is announced in open court immediately after the hearing of the prosecutor, the sentenced person and his/her defence counsel. The decision should also include a detailed explanation of why and how the sentence has been adapted.

4.4. Adaptation of the sentence

4.4.1. Duration or nature of sentence incompatible with the law of the State concerned

4.4.1.1. As executing State

The MoJ informed the evaluation team that three cases had been identified. In all of them, the sentence imposed by the issuing Member State had exceeded the maximum sentence for the crime in Bulgaria. In these cases, the court had reduced the amount to the maximum sentence provided for in the Bulgarian Criminal Code. The MoJ had received no information on cases in which the certificate had been withdrawn due to a lenient sentence after adaptation²⁷.

In theory, where such circumstances exist, the Bulgarian court is obliged to adapt the sentence. The punishment should be as consistent as possible with the punishment imposed in the issuing State. The sentence cannot be replaced by a fine.

Bulgarian law provides that the punishment cannot be more severe in type or duration than that imposed in the issuing State. In these cases it is desirable to hold consultations with the issuing or executing authority, depending on the procedure in which the Bulgarian State finds itself: recognising the relevant judicial act, enforcing it or sending it for enforcement.

4.4.1.2. As issuing State

The National Network of Judges is not aware of any cases in which a sentence was adapted because its duration or nature was incompatible with the law of the executing State. Moreover they are not aware of any cases in which the certificate was withdrawn due to a lenient sentence after adaptation by the executing State.

4.4.2. Assessment of a 'similar offence'

The Bulgarian competent authorities consider a 'similar offence' to be a criminal act which, on the basis of the description in the certificate, is close in its objective and subjective features to an act described in the Bulgarian Criminal Code.

²⁷ After the onsite evaluation, the evaluation team was informed that as of 12 January 2022 in one of the cases the issuing authority has withdrawn the certificate due to the reduction of the sentence.

Grounds for non-recognition or non-enforcement

As both issuing and executing State, Bulgaria has not experienced cases where grounds for non-recognition or non-enforcement have been applied.

Therefore they could not share practical difficulties in the event of judgments *in absentia* or decisions of criminal irresponsibility and imposition of psychiatric care: the Bulgarian authorities have not yet encountered such difficulties.

Nevertheless the Eurojust Bulgarian desk is very often approached for consultations and additional verifications and clarifications in relation to the final judgment; missing information in the certificate; the rule of specialty; on the factual situation in order to check double criminality; what part of the sentence was served in the issuing (sentencing) Member State; whether the sentenced person has worked in prison and there is any deduction from the sentence of imprisonment; the consent of the sentenced person; the consent of the sentencing Member State, etc.

4.5. Partial recognition

In accordance with Article 10 of Framework Decision 2008/909/JHA, Bulgaria - as provided for in Article 16 of the Recognition, Enforcement and Forwarding of Judicial Instruments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty Act - decides on the partial recognition and enforcement of a judgment.

Up to now the Bulgarian authorities have experienced only one case, as executing State, where a Romanian sentence was partially recognised: the legal basis used by the Bulgarian court is Art. 15(1), point 4 of the law previously mentioned. More clearly, one of the crimes for which the person was sentenced in Romania did not constitute an offence in Bulgaria. The District Court took that decision after initiating a written consultation with the issuing judicial authority in Romania in order to obtain its consent to the partial enforcement of the sentence only, in respect of two months of imprisonment. The Romanian judicial authority refused to grant such consent on the ground that the sentence imposed was eight months and twenty days for both offences. It stated that it was awaiting the position of the Romanian MoJ.

The district court judgment was appealed against. The appeal court annulled this judgment because the position of the Romanian MoJ was never received. On the basis of Article 10 of Framework Decision 2008/909/JHA, the appeal court decided that the partial recognition and execution of the Romanian sentence should be refused.

To date there has been no case, as issuing State, where a Bulgarian sentence was partially recognised by another Member State.

Moreover the Bulgarian authorities have not encountered difficulties in the consultation process established under Article 10 (1) of Framework Decision 2008/909/JHA.

4.6. Challenges relating to compliance with the deadline for recognition and enforcement

According to the Bulgarian authorities the deadline provided for in Article 12 (2) of Framework Decision 2008/909/JHA is nearly always complied with, both as issuing and as executing State.

The MoJ mentioned isolated instances of delayed proceedings mainly due to the lack of timely responses to the Bulgarian court's request for further information. There have also been individual delays in the surrender/reception of individuals as mentioned above largely due to the dynamics of the situation with the spread of COVID-19 and the restrictive measures imposed as a result.

Moreover some prosecutors stated that the timeframe of 30 days²⁸ to transfer the sentenced person after the final decision of the executing State should be more flexible. Apparently the time it takes to translate Bulgarian judgments is an issue. Indeed the Bulgarian authorities always translate the Bulgarian judgments together with the certificate when transferring a prisoner (cf. 4.2.2.). The issue is that some Bulgarian judgments can be very long, so that it can take more than a week to produce the translation.

²⁸ Article 15 (1) of Framework Decision 2008/909/JHA

The Bulgarian practitioners explained that the reasoning part of the judgment is important because it helps to understand what the social measures to be imposed on the prisoner are in order to facilitate his resocialisation. Unfortunately this part of the judgment is also the longest. Therefore the Bulgarian prosecutors stated that one idea to avoid such difficulties could be to focus first on translating the operative part of the judgment (which is shorter) and, if needed by the executing State, to translate the reasoning part later.

When there are delays, the Recognition, Enforcement and Forwarding of Judicial Instruments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty Act²⁹ obliges the Court to inform the issuing State.

4.7. Law governing the enforcement of the sentence

As issuing State, the MoJ does not have information about any cases in which Bulgarian authorities have withdrawn the certificate because of applicable provisions on early or conditional release in the executing State.

As executing State, the MoJ does not have information about any cases in which the certificate received by the Bulgarian judicial authorities was withdrawn because of applicable provisions on early or conditional release.

Up to now the Bulgarian competent authorities have not encountered problems related to the deduction of a period of deprivation of liberty. They added that in cases of ambiguity they would carry out consultations with the issuing State.

²⁹ Article 17, para 2

4.8. Further challenges

4.8.1. Transit of the sentenced person

To date, although such cases have been initiated, they are not yet at the stage of transfer of the person and Bulgaria has no practical experience of transferring persons sentenced in Bulgaria to another Member State. Given the similarities with the surrender of persons under the EAW the Bulgarian practitioners do not expect situations to arise that would pose significant practical or legal difficulties.

4.8.2. Other practical problems

The representative of the Sofia City prosecution office mentioned a difficulty related to the remaining days to serve in the executing State. Under Bulgarian law a prison's director can allow a prisoner to work. If the prisoner works, his sentence is reduced.

This provision does not exist in other Member States. Consequently, there can be difficulties with the executing State as to how many remaining days the prisoner has to serve³⁰.

In such cases the Bulgarian court competent to issue the certificate requires from the prison an up-to-date reference on the legal status of the convicted person, which must contain data on the sentence imposed by the sentence, the days of detention taken into account and the working days served and the remainder of the sentence.

4.9. Statistics

The law lays down the obligation for the Bulgarian competent judicial authorities to send information on issued and received requests for recognition of a sentence under the Framework Decision to the MoJ.

³⁰ Article 41, paragraph 3, of the Bulgarian Criminal Code and Article 178, paragraph 1 of the Implementation of Penal Sanctions and Detention in Custody Act

Bearing in mind what was mentioned about the difficulty in gathering data (cf. 3.6.1.) the MoJ managed to inform the evaluation team that from 1 January to 16 November 2020, 4 certificates were issued by the competent Bulgarian authorities and 45 certificates were sent to Bulgaria for recognition.

4.10. Conclusions

The procedure for transfer of sentenced persons from and to Bulgaria is laid down in a structured and clear manner in the Recognition, Enforcement and Forwarding of Judicial Instruments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty Act SG No. 45/7.06.2019.

The implementing law follows closely the provisions of the Framework Decision, and discussions revealed a concern to resolve recognition cases in a timely manner. Some procedures are similar to those which occur in the application of Framework Decision 2002/584/JHA, but for the moment at least they do not seem to have given rise to practical difficulties. The practical application of the Framework Decision builds upon the experience gathered in settling cases under the European Convention on the Transfer of Sentenced Persons.

The certificates are accepted only in Bulgarian, a condition that might be difficult to comply with, especially in urgent cases. Furthermore the Bulgarian authorities always translate the entire judgment. In order to speed up the process the Bulgarian authorities should primarily focus on the operative part of the judgment.

The procedure is entirely judicial, in line with the provisions of the Framework Decision, with no central authority designated, although the MoJ may offer support if needed.

Due to the recent implementation of Framework Decision 2008/909/JHA (since 1 January 2020), the Bulgarian authorities have not had the opportunity to gain significant practice and its application is still limited. The assistance of Eurojust was once again emphasised, along with consultations carried out directly with the other MS involved. Furthermore, the law provides the possibility of consultations, even before sending the certificate. The experts note this as a good practice in order to resolve difficulties and avoid unnecessary procedures.

The experts also note as a good practice the fact that the court in charge of the recognition procedure requests *ex officio* information on any other convictions or judicial affairs the sentenced person has in Bulgaria.

There is a clear interest in training in this matter, and the practitioners are aware of the Handbook drafted by the Commission; also, the EJM's electronic resources are disseminated during training events, along with national learning resources (manuals on international judicial cooperation). The guidelines of the SPCO have proved their usefulness in practice and drafting similar guidelines in the application of Framework Decision 2008/909/JHA would be advisable.

According to the Bulgarian authorities the main reason for the limited use of this legal instrument is its recent implementation, resulting in a limited number of cases. The Framework Decision should be used in conjunction with the EAW Framework Decision, with the goal of striking a balance and, if appropriate, finding an alternative (in some cases, recognition of the judgment could be preferable to an EAW).

The law provides guarantees for the procedural rights of sentenced persons, who are heard before the court and are given the opportunity to express their opinion in respect of the transfer. Due to the lack of relevant case law, it is not very clear what the weight of their opinion is. Also, the sentenced person is provided with a public defender and, if he/she is a foreigner, translations of the essential documents are provided.

5. LINK BETWEEN FD 2002/584/JHA ON EAW AND FD 2008/909/JHA ON CUSTODIAL SENTENCES

5.1. Problems related to the link between FD 2002/584/JHA on EAW and FD 2008/909/JHA on custodial sentences

5.1.1. Criteria used in order to decide whether to use an EAW or a certificate

The competence to forward a certificate in accordance with Framework Decision 2008/909/JHA on custodial sentences lies with the court that rendered the judgment at first instance³¹. According to the Law³², the court may *ex officio*, at the request of the prosecutor or of the convicted person, send the court act or a certified transcript thereof together with the certificate under Art. 3 directly to the competent authority of the executing State. The act may also be sent at the request of the executing State.

However, the competent body for the execution of a final sentence of imprisonment is in all cases the prosecutor³³. According to the practitioners this means that when the final judgment has been sent to the Prosecutor for execution the prosecutor will assess whether there are grounds for sending a certificate to transfer the custodial sentence to the Member State in which the person resides.

The Bulgarian competent authorities may offer to the authorities of the other State to explain to the person the possibility of being transferred to serve his/her sentence in Bulgaria, if he/she so requests, or to request the competent authority to issue a certificate in accordance with FD 2008/909/JHA.

³¹ Art. 20(1) of the Recognition, Enforcement and Forwarding of Judicial Instruments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty Act.

³² Art. 23(1) of the Recognition, Enforcement and Forwarding of Judicial Instruments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty Act.

³³ Criminal Procedure Code art. 416(2).

When deciding to choose between an EAW or a certificate the Bulgarian authorities examine in which of the two countries (the issuing or the executing) both goals would be fully achieved: avoiding impunity and achieving the social rehabilitation of the sentenced person. Criteria such as the citizenship of the sentenced person, the sentenced person's relationship with the EU Member States in which he resides and lack of relationship with Bulgaria are also mentioned by the practitioners. If the preconditions of Framework Decision 2008/909/JHA are met, this Framework Decision should prevail when choosing between issuing an EAW or a certificate for transfer.

No general guidelines have been issued for the courts or the Prosecution Service in regard to the application of Framework Decision 2008/909/JHA when persons convicted in Bulgaria are residing in another EU Member State and the choice between issuing an EAW for execution of a sentence or sending a certificate for the execution of the sentence in another Member State.

5.1.2. As executing State, possibility to enforce a sentence without certificate after rejecting an EAW or after a surrender granted on the basis of Article 5 (3) of Framework Decision 2002/584/JHA

Before the implementation of Framework Decision 2008/909/JHA, according to the MoJ, the practice was to request the sentence from the issuing State and a procedure for recognition and execution of a sentence was conducted in accordance with the provisions of the EEAWA³⁴ and the Code of Criminal Procedure³⁵.

At first it was explained to the evaluation team that, following the implementation of Framework Decision 2008/909/JHA, in cases when, on the grounds of Article 4(6) of the EAW Framework Decision, the surrender of a person is refused, the acceptance for execution of the sentence is done by sending the certificate under Framework Decision 2008/909/JHA. In addition to the certificate, according to the National Network of Judges, in order to carry out the procedure for recognition and enforcement, the judicial act itself must also be sent.

³⁴ Art. 44, para. 11 of the EEAWA

³⁵ Art. 452, para. 2-5 of the Code of Criminal Procedure, a procedure similar to that established for the purposes of the 1983 Council of Europe Convention on the Transfer of Sentenced Persons.

Nevertheless the National Network of Judges shared another legal interpretation. The procedure under Art. 44, para. 11 and subsequent of the EEAWA does not explicitly provide for the sending of the certificate, after a refusal to surrender the person and willingness to accept of the sentence for execution has been declared.

The following example was given to the experts. Sofia City Court recently had a case in which the prosecutor's office filed a request for recognition of a sentence and execution of the imposed punishment after Sofia City Court refused to surrender the person under the EAW.

Sofia City Court was misled by the EAW form and believed that the EAW had been issued to enforce a sentence and refused to surrender the person sought. Indeed the person sought's legal counsel had appealed against the sentence in the issuing State and therefore the sentence was not final. But in fact the EAW was issued for prosecution. The prosecutor protested and the Sofia Court of Appeal annulled the first-instance judgment because meanwhile the sentence had become final in the issuing State. Moreover the Court of Appeal recognised and enforced the custodial sentence thanks to the data contained in the EAW form.

To summarise, in case the court refuses to execute the EAW on the grounds of Art. 4(6) of the EAW Framework Decision³⁶ and the facts in the sentence by which the person was convicted, or the sentence itself is provided with the EAW, the court could directly accept and enforce the sentence in accordance with the EEAWA, without requiring a certificate under FD 2008/909/JHA.

The representative of the Bulgarian judges highlighted a legal issue regarding Article 44 (11) of the EEAWA. It was mentioned that the reference to the Code of Criminal Procedure in Article 44 (11) is no longer valid since the Bulgarian law implementing Framework Decision 2008/909/JHA has entered in force. Reference should be made to the Recognition, Enforcement and Forwarding of Judicial Instruments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty Act. Therefore an amendment of the EEAWA is needed on this specific point.

³⁶ Art. 40, para. 1 of the EEAWA

5.1.3. *As issuing State, after refusal to surrender the executing State must await a certificate to enforce the Bulgarian sentence*

The Bulgarian law implementing Framework Decision 2008/909/JHA³⁷ indicates that the court may *ex officio*, at the request of the prosecutor or of the sentenced person, send the judgment or certified copy thereof, together with the certificate referred to in Article 3, directly to the competent authority of the executing State. Therefore the Bulgarian authorities consider that the certificate should be sent after notification by the Member State which refused the EAW.

In practice, however, there can be cases where a sentence is enforced without obtaining or sending a certificate under Framework Decision 2008/909/JHA. (cf. 5.1.2.)

5.1.4. *After a surrender granted on the basis of Article 5(3) of Council Framework Decision 2002/584/JHA, need for a certificate*

If a Bulgarian citizen or a person residing on the territory of Bulgaria is surrendered to another Member State on the basis of an EAW with return guarantees, he/she is to be returned under the law implementing FD 2008/909/JHA³⁸.

In the case of a Bulgarian citizen or a person residing on the territory of Bulgaria, surrendered to another State with guarantees on the grounds of Art. 5(3) of FD 2002/584/JHA³⁹, the person should be returned to Bulgaria under Art. 29 of the Recognition, Enforcement and Forwarding of Judicial Instruments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty Act. The Bulgarian competent authorities (as issuing authorities) always issue the certificate under FD 2008/909/JHA, and at the same time they, as executing authorities, require to receive such a certificate, when a sentence has already been imposed in the other MS on a person surrendered to this MS subject to the guarantees under Art.5(3) of FD 2002/584/JHA.

³⁷ Art. 23 para 1 of the Recognition, Enforcement and Forwarding of Judicial Instruments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty Act

³⁸ Art. 29 , para. 2 of the Recognition, Enforcement and Forwarding of Judicial Instruments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty Act

³⁹ Art. 41 para. 3 of EEAWA

5.1.5. *Certificate relating to Popławski case*⁴⁰

So far, the Bulgarian authorities do not have information about difficulties such as those mentioned in the CJEU *Popławski* case.

5.2. Conclusions

The choice in practice whether to resort to an EAW or to request the judge to issue a certificate under Framework Decision 2008/909/JHA lies with the prosecutor in charge of the enforcement, who can either issue an EAW or apply to the competent court for a certificate to be issued.

When the Bulgarian judicial authorities have a choice between issuing an EAW for the enforcement of a custodial sentence and transferring the custodial sentence to another Member State, it is usually the EAW which is chosen. The competent authorities explained this mainly by the recent implementation and the small number of cases that justify transferring the custodial sentence.

Some criteria for choosing the appropriate mutual recognition instrument were mentioned to the evaluation team. These are the possibilities for enforcement of the sentence (without losing sight of the fundamental purpose of the sentence), the links between the person and the executing State, the need to avoid impunity and the possibilities for facilitating social rehabilitation and integration. (cf. also 5.1.1.)

Nevertheless, the experts believe that there should be more reflection on the part of the issuing authority as to whether to send an EAW or a certificate, which is a good way to strike a balance between the need for enforcement of the sentence and the need to ensure the social rehabilitation of sentenced persons. Following this idea, the evaluation team considers that the Bulgarian authorities should give greater weight to the citizenship and place of residence of the sentenced person, as well as various other criteria, in order to establish whether the transfer would facilitate the social rehabilitation of the sentenced person.

⁴⁰ CJEU: C-579/15, *Popławski*, 29 June 2017, ECLI:EU:C:2017:503

The evaluation team also considers that it would be useful for the Bulgarian authorities to issue guidelines for practitioners in regard to the choice between issuing an EAW or sending a certificate for the transfer of the sentence in accordance with FD 2008/909/JHA.

Most practitioners indicated that, in cases when Article 4(6) of FD 2002/584/JHA is applied, the Bulgarian courts decide on the recognition of the judgment within the same proceedings. Nevertheless, the law does not regulate this aspect very clearly, and therefore measures should be taken to address this problem.

Again, as mentioned in the conclusions on the implementation of Framework Decision 2002/584/JHA, the guarantee of return should not be requested in advance, but simply imposed by the decision for surrender.

From discussions with practitioners, it emerged that Article 4(6) of the Framework Decision 2002/584/JHA is applied when the person sought is a Bulgarian national and opposes surrender. Generally, courts tend not to refuse surrender of nationals *ab initio*; the law only provides for an optional ground for refusal in this case. They also informed the team that enforcement of the judgment in Bulgaria needs to be requested, usually by the person sought.

6. FRAMEWORK DECISION 2008/947/JHA ON PROBATION AND ALTERNATIVE SANCTIONS

6.1. Authorities competent for Framework Decision 2008/947/JHA

6.1.1. A judicial process without a central authority

Bulgaria has not designated a central authority for the purposes of Framework Decision 2008/947/JHA. The law implementing this Framework Decision is the Recognition, Execution and Forwarding of Judgments and Probation Decisions with a View to Exercising Supervision of Probation Measures and Alternative Sanctions Act.

The Bulgarian procedure is entirely judicial. Thus the Bulgarian judicial authorities have direct contacts with their counterparts. But this does not preclude the possibility of communication through the MoJ or in any other way that is considered more appropriate.

6.1.2. Authorities competent to issue a request on probation and alternative sanctions

The competent authority for issuing requests on probation and alternative sanction for judgments in criminal matters delivered in Bulgaria which have entered into force and imposing a probationary penalty or laying down probationary measures in the case of a conditional sentence or conditional early release, for recognition and execution in other Member States of the European Union, is the Bulgarian first-instance court which delivered the judgments.

In practice, issuing a request on probation and alternative sanctions depends on the sentenced person and/or his lawyer. If they do not make any request the process will not be initiated by the competent authorities. During the on-site visit the representatives of lawyers admitted the poor knowledge of this instrument among lawyers.

The steps to issue a request on probation and alternative sanctions are the following:

- The court that has imposed the measure as first instance sends its decision imposing probation or an alternative measure and the certificate directly to the competent authority in the executing MS and informs the MoJ of this.

- Where the sentenced person fails, without reasonable excuse, to comply with the probation measure or alternative sanction imposed or commits a new criminal offence and the executing State is not competent to take subsequent decisions relating thereto, the Bulgarian court decides on the modification of obligations or instructions contained in the probation measure or alternative sanction, enforcement of the suspended custodial sentence or serving separately the unserved part of the sentence in respect of which the sentenced person has been granted early release. The court immediately informs the competent authority of the executing State of its decision.
- Supervision of the probation measures or alternative sanctions imposed is discontinued and the Bulgarian court no longer has competence in relation to the said supervision nor to take subsequent decisions, once the court has been informed by the competent authority of the executing State of the recognition of the judgment.

6.1.3. *Authorities competent to execute a request on probation and alternative sanctions*

The steps to execute a request on probation and alternative sanctions are the following:

- The decision and the certificate are sent to the competent district court based on the address of the sentenced person in Bulgaria. If the place of residence is unknown or they do not live in the country, Sofia City Court is competent to recognise the judgment.

If the probation decision is sent to an authority that is not competent to recognise it, the district court will *ex officio* forward it to the relevant court.

- After receiving the judgment or decision and the certificate, the court institutes recognition proceedings and schedules the case within seven days. The case is examined by a panel of three judges in public session with the mandatory participation of a prosecutor and with the sentenced person being summoned.
- The decision of the district court seized can be appealed against by the defence or the prosecution before the appeal court within five days after its publication. The appeal court's decision is final.

- The measures imposed are forwarded for execution from the prosecutor to the probation services at the Directorate-General for the Execution of Sentences. The legality of the execution is monitored by the District Prosecutor.

6.2. Problems related to lack of application of Framework Decision 2008/947/JHA

6.2.1. No problem regarding the law or institutional organisation but a lack of awareness

The Bulgarian practitioners do not criticise the quality of the Recognition, Execution and Forwarding of Judgments and Probation Decisions with a View to Exercising Supervision of Probation Measures and Alternative Sanctions Act. The National Network of Judges does not find any gaps in national law. Moreover the implementation of the law did not require changes in the institutional organisation.

But all practitioners, including defence lawyers, agree on the fact that there is a lack of awareness. They consider that training on the application of the law should be organised and should be available not only to magistrates but also to lawyers. They underline the importance of conducting virtual training, especially when facing a health crisis.

The Bulgarian authorities, following the discussion with the experts during the on-site visit, plan to propose strengthening training on this Framework Decision for probation officers and for magistrates organised by the NIJ.

The lawyers' representative mentioned a case where her client was sentence to an alternative sanction in Bulgaria and was working in the UK. Neither the probation officer nor the sentenced person's lawyer thought of requesting that the probation measure be transferred to the UK. In the end the sentenced person, who kept working in UK, had her probation measure revoked and was jailed for several months.

6.2.2. *A little-used instrument*

Bulgarian law lays down the requirement for the judicial authorities to provide to the MoJ, each year, judgments related to the Framework Decision 2008/947/JHA.

Bearing in mind what was mentioned about the difficulty in gathering data (cf. 3.6.1.), the MoJ managed to provide the evaluation team with the following statistics:

Probation measures requests from 15 May 2012 to 10 August 2021

Year	Incoming	Outgoing
2012	1	1
2013	-	3
2014	8	1
2015	10	8
2016	15	10
2017	16	5
2018	30	9
2019	28	8
2020	29	9
2021	28	8
Total	165	62

Bulgarian practitioners highlighted the frequent need to adapt the sentences handed down in the issuing State, especially regarding the length of conditional sentences.

They also mentioned that in 2019 they introduced electronic monitoring of sentenced persons (GPS or radio-frequency monitoring). Bulgaria is consequently able to enforce sentences using such devices.

Another point, underlined by the MoJ, is the fact that the list in Article 4 of Framework Decision 2008/947/JHA does not mention the suspension of driving licence. The MoJ explained that some Member States cannot enforce such a suspension, and this is an obstacle to using this mutual recognition instrument. Therefore, the MoJ stated, it could be helpful to amend the Framework Decision on this specific point by adding the suspension of the driving licence to the list.

The MoJ did not send information sheets to practitioners after the transposition of FD 2008/947/JHA but the NIJ has provided practitioners with the national Handbook 'Judicial Cooperation in Criminal Matters in the EU', which was included in the training (see 8.1.1.).

6.3. Conclusions

Recognition, Execution and Forwarding of Judgments and Probation Decisions with a View to Exercising Supervision of Probation Measures and Alternative Sanctions Act No. 25/27.03.2012 was found by the Bulgarian authorities as well as by the evaluation team to be a sufficient, comprehensive and clear legal instrument.

But the judicial authorities expressed the view that it is not very effective and is rarely applied. They agree on the fact that there is a lack of sufficient awareness amongst some practitioners. It seems to be natural that the judicial authorities opt for a less intensive supervision of the suspended sentence rather than using a more complex and time-consuming mechanism.

The evaluation team noted that one of the causes for the limited use of this instrument is insufficient knowledge of this Framework Decision among practitioners.

They considered that more training was needed on this specific issue, not only for judges and prosecutors but also for lawyers and other staff, especially for the probation service. Moreover, the authorities deciding on implementation of this instrument must have trust in the services responsible for monitoring and supervision. Possibly if more practical training on the mechanism for applying FD 2008/947/JHA were given to them, its practical application would increase.

In the evaluation team's view it would be appropriate to unify not only the formats in which statistical data are sent to the MoJ by the courts but also the MoJ's and Directorate-General for the Execution of Sentences' statistics system.

7. FRAMEWORK DECISION 2009/829/JHA ON THE EUROPEAN SUPERVISION ORDER (ESO)

7.1. Authorities competent for the Framework Decisions 2009/829/JHA

7.1.1. A judicial process without a central authority

Bulgaria has not designated a central authority in the field of the Framework Decision 2009/829/JHA. The law implementing this Framework Decision is the Recognition, Execution and Transmission of Decisions on Supervision Measures Other than Measures which Require Detention Act.

The Bulgarian procedure is entirely judicial. Thus the Bulgarian judicial authorities have direct contacts with their counterparts. But this does not preclude the possibility of communication through the MoJ or in any other way that is considered more appropriate.

7.1.2. Authorities competent to issue a request in relation to an ESO

The competent authority for issuing a request in relation to an ESO is the prosecutor who is overseeing the investigation.

When the Bulgarian prosecutor decides to issue an ESO, he sends the decision to the competent authority in the executing State in which the defendant resides permanently, or has resided for a long time. Prior to this, the defendant must give written consent to return to the executing State.

Once the authority in the executing State informs the Bulgarian prosecutor that the ESO has been recognised, the Bulgarian prosecutor no longer has competence for supervision or to take subsequent decisions.

In practice initiating the proceedings for issuing an ESO depends on the prosecuted person's request. If such request is not made, the prosecutor will not issue an ESO on his or her own initiative.

7.1.3. *Authorities competent to execute a request in relation to an ESO*

The Bulgarian competent authority to execute a request in relation to an ESO is the district court where the sentenced person resides. When the place of residence is unknown or the sentenced person does not live in the country, Sofia City Court is competent to enforce the ESO.

If the supervision measure is sent to an authority that is not competent to recognise it, the district court will *ex officio* forward it to the relevant court.

After receiving the decision and the certificate, the court institutes recognition proceedings and schedules the case within 14 days. The case is examined by one judge in public session with the mandatory participation of a prosecutor and the person for whom the ESO has been issued.

The decision of the district court seized can be appealed against by the defence or the prosecution before the appeal court within seven days. The appeal court's decision is final.

Then the imposed measures are forwarded for execution according to the Bulgarian legislation in force.

7.2. Problems related to lack of application of the Framework Decisions 2009/829/JHA

7.2.1. *No problem regarding the law or institutional organisation but a lack of awareness*

The Bulgarian practitioners do not criticise the quality of the Recognition, Execution and Transmission of Decisions on Supervision Measures Other than Measures which Require Detention Act. The National Network of Judges did not find any gaps in the national law. Moreover the implementation of the law did not require changes in the institutional organisation.

But all the practitioners, including defence lawyers, agree on the fact that there is a lack of awareness. They consider that training on the application of the law should be organised and should be available not only to magistrates but also to lawyers. Following the discussion with the experts during the on-site visit, the Bulgarian authorities plan to enhance the training on this Framework Decision also for probation officers, organised by the NIJ.

7.2.2. *An unused instrument*

No statistical data is available.

As Bulgarian law lays down the requirement for the judicial authorities to provide such data to the MoJ on a yearly basis, the lack of such information could indicate that there are no such cases.

The MoJ did not send information sheets to practitioners after the transposition of FD 2009/829/JHA but the National Institute of Justice has provided practitioners with the Handbook on the application of all the mutual recognition instruments, and the training was included in their training curriculum as described above (cf. 8.3.).

7.3. Conclusions

The evaluation team as well as the Bulgarian judicial authorities found the transposition of Framework Decision 2009/829/JHA in Recognition, Execution and Transmission of Decisions on Supervision Measures Other than Measures which Require Detention Act, SG No. 33/26.04.2016 to be clear and precise.

It seems that there have simply been no cases this Framework Decision being applied in Bulgaria. At national level supervision measures are frequently used by the judiciary. Thus the absence of ESOs in Bulgaria cannot be explained by a national practice of not using supervision measures. The Bulgarian judicial authorities believed that this was due to recent implementation, reluctance by judges to apply this instrument and insufficient awareness. They consider this particular instrument to be costly and time-consuming. They did not see the need for this Framework Decision and stated that the EAW and detention are sufficient as measures for restraining freedom and ensuring the presence of the person for criminal proceedings.

Discussions during the on-site visit revealed that the EAW is the instrument most frequently used, and a reflection on resorting, alternatively, to Framework Decision 2009/829/JHA or 2008/947/JHA needs to be further encouraged. The most frequent use of the EAW can be explained, inter alia, by the fact that it has been applied for longer and consequently given rise to a lot of judicial practice.

The evaluation team points out that the use of pre-trial detention could increase the risk of the criminal court handing down a prison sentence.

Before deeming a person to be a fugitive, exhaustive measures should be taken to locate the respective person to give him/her the possibility to benefit from the application of a measure alternative to detention in another MS. These measures should be considered even in cases when, in conjunction with the provisions of the Criminal Proceedings Code, judgment *in absentia* is an option.

The instrument is based on the principle of mutual trust between competent judicial authorities and this trust arises from knowledge of the other judicial systems as well as from direct contacts.

The evaluation team agrees that in cases where the investigation can be completed quickly this procedure can make the cases more complicated to manage. But in long-drawn-out criminal cases the positives of this Framework Decision - enhancing the presumption of innocence and the right to liberty - prevail.

According to the experts, the wider application of this Framework Decision can prevent the common practice of certain inequalities between residents and non-residents in the trial State, when in similar circumstances non-residents are remanded in custody more often than residents.

The expert team concluded that the training on the use of this instrument should be enhanced. This point seems particularly important for lawyers, because they would most often request the ESO for their clients and for the probation service and police officers because they would be responsible for supervision in practice.

8. TRAINING

8.1. Main characteristics of the judiciary's training

8.1.1. Training at national level

In order to become a judge or prosecutor, a Master's degree in the speciality 'Law' is needed. This means five years of study in the legal field and passing a final State exam. After that, students should do a three-month internship. The internship ends with another exam after which they gain their certificate to practice law. For a judge or prosecutor in a district court/prosecutor's office, only persons with at least eight years of professional experience in law can be appointed; for an appeal court/prosecutor's office at least ten years of professional legal experience are required.

The NIJ is the body in charge of the training for judges and prosecutors.

According to the NIJ, mutual recognition instruments have a permanent place in the Institute's Annual Calendar. The four Framework Decisions which are the subject of the ninth round of mutual evaluations are taught. The scope of the topic is even broader and takes in account all aspects of international cooperation in criminal matters (EIO, Eurojust, CJEU case law, etc.).

During their initial training judges, prosecutors and investigators are trained on the four Framework Decisions on which this mutual evaluation focuses. Junior magistrates are also provided with a large amount of written papers and analysis on the substance, such as the manual 'Judicial cooperation on criminal matters in the EU' (see below). The four Framework Decisions are incorporated in most case studies given to the junior magistrates to work on, and form part of the mock trials which are organised.

These Framework Decisions are also part of the continuous training of the Bulgarian magistrates and court staff. The NIJ has organised training for the Bulgarian judiciary both at central and regional level. Training can take place in a traditional classroom, or by videoconference, and can bring together practitioners from different areas: judges, prosecutors and investigating magistrates. Whenever the topics were relevant to the professional competency of the Government bodies, their respective representatives were also admitted for participation. From 2016 to 2020, 17 staff members from the Ministry of the Interior and eight experts from the State Agency for National Security took part in training events dedicated to cooperation on criminal matters in the EU.

In 2019, under the project 'Innovative Products and Services in Training provided by NIJ', funded by the Operational Programme 'Good Governance', the NIJ developed and published a manual on 'Judicial Cooperation in Criminal Matters in the EU', including an analytical review of EU acts in the field of mutual recognition in criminal matters. It includes notably the four Framework Decisions which are the subject of the ninth round of mutual evaluations. The manual is published in electronic format and is available on the NIJ e-learning portal (www.nij.bg). More than 4000 representatives of the professional community have registered in the e-learning portal.

Besides being a self-learning resource, the manual is used as training material in the initial, introductory and ongoing training of judges, prosecutors and investigators.

Number of Bulgarian magistrates and court staff trained per year on EU criminal law

Year	Initial training	Ongoing training	EU or international training	Total trained
2016	69 (37 junior judges and 32 junior prosecutors)	141 (118 magistrates (judges, prosecutors and investigators) and 23 court staff members)		210
2017	47 (18 junior judges and 29 junior prosecutors)	207 (191 magistrates (judges, prosecutors and investigators) and 16 court staff members)	13 (3 judges, 7 prosecutors and 3 investigators)	267
2018	80 (29 junior judges, 33 junior prosecutors and 18 junior investigators)	88 (84 magistrates and 4 court staff members)	18 (5 judges, 8 prosecutors, 4 investigators and 1 judicial assistant)	186

2019	78 (32 junior judges, 33 junior prosecutors and 13 junior investigators)	353 (302 magistrates and 51 court staff members)	15 (6 judges, 7 prosecutors and 1 investigator)	446
2020	83 (28 junior judges, 34 junior prosecutors and 21 junior investigators)	113 (41 judges, 64 prosecutors and 8 investigators)		194

Bulgaria has also created a national judicial network for international cooperation in criminal matters. All the practitioners involved in this network can be found on the Supreme Judicial Council's website (<http://www.vss.justice.bg/page/view/2852>), together with their email addresses and mobile phone numbers. These resource persons help their colleagues when there is a need to use EU instruments. The website also contains the latest developments at Eurojust in the field of implementation of mutual recognition instruments, the manual for issuing EAWs and all the Commission's manuals. In addition, the network holds annual meetings, on the premises of the Supreme Judicial Council, involving judges, prosecutors and the representative of the MoJ.

Bulgarian practitioners can also count on a tool called APIS. It is an electronic legal information system that contains a database of current Bulgarian legislation, EU law and international treaties in all fields. The system also contains information on court rulings on national laws which implement EU acts. The experts find this tool practical and useful: it is a good way to get acquainted with colleagues' decisions and share knowledge.

It has also been noted that the Bulgarian judicial authorities can meet the Eurojust national member, EJM contact points or employees of the MoJ in workshops.

Meetings with the Eurojust member were organised at regional level in the judicial districts of Burgas, Plovdiv, Varna, Sofia, Veliko Tarnovo, Stara Zagora and Blagoevgrad (this covers almost the whole territory of Bulgaria) - but also at the Specialised Prosecutors' Office with prosecutors and judges, since Eurojust has many complicated cases involving them or the NIJ.

The Eurojust member and EJM contact points met together with the national judicial network for international cooperation in criminal matters in June 2021. This meeting enabled them to easily share experience of different cases and enhanced cooperation among these practitioners.

Traditionally, representatives of the MoJ take part in the national annual meetings of the Bulgarian contact points in the EJM, where the work of the network in the previous year is discussed, as well as current problems and challenges in practitioners' work with mutual recognition instruments, including comments on the implications of the recent case law of the CJEU, as well as the implementation of EU agreements with third countries in the field of cooperation in criminal matters. The MoJ also maintains regular contacts with Bulgaria's national representatives at Eurojust and with representatives of the national judicial and prosecutorial network on specific cases.

Regarding the IOCD, the police officers are selected after their initial training followed in the police academy and speaking English is a requirement. The specific tasks within the SIRENE Bureau or the Wanted Persons Bureau are learned on the spot. A junior police officer is always accompanied by a senior police officer in order to share experience. The IOCD's representatives explained that combined training with the judiciary is at the initiative of the judicial authorities. But currently it is no longer happening, and police officers expressed their wish to have shared training together with the judicial authorities. In parallel, the IOCD stated that each year they trained hundreds of local police officers on how the SIS works and how to cooperate with this directorate.

Lawyers are trained in a training centre dedicated to this profession. Initially the training centre was a foundation; currently it is under the responsibility of the Supreme Bar Council. The training centre delivers a training course on the EAW. Unfortunately few lawyers are interested in this matter. One explanation is that few lawyers are specialised in this field; another is that many EAW cases are handled by the legal aid service which does not have the time and resources to focus on such matters.

8.1.2. *Training at international level*

The judiciary is able to attend courses at EU or international level through the NIJ. Indeed the NIJ cooperates with the EJTN, the Academy of European Law (ERA) and other partner organisations. A total number of 46 judges, prosecutors and investigators have participated in such events within the reporting period.

The NIJ also includes in its annual curriculum training events on ICCM in the EU. These training events are run by both magistrates and judicial employees.

As already mentioned, the NIJ makes use of e-learning. In this connection, the Institute organised two electronic training events on the subject 'Use of the electronic resources of the EJM', held in 2019 and 2020, in which 51 participants took part: 17 judges, 22 prosecutors, 7 investigating magistrates, 3 prosecutorial assistants and 2 judicial assistants.

The main focus areas in the training were the presentation of the EJM, and Eurojust and its powers. The training encompasses detailed information on the electronic resources on the website of the EJM: Fiches Belges, Atlas, Compendium, library, contact points, professional networks, as an effective opportunity for practitioners to become familiar with the tools enabling the search for and provision of international cooperation in criminal matters. The training is interactive – with video lectures and online discussion meetings.

On 23 June 2021, under the project CrossJustice⁴¹, a training event was organised entitled 'Rights of suspected and accused persons in the criminal procedure according to the European and national legislation – presentation of the information platform CrossJustice'. The CrossJustice platform provides a legal information service primarily intended for legal practitioners – judges, prosecutors, investigating magistrates and lawyers, but also accessible to law students, NGOs and all EU citizens. The project consortium has committed to provide free access to the designated service for a period of not less than five years from the completion of the project (February 2022). The University of Bologna, in its capacity as coordinator, recently submitted a new project proposal for expanding the scope of the platform with regard to the mechanisms for cooperation among the Member States in criminal matters – the EAW, the EIO and Regulation 2018/1805.

The CrossJustice online platform contains two software modules –'Legal data base' and 'Legal assistant'.

The 'Legal data base' module aids users in searching for and extracting legal information on the procedural rights of persons suspected or accused of crimes, with special emphasis on the EU legal acts in the field of judicial cooperation in criminal cases and their transposition into national legislation in each of the 11 EU Member States participating in the CrossJustice project: Bulgaria, Croatia, France, Germany, Italy, Netherlands, Poland, Portugal, Romania, Spain and Sweden.

The 'legal assistant' module is an interactive software instrument which helps legal professionals to determine the applicable provisions of European and national legislation regarding the procedural rights of the accused persons in both the national and international context. More specifically, the module evaluates: the level of compliance of the national legislation with the EU law acquis, indicating potential omissions in the process of implementation, and the degree of compatibility between the national legal systems as a result of the transposition of the EU directives.

⁴¹ Justice Programme, funded by the European Commission, Grant Agreement No 847346

The NIJ also train participants in the use of the platforms, such as:

- The webpage of the EJTN, as well as information on upcoming venues, included in the section 'Methodology and resources', for access to a database with training materials in the field of European law.
- The webpage of the ERA that provides access to the calendar of topical training events, as well as to an archive with training materials in different fields of law.
- EUR-Lex – online portal for EU law. It provides official, and the most complete, access to EU texts. The portal is accessible in all 24 official EU languages and is updated on a daily basis, which makes it a valuable source of information.
- IATE (Interactive Terminology for Europe) is the EU terminology database. It has been used by the EU agencies and institutions from the summer of 2004 for the collection, dissemination and management of EU terminology.

During the on-site visit, the Bulgarian judges also said that the judges of the regional courts who deal with the EU agenda organise periodic training for judges of the district courts focused on this issue, in which they inform them about recent cases and solve the practical problems.

8.2. Specific content related to Framework Decision 2002/584/JHA

The NIJ facilitates the access of Bulgarian legal practitioners to relevant information regarding the implementation of the Framework Decision 2002/584/JHA to support their activities. References to the major publications of EU bodies and agencies in this field, such as the Commission's Handbook on how to issue and execute a European arrest warrant, the EU Parliament's report "EAW – European Implementation Assessment" as well as Eurojust's annual publications, providing an overview of the CJEU case-law on the EAW are provided regularly within NIJ training activities and on its website.

The Instruction for issuing and executing an EAW in Bulgaria is available to all prosecutors on the website of the Bulgarian Prosecutor's Office. This document has been amended twice to take into account the evolution of practice by the Bulgarian authorities in the application of the EAW, in cases where Bulgaria is the issuing or executing MS.

This instruction provides specific practical measures to assist prosecutors in a number of practical cases (especially in cases of postponed surrender). An annotation to the decisions in joined cases of the CJEU C-508/2018 and C-82/2019 and in case C-509/2018, the text of these decisions, and other specific instructions are also available on the website of the Prosecutor's Office.

The International Department of the SPCO conducts regular training - at least once a year - for prosecutors and investigative authorities, including on the possibilities for using the tools on the EJM website, as well as on specific EAW cases or related issues. Due to the COVID-19 pandemic no training took place in 2020.

As a central authority in the implementation of the EAW, the MoJ informs the judicial authorities, and their technical specialists, about the opportunities provided by the EJM. Practical guidelines are given, both general and specific; how the system works, and what information is contained in it, is explained.

From the MoJ's perspective, in the last few years (especially after the sixth round of mutual evaluations) the popularity of the Network and its contact points as a tool for searching and collecting information has increased significantly. In its opinion, this is mainly due to the desire and professionalism shown by the contact points, thus strengthening trust in the Network and between the judicial authorities of the EU MS as a whole.

Specialised training on the recognition and enforcement of judicial acts issued by a foreign court in criminal cases, extradition and the EAW is organised by the Lawyers' Training Centre, the Supreme Bar Council or together with the bar associations in the country. These training events are held periodically. The last training event was held on 11 June 2021 as part of the conference 'National Courts and EU Law – A glance over the protection of personal data and the EAW', together with the Bulgarian Association for European Law. About 40 lawyers took part.

To date, about 150 lawyers from Veliko Turnovo, Gabrovo, Lovech and Stara Zagora have received training on these topics. The 'Krastyu Tsonchev' Lawyers' Training Centre has also issued a manual on the issuing and execution of EAWs for the assistance of lawyers.

8.3. Specific content related to Framework Decisions 2008/909/JHA and 2008/947/JHA

A series of Convention-related training activities were organised under the project 'Support and execution of the decisions of the ECHR and the standards and recommendations of the CPT in Bulgaria', implemented in cooperation with the Council of Europe, the NIJ and the Directorate-General for the Execution of Sentences with the MoJ. In 2017, 14 employees from the MoJ and the Directorate-General for the Execution of Sentences took part in a training event on the subject 'Best European practices and standards, pertaining to the alternatives of the deprivation of freedom'. A number of training manuals, focusing on enhancing the capacity of Bulgarian magistrates, prison staff and probation employees, were developed and translated under the above-mentioned project. Free access to the training materials is provided on the NIJ's e- training portal.

Eleven employees from the MoJ and the Directorate-General for the Execution of Sentences took part in a round table, held on 30 January 2020, at which the following topics were presented and discussed: 'substantive and procedural legal aspects of the institution of conditional early release, the probation measures under Art. 67 and Art. 70(6) of the Criminal Code and substituting the penalty of 'deprivation of liberty' for 'life imprisonment'. The analysis was published in the 'Virtual Library' section of the NIJ e- training portal, which is open for registered users.

With regard to the training of staff in the territorial offices of the Directorate-General for the Execution of Sentences, continuous training is provided in accordance with the annual plans approved by the General Director for the professional training of employees at their place of work. The training takes the form of lectures, discussions and practical exercises, and is conducted on a monthly basis in order to improve and enhance the professional training of the employee. The lecturers conducting the training are psychologists, the Head of the Supervision and Security Sector, the Head of the Sofia Sector within the Directorate of the Interior at the Ministry of the Interior, etc.

During the monthly training seminars in the past 2020-2021 professional training year, prison and probation officers have been introduced and had discussed the amendments to the EEAWA, concerning the guarantees provided by the issuing State, taking of custodial measure, the information provided by the issuing authority, the grounds on which the execution of EAW may be refused, as well as issues related to criminal proceedings under the Code of Criminal Procedure.

The evaluation team was also informed that the Commission handbook on the transfer of sentenced persons and custodial sentences in the European Union is published on the webpage of the Supreme Judicial Council and in the NIJ Virtual Library.

Nevertheless, there are no national guidelines on how to deal with Framework Decision 2008/909/JHA. The representative of the SPCO mentioned that an Order from the General Prosecutor on this specific topic could be useful.

In parallel, several practitioners explained that up to now there has not been sufficient training on Framework Decision 2008/947/JHA. The NIJ underlined that on its website the Bulgarian manual on international cooperation in criminal matters is available to all practitioners and includes a part on each Framework Decision covered by this round of mutual evaluations (cf. 8.1.1.). The NIJ also highlighted that Framework Decision 2008/947/JHA is studied by junior judges (together with the other mutual recognition instruments) and has its own module for ongoing training.

8.4. Specific content related to Framework Decision 2009/829/JHA

Just as with Framework Decision 2008/947/JHA (cf. 8.3.), the NIJ explained to the evaluation team that Framework Decision 2009/829/JHA is studied by junior judges (together with the other mutual recognition instruments) and has its own module for ongoing training.

Nonetheless discussions with the various Bulgarian judiciary bodies showed that, to date, awareness of this Framework Decision remains very low. The need for more awareness and the distribution of a handbook on this specific matter was stressed by the Bulgarian practitioners.

8.5. Conclusions

Adequate training on the EAW seems to be provided to the Bulgarian authorities. Indeed the discussions revealed that the SPCO, through the International Department, has issued guidelines on the issuance and execution of EAWs, along with the support provided during the proceedings, but these guidelines have not been shared with the judges. The discussions also revealed the constant support from the MoJ, SPCO, EJM Contact Points and Eurojust, with full respect for the independence of the judiciary. This support is combined with the dissemination of relevant materials and a constant concern for training (initial, ongoing, and combined sessions). The discussions with the police authorities revealed a proactive attitude, reflected in a quality check on alerts, suggestions for the issuing authorities, sufficient explanations of the details of the crime, the assistance of a prosecutor in dealing with difficult cases, and frequent training sessions. The experts therefore conclude that there is a constant concern for training of specialists at all levels in this area.

The evaluation team considers that there is a lack of training on Framework Decision 2008/909/JHA. Guidelines from the MoJ or SPCO could also be useful to build good and constant practices, as they proved useful in the application of Framework Decision 2002/584/JHA. The national networks (judges and prosecutors) showed that they brought added value to the dissemination of materials and consultations among practitioners, and their involvement in the effective application of Framework Decision 2008/909/JHA should be more fully appreciated.

The evaluation team appreciate the work of the Bulgarian NIJ in the international field, the dissemination of training materials and information to the competent authorities and their availability on the website.

The use of electronic resources (on the webpage of the Supreme Judicial Council, the NIJ Virtual Library, the CrossJustice platform) is very beneficial and makes materials and guidelines easily and widely available.

According to the data from the replies to the questionnaire prepared by the Bulgarian authorities, which was supplemented by the written answers to the questions sent later, and the data presented to the evaluation team during the on-site visit, the training on the Framework Decisions under evaluation is considered by the practitioners to be sufficient. However, after the discussions with the experts during the visit, they plan to enhance training on the relevant Framework Decisions for probation officers and for magistrates organised by the NIJ.

The Bulgarian authorities explained that the limited application of the EU instruments other than the EAW was due to insufficient awareness of the legal possibilities offered by these instruments. They consider probation and alternative measures and the ESO to be costly and time-consuming. Possibly if more practical and especially specific training were given to the judicial authorities on the mechanism for applying the evaluated Framework Decisions, practical application of them would increase. It would be appropriate to train not only judges and prosecutors but also lawyers and the probation and prison services.

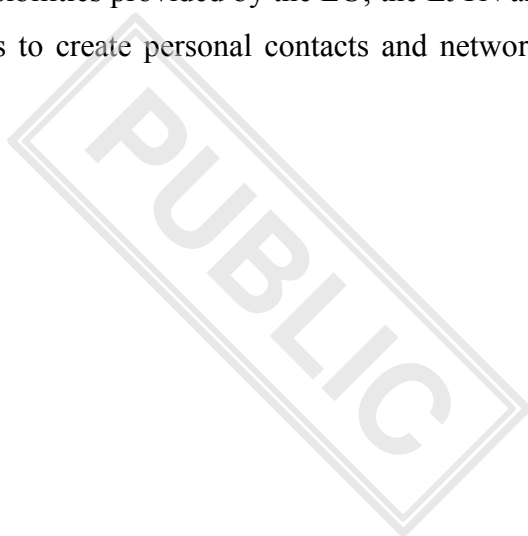
The evaluation team concludes that Bulgaria should ensure that all its practitioners receive coordinated and effective training on the content and use of FDs covered by this round of mutual evaluations with a view to sharing experience, creating good practices and arriving at a common understanding and application.

In that respect, training could be useful if it provides a reminder that not only EAWs but also other tools exist and thus encourages authorities to reconsider their reservations about them.

Bulgaria should consider the promotion of regular meetings of judges and prosecutors who deal with the above-mentioned Framework Decisions and the possibility of combined training involving all the relevant professions.

The evaluation team considers that improving the language skills of judicial authorities could also facilitate international cooperation with the other EU Member States. The expert team is of the opinion that e-learning modules, which would enable wider participation, save time and reduce cost, should also be offered.

The Bulgarian practitioners suggested more training possibilities provided by the EU, the EJTN and the EJM. This kind of training also offers opportunities to create personal contacts and networks among EU practitioners.



9. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

9.1. Suggestions from Bulgaria

9.1.1. Regarding Framework Decision 2002/584/JHA

The Bulgarian authorities recommend improving the notifications from Member States regarding transit by reviewing the information available in the EJN on the competent authorities responsible for authorising transit (in one case they found a discrepancy between the competent authority specified in the EJN and the information received through the SIRENE Bureau), as well as supplementing the information with the required documents and the deadlines for sending requests and replies.

The courts shared the idea that a single electronic system and unified instructions at EU level would be useful to standardise practice and exchange information, to overcome certain difficulties and to quickly resolve emerging and recurring problems.

9.1.2. Regarding Framework Decision 2008/909/JHA

The National Network of Judges suggest developing at EU level an electronic platform for sending and receiving certificates for the transfer of sentenced persons, and requesting additional documents or court decisions, in order to facilitate all communication between the competent authorities.

This platform should also have an application for automatic translation of court decisions and certificates in order to save costs and time for their translation. Considering the nature of automatic translation and the impact the translation could have on the work of the issuing/executing authorities, the platform should also provide sufficient guarantees of the quality of the translation as well mechanisms for its verification, since there are some concerns on the part of the judicial authorities, bearing in mind the importance of conveying the true meaning of the acts such as sentences, decisions and rulings of judicial authorities.

9.1.3. *Regarding Framework Decisions 2008/947/JHA and 2009/829/JHA*

The Bulgarian practitioners would like the EU institutions to launch a study on Framework Decisions 2008/947/JHA and 2009/829/JHA in order to analyse how their use could be improved.

The European Commission together with EJM and Eurojust should also provide practical guides for the application of all mutual recognition instruments in force, notably Framework Decisions 2008/947/JHA and 2009/829/JHA. These guides should also contain best practices in all EU MS.

According to the Bulgarian authorities there is a need for an increase in training, both at national and European level, and toolkits which could be disseminated among practitioners: magistrates and lawyers, as well as the probation services/officers. The latter are considered to be certainly the most important, in the area of Framework Decision 2008/947/JHA, as they will give information to persons sentenced to probation.

Bulgarian practitioners would like more training on Framework Decisions 2008/947/JHA and 2009/829/JHA at EU level. They consider EU training programmes as one of the best forms of training as well as awareness-raising on the practical application of the EU instruments. The possibility for the practitioners to meet and exchange their views with their counterparts from other MS is always welcomed by practitioners. The Bulgarian authorities would welcome any initiatives for training at EU level or between two or more MS, based on their specific needs or experience. They also strongly support the possibilities provided by e-training or practical seminars.

9.1.4. *Regarding training*

A representative of the Bulgarian judges explained to the evaluation team that they would like to create a national platform where cases involving the mutual recognition instruments could be shared with the other practitioners. They stressed that it would be a good way to share experience and enhance judicial cooperation.

9.1.5. *Regarding the EJM*

The Bulgarian authorities underline the importance of regularly checking and updating the information available on the EJM website. They also believe that it would be useful to optimise the site for mobile devices by developing a mobile version or application that will facilitate navigation on devices with a smaller screen or touchscreen.

9.2. **Recommendations**

As regards the practical implementation and operation of the Directives and the Regulation, the expert team involved in the evaluation of Bulgaria was able to satisfactorily review the system in Bulgaria.

Bulgaria should conduct a follow-up, after 18 months, on the recommendations mentioned below after the adoption of this report in the Working Party concerned.

The evaluation team thought fit to make a number of suggestions for the attention of the Bulgarian authorities. Additionally, based on the various good practices, related recommendations to the EU, its institutions and agencies, Eurojust and EJM in particular, are also put forward.

9.2.1. *Recommendations to Bulgaria*

9.2.1.1. *Regarding Framework Decision 2002/584/JHA*

Recommendation No 1: Bulgaria should consider using the general statement given to Germany regarding detention conditions with other EU Member States. (cf. 3.7.2.)

Recommendation No 2: Bulgaria should consider adding to the General Prosecutor's Instruction guidelines on the assessment of whether to issue an EAW or request the court to issue a certificate for transfer of the execution of a sentence, in cases where a person residing in another Member State has been sentenced to imprisonment by a Bulgarian court. (cf. 5.2.)

Recommendation No 3: In accordance with Article 8(2) of FD 2002/584/JHA Bulgaria is encouraged to accept EAWs in another language, at least in English. (cf. 3.7.3.)

Recommendation No 4: In accordance with the CJEU case law in C-648/20 and C-206/20, Bulgaria should amend its law providing for the prosecutor to issue an EAW. Meanwhile, Bulgaria is encouraged to find a practical way to ensure that all Bulgarian EAWs (pending and future) can be reviewed by a Court prior to the surrender of the requested person. (cf. 3.7.2.)

Recommendation No 5: Bulgaria is encouraged to amend Article 41(3) of the EEAWA in such a way that the guarantees sought for Bulgarian citizens to serve their sentence in Bulgaria are no longer requested in advance, in accordance with Article 5(3) of FD 2002/584/JHA providing for the possibility for the judicial authority to directly mention this point in its decision. (cf. 3.7.3.)

Recommendation No 6: Bulgaria should consider a common practice in setting the beginning of the 72-hour period of detention decided by the prosecutor. (cf. 3.7.3.)

Recommendation No 7: In accordance with Recommendation No 8 of the 4th round of mutual evaluations, Bulgaria is encouraged to further consider including the principle of proportionality in its national legislation. (cf. 3.7.2.)

9.2.1.2.Regarding Framework Decision 2008/909/JHA

Recommendation No 8: In order to speed up the transfer of the sentenced person, Bulgaria should limit the translation of the Bulgarian judgment to the operative part. (cf. 4.11)

Recommendation No 9: As for Framework Decision 2002/584/JHA, prosecutors and judges should draft guidelines regarding the other mutual recognition instruments, at least Framework Decision 2008/909/JHA. (cf.4.11.)

9.2.1.3. Regarding training

Recommendation No 10: Bulgaria should train more extensively all the authorities involved (judges, prosecutors, prison staff, police officers, probation staff, lawyers, police officers...) in the field of the Framework Decisions 2008/947/JHA and 2009/829/JHA, notably using combined training. (cf.8.5.)

Recommendation No° 11: In its guidelines, Bulgaria should highlight the need to seek the advice of Eurojust in the event of competing EAWs. (cf. 3.5.6.)

Recommendation No 12: Bulgaria should take further measures to ensure that at least all relevant judges and prosecutors attend ongoing training on relevant EU legal instruments for judicial cooperation in criminal matters. (cf. 8.5.)

Recommendation No 13: In accordance with Recommendation No 7 of the 4th round of mutual evaluations, Bulgaria should encourage judges and prosecutors to improve their language skills and take part in language training (cf. 8.5.)

9.2.1.4. Regarding statistics

Recommendation No 14: Bulgaria is encouraged to develop a coordinated system (possibly involving both judicial and central authorities) in order to facilitate both gathering statistical data (building upon the good practice of the software used by the courts) and monitoring the application of the EU legal instruments. (cf. 3.7.1, 4.11 and 6.3.)

9.2.2. Recommendations to the other Member States

Recommendation No 15: Member States are encouraged to take all the necessary measures to ensure the actual handover of the sought or sentenced person, including all appropriate coercive measures. (cf. 3.7.2.)

Recommendation No 16: Member States are encouraged to include the EJM resources, especially the EJM website, in their training programmes. (cf. 8.1.2. and 8.2.)

9.2.3. Recommendations to the EJM

Recommendation No 17: The EJM should increase its efforts to offer training to practitioners in the field of the four framework decisions which are the subject of the ninth round of mutual evaluations and give greater visibility to its training programme. (cf. 8.5.)

9.3. Best practices

Only the best practices which other MS have suggested adopting are listed.

The Member States:

1: are encouraged to set up a national judicial network of judges specialised in international cooperation in criminal matters. (cf. 8.5.)

2: are encouraged to follow the example of the NIJ in training the judiciary on the use of the mutual recognition instruments. (cf. 8.5.)

3: are encouraged to follow the example of the IOCD in regard to the thorough quality check when receiving an EAW, the high level of training and qualifications of their police officers, communication through police channels and double alerts in SIS and with Interpol. (cf. 3.7.1.)

4: are encouraged to allocate sufficient timeslots and resources to assess EAWs in a timely manner, in order to comply with the timeframe laid down by Framework Decision 2002/584/JHA. (cf. 3.7.1.)

5: which are frequently asked to provide additional information regarding detention conditions are encouraged to use a standardised as Bulgaria does. (cf. 3.7.2.)

ANNEX A: PROGRAMMES FOR THE PREPARATORY WORK AND ON-SITE VISIT

Preparatory work, 9 December 2020

- Presentation of the agenda of the onsite evaluation and comments by the experts;
- Questions by the experts on the replies to the questionnaire;
- Discussions on Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions;
- Discussions on Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle on mutual recognition to decisions on supervision measures as an alternative to provisional detention.

Onsite evaluation 13-17 September 2021

Day 1, Monday, 13 September 2021

Arrival and accommodation of the evaluation team

Day 2, Tuesday, 14 September 2021

Morning session 10h00 - 12h00

Meeting in the Ministry of Justice – International Cooperation and European Affairs Directorate, DG Security, DG Execution of Sentences (including Probation Services)

Afternoon session 14h00 - 16h00

Meeting in the Palace of Justice (prosecutors) – International Department of the Supreme Prosecution Cassation Office, Sofia City PPO, and Prosecutors' network

Day 3, Wednesday, 15 September 2021

Morning session 10h00-12h00

Meeting in the National Institute of Justice (judges) – Sofia Court of Appeal, Sofia City Court, Judges' Network, National Institute of Justice

Afternoon session 14h00-16h00

Meeting in the Ministry of Interior – International Operational Cooperation Directorate, SIRENE Bureau

Day 4, Thursday, 16 September 2021

Visit to Plovdiv

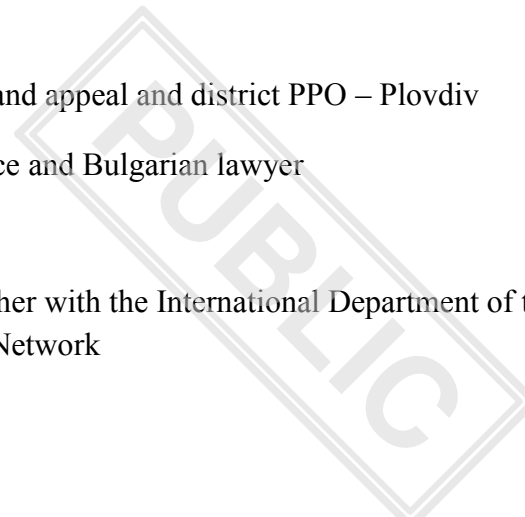
10h00-12h30 Meeting with an appeal and district court and appeal and district PPO – Plovdiv

16h00-17h30 Meeting with the National Legal Aid Office and Bulgarian lawyer

Day 5, Friday, 17 September 2021

10h00-11h30 Debriefing in the Ministry of Justice together with the International Department of the Supreme Prosecution Cassation Office and the Judges' Network

Departure of the evaluation team



ANNEX B: PERSONS INTERVIEWED/MET

9 December 2020

Venue: virtual meeting

Person interviewed/met	Organisation represented
Ms Mariyana Lilova	Prosecutor at the International Department of the Supreme Prosecution Cassation Office; former national member for Bulgaria in EUROJUST
Ms Marieta Nedeltcheva	Judge at the Specialised Criminal Court, national contact point for the European Judicial Network
Ms. Lyubomira Dimitrova	Head of Division of International Cooperation in Criminal Matters at the Directorate of International Legal Cooperation and European Affairs, Ministry of Justice of the Republic of Bulgaria
Ms Katia Panova	State Expert in the Division of International Cooperation in Criminal Matters at the Directorate of International Legal Cooperation and European Affairs, Ministry of Justice of the Republic of Bulgaria
Mr Dimitar Terziivanov	Chief Expert in the Division of International Cooperation in Criminal Matters at the Directorate of International Legal Cooperation and European Affairs, Ministry of Justice of the Republic of Bulgaria

Meeting on 14 September 2021, morning session

Venue: Ministry of Justice, 1 Slavyanska Street Sofia

Person interviewed/met	Organisation represented
Ms. Lyubomira Dimitrova	Head of the Criminal Law Cooperation Department
Ms. Katia Panova	State Expert in the Criminal Law Cooperation Department
Mr. Dimitar Terziivanov	Chief Expert in the Criminal Justice Cooperation Department
Ms. Milena Gencheva	Directorate-General for the Execution of Sentences, MoJ: Head of the Regime Activity Sector
Ms. Liliya Oushtepkova	Directorate-General for the Execution of Sentences, MoJ: Probation Sector
Mr. Mariyan Marinov	Directorate-General for Security, MoJ: Head of Department, Commissioner

Meeting on 14 September 2021, afternoon session

Venue: Palace of Justice, Sofia

Person interviewed/met	Organisation represented
Ms. Katia Panova	State Expert in the Criminal Law Cooperation Department
Ms. Mariyana Lilova	Prosecutor in the International Department of the Supreme Prosecution Cassation Office
Ms. Michaela Spasova Raidovska	Prosecutor in the International Department of the Supreme Prosecution Cassation Office
Ms. Gergana Kyurkchiyska	Prosecutor at the Sofia City Prosecutor's Office

Meeting on 15 September 2021, morning session

Venue: National Institute of Justice, 14 Ekzarh Yosif Street Sofia

Person interviewed/met	Organisation represented
Ms. Katia Panova	State Expert in the Criminal Law Cooperation Department
Ms. Marieta Nedelcheva	Judge at the specialised criminal court of Sofia
Ms. Karamfila Todorova	Judge at Sofia City Court
Ms. Cornelia Kirilova,	Programme Coordinator in the Current Training and International Exchange of Magistrates Directorate, NIJ

Meeting on 15 September 2021, afternoon session

Venue: Ministry of the Interior, International Operational Cooperation Directorate, SIRENE Bureau in Sofia

Person interviewed/met	Organisation represented
Ms. Katia Panova	State Expert in the Criminal Law Cooperation Department
Mr. Valentin Kostov	Director of IOCD, Senior Commissioner
Ms. Kalina Kalcheva-Alexandrova	Commissioner, Head of the SIRENE Department at IOCD
Mr. Ventsislav Yanakiev	Chief Inspector, Head of the International Wanted Persons Search Sector at the SIRENE Department at IOCD
Mr. Petar Vassilev	Head of Legal Services and Human Resources Department at the IOCD

Meeting on 16 September, morning session

Venue: Plovdiv Appeal Court

Person interviewed/met	Organisation represented
Mr. Dimitar Terziivanov	Chief Expert in the Criminal Justice Cooperation Department
Ms. Magdalena Ivanova	President of Plovdiv Appeal Court
Ms. Mihaela Buyuklieva	Deputy Chairman of Plovdiv Appeal Court
Mr. Hristo Kracholov	Judge at Plovdiv Appeal Court
Ms. Rozalia Sheitanova	President of the District Court of Plovdiv
Ms. Maria Shishkova	Deputy Chairman of the District Court of Plovdiv
Ms. Mariyana Lilova	Prosecutor in the International Department of the Supreme Prosecution Cassation Office
Mr. Svetlozar Lazarov	Prosecutor, Plovdiv Prosecution Office of Appeal
Ms. Andreyana Atanasov	Prosecutor, Plovdiv Prosecution Office of Appeal
Mr. Galin Gavrailov	Prosecutor, District Prosecution Office – Plovdiv
Ms. Galina Andreeva-Mincheva	Prosecutor, District Prosecution Office – Plovdiv

Meeting on 16 September, afternoon session

Venue: Ministry of Justice, 1 Slavyanska Street Sofia

Person interviewed/met	Organisation represented
Ms. Asya Olegova Mandzhukova	Lawyer
Ms. Kalina Petrova	Deputy Chairman of the National Bureau for Legal Aid
Ms. Katia Panova	State Expert in the Criminal Law Cooperation Department

Meeting on 17 September, morning session

Venue: Ministry of Justice, 1 Slavyanska Street Sofia

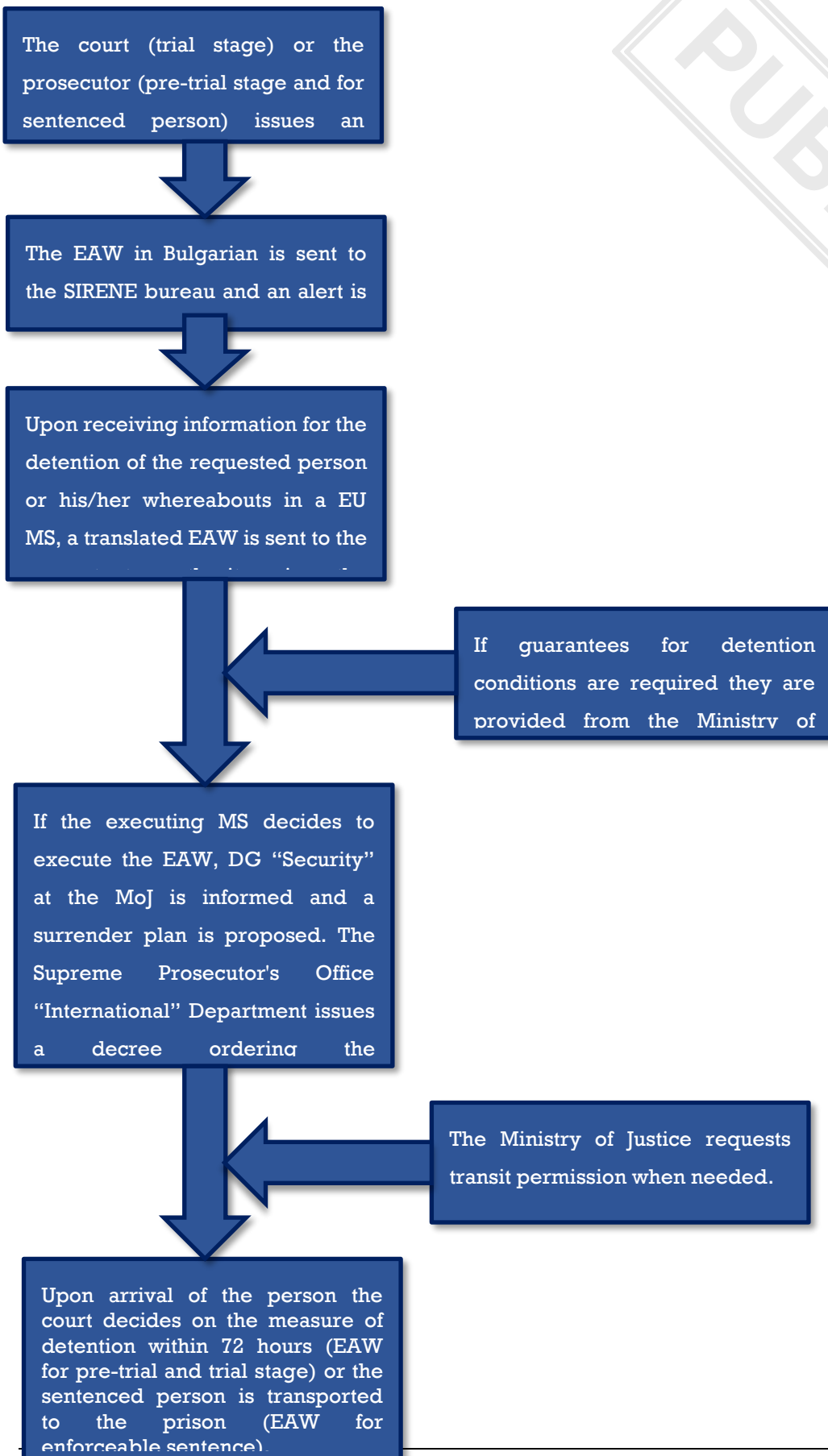
Person interviewed/met	Organisation represented
Ms. Katia Panova	State Expert in Criminal Law
Ms. Lyubomira Dimitrova	Head of the Criminal Law Cooperation Department
Ms. Mariyana Lilova	Prosecutor in the International Department of the Supreme Prosecution Cassation Office

ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

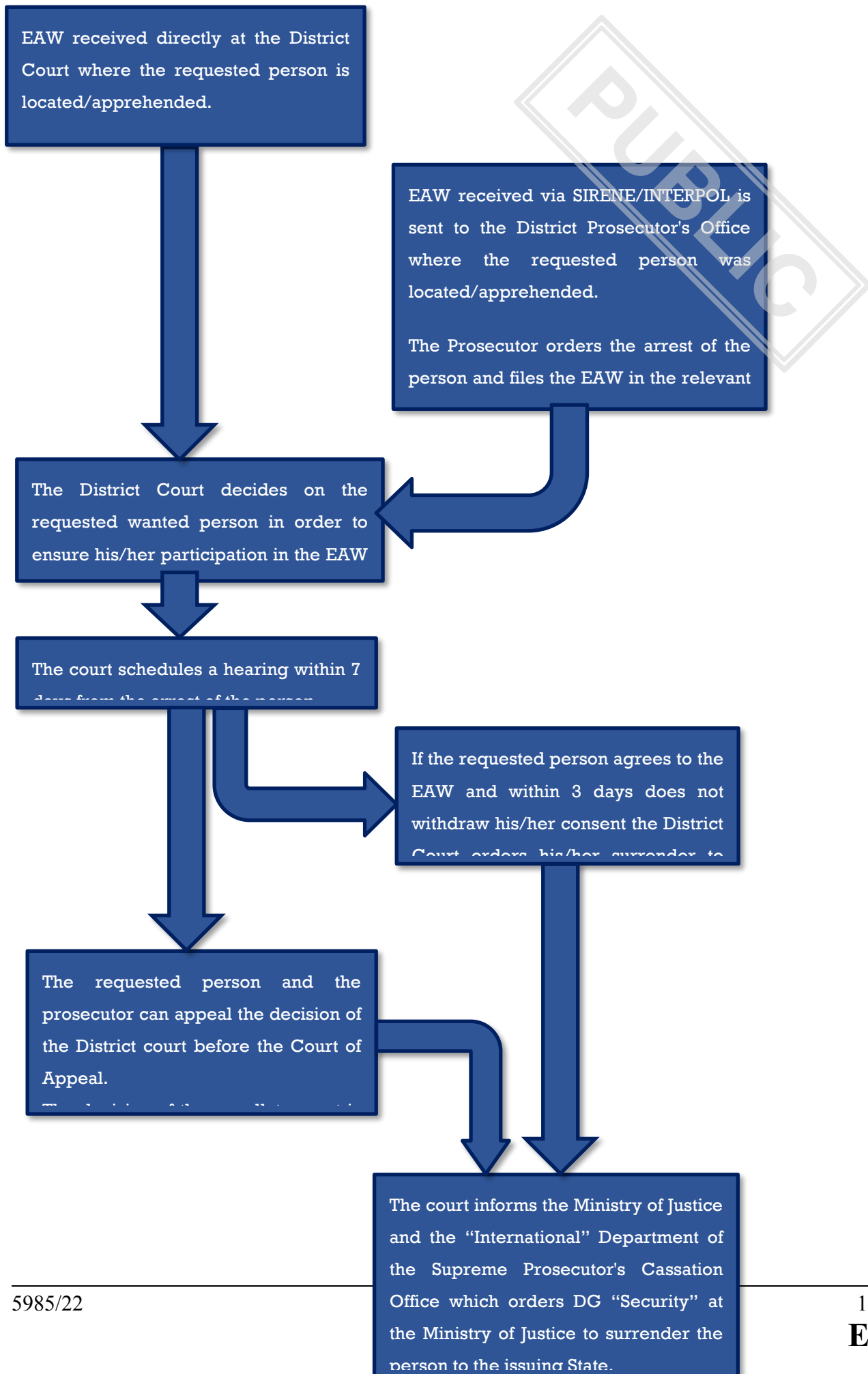
LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	BULGARIAN OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
CATS		Coordinating Committee in the area of police and judicial cooperation in criminal matters
CJEU		Court of Justice of the European Union
CPT		European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment
EAW		European arrest warrant
ECHR		European Court of Human Rights
ECJ		European Court of Justice (Court of Justice of the European Union)
EEAWA		Extradition and European Arrest Warrant Act
EJN		European Judicial Network
EJTN		European Judicial Training Network
EPDCA		Execution of Penalties and Detention in Custody Act
ERA		Academy of European Law
ESO		European Supervision Order
EU		European Union
FD		Framework Decision
GSC		General Secretariat of the Council
ICCM		International Cooperation in Criminal Matters
IOCD		International Operational Cooperation Directorate

LIST OF ACRONYMS, ABBREVIATIONS AND TERMS	BULGARIAN OR ACRONYM IN ORIGINAL LANGUAGE	ENGLISH
JHA		Justice and Home Affairs
NIJ		National Institute of Justice
SIRENE		Supplementary Information Request at the National Entries
SIS		Schengen Information System
SPCO		Supreme Prosecution Cassation Office
UN		United Nations

FD 2002/584/JHA: BULGARIA AS ISSUING MEMBER STATE



FD 2002/584/JHA: Bulgaria as Executing Member State



FD 2008/909/JHA: Bulgaria as Issuing MS

The court that has sentenced the person as first instance or the prison management informs him / her about the right to request a transfer. Apart from the sentenced person a transfer can be initiated by the court *ex officio*, the prosecutor or the executing MS

The court, in an open court session, gives the sentenced person the opportunity to consent to the transfer and hears his / her opinion about it

If the sentenced person agrees or the court decides so, it sends the certificate to the executing Member State

After the issuing authority is informed that the decision to execute the certificate is final, the Supreme Prosecutor's Office "International" Department issues a decree ordering DG "Security" at MoJ to carry out the surrender of the sentenced person

FD 2009/829/JHA: Bulgaria as Executing MS

The certificate is sent to the the district court at the permanent address of the sentenced person in Bulgaria (upon his / her request

After receipt of the certificate, the court institutes recognition proceedings and schedules a public hearing within 14 days for examination of the case. The court examines the case in a panel composed of a single judge with the mandatory participation of a prosecutor. The presence of a defence council is also mandatory.

The decision of the court can be appealed by the defence or the prosecution before the competent appellate court within 14 days from being made public. The decision of the court of appeal is final.

After the recognition of the certificate, the court transmits a certified copy of the decision to the competent prosecution office to take the necessary measures for the enforcement of the sentence according to the procedure established by Bulgarian law and/or for proceeding with the transfer. A certified copy of the final decision is sent to the Supreme Prosecutor's office of Cassation and to the Ministry of Justice.

The sentenced person is surrendered to officer from DG "Security" at the Ministry of Justice by the executing State on a date agreed between the Supreme Cassation Prosecution Office and the competent authority of the executing State through the International "Operational Cooperation Directorate" of the Ministry of Interior.

FD 2008/947/JHA: Bulgaria as Issuing MS

The court that has imposed the measure as first instance sends its decision imposing a probation or alternative measure and the certificate directly to the competent authority at the executing MS and informs the Ministry of Justice about it.

Where the sentenced person fails, without reasonable excuse, to comply with the probation measure or alternative sanction imposed or commits a new criminal offence and the executing State is not competent to take subsequent decisions relating thereto, the Bulgarian court decides on modification of obligations or instructions contained in the probation measure or alternative sanction; enforcement of the suspended custodial sentence or serving separately the unserved part of the sentence in respect of which the sentenced sentence has been granted early release.

The court informs without delay the competent authority of the executing State of its decision.

Supervision of the probation measures or alternative sanctions imposed are discontinued and the Bulgarian court no longer has competence in relation to the said supervision nor to take subsequent decisions, once the court has been informed by the competent authority of the executing State of the recognition of the judgment.

FD 2008/947/JHA: Bulgaria as Executing MS

The decision and the certificate are sent to the the district court at the permanent address of the sentenced person in Bulgaria.

After receiving the judgment or decision and the certificat the court institutes recognition proceedings and schedules the case within seven days.
The case is examined in a panel of three judges in public session with the mandatory participation of a prosecutor and with the sentenced person being summoned.

The decision of the district court referred could be appealed by the defence or the prosecution before the appellate court within five days after the publication thereof. The decision of the appelate court is final.

The imposed measures are forwarded for execution from the prosecutor to the probation services at DG "Execution of sentences" at the current address of the person. The legality of he exeution is monitored by the District Prosecutor.

FD 2008/829/JHA: Bulgaria as Issuing MS

The competent authority to send a decision on a supervision measure for the exercise of monitoring in another Member State is the supervising prosecutor.

The decision on supervision measures is sent to the competent authority of the executing State in which the defendant resides for a long time or permanently when, after serving the decision, the person gives a written consent to return to that State.

Supervision of the supervision measures imposed are discontinued and the prosecutor longer has competence in relation to the said supervision nor to take subsequent decisions, once he/she has been informed by the competent authority of the executing State of the recognition measure.

FD 2009/829/JHA: Bulgaria as Executing MS


The decision and the certificate are sent to the the district court at the permanent address of the person in Bulgaria.

After receiving the decision and the certificate the court institutes recognition proceedings and schedules the case within 14 days.
The case is examined in a panel of single judge in public session with the mandatory participation of a prosecutor and with the sentenced person being summoned.

The decision of the district court referred could be appealed by the defence or the prosecution before the appellate court within seven days after the pronouncement thereof. The decision of the appellate court is final.

The imposed measures are forwarded for execution according to the Bulgarian legislation in force.

ANNEX E: THE IMPACT OF COVID-19 ON JUDICIAL COOPERATION IN CRIMINAL MATTERS

BULGARIA 	
<p>EAW</p> <p>-issuing of EAWs (<i>suspension; impact on already issued EAWs; prioritisation in issuing new EAWs + criteria</i>)</p> <p>- execution and postponement of the actual surrender (<i>legal basis, adequacy, release of surrendered persons, measures to prevent released persons from absconding</i>)</p> <p>-expected resuming of surrenders</p> <p>-transit</p>	<p>Impact on the issuing of EAWs</p> <p>No, the Bulgarian authorities issued EAWs as they did <u>before</u> the situation caused by COVID-19.</p> <p>Impact on the execution of EAWs and postponement of the actual surrender</p> <p>The Prosecutor’s Office is looking for mechanisms to guarantee that the execution of the EAW will take utmost account of the epidemiological environment. In practice, the Bulgarian authorities requested the surrenders following an issued EAW to be postponed at least until 13 April 2020 and subsequently until 30 June 2020, when the national state of emergency was due to end. This measure concerns EAW proceedings with Member States where the epidemiological risk is high, as indicated by the Minister of Health. With other Member States the Bulgarian authorities request only an extension of the surrender period due to the restrictions implemented in response to the COVID-19 outbreak.</p> <p>The execution of the EAW has not been suspended so far. Surrenders were not possible but are postponed until the end of the extraordinary situation ordered by Bulgarian national assembly in response to the COVID-19 pandemic. The Supreme Prosecution Cassation Office of the Republic of Bulgaria is making great efforts to agree with the issuing State on extension of the surrender period when due to objective reasons (travel restrictions, cancelled flights, high epidemiological risk etc.) the surrender cannot take place within ten days after the entry into force of the decision of the competent Bulgarian court.</p> <p>On 15 May 2020 the state of emergency was replaced by the declaration of an extraordinary epidemiological situation. Since 15 May 2020 the BG authorities have been seeking for every possible opportunity to perform the surrenders.</p> <p>Update about Bulgaria’s practice for surrendering criminals in the execution of an EAW:</p> <ul style="list-style-type: none"> • First step: after receiving the court decision on the surrender the Supreme Prosecution Cassation Office prolongs the factual surrender period to 20 days on the bases of Article 54 para 1 and 2 of the Bulgarian Law on EAW if necessary. This provision corresponds to Article

23 of the FD on EAW. In summary the court can postpone the factual surrender when: there is a *force majeure* situation or/and the surrender would endanger the life and health of the wanted person.

- Second step: within those 20 days SIRENE-Sofia has informed the relevant SIRENE in the issuing Member State and ask for its opinion to temporarily postpone the factual surrender.

PUBLIC

The Supreme Prosecution Cassation Office has postponed the surrender with 20 days. Within those 20 days the Supreme Prosecution Cassation Office asked for the opinion of the issuing authorities to prolong that period after 20 days. There are several cases when the BG court has ordered measures other than detention, particularly less severe measures such as bail or home arrest, in view of securing the follow-up factual surrender.

- Third step: if the time defined by the Supreme Prosecution Cassation Office is not enough the relevant District PO has sought an additional prolongation from the District court until the end of the state of emergency.
- Fourth step: after obtaining the court decision on extension until the end of the epidemiological situation on the legal bases of Article 54 point 3 of the Law on EAW in relation to Article 23 point 3 of the FD on EAW the wanted person is kept in the detention centre without being released until the factual surrender.

Impact on surrender, extradition, transfer by land

The COVID-19 situation has had an effect on the execution of surrenders, extraditions and transfers of convicts by land in Bulgaria. Between the middle of March 2020 and the middle of May 2020, based on the restrictive measures for entering and exiting of the territory of Bulgaria imposed in connection with the COVID-19 pandemic, all surrenders, extraditions and transfers of convicts by land were cancelled. After the end of the state of emergency in the middle of May 2020, the restrictive measures for entering in Bulgaria were prolonged until 30 June 2020, when the execution of all surrenders, extraditions and transfers of convicts were resumed. Surrenders, extraditions and transfers of convicts are now being executed by land and air, with some restrictions.

Impact on surrender, extradition, transfer by air

Currently, surrenders, extraditions and transfers of convicts by air are taking place again, with some restrictions.

Legal basis for postponing the actual surrender

The extension is based on Article 23(3) of the EAW Framework Decision.

Adequacy of these provisions

Yes, it is sufficient and applicable to the current situation.

Releases of requested persons following the postponement of the surrender

BG courts in some cases have ordered less severe restraint measures such as release on bail or home arrest.

Expected resuming of the surrender

Practically in every case with a final decision to surrender the requested person after 13/03/2020 the physical surrender has been postponed. From the Bulgarian perspective the earliest date to consider the possible execution of the court decisions to surrender persons was 14/05/2020 since this was the last date of the *state of emergency* declared by the Parliament. On

	<p>14/05/2020 the Government declared an <i>extraordinary epidemic situation</i> under the Law of Health. It replaced the <i>state of emergency</i> with basically the same restrictions regarding cross-border trips imposed with orders of the Ministry of Health.</p> <p>The <i>extraordinary epidemic situation</i> remained in place until 13 April 2021, which was basically the new date when the postponed procedures were to be resumed under certain conditions.</p> <p>Transit</p> <p>We do not have recent cases of requests for transit but the restrictions mentioned above for surrenders are valid. Transit via Bulgaria is possible, following the regulation for anti-epidemic measures, but it is limited because of the limited available air traffic in Europe.</p>
<p>Precautionary measures for surrender, extradition and transfer</p> <ul style="list-style-type: none"> - COVID-19 test - health certificate - quarantine - facial masks 	<p>Specific measures for the person to be transferred</p> <p>Protective equipment (masks, gloves and disinfectants) is available to the detained persons. Additionally, they are all briefed on the safety measures to prevent dissemination of the virus.</p> <p>Bulgaria applies a system of precautionary measures in order to limit the health risks for requested and detained persons in the epidemic situation. It includes:</p> <ul style="list-style-type: none"> -Personal preservation and protective equipment – masks, gloves, disinfection; -Focused medical checks and quarantine of all persons who are detained or brought to a prison (or other detention facility) for the first time. This will include requested persons surrendered by other Member States; -14-day monitoring of the health condition of the detained persons; -Intensive disinfection; -Protocol for isolation and hospitalisation of persons with symptoms and persons at high risk; -Protocol for action of the staff in <i>state of emergency</i> and/or <i>extraordinary epidemic situation</i> (rotation, long shifts of the medical staff etc.). <p>The leading opinion so far is that in every case of surrender of a person the surrendering state should provide a medical reference stating the health conditions of the person and the lack of symptoms in the last 14 days. A specific COVID-19 medical examination should be obligatory only in case of symptoms or other reason for suspicion that the person is infected.</p> <p>There are no specific conditions for the persons in a procedure of surrender, extradition or transfer. In general, before the surrender, extradition or transfer from Bulgaria to another country, a medical certificate from the penitentiary institution is required. In connection with the COVID-19 situation, the certificate should highlight that the person is not suffering from a respiratory disease with COVID-19 symptoms and that they have had no contact with a person suffering from COVID-19. After execution of the surrender, extradition or transfer into Bulgaria the person is quarantined according to the rules in the penitentiaries in Bulgaria.</p> <p>Before the surrender, extradition or transfer to Bulgaria, our competent authority requests confirmation from the other country</p>

	<p>that the person has not suffered from a respiratory disease with COVID-19 symptoms and that they have had no contact with a person suffering from COVID-19 in the last 14 days.</p> <p>Specific measures for escorting police officers When carrying out procedures on EAW the officials at the Directorate-General for Security at the Ministry of Justice are provided with protective equipment (masks, gloves and disinfectants). Additionally, they are all briefed on the safety measures to prevent the dissemination of the virus.</p> <p>There are no special conditions for escort police officers coming to Bulgaria and according to the latest measures taken by the Bulgarian authorities, foreign officials, including law-enforcement officials, are allowed to enter Bulgaria without being under quarantine after entering in Bulgaria. Bulgarian escorting officers going abroad for the execution of surrenders, extraditions and transfers are provided with personal protective gear – masks, gloves and disinfectants. Masks, gloves and disinfectants are also provided to the surrendered, extradited and transferred person.</p> <p>All police officers coming to Bulgaria should be aware of the current measures taken by the Bulgarian authorities such as wearing masks in public places, social distancing, etc.</p> <p>The Order issued by the Minister of Health has not imposed a quarantine on officials, especially for the escort team accompanying the extradited persons.</p> <p>Need (or not) for further guidance on precautionary measures We would appreciate some brief guidance regarding the necessary measures and specifically in the application of EAW procedures in a pandemic situation. We believe such guidance would be useful if: - we could refer to it in relations with another Member State; - we can expect that all Member States will act in compliance with it.</p>
<p>Extradition -suspension -legal basis -third countries involved -expected duration of suspension</p>	<p>Impact on extradition procedures Bulgaria has applied a temporary detention and then, after the court decision, a factual surrender having in mind all restrictions and subsequent complications in relation to travelling.</p>
<p>Transfer of sentenced persons -prioritisation in issuing/execution</p>	<p>Impact on the issuing of requests for transfer of sentenced persons No prioritisation.</p> <p>Impact on the execution of transfers of sentenced persons The transfer of convicted persons was directly affected by the spread of the disease due to the need for surrender of the persons. In several cases the Supreme Prosecution Cassation Office had to cancel plans for surrender that were already approved and to negotiate new ones due to the quickly changing situation. The other Member State has been notified that a confirmation for a new specific plan would be possible only after the</p>

	<p>alleviation of the epidemiologic environment. This limitation was valid until July 2020. Now the situation is completely changed.</p> <p>Transfers of prisoners were thus not possible because of COVID-19 restrictions, even if the surrendered person had a negative test result. In every single case there was a court decision to postpone the surrender of person. We did not have cases under FD 2008/909/JHA because the law entered in force from the 1 January 2020 and in practice we have just started a few cases under this procedure. This limitation was valid until July 2020. Now the situation is completely changed.</p>
<p>SIRENE Bureaux -working of SIS bureau -exchange of information with other SIS Bureaux</p>	<p>Impact on the working of the SIRENE Bureau SIRENE Bulgaria is working at full capacity, 24/7.</p> <p>Impact on the exchange of information with other SIRENE Bureaux None.</p>
<p>EIO and MLA -prioritisation in issuing/execution -electronic transmission -whom to contact</p>	<p>Impact on the issuing of EIOs and MLA requests No prioritisation.</p> <p>Impact on the execution of EIOs and MLA requests You could expect some delays in the execution of all EIOs due to the crisis with COVID-19, the state of emergency in Bulgaria and limited judicial and police resources. In addition, Bulgaria is not going to participate in common Action Days with other countries. We do not execute EIO for ordinary cases till the end of the extraordinary situation announced by Bulgarian authorities due to COVID-19. For serious urgent cases a single decision is made based on the concrete issues by the competent prosecutor responsible for the execution. Before that we recommended consulting him/her by phone or email for possible solutions.</p> <p>Electronic transmission and contact details EIOs must be sent by email. It is not necessary to send the EIO to the central authority, it is always better to send directly to the competent District prosecution office responsible for the execution.</p>
<p>Freezing and confiscation orders -prioritisation in issuing/execution</p>	<p>Impact on freezing and confiscation orders No prioritisation.</p>
<p>JITs -prioritisation and alternative telecommunication solutions</p>	<p>Impact on JITs No prioritisation.</p>

<p>Recommended channels for transmission of -urgent requests -information exchange</p>	<p>The experience of the Supreme Prosecution Cassation Office shows that the fastest and most effective channel for exchange of information between the Member States is ensured by SIS, operated by Member States' SIRENE bureaux.</p> <p>For the transmission of EIOs and MLA requests, <i>see above</i> 'EIO and MLA'.</p>
<p>Any other relevant information</p>	<p>With regard to the additional information asked we would like to stress that the procedures of issuing EAW and the court hearings in case of incomings EAW have been never stopped in Bulgaria and there has been no obstacle to them since 14/05/2020. Only the physical surrenders have been postponed – in most of the cases via a separate court decision if Bulgaria acts as executing State.</p>