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# BULGARIAN NATIONAL REPORT

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# 2 Table of Contents

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# 3 Executive Summary

Of the three European criminal mutual recognition instruments under examination, the European Arrest Warrant (EAW) has been first introduced in national legislation, since 2006, entering into force on January 1, 2007. Its long application in judicial practice - more than 15 years - is one of the possible reasons for the lack of significant difficulties and problems in the national proceedings on the issuance and execution of the European arrest warrant. However, significant changes were made in December 2023[435] to bring the national law into full compliance with the European regulatory framework in this area, as well as to meet the standards for effective judicial protection in EAW proceedings established in the case law of the CJEU (the so-called dual level of protection).

Unlike EAW, the other instrument – the European Investigation Order (EIO), was introduced relatively recently into the national legal system - through the adoption in 2018 of a special law - European Investigation Order Act[436]. Almost the entire Directive 2014/41/EU is adopted verbatim in the Bulgarian law through which it is transposed. In practice are outlined the problems related to the procedural aspects of the application of the rules and, in particular, to the competence of the authorities that issue or execute EIO and to the guarantee of legal means of protection against the issuance of EIO. In connection with these issues, preliminary rulings have been made to the Court of the European Union. As a result of bringing the noted problems to the attention of the Court, legislative amendments were made[437], through which the identified problems are solved and thus contribute to increasing confidence in the ability of the Bulgarian judicial authorities to correctly apply the rules of the European Union acts, even with gaps in national legislation.

As regards the mutual recognition and execution of freezing or confiscation orders, in general the Bulgarian law and judicial practice are in compliance with the EU requirements in this field as set out prior to the adoption of the Regulation 2018/1805. Like the EAW, the minimum standards established by both Framework decisions – 2003/577/JHA and 2006/783/JHA, were introduced relatively long ago in the national legislation – through the adoption of the *Recognition, Execution, Issuance and Transmission of Property Freezing Orders Act*[438] and the *Recognition, Execution and Transmission of Confiscation or Seizure*

[435] SG No. 100/1.12.2023.
[436] SG No. 16/20.02.2018.
[437] SG No. 36/23.04.2024.
[438] SG No. 59/21.07.2006.

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*Orders and Decisions Imposing Financial Penalties Act*[439]. However, some regulatory amendments were introduced in July 2022[440] in order to implement into national law, the measures necessary for the full implementation of Regulation 2018/1805. It is its application that poses the most challenges, not only due to the direct effect of the Regulation, but also due to the various regimes of confiscation existing in the Bulgarian legal system, such as confiscation under the Criminal Code and the so-called civil forfeiture, which will be discussed below.

# 4 The implementation of criminal mutual recognition instruments in Bulgaria

## 4.1 Introduction

### 4.1.1 Overview of the criminal procedural system

Bulgarian legal framework governing criminal proceedings includes the Bulgarian Constitution, Code of Criminal Procedure, other laws and a number of regulations. The fundamental rights, also in criminal proceedings, are laid down in the Bulgarian Constitution. The provisions of the Constitution take precedence over other "ordinary" laws whose provisions can be declared unconstitutional by the Bulgarian Constitutional Court. The procedural guarantees for the effective exercise of the rights, in particular in the criminal proceedings, are provided for in Code of Criminal Procedure (in the text, hereinafter "CCP"). The Code also determines the order for conducting criminal proceedings as well as the competences of the bodies involved therein.

Besides the Bulgarian Constitution and Code of Criminal Procedure, there are other laws that are part of the legislative criminal justice framework such as the Criminal Code, the Extradition and European Arrest Warrant Act (applicable in the European Arrest Warrant proceedings), the Implementation of Penal Sanctions and Detention in Custody Act (concerning the execution of penalties as well as the legal status of accused persons detained in custody) and Judiciary System Act (regarding the organisation and the principles of operation of the judicial system bodies).

[439] SG No. 15/23.02.2010.
[440] SG No. 56/19.07.2022.

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The Bulgarian Constitution as well as the Judiciary System Act guarantee the independence of the judiciary. According to Article 117 (2) of the Constitution, the judiciary shall be independent. In the performance of the functions thereof, all judges, jurors, prosecutors and investigating magistrates shall be subservient only to the law.

The Bulgarian judicial system is based on a three-instance trial system. The courts of first instance are the Regional Courts (in cases of minor offences) and the District Courts in cases of more serious crimes. The Sofia Sity Court has a statute of a district court. The District Courts and the Appellate Courts act as an appellate instance, the Supreme Court of Cassation – as a cassation instance. Only acts of the appellate instance are subject to cassation appeal, and not all of them.

Bulgarian criminal procedure includes two stages - pre-trial proceedings and trial (court) proceedings. Trial proceedings have a central role within the criminal process unlike the pre-trial proceedings, which have a preparatory nature (Article 7 CCP). The pre-trial proceedings are carried out only in publicly actionable criminal cases and can be divided in two stages - investigation and action taken by the prosecutor after the completion of the investigation. The prosecutor is the pre-trial authority who press charges for publicly actionable criminal offences. In discharge of this assignment, the prosecutor directs the investigation and exercises constant supervision for its lawful and timely conduct. In addition, he/she may personally conduct investigation or undertake separate investigative or other procedural action. In practice, other pre-trial authorities - investigative bodies, carry out the investigation. These are investigators, Ministry of Interior officers appointed at the position of "investigating police officer" and officials of the Customs Agency appointed at the position of "investigating customs inspector" as well as police authorities within the Ministry of Interior and customs authorities within the Customs Agency, in the cases provided for in the Code of Criminal Procedure. In this regard, it should be noted that investigators, also called “investigating magistrates”, are magistrates unlike the other investigative bodies who are executive authorities. Investigation is conducted by investigators in cases explicitly provided for in the Code of Criminal Procedure. Investigative bodies operate under the guidance and supervision of a prosecutor.

Since the current Code of Criminal Procedure came into force in 2006, the judicial control over pre-trial proceedings has been strengthened. Almost all coercive measures in these proceedings are taken by the court. There are investigative actions (such as the use of special intelligence means, interception and seizure of correspondence, searches and

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seizures in non-urgent cases) that cannot be carried out without the permission of a court. Besides, most of the acts issued at the pre-trial proceedings can be appealed in court.

After the completion of the investigation, if the prosecutor is persuaded that the necessary evidence for the discovery of the objective truth and for pressing charges before court were collected, that there are no grounds for terminating or suspending the proceedings and no remediable substantial breach of procedural rules has been committed, he/she shall draw up an indictment and submit it to the court. The prosecutor maintains the indictment before the court.

Unlike the pre-trial proceedings, the court proceedings are adversarial. The parties have equal procedural rights, except in the cases specified by the Code. In this regard, the doctrine discusses how the adversarial principle relates to the *ex proprio motu* principle as laid down in Article 107 (2) CCP, according to which the court shall collect evidence following requests made by the parties, and of its own motion, whenever this is necessary to the discovery of the objective truth. Some scholars consider that the latter is not inconsistent with the adversarial principle. The activity of the court to clarify the substance of the case does not derive directly from the adversarial principle, but is the result of the interaction of several principles of the Bulgarian criminal procedure law, such as those of discovery of the objective truth, of making decisions out of inner conviction, of adversarial nature of the court proceedings etc.

The trial proceedings includes five stages. The first stage, called "Submission to court and preparatory actions for examination of the case at a court hearing" has a preparatory nature, i.e. the court does not consider the case on the merits.

After the initiation of the case on the basis of the indictment a judge-rapporteur is appointed. Where the judge-rapporteur finds that the case falls within the jurisdiction of the court, he/she shall refer the case initiated on the basis of indictment in an operative hearing within two months of receiving the case. Competent to hear the case in an operative hearing is the same court that shall hear the case at first instance. The operative hearing is postponed where any of the following does not appear: the prosecutor, the accused party, if his/her appearance is mandatory, the defender. Issues to be discussed at the operative hearing include 1) whether the case is within the jurisdiction of the court; 2) whether there are grounds for termination or suspension of the criminal proceedings; 3) whether there have been any substantial breaches of procedural rules in the course of pre-trial proceedings susceptible of being removed, which have resulted in the restriction of

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procedural rights of the accused, of the victim or of his/her heirs; 4) the scheduling of the court hearing and the persons to be summoned to it, etc.

After hearing the prosecutor and the other persons, such as the defendant, the defence counsel, as well as the victim or his/her heirs and the prejudiced legal person the court shall make pronouncement by a ruling whereby it:

1. terminates the court proceedings;
2. terminates the criminal proceedings;
3. suspends criminal proceedings;
4. schedules the case for hearing and notifies the persons who have appeared where no grounds exist for the examination of the case in accordance with the special rules, or where the court has found obvious factual errors in the indictment.

The other four stages of the trial proceedings are court hearing at the first instance, intermediate appellate review proceedings, cassation proceedings and re-opening of criminal cases. The latter constitutes a procedure for verification of the final sentences and judgements.

The features of the Bulgarian criminal procedural system discussed above are relevant in relation to the application of the three criminal mutual recognition instruments. This is because the EU minimum standards established in this field have been introduced into the national legal framework through the adoption of special laws. The latter in turn, in addition to the special proceedings regarding the recognition and execution of EAW, EIO and freezing or confiscation orders, also provide for the subsidiary application of the rules of criminal proceedings under the Code of Criminal Procedure.

### 4.1.2 Overview of the implementation roadmap

All three European criminal mutual recognition instruments under examination – the European Arrest Warrant (EAW), the European Investigation Order (EIO), the Regulation 1805/2018 – have been introduced into Bulgarian legislation.

The regulation on the detention and surrender of persons for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order based on a EAW was already adopted in 2005 - by the *Extradition and European Arrest Warrant Act* (in the text, hereinafter "EEAWA")[441]. Its introduction was related to Bulgaria's commitments regarding the country's accession to the European Union (EU). It began to be

[441] SG No. 46/3.06.2005.

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practically implemented on January 1, 2007, when Bulgaria became a full member of the Union. Its application does not raise any particular difficulties in the case law of the Bulgarian courts, as it will be outlined below. Nonetheless, the regulatory framework has been amended several times to bring the national law into full compliance with the European regulatory framework in this area, as well as to meet the standards for effective judicial protection in EAW proceedings established in the case law of the CJEU[442], including through the recent amendments in this connection - from December 2023[443]

As regards the EIO, the transposition of the Directive 2014/41/EU[444] entailed the adoption in 2018 of a comprehensive law, namely the *European Investigation Order Act*[445]. The first amendment to the law so far was made in 2022 and was related to the closure in the same year of the specialized criminal courts and specialized prosecution offices as part of the Bulgarian judicial system[446]. However, the new amendments were adopted in April 2024 [447] , motivated by the need to bring the national legislation in line with the requirements of the Directive 2014/41/EU, as well as with two judgments of the CJEU delivered in 2021 (references for a preliminary ruling from Bulgarian courts)[448].

As regards the mutual recognition and execution of freezing or confiscation orders, in general the Bulgarian law is in compliance with the requirements as set out by the European legislation. Specifically, in July 2022 measures for implementing Regulation 1805/2018 were introduced in the domestic system[449], by amending the two laws governing the matters of the mutual recognition of the freezing orders and confiscation orders, namely the *Recognition, Execution, Issuance and Transmission of Property Freezing Orders Act*[450] and the *Recognition, Execution and Transmission of Confiscation or Seizure Orders and Decisions Imposing Financial Penalties Act*[451]. Both laws were adopted more than 10 years ago, in 2006 and 2010 respectively, to bring national legislation into line with the European

[442] Case C648/20 *Svishtov Regional Prosecutor's Office* (ECJ, 10 March 2021).
[443] SG No. 100/1.12.2023.
[444] Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters [2014] OJ L130/1.
[445] SG No. 16/20.02.2018.
[446] SG, No. 32/26.04.2022, in force from 27.07.2022.
[447] SG No. 36/23.04.2024.
[448] Case C-852/19 *Gavanozov II* (ECJ, 11 November 2021) and Case C-724/19 *Spetsializirana prokuratura () u à la localisation)* (ECJ, 16 December 2021).
[449] SG No. 56/19.07.2022.
[450] SG No. 59/21.07.2006.
[451] SG No. 15/23.02.2010.

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standards of the time, namely Framework Decision 2003/577/JHA and Framework Decision 2006/783/JHA respectively, now replaced by the Regulation 1805/2018.

## 4.2 The implementation of Framework Decision 2002/584

### 4.2.1 Scope

The requirements of Art. 2 of the Framework decision 2002/584 regarding the scope and double criminality of the acts are fully and explicitly transposed into the national legislation.[452] In the case law, there are also no problems related to the application of this provision.[453]

### 4.2.2 Grounds for non-recognition and non-execution

In general, the requirements of the Framework decision for grounds for non-recognition and non-execution of the European arrest warrant have been correctly introduced in the Bulgarian legislation - both with regard to the mandatory (Art 3 EAW FD) and optional grounds (Art 4 EAW FD)[454].

The mandatory grounds are established in Art 39 EEAWA and are fully in line with Art 3 EAW FD. The optional grounds for non-execution are provided for in Art 36 (2) and Art 40 EEAWA, transposing the requirements of Art 4 EAW FD.

Part of the recent changes in the national legislation in this area, made in December 2023, related precisely to one of these grounds, namely that under Art 4 (1) EAW FD, according to which "the executing judicial authority may refuse to execute the European arrest warrant if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State". According to the doctrine[455], the national regulation (Art 36 (2) EEAWA) until then, had correctly introduced the ground in question as not mandatory,

[452] Article 36 Extradition and European Arrest Warrant Act.
[453] See Judgment № 92/2019 of District Court – Haskovo. The court concluded that the execution of the EAW should be refused due to the lack of the double criminality of the act. The crime for which the surrender of the person is requested for the purpose of conducting a criminal prosecution (breaking a level crossing barrier and thus creating a danger for the life and the bodily integrity of the railway passengers), corresponds to some extent to a crime under the Bulgarian Criminal Code. However, the factual description of that crime shows that it is committed through negligence. It is, nonetheless, intentional as a form of guilt under Bulgarian Criminal Code (Article 340 CC).
[454] See, in that regard, Pavlina Panova, *The European Arrest Warrant,* (Ciela 2009), 129-140.
[455] ibid 143.

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meeting the standards of the EAW FD[456]. Nonetheless, the Bulgarian legislator adopted amendments in the provision of Art 36 (2) and Art 40 EEAWA in order to bring it into full compliance with the European act[457].

#### *4.2.2.1 Fundamental rights and proportionality issues*

As correctly stated in the doctrine, fundamental rights violations are not among the grounds for non-execution under Art 3 and 4 EAW FD[458]. At the same time, however, Art 1 (3) EAW FD, in conjunction with recitals 12 and 13 of the Framework decision, are considered by some scholar as "independent grounds for refusal"[459]. It is also accepted that, based on these provisions of the FD, both the issuing and executing states are obliged to respect human rights under the international treaties to which they are parties, as well as under their constitutional norms[460].

Bulgarian legislation has not been explicitly transposed Art 1 (3) EAW FD, which states that "this Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union". However, the lack of explicitly transposition does not mean that, both as an issuing and executing country, Bulgaria can be exempt from the obligation to respect human rights. On the contrary[461], this obligation arises from the commitments

[456] Article 36 (2), first sentence EEAWA in the version in force until 5 December 2023 states that „a surrender on the basis of a European arrest warrant **shall be carried out** if the act in respect of which the said warrant is issued, also constitutes a criminal offence under the laws of the Republic of Bulgaria".
[457] Under Art 36 (2), first instance EEAWA in its current wording, the court **may refuse to allow the surrender of the person** if the act for which a EAW has been issued is not included in the list under Paragraph (3) and it does not constitute a crime under the legislation of the Republic of Bulgaria. Moreover, Art 40 (1) EEAWA on the grounds for optional non-execution of EAW was supplemented by a new point 6, according to which the District Court **may refuse to execute a EAW** in the absence of double criminality, save for cases under Article 36 (2) and (3).
[458] ibid 169 and the literature quoted in the article; Gergana Marinova, *The Extradition and European Arrest Warrant,* (Sibi 2009), 119.
[459] Panova (n 14) 169.
[460] Marinova (n 18) 120-121 and the literature quoted in the book. According to human rights activists, although "all Member States are bound by Article 6 TEU to protect the principles therein and that all member states are signatories to the European Convention on Human Rights (ECHR) and are equally bound by its provisions", their views "as to whether or not Article 1(3) FD requires specific implementation in national laws" have differed. See for more detailes, Alegre, S., & Leaf, M. (2004). Mutual Recognition in European Judicial Cooperation: A Step Too Far Too Soon? Case Study—the European Arrest Warrant. *European Law Journal, 10*, 200-217, 203.
[461] See in this regard Panova (n 14) 169-171. According to the author, although these texts have not been transposed into Bulgarian law, the judicial authorities should observe them pursuant to the interpretation made

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Bulgaria has undertaken as a party to the European Convention on Human Rights (ECHR), as well as from the Bulgarian Constitution. According to Art 4 (1) thereof Bulgaria is a state governed by the rule of law. In addition, Art 5 (4) of the Constitution provides for that any international treaty, ratified, promulgated and entered into force for Bulgaria, shall be part of the domestic law. Such a treaty shall take precedence over any conflicting standards of the domestic legislation.

The Bulgarian Constitutional Court has issued several decisions in this regard. For instance, in Decision № 3/2004, it noted that "The acts of primary law of the European Union constitute international treaties within the meaning of Article 5 (4) of the Constitution and subject to the stipulated conditions, their provisions become part of the domestic law of Bulgaria. Moreover, they take precedence over the norms of the domestic law that contradict them […] The European Union also adopts so-called secondary law. Its main characteristic is that its acts are not international treaties within the meaning of Article 5 (4) of the Constitution and are not subject to ratification by national parliaments after their adoption […] This is because the institutions of the European Communities act within their competences with a directly binding legal effect on the institutions and citizens of the Member States. At the same time, however, it should be borne in mind that the methods and mechanisms of the adoption of acts of secondary law, as well as its scope, are determined by the primary law, which, constituting international treaties, is necessarily subject to ratification"[462].

This understanding is confirmed in its basic sense in the Decision № 3/2012 of the Bulgarian Constitutional Court, in which the primacy of primary law is linked to the provision of Art 5 (4) of the Constitution, and the automatic effect of priority refers to the secondary law of the Union: "As soon as the international treaty has been ratified in accordance with the constitutional order, promulgated and entered into force, it has priority. The priority is unconditional. According to Article 5 (4), second sentence of the Constitution, the international treaties, promulgated and entered into force for the Republic of Bulgaria, are part of the domestic law and have priority over those norms of the national legislation that

by the CJEU in Pupino judgment (Case C-105/03 - *Pupino* [2005] ECR I-05285). In this judgment the CJEU concludes "that the principle of conforming interpretation is binding in relation to framework decisions adopted in the context of Title VI of the Treaty on European Union. When applying national law, the national court that is called upon to interpret it must do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues and thus comply with Article 34(2) (b) EU" (para 43 thereof).

[462] SG No. 61/13.07.2004.

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contradict them. This also applies to all acts of Community law, not only to regulations (Article 249 (2) of EC Treaty and Article 288 (2) of the Treaty on the Functioning of the European Union). The primacy operates automatically and does not require any special mechanism to establish or declare"[463].

In fact, there is national case law in regard to the possibility of refusing surrender in case of potential fundamental rights violation. For instance, the Appellate Court – Sofia annulled the ruling of the first instance court (Sofia City Court) and refused to execute EAW, issued by the Greek authorities for the purposes of conducting a criminal prosecution. The requested person is Bulgarian citizen, pregnant at the time of the proceedings and mother of a 3-year-old child with chronic nephritis. According to the Court, despite the presence of the formal prerequisites for the execution of the EAW, not all material legal grounds are present. Analysing the provision of Art 1(3) FD in conjunction with recitals 12 thereof, the court concluded that the specifics of the case define the surrender of the requested person as a disproportionate measure, because it would affect the fundamental rights of private and family life guaranteed by EU law of the mother, who would also be placed at risk for her health and that for the fetus as well as the right of care and protection enjoyed by her 3-year-old son[464].

### 4.2.3 Execution procedure

#### *4.2.3.1 Issues for the rights of the suspect, accused and other parties*

In general, the standards regarding the rights of persons suspected and accused in the criminal proceedings and provided for in the six procedural directives of the European Union are also applicable in the EAW proceeding[465].

Specifically, under the EEAWA, the **right of access to a lawyer** in European arrest warrant proceedings is guaranteed in the proceedings for the imposition of remand in custody of the requested person by the court, as well as in the judicial proceedings for the

[463] SG No. 26/30.03.2012. See in this context also Decision № 7/2018 of the Bulgarian Constitutional Court (SG No. 36/27.04.2018).
[464] Judgment 48/2021 of Appellate Court-Sofia.
[465] Directive 2010/64/EU; Directive 2012/13/EU; Directive 2013/48/EU; Directive (EU) 2016/800; Directive (EU) 2016/1919 and Directive (EU) 2016/343. For more details on the standards of the rights of the requested persons in EAW proceedings under the six directives and their transposition into Bulgarian law see the National Report of Bulgaria, CrossJustice, https://site.unibo.it/cross-justice/en/project-results/publications.

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examination of the European arrest warrant[466]. In both cases, the court shall appoint a defence counsel and an interpreter for the requested person, if the latter has no command of the Bulgarian language[467]. The participation of a lawyer is mandatory and does not depend on the will of the requested person. In this respect, therefore, according to some scholars, Bulgarian law provides a higher standard of protection than that granted in Directive 2013/48/EU[468].

The **legal aid** is also guaranteed in cases of detention of requested persons under the EEAWA[469]. Moreover, in such cases, legal assistance is mandatory, and the court is obliged to appoint a lawyer if the requested person has not retained one of his or her own.

As regards the **right to information,** under the EEAWA, in the proceedings for the imposition of remand in custody of the requested person, the court shall explain the grounds for his/her detention, the content of the European arrest warrant and his/her right to give consent to surrender to the competent authorities of the issuing Member States and the implications thereof[470]. The court is obliged to do the same in the judicial proceedings for the examination of the European arrest warrant where Bulgaria is an executing state.

In addition, in December 2023, the *Extradition and European Arrest Warrant Act* was amended to fully comply with the requirements of Art 5 of Directive 2012/13/EU. According to Art 42 (6) EEAWA in its current wording, immediately after detention of the requested person by the police authorities, an official or contractual defender is provided, as well as

[466] Articles 43 (4) and 44 (5) EEAWA.
[467] According to Art 43 (4) EEAWA, applicable in the proceedings for the imposition of remand in custody of the requested person, the court shall explain the grounds for his/her detention, the content of the European arrest warrant and his/her right to give consent to surrender to the competent authorities of the issuing Member States and the implications thereof. As regards the judicial proceedings for the examination of the European arrest warrant, the court shall explain to the request person the right to give consent to surrender to the issuing Member State, as well as to renounce entitlement to the speciality rule under Art 61 and the consequences of these steps (Art 44 (3) EEAWA). At the court session the court shall hear the prosecutor, the person claimed and his/her defence counsel (Art 44 (5) EEAWA). The rule ensures the participation of the lawyer in the judicial proceedings.
[468] See Margarita Chinova, Pavlina Panova. The new Directive on the right of access to a lawyer in criminal proceedings in: - Norma, 3/2014.
[469] According to Art 43 (4) EEAWA, applicable in the proceedings for the imposition of remand in custody of the requested person, the court shall appoint a defence counsel and an interpreter for the person if the latter has no command of the Bulgarian language and shall explain the grounds for his/her detention, the content of the European arrest warrant and his/her right to give consent to surrender to the competent authorities of the issuing Member States and the implications thereof.
[470] Article 43 (4) EEAWA.

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an interpreter, in whose presence a declaration of the rights is served on the person detained and signed, in a language understandable to him/her[471].

### 4.2.4 Cooperation issues between executing and issuing authorities

As regards cooperation issues between executing and issuing authorities, the national law is in full compliance with the requirements of EAW FD as laid down in Art 9 and 10 thereof[472].

Practically, the same means are provided for, both for reception and transmission of a European arrest warrant, namely: the Schengen Information System; the telecommunications system of the European Judicial Network; the Interpol; electronic mail or fax or any secure means allowing establishment of the authenticity of the European arrest warrant [473].

Moreover, according to Art 57 (1) EEAWA, where the location of the requested person in the territory of a Member State is known, the issuing authority may transmit the European arrest warrant directly to the executing authority of said Member State. Where the issuing authority has no information about the executing authority of the said Member State, it shall consult the European Judicial Network. This rule applies in cases where Bulgaria is an issuing state but, as noted in the scientific literature, that provision is fully applicable also where Bulgaria is an executing state[474].

[471] For more details on the standards of the rights of the requested persons in EAW proceedings under the Directive 2012/13/EU and its transposition into Bulgarian law see the National Report of Bulgaria, CrossJustice, https://site.unibo.it/cross-justice/en/project-results/publicationsq, 24-34.
[472] According to Art 9 EAW FD, when the location of the requested person is known, the issuing judicial authority may transmit the European arrest warrant directly to the executing judicial authority. The issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS). Such an alert shall be effected in accordance with the provisions of Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders. An alert in the SIS shall be equivalent to a European arrest warrant accompanied by the information set out in Article 8(1) EAW FD. For a transitional period, until the SIS is capable of transmitting all the information described in Article 8, the alert shall be equivalent to a European arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority. In addition, Art 10 EAW FD provides for detailed procedures for transmitting a European arrest warrant in various situations, such as where the issuing judicial authority does not know the competent executing judicial authority or if it is not possible to call on the services of the SIS or if the authority which receives a European arrest warrant is not competent to act upon it.
[473] Articles 38a and 57 (5) EEAWA.
[474] See Panova (n 14) 81-82.

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### 4.2.5 Remedies

The possibility of appeals against the imposition of remand in custody, the decision to surrender the requested person or to refuse the execution of an EAW, as provided for in the *Extradition and European Arrest Warrant Act*[475], can be considered to be an effective remedy under the EAW FD.

As argued in the case law and scientific literature, according to the practice of the CJEU, in EAW proceedings a dual level of protection must be provided[476]. In the *Parchetul de pe lângă Curtea de Apel Cluj/Bob-Dogi* case, the Court concluded that "the European arrest warrant system […] entails, in view of the requirement laid down in Article 8(1)(c) of the Framework Decision, a dual level of protection for procedural rights and fundamental rights which must be enjoyed by the requested person, since, in addition to the judicial protection provided at the first level, at which a national judicial decision, such as a national arrest warrant, is adopted, is the protection that must be afforded at the second level, at which a European arrest warrant is issued, which may occur, depending on the circumstances, shortly after the adoption of the national judicial decision"[477].

In this regard, in Bulgaria, until recently, there was a problem in ensuring that both levels of protection were present when issuing an EAW in pre-trial proceedings[478].

In these cases, before the legislative amendment to be discussed below, the competent issuing authority is the public prosecutor[479]. Pursuant to Art 56(1) EEAWA, at the pre-trial stage of criminal proceedings an EAW may be issued by the competent prosecutor against an accused person or a person convicted by an enforceable sentence. The EAW is issued on the basis of the detention decree for up to 72 hours from the moment the person is detained (Art 64 (2) of the *Bulgarian Code of Criminal Procedure "CCP").* In this scenario, neither the arrest decree, nor the EAW both issued by the prosecutor were subject to judicial review before the surrender of the requested person by the executing Member State.

[475] Articles 43, 44 and 48 thereof.
[476] See Klip, André. A Next Level Model for the European Arrest Warrant, European Journal of Crime, Criminal Law and Criminal Justice 30 (2022) 107–126.
[477] Case C-241/15 *Parchetul de pe lângă Curtea de Apel Cluj/Bob-Dogi* [2016] (ECJ 1 June 2016), para 56.
[478] See in this context Ivo Hinov, Elena Popova. The European arrest warrant in Bulgaria in the light of the latest case law of the CJEU, 9 April 2017, https://evropeiskipravenpregled.eu/t174/; Andrey Jankulov. The European arrest warrants, issued by a prosecutor in our country, and the new case law of the CJEU, 3 January 2020, https://defakto.bg/2020/01/03/evropeyskite-zapovedi-za-arest-izdav/.
[479] Article 56 (1)(1) EEAWA.

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The matter was examined by the CJEU, on a preliminary ruling raised by an English court and regarding the execution of an EAW issued by the Bulgarian Prosecutor's Office. In the *Svishtov Regional Prosecutor's Office* case, the Court noted (para 39 of the judgment) that "the prosecutor's decision ordering the detention of the requested person for a maximum of 72 hours, on which the European arrest warrant is based, must be classified as an 'enforceable judicial decision having the same effect' as a national arrest warrant, within the meaning of Article 8(1)(c) of Framework Decision 2002/584". In addition, the Court concluded that the requirements inherent to the effective judicial protection that must be afforded to a person who is the subject of a European arrest warrant 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. This was held true, even if the latter may be classified as an 'issuing judicial authority' within the meaning of Art 6 (1) EAW FD, in case the decision cannot be reviewed by a court in the issuing Member State prior to the surrender of the requested person by the executing Member State[480].

In practice, this CJEU's judgment caused an impossibility of executing the Bulgarian European arrest warrants, issued by a prosecutor for the purposes of pre-trial proceedings on the basis of a detention decree under Art 64 (2) CCP.

In order to overcome this problem, as well as to bring the national legislation into full compliance with the requirements of the EAW FD, amendments to the EEAWA were adopted in December 2023. Two levels of judicial control were introduced when a prosecutor issues an EAW. In pre-trial proceedings, if there are grounds for the detention of the requested person, the prosecutor issues a National detention warrant of the accused person and submits a request to the relevant court of first instance for permission to issue a European Arrest Warrant. The request is accompanied by the issued National detention warrant and by a draft of the European Arrest Warrant. The court issues a ruling, assessing the existence of the conditions justifying detention in relation to the presented National detention warrant, and the legality and proportionality of the issuance of the EAW. The ruling is subject to appeal before the relevant appellate court. When the ruling is final, the public prosecutor can actually issue the European Arrest Warrant. The issued EAW can be challenged before the relevant court of appeal by the accused, within 7 days from the date on which s/he learned that the EAW has been issued against her/him[481].

[480] Case C-648/20 *Svishtov Regional Prosecutor's Office* [2021] (ECJ, 10 March 2021), para 60.
[481] Art 56a EEAWA.

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In this way, the national legislation meets the first level of protection required by the case law of the CJEU.

Along with this, the second level of protection was also introduced, by providing a judicial review after the admittance of the requested person on Bulgarian territory. According to Art 59a EEAWA, in this case, the prosecutor immediately submits a request to the relevant court of first instance for taking the permanent measure of remand in custody of the requested person. In this proceeding, the accused and his defense counsel may contest the legality and proportionality of the European Arrest Warrant issued by the prosecutor pursuant to Art 56a EEAWA.

## 4.3 The implementation of Directive 2014/41

### 4.3.1 Scope

In accordance with Art 2 of Directive 2014/41/EU, Art 4 (1) of the *European Investigation Order Act*[482] provides that this Act applies to all investigative actions and other procedural actions for the performance of which a European Investigation Order has been issued, except for cases where a Joint Investigation Team has been established. Where a competent authority participating in a Joint Investigation Team requests the assistance of a Member State other than those participating in the said team, a European Investigation Order may be issued (Art 4 (2) of the *European Investigation Order Act*). The *European Investigation Order Act,* however, shall not apply to freezing property with a view to confiscation and to confiscation of property[483], and where cross-border surveillance has been requested[484].

[482] Article 4 (1) of the *European Investigation Order Act:* "This Act shall apply to all investigative measures and other procedural measures for the carrying out of which a European Investigation Order has been issued with the exception of the cases where a joint investigation team under Article 476 (3) of the Code of Criminal Procedure has been set up".

[483] In these cases, it concerns actions that are not related to an investigation. They are regulated in two other acts – *Recognition, Execution, Issuance and Transmission of Property Freezing Orders Act (Title amended, SG No. 16/2018, SG No. 56/2022)* and *Recognition, Execution and Transmission of Confiscation or Seizure Orders and Decisions Imposing Financial Penalties Act (Heading amended, SG No. 56/2022).*

[484] In accordance with Art 40 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ L 239/19 of 22 September 2000. A detailed analysis aimed at the training of magistrates is presented in: Prosecutor's Guide. Book two, Project "Modern learning environment for judges, prosecutors, investigators and other representatives of the professional community". National Institute of Justice, 2024.

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Specifically, the transposition law provides that an EIO may be issued with respect to: (1) criminal proceedings that are brought by, or that may be brought before, a judicial authority in respect of a criminal offence committed in the issuing State; (2) proceedings brought by administrative authorities in respect of acts which are punishable under the law of the issuing State, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in criminal matters; (3) proceedings brought by judicial authorities in respect of acts which are punishable under the law of the issuing State by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in criminal matters; (4) acts in connection with these proceedings, which relate to criminal offences or infringements for which a legal person may be held liable or punished in the issuing State[485].

With regard to the goals pursued by the EIO, the latter may be issued: (1) with a view to provisionally preventing acts of destruction, transformation, removal, transfer or disposal of items that may be used as evidence in the territory of the executing State; (2) for the temporary transfer to the issuing State of a person held in custody in the executing State for the purpose of carrying out procedural measures requiring the presence of that person, or for the temporary transfer to the executing State of a person held in custody in the issuing State for the purpose of participating in the investigation as requested[486].

### 4.3.2 Grounds for non-recognition and non-execution

The provisions of Art 11 of Directive 2014/41/EU have been fully implemented in Bulgarian legislation.

In Art 16 of the *European Investigation Order Act* (in its original version), the same grounds for non-recognition and non-execution specified in the Directive are provided for[487]. In the case law, no problems are identified in connection with their concrete

[485] Article 2(2) of the *European Investigation Order Act.*
[486] Article 2(3) of the *European Investigation Order Act.*
[487] Article 16. (Promulgated SG No. 16/2018), Grounds for Refusal of Recognition or Execution, which states: (1) The competent authority referred to in Article 9 (1) herein may refuse to recognise or to execute a European Investigative Order where:
1. there is an immunity or a privilege under Bulgarian legislation which make it impossible to execute the said order;
2. the execution of the European Investigative Order would harm essential national security interests or would jeopardise a source of information, or would involve the use of classified information relating to specific intelligence activities;
3. the execution of the European Investigative Order would be contrary to the principle of ne bis in idem,

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application[488]. Nevertheless, Art 16 was recently amended[489] in order to clarify the approach in which the grounds for non-recognition and non-execution are formulated[490].

except in the cases where the said order is aimed to establish whether a possible conflict with the ne bis in idem principle exists, or where the issuing authority has provided assurances that the evidence transferred as a result of the execution of the said order would not be used to prosecute or impose a sanction on a person whose case has been finally disposed of in another Member State for the same facts;
4. the European Investigative Order has been issued in connection with proceedings brought by administrative authorities or by judicial authorities in respect of acts for which carrying out an investigative measure and other procedural measures would not be authorised under Bulgarian legislation in a similar case;
5. the European Investigative Order relates to an act which has been committed outside the territory of the issuing State, has been committed wholly or partially on the territory of the Republic of Bulgaria, and does not constitute a criminal offence according to Bulgarian legislation;
6. there are substantial grounds to believe that the execution of the investigative measure and the other procedural measures would be incompatible with the respect for the rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe and the Charter of Fundamental Rights of the European Union;
7. a decision has been rendered regarding a legal remedy under Article 18 herein, whereby the European Investigative Order is invalidated;
8. the act for which the European Investigative Order has been issued does not constitute a criminal offence under Bulgarian legislation, unless the European Investigative Order relates to a criminal offence on the list referred to in Article 10 (2) herein;
9. the use of the investigative measure and other procedural measures for the criminal offence indicated in the European Investigative Order is restricted according to Bulgarian legislation to a range or category of offences or to offences punishable by a certain threshold and which do not include the offence covered by the European Investigative Order.

[488] This conclusion follows from a comprehensive review of the relevant case law, in which no such problem has been raised. It should be noted that, in principle, judges comply with the provisions of European acts, applying national legislation. Indicative of the desire to comply with the rules of European acts is the high number of preliminary rulings - in the last three years, Bulgaria is in second or third place in terms of preliminary ruling, right after Germany (for 2021 and 2023) and after Germany and Italy (for 2022), See Annual Report 2023. Statistics concerning the judicial activity of the Court of Justice, https://curia.europa.eu/jcms/upload/docs/application/pdf/2024-04/en_ra_2023_cour_stats_web_bat_22042024.pdf.

[489] The purpose of the language revision is to remove doubts about the use of some terms.

[490] Article 16, Grounds for Refusal of Recognition or Execution, which states: "(1) The competent authority referred to in Article 9 (1) herein may refuse to recognise or to execute a European Investigation Order where:
1. there is an immunity or a privilege under Bulgarian legislation which make it impossible to execute the said order;
2. the execution of the European Investigation Order would harm essential national security interests or would jeopardise a source of information, or would involve the use of classified information relating to specific intelligence activities;
3. the execution of the European Investigation Order would be contrary to the principle of ne bis in idem, except in the cases where the said order is aimed to establish whether a possible conflict with the ne bis in idem principle exists, or where the issuing authority has provided assurances that the evidence transferred as a result of the execution of the said order would not be used to prosecute or impose a sanction on a person whose case has been finally disposed of in another Member State for the same facts;
4. (Amended, SG No. 36/2024) The European Investigation Order has been issued in connection with the

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The amendments are caused by two decisions of the Court of the European Union – which are discussed below – regarding other problems established in the practice in connection with the procedure for issuing a European Investigation Order in Bulgaria[491].

#### *4.3.2.1 Fundamental rights and proportionality issues*

According to Art 16 (1)(6) of the *European Investigation Order Act,* one of the grounds for refusing to recognize and execute an EIO is if there are substantial grounds to believe that the execution of the investigative action and other procedural actions would be incompatible with the observance of the rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of the Council of Europe and the Charter of Fundamental Rights of the European Union (CFR).

Moreover, as a condition for issuing an EIO, according to Art 6 (1)(1) of the *European Investigation Order Act,* the competent authority must establish that the issuance of such Order is necessary and proportionate to the purpose of the criminal proceedings, taking into account the rights of the accused or the defendant. Also, Art 5(1)(1)(b) of the *European Investigation Order Act* expressly stipulates an obligation for the judge to make an assessment of the necessity and proportionality of the investigative action when giving prior permission for its performing in the pre-trial proceedings.

In judicial practice, no problems related to the application of these provisions have been identified, and the observance of fundamental rights and proportionality in the application of coercive measures are largely related to the aspiration of judges to comply

proceedings referred to in Items 2 and 3 of Article 2 (2) herein and the measure requested is not authorised according to Bulgarian legislation in a similar case;
5. (Amended, SG No. 36/2024) the European Investigation Order relates to a criminal offence which has been committed outside the territory of the issuing State but wholly or partially on the territory of the Republic of Bulgaria, and which is not an offence according to Bulgarian legislation;
6. (Amended, SG No. 36/2024) there are substantial grounds to believe that the execution of the investigative measure and the other judicial investigation measures would be incompatible with the respect for the rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe and the Charter of Fundamental Rights of the European Union;
7. (Amended, SG No. 36/2024) a decision has been rendered under Article 18 (2) herein and the European Investigation Order has been revoked;
8. the conduct for which the European Investigation Order has been issued does not constitute a criminal offence under Bulgarian legislation, unless the European Investigation Order relates to a criminal offence on the list referred to in Article 10 (2) herein;
9. (Amended, SG No. 36/2024) the measure requested is inapplicable, according to Bulgarian legislation, to the criminal offence for which the European Investigation Order has been issued.".

[491] Case C 852/19 Gavanozov and Case C 724/19.

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with the decisions of the European Court of Human Rights[492]. As stated in the Decision No. 24 of 10.03.2023 of the Supreme Court of Cassation in Criminal Case No. 1121/2021, III Criminal Division, "The standards adopted in the practice of the ECHR indicate that the execution of a search with a preliminary or subsequent a judicial sanction does not necessarily constitute a reliable guarantee against an arbitrary violation of the right to privacy of the home, from which it follows the need to assess the proportionality of the restriction of rights in accordance with the specific circumstances. This assessment takes into account the severity of the offense that led to the search; the circumstances that gave rise to the action; the order in which it was carried out; the precautions to limit coercive actions within reasonable limits; whether the premises subject to search are used by the offender or by a third party; the extent to which the search affected the good name of the person using the premises, etc. The assessment of the described criteria in relation to the searches carried out in the residences inhabited by the defendants indicates that these actions were proportional to the severity of the crime under investigation, that the legal order was observed when they were carried out, the coercion used was not related to the execution of the actions, but was aimed at the detention of the persons".

### 4.3.3 Execution procedure

#### *4.3.3.1 Issues for the rights of the suspect or accused person*

As a condition for issuing a European Investigation Order, Art 6(1) of the *European Investigation Order Act* provides for a requirement to take into account the rights of the accused or the defendant, in addition to the requirement that there be necessity and proportionality to the purpose of the criminal proceedings. According to Art 15(1)(3) of the law, the competent authority shall have recourse to an investigative measure and other judicial investigation measures other than those indicated in the European Investigation

[492] In Judgment No. 10 of 11.06.2020 in appeal case No. 418/2020, the Sofia Court of Appeal emphasizes the requirements of necessity and proportionality: "At the same time, the conditions of Article 6, Paragraph 1, Item 1 and 2 of the European Investigation Order Act, namely that the issuance of the order was necessary for the full and comprehensive conduct of the judicial investigation in the case and was proportional to the purpose of the criminal proceedings, taking into account the rights of the defendant and giving him the opportunity to formulate and set the requested by him questions to the witness ...". It is noteworthy that in many other matters, when judges find inconsistency of national law with the European Convention on Human Rights and with the interpretation made by the European Court of Human Rights, they directly apply the law of the ECHR, not the national law. This approach of the judges is correct and should be encouraged, because when it is necessary to protect the rights of individuals, the judicial practice precedes the national legislation.

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Order where the measure selected would achieve the same result by means that intrude less into the privacy and the legitimate interests and rights of the person than the measure indicated in the European Investigation Order. Where there are substantial grounds to believe that the execution of the investigative measure and the other judicial investigation measures would be incompatible with the respect for the rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe and the Charter of Fundamental Rights of the European Union the competent authority may refuse to recognise or to execute a European Investigation Order (Art 16(1)(6) of the *European Investigation Order Act).* When conducting a hearing by videoconference or other audiovisual transmission, the competent authority shall be obliged to inform the accused person about the rights thereof in such a time as to ensure a possibility for the effective exercise of the right of defence (Art 28(2) of the law). In addition to the express provisions of the special law, in relation to the right of defence of the accused, respectively the defendant, the rules of the *Code of Criminal Procedure* are also applicable[493].

### 4.3.4 Cooperation issues between executing and issuing authorities

In the practice of the application of the Directive and the law, no particular difficulties related to cooperation have been noticed. It is noteworthy that in most cases the communication among Member States' authorities is sufficiently intense to ensure the normal conduct of the hearing, including the technical support and the provision of translators/interpreters.

In some cases, Bulgarian authorities reportedly conduct consultations with the assistance of the European Judicial Network[494]. Important for the qualification of Bulgarian

[493] According to § 3 of the Additional provisions of the European Investigation Order Act, "Except where this Act contains specific rules, the provisions of the Code of Criminal Procedure shall apply".

[494] See, for example, Ruling No. 2829 of 13.12.2022 of the Sofia City Court in criminal case No. 2870/2022. In both phases of the criminal process, the competent authority can use the Atlas, Contact Points and Library sections of the European Judicial Network (EJN) (europa.eu) website, can contact a contact point in the National Judicial Network for International Cooperation in Criminal Cases in the Republic of Bulgaria or with a contact point of the EJN. In more complex cases, where European Investigation Orders are drawn up to more than two countries or when operational coordination is required, the competent authority could also seek assistance from the National Bureau of Bulgaria at Eurojust, which also offers a legitimate channel for sending European Investigation Orders. When searching for initial information, it can also be specified whether the crime (criminal offense) is also punishable in the executing country; in what way the procedural actions for collecting the relevant evidence would be carried out; whether there are other "interested persons" under the law of the executing state who would have legal remedies against EIO enforcement actions, etc. See Sava

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magistrates and investigative bodies is moreover the compulsory training conducted by the National Institute of Justice[495], which comprises separate training manuals for judges, prosecutors and investigators and dedicates a module to the European Investigation Order[496].

### 4.3.5 Remedies

Article 18 of the *European Investigation Order Act* provides for a general regulation of legal remedies.

According to it, remedies and time limits available in similar cases under Bulgarian legislation shall apply to the defence of the persons concerned when carrying out an investigative measure and other procedural measures indicated in the European Investigation Order. This provision states that the substantive reasons for issuing an EIO may be appealed only in the issuing State, without prejudice to the guarantees of fundamental rights provided for in Bulgarian legislation. The law moreover provides that, where it would not undermine the need to ensure confidentiality of an investigation, the issuing authority and the authority competent to recognize the order shall take measures to ensure that information is provided about the possibilities for seeking the legal remedies when these become applicable and shall ensure in due time the effective exercise of the said remedies. These authorities must inform each other about the legal remedies sought against the issuing, the recognition or the execution of a European Investigation Order.

In addition to this general provision, the law also contains special rules regarding the performance of certain procedural actions. For example, in the procedure for the temporary transfer of persons held in custody for the purpose of carrying out investigative measure

Petrov. *European Investigation Order*. – In: Prosecutor's Guide. Book two, Project 'Modern learning environment for judges, prosecutors, investigators and other representatives of the professional community' (National Institute of Justice 2024).

[495] According to Art 249 of the Judiciary System Act, the National Institute of Justice shall implement: (1) mandatory initial training of candidates for junior judge, junior prosecutor, and junior investigating magistrate; (2) mandatory induction training of judges, prosecutors and investigating magistrates when they are appointed for the first time in judicial authorities and when court assessors are elected for their first term of office; (3) maintaining and upgrading the qualification of judges, prosecutors and investigating magistrates, of members of the Supreme Judicial Council, of the Inspector General and inspectors of the Inspectorate with the Supreme Judicial Council, of public enforcement agents, recording magistrates, judicial assistants, prosecutorial assistants, judicial officers, court assessors, of the inspectors at the Inspectorate with the Minister of Justice and of other employees of the Ministry of Justice; (4) e-learning, and shall organise empirical legal research and analysis.

[496] https://nij.bg/.

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and other procedural measures, in addition to the cases referred to in Article 16, the execution of a European Investigation Order issued for temporary transfer may be refused on the grounds that the person in custody does not consent to it, or that the transfer is liable to prolong the detention of the person in custody (Art 26(3) of the Act). Such a rule is contained in Art 28 (3) of the *European Investigation Order Act,* according to which execution of an EIO by videoconference or other audiovisual transmission may be refused where the accused does not consent, or the execution of such an investigative measure and other procedural measures in the particular case is contrary to Bulgarian legislation. These rules are in accordance with the provisions of Art 22(2) and, accordingly, Art 24(2) of the EIO D.

So far, problems have been identified in the application of the Directive in Bulgaria, specifically in relation to the means of protection. They are related to the lack of a guaranteed possibility of defence in the proceedings for the issuance of the European Investigation Order and the lack of judicial sanction for certain actions, for which in similar cases a judicial authorization is required according to the *Criminal Procedure Code*[497]. Thus, the previous provisions in the law created a risk that the European Investigation Orders issued by the Bulgarian authorities would not be recognized by the authorities of other Member States.

In applying the law, in case No 1055/2022[498] the Bulgarian Specialized Criminal Court concluded that Bulgarian law does not provide for any legal remedies against decisions to search and seize or to hearing of a witness, nor against the issuance of a

[497]According to the Code of Criminal Procedure, the permission of a judge is required to carry out a physical examination in the absence of the person's consent (Art 158(3) of the CCP), searches (including search of a person) and seizures (Art 161(1) of the CCP), submission of data by enterprises, providing public electronic communication networks and/or services (Art 159a(1) of the CCP), compulsory taking samples for comparative study (Art 146(3) of the CCP), interception and seizure of correspondence (Art 165(2) of the CCP), when these actions are carried out in the pre-trial proceedings. In cases of urgency, where this is the only possible way to collect and keep evidence, the pre-trial authorities may perform physical examination, searches (including search of a person) and seizures without authorisation from the judge, but the record of the investigative action being submitted for approval by the supervising prosecutor to the judge forthwith, but not later than 24 hours thereafter (Art 158(4), Art 161(2) and Art 164 of the CCP).

[498]After the closure of the Specialized Criminal Court, a problem was noticed with access to the acts issued by this court. According to the information in the press release about the request for a preliminary ruling, the judicial act has been published (https://spns.justice.bg/), but it is missing on the website of the Supreme Judicial Council (https://legalacts.justice.bg/Search/Details?actId=txT87UWr1alD2rOE9HLtgg%3D%3D).

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European Investigation Order, and made a preliminary reference to the Court of the European Union (CEU) to seek the interpretation of certain provisions of the Directive[499].

In relation to this, in its decision in case C 852/19 *Gavanozov* [500], the CJEU held that the rules of Directive 2014/41/EU and of the Charter of Fundamental Rights of the European Union require Member States' legislation to provide for legal remedy against the issuing of a European Investigation Order, the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by videoconference. Also, the rules of EIO D, CFR and the Treaty on European Union do not allow the issuance of EIO, the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by

[499] Article 6(1) of the European Investigation Order Act (SG No 16 of 20. 2. 2018) lays down "conditions for issuing a European Investigation Order":
*"The competent authority in accordance with Article 5(1) shall issue a European Investigation Order following an individual assessment, on condition that:*
*1. A European Investigation Order is necessary and appropriate in light of the purpose of the criminal proceedings, taking account of the rights of the accused or the defendant.*
*2. The investigative and other procedural measures for which the European Investigation Order is issued could be carried out in a similar case under the same conditions under Bulgarian law.".*
No provision of the European Investigation Order Act provides for a possibility of challenging the issuance of a European Investigation Order. Article 161(3) of the Code of Criminal Procedure (SG No 86/05, in the version applicable at the time of the order for reference SG No 83/19) states that "search and seizure measures in court proceedings shall be carried out on the orders of the court in which the proceedings are pending". Article 341(3) of the Code of Criminal Procedure excludes the possibility of appealing against acts other than those expressly listed. The Code of Criminal Procedure does not allow for orders for the hearing of witnesses or for a search and seizure of residential and business premises to be challenged. The person concerned by the search and seizure or the hearing of the witness cannot challenge the decision because he is not party to the proceedings.

[500] https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-852/19. Mr Gavanozov is being prosecuted in Bulgaria for involvement in an organised criminal group formed for the purpose of committing tax offences. He is suspected of having imported sugar, via shell companies, into Bulgaria from other Member States, obtaining supplies from, inter alia, a company established in the Czech Republic and represented by Mr Y, and of subsequently having sold that sugar on the Bulgarian market without assessing or paying value added tax (VAT), by submitting incorrect documents according to which that sugar had been exported to Romania. The Specialised Criminal Court (Bulgaria) decided, on 11 May 2017, to issue an EIO requesting the Czech authorities to carry out searches and seizures at both the premises of the company established in the Czech Republic and the home of Mr Y, and to hear Mr Y as a witness by videoconference. In its order for reference, the Specialised Criminal Court states that Bulgarian law does not provide for any legal remedy against decisions ordering the carrying out of searches and seizures or the hearing of witnesses, or against the issuing of an EIO. In that context, that court asks whether Bulgarian law is contrary to EU law and, in such a case, whether it may issue an EIO seeking such investigative measures. In his Opinion, the Advocate General notes that "it is the duty of the issuing authorities to make sure that their own acts are not tainted by unlawfulness due to non-compliance with the minimum standards laid down in the ECHR when these acts enter the system of Directive 2014/41." (https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62019CC0852).

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videoconference, where the legislation of the respective Member State does not provide any legal remedy against the issuing of such a European Investigation Order[501].

In another case related to the implementation of the Directive, the Specialized Criminal Court found that there was no requirement in the special law (the *European Investigation Order Act*) for a judicial sanction, as required for similar actions under the *Code of Criminal Procedure*[502].

Specifically, following the commencement of criminal proceedings in Bulgaria for the financing of terrorist activities, the prosecutor issued four EIOs, with identical content, for the collection of traffic and location data relating to electronic communications. The four EIOs were issued by the Bulgarian prosecutor without a validation by a judge or a court[503], and were transmitted to the relevant authorities in Belgium, Germany, Austria and Sweden.

[501] See the Judgment of the Court (First Chamber) 11 November 2021 (https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62019CJ0852): "1. Article *14 of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, read in conjunction with Article 24(7) of that directive and Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding legislation of a Member State which has issued a European investigation order that does not provide for any legal remedy against the issuing of a European investigation order, the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by videoconference.*
*2. Article 6 of Directive 2014/41, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union and Article 4(3) of the Treaty on European Union, must be interpreted as precluding the issuing, by the competent authority of a Member State, of a European investigation order, the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by videoconference, where the legislation of that Member State does not provide any legal remedy against the issuing of such a European investigation order."*.

[502] See Art 146, Art 158, Art 159a, Art 161, Art 164, Art 165 of the Code of Criminal Procedure, as outlined *supra,* n 54.

[503] According to Art 159a(1) of Code of Criminal Procedure, "Upon request by a court as part of court proceedings or based on *motivated order by a judge of the respective court of first instance, issued by request of the supervising prosecutor of pre-trial proceedings* the enterprises, providing public electronic communication networks and/or services shall make available the data, generated in the course of performance of their activities, which may be required for:
1. tracing and identification of the source of the communication link;
2. identification of the direction of the communication link;
3. identification of the date, hour and duration of the communication link;
4. identification of the type of the communication link;
5. (amended, SG No. 20/2021) to identify the terminal equipment of the user or what purports to be a terminal equipment of the user;
6. establishment of an identification code of the cells used.".

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The public prosecutor's offices of such Member States executed the EIOs without authorisation or validation by a judge or a court either, except in the case of the Belgian public prosecutor's office. Based on the evidence gathered (including the information supplied in response to the EIOs), the defendant, *HP*, and five other persons were charged with financing terrorist acts and being part of a criminal group for the purpose of financing such acts. The Specialised Criminal Court in Bulgaria, which had to examine the evidence gathered in accordance with the EIOs, questioned whether that evidence was lawful since, under national law, that evidence could only have been obtained in Bulgaria following judicial authorisation, including from the public prosecutor. Against that background, that court has made a preliminary ruling to the Court of the European Union whether the public prosecutor's office of a Member State is competent to issue a European Investigation Order in a criminal matter ('EIO'), requesting traffic and location data relating to electronic communications, when, in accordance with the national law of the issuing State, only a judge or a court is entitled to authorise the gathering of such evidence[504].

In its preliminary ruling, the Bulgarian Specialized Criminal Court stated that Article 2(c) of Directive 2014/41 refers to national law to designate the competent issuing authority. The Specialized Criminal Court notes that under Bulgarian law, pursuant to Article 5(1)(1) of the *European Investigation Order Act,* the competent issuing authority is the public prosecutor. However, that Court notes that, in a similar domestic case, the authority with competence to order the transfer of traffic and location data associated with telecommunications is a judge of the first instance court having jurisdiction and that the public prosecutor has, in such a situation, only the power to make a reasoned request to that judge. Thus, the Specialized Criminal Court asked the CEU whether, having regard in particular to the principle of equivalence, the competence to issue an EIO may be governed

[504] See Request for a preliminary ruling from the Specialised Criminal Court (Bulgaria) lodged on 1 October 2019 — Criminal proceedings against HP (Case C-724/19), https://curia.europa.eu/juris/document/document.jsf?text=&docid=221379&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=7001808: "Is a national law (Article 5(1)(1) of the Law on the European investigation order; 'the ZEZR'), according to which, during the pre-trial stage of the criminal proceedings, the authority competent to issue a European investigation order for the provision of traffic and location data related to telecommunications is a public prosecutor, consistent with Article 2(c)(i) of Directive 2014/41 and the principle of equivalence, provided that in an identical domestic case the competent authority is a judge?
Does recognition of that European investigation order by the competent authority of the executing State (public prosecutor or an investigating judge) replace the court order required under the law of the issuing State?".

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by the national law transposing Directive 2014/41, or whether Article 2(c) of that Directive confers competence on the authority which is competent in a similar domestic case.

In relation to this reference for a preliminary ruling, in its decision in Case C 724/19, the Court of the European Union held that the rules of Directive 2014/41/EU do not allow a prosecutor to have the power to issue, during the pre-trial phase of criminal proceedings, a European Investigation Order an investigation aimed at obtaining traffic and location data related to telecommunications, when in a similar national case only the judge has the exclusive competence to grant permission for this[505].

In order to address these problems, Bulgarian law was recently amended[506]. In 2024, an amendment to the *European Investigation Order Act* was adopted and in Art 6, two new paragraphs are included. The new rules introduce the possibility for persons affected by the execution of the European Investigation Order to appeal the grounds for its issuance and regulate the procedure for appeal[507]. In addition, explicitly in Art 5 of the *European*

[505] See the Judgment of the Court (Fourth Chamber) of 16 December 2021 (https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62019CJ0724): "*1. Article 2(c)(i) of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters must be interpreted as precluding a public prosecutor from having competence to issue, during the pre-trial stage of criminal proceedings, an European Investigation Order, within the meaning of that directive, seeking to obtain traffic and location data associated with telecommunications, where, in a similar domestic case, the judge has exclusive competence to adopt an investigative measure seeking access to such data.*
*2. Article 6 and Article 9(1) and (3) of Directive 2014/41 must be interpreted as meaning that recognition, on the part of the executing authority, of an European Investigation Order issued with a view to obtaining traffic and location data associated with telecommunications may not replace the requirements applicable in the issuing State, where that European Investigation Order was improperly issued by a public prosecutor, whereas, in a similar domestic case, the judge has exclusive competence to adopt an investigative measure seeking to obtain such data*".

[506] SG No. 36/23.04.2024.

[507] "Conditions for Issuing European Investigative Order
Article 6. (1) […]
(4) (New, SG No. 36/2024) Persons whose individual rights or property rights are directly and immediately affected by the execution of the European Investigative Order may appeal the substantive reasons for issuing the said order within 14 days after becoming aware of the carrying out of the investigative measure or the judicial investigation measure before:
1. the relevant court of first instance, where the order has been issued in the pre-trial proceeding;
2. the court which issued the said order in the trial proceeding;
3. the relevant regional court, where the order has been issued by an administrative authority in the cases referred to in Article 44(2) and Article 52(4) of the Administrative Violations and Sanctions Act.
(5) (New, SG No. 36/2024) The interlocutory appeal shall be lodged care of the authority referred to in Article 5(1) herein which has issued the European Investigative Order. The court, sitting in camera, shall examine the appeal within 7 days from the lodgement thereof and shall adjudicate on the lawfulness, necessity and proportionality of the European Investigative Order as issued by a ruling, which shall be final. Where the court revokes the European Investigative Order, the competent authority referred to in Article 5(1) herein shall so

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*Investigation Order Act* provides that in the pre-trial phase of the criminal proceedings, the prosecutor issues a European Investigation Order based on prior permission from a judge, when such is required under Bulgarian legislation and the EIO shall be issued by the relevant court on a motion by the prosecutor, where the court is the sole authority to order the carrying out of an investigative measure in a domestic case[508].

## 4.4 The coordination with Regulation 2018/1805

### 4.4.1 Legal basis in the national system and scope

As already mentioned above, before the adoption of the Regulation 1805/2018, the European requirements regarding the mutual recognition and enforcement of freezing or confiscation orders as laid down in FD 2003/577 and FD 2006/783 were implemented in national legislation, by the adoption of two laws regulating this matter, namely the *Recognition, Execution, Issuance and Transmission of Property Freezing Orders Act* of 2006, and the *Recognition, Execution and Transmission of Confiscation or Seizure Orders and Decisions Imposing Financial Penalties Act* of 2010.

In 2022, both laws were amended to introduce implementing measures for the Regulation 1805/2018 into national legislation[509]. In view of the direct applicability of the Regulation, the grounds established in it for non-recognition and non-execution of the freezing or confiscation orders do not need to be repeated in the domestic law. Therefore, the changes made in both laws in 2022 refer to the designation of the competent authority in Bulgaria as an executing or issuing State, the jurisdiction, the procedure for recognition of the freezing or confiscation orders.

notify the executing State.".

[508]"Authority Competent to Issue European Investigative Order

**Article 5.** (1) (Amended, SG No. 36/2024) A European Investigative Order in the Republic of Bulgaria shall be issued:

1. in a pre-trial proceeding:

(a) by the relevant prosecutor:

(b) by the relevant prosecutor: on the basis of a prior authorisation granted by a judge, where such authorisation is required by Bulgarian legislation in order to carry out the investigative measure; the judge shall assess the necessity and proportionality of issuing the European Investigative Order and shall adjudicate according to the procedure and within the time limits established in a similar domestic case;

(c) by the relevant court on a motion by the prosecutor, where the court is the sole authority to order the carrying out of an investigative measure in a domestic case;

[…]

[509] SG No. 56/19.07.2022.

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The Bulgarian legal system provides several legal regimes for freezing and confiscation of property. In addition to confiscation as a punishment in the meaning of Art 44 of the *Criminal Code* (CC)[510], the *Criminal Code* under its Art 53 also provides for the confiscation in favour of the state of: a) objects belonging to the culprit that were intended or served for the perpetration of an intentional crime; b) objects belonging to the culprit, which were subject of intentional crime - in the cases expressly provided in the Special Part of the Code. According to the Code, the direct and indirect benefits acquired through the crime are also subject to confiscation, if they are not subject to return or recovery[511]. The confiscation within the meaning of Art 53 CC is not a punishment. It is defined in the doctrine as a measure that is applicable regardless of the criminal liability[512].

Besides these, Bulgarian legislation also provides for the so-called civil forfeiture, i.e. forfeiture of unlawfully acquired assets (any assets for the acquisition of which a legitimate source has not been identified). The unlawfully acquired assets forfeiture proceeding is conducted without prejudice to the criminal proceeding against the person under examination and the parties related thereto. The matter is governed by the *Unlawfully Acquired Assets Forfeiture Act*[513]. As per its Art 5 (3) the procedures and sanctions regarding identification of such assets are applied without prejudice to the taking of steps and measures under other laws, including the initiation of criminal proceedings.

In the literature, this civil forfeiture is distinguished from the crime-related confiscation in so far it concerns the forfeiture of unlawfully acquired assets, i.e. any assets for the acquisition of which a legitimate source has not been identified and not necessarily proceeds of crime[514]. It is also noted that EU legal framework, which includes FD 2006/783, Directive 2014/42/EU and currently Regulation 1805/2018, applies precisely to the crime-related confiscation and not to the so-called civil forfeiture[515].

[510] Art 44 CC states that confiscation shall be compulsory appropriation without compensation of property in favour of the state, of assets belonging to the convict or of part thereof, of specified pieces of property of the culprit, or of parts of such pieces of property.
[511] Art 53 CC.
[512] Alexander Stoynov, *Criminal Law* (Ciela 2019); Lazar Gruev, *Punishment of Crime* (Prof Marin Drinov Publishing House of BAS 2020).
[513] SG No. 7/19.01.2018 (Heading amended, SG No. 84/2023, effective 6.10.2023).
[514] Gruev (n 56) 119.
[515] ibid 120-123. The differences in these two types of confiscations provided for into national legislation have also been discussed by the CJEU. For instance, in its judgment in Case C 319/19, the Court concluded that the Directive 2014/42 […] is an act aimed at obliging Member States to establish common minimum rules for confiscation of crime-related instrumentalities and proceeds, in order to facilitate the mutual recognition of

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### 4.4.2 Grounds for non-recognition and non-execution

#### *4.4.2.1 Impossibility to execute the freezing or confiscation orders*

The grounds for non-recognition and non-execution of the freezing or confiscation orders laid down in both laws mentioned above introduce into the national legislation the requirements of two framework decisions in this field. In view of the direct applicability of the Regulation, the grounds established in it do not need to be repeated in the national law[516]. Therefore, the changes made in both laws in 2022 refer to the designation of the competent authority in Bulgaria as an executing or issuing State, the jurisdiction, the procedure for recognition of the freezing or confiscation orders.

There are differences between the grounds for non-recognition and non-execution of the freezing or confiscation orders, provided for in the two Framework Decisions, and implemented into Bulgarian law, and those established in the Regulation.

For instance, according to Art 14 (1) of the *Recognition, Execution and Transmission of Confiscation or Seizure Orders and Decisions Imposing Financial Penalties Act*, confiscation orders issued in another Member State shall be recognised and executed in Bulgaria if they relate to acts which constitute offences **and for which confiscation is also envisaged under the Bulgarian legislation**, regardless of the components comprising the *corpus delicti* under the legislation of the issuing State. Accordingly, in such way one of the grounds for non recognition or non-execution of a confiscation order under Art 19 (1), p. 8

judicial confiscation decisions adopted in criminal proceedings. Therefore, according to the Court the directive does not govern the confiscation of instrumentalities and proceeds resulting from illegal activities that is ordered by a court in a Member State in the context of or following proceedings that do not concern the finding of one or more criminal offences. Such confiscation falls outside the scope, in fact, of the minimum rules laid down by that directive, in accordance with Article 1(1) thereof, and the rules governing it fall within the scope of the power of the Member States, referred to in recital 22 of that directive, to provide more extensive powers in their national law (Case C-319/19 *Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo* [2021] (ECJ, 28 October 2021), paras 36-37).

[516] As set out in a comparative report on the subject, Bulgaria, along with other Member States, considers that it is not necessary to further specify what is already provided in the Regulation (EU) 2018/1805. See for more details Freezing Orders and Confiscation orders: Effort for common standards - D2.1 Comparative report on the implementation of Regulation (EU) 2018/1805, 12 April 2023, 23-26, https://projectforce.eu/wp-content/uploads/2023/08/D2.1-Comparative-report-on-desk-resarch.pdf.

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thereof is formulated[517]. Thus, the requirements established in Art 6 (3) and 8 (2) (b) of FD 2006/783 have been introduced into national law[518].

However, the Regulation does not provide for a similar condition for recognition and execution of confiscation orders for crimes, other than those for which double criminality is not necessary[519].

These differences are reflected in the case law. In particular, some courts continue to apply the national law introducing the requirements of the FD, although, in relation to confiscation certificates transmitted on or after 19 December 2020, Regulation 1805/2018 should now apply[520].

[517] Article 19 (1), p. 8 states that the court may refuse to recognise or to allow the execution of a confiscation order if it establishes that according to the terms of Article 14 (1) the confiscation order relates to acts which do not constitute an offence, **which permits confiscation pursuant to the Bulgarian legislation.**

[518] According to Art 6 (3) of FD 2006/783, for offences other than those covered by paragraph 1 [namely those without need of the verification of the double criminality], the executing State may make the recognition and execution of a confiscation order subject to the condition that the acts giving rise to the confiscation order constitute an offence which permits confiscation under the law of the executing State, whatever its constituent elements or however it is described under the law of the issuing State.
In addition, Art 8 (2)(b) of FD 2006/783 provides for that the competent judicial authority of the executing State, as defined in the law of that State, may also refuse to recognise and execute the confiscation order if it is established that in one of the cases referred to in Art 6 (3), the confiscation order relates to acts which do not constitute an offence which permits confiscation under the law of the executing State; however, in relation to taxes, duties, customs duties and exchange activities, execution of a confiscation order may not be refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain the same types of rules concerning taxes, duties, customs duties and exchange activities as the law of the issuing State.

[519] As laid down in Art 3 (2) thereof, for criminal offences other than those referred to in paragraph 1, [namely those without need of the verification of the double criminality], the executing State may make the recognition and execution of a freezing order or confiscation order subject to the condition that the acts giving rise to the freezing order or confiscation order constitute a criminal offence under the law of the executing State, whatever its constituent elements or however it is described under the law of the issuing State.
In addition, Art 19 (1)(f) of Regulation 1805/2018 states that the executing authority may decide not to recognise or execute a confiscation order only where in a case falling under Art 3(2), the conduct in connection with which the confiscation order was issued does not constitute a criminal offence under the law of the executing State; however, in cases that involve taxes or duties or customs and exchange regulations, the recognition or execution of the confiscation order shall not be refused on the grounds that the law of the executing State does not impose the same kind of taxes or duties or does not provide for the same type of rules as regards taxes and duties or the same type of customs and exchange regulations as the law of the issuing State.

[520] See in this context Judgment № 114/17.06.2021 of the District Court-Blagoevgrad. The proceedings is initiated on the basis of a confiscation certificate under Art 4 of FD 2006/783 for the recognition and execution of a confiscation order, issued by a competent authority of the Lithuania against a Bulgarian citizen, that concerns an amount of money - 3200 euros, representing the value of the instrumentality of crime, namely the vehicle used to transport the goods.
According to the court, the most similar crime under the Bulgarian Criminal Code to the described act is that

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The situation is similar with regard to another ground for non-recognition and non-execution of confiscation orders, specified in the FD 2006/783 (Art 8 (2)(h) thereof)[521] and provided for in Bulgarian legislation[522], but which, again, is missing among the grounds set out in Regulation, namely – where the execution of the confiscation order is with expired prescription barred under the Bulgarian legislation. Until the entry into force of the Regulation, such requirements have been commonly applied by the case law[523]. However,

under Art 234 of the Criminal Code (the distribution or storage of excise goods without an excise tax banderol sticker where such banderol is required by the law shall, in non-negligible cases), but it does not provide for "confiscation" of the instrumentality of crime. Additionally, the offence committed on the territory of the Republic of Lithuania does not fall under the exceptions of crimes for which double criminality is not required. Against all these factors, the court concluded that the recognition and execution of the confiscation order should be refused.

[521] According to Art 8 (2)(h) of FD 2006/783, the competent judicial authority of the executing State, as defined in the law of that State, may also refuse to recognise and execute the confiscation order if it is established that the **execution of a confiscation order is barred by statutory time limitations in the executing State, provided that the acts fall within the jurisdiction of that State under its own criminal law**.

[522] An identical norm is introduced in national legislation. Article 19 (1), p. 3 of the *Recognition, Execution and Transmission of Confiscation or Seizure Orders and Decisions Imposing Financial Penalties Act* states that the court may refuse to recognise or to allow the execution of a confiscation or seizure order if it establishes that the execution of the order is with expired prescription barred under the Bulgarian legislation and the order is related to an act which falls within the jurisdiction of a Bulgarian court.

[523] See in this context Judgment № 2/4.07.2017 of the District Court-Sliven. The proceedings is initiated on the basis of a confiscation certificate received in the District Court - Sliven under Art 4 of FW Decision 2006/783 for the recognition and execution of a confiscation order, issued by a Netherlands court (entered into force on 15 March 2005), by which a confiscation was imposed on the defendant, Bulgarian citizen, that concerns an amount of money - 22 218 euros, representing proceeds derived from the crime of trafficking in human beings.

According to national law (Art 10 (1) of the *Recognition, Execution and Transmission of Confiscation or Seizure Orders and Decisions Imposing Financial Penalties Act*), the execution of confiscation orders in the Republic of Bulgaria shall be governed by the Bulgarian legislation. For the confiscation Bulgarian Criminal Code provides for that the punishment imposed shall not be served where the term of two years have elapsed following the entry into force of the sentence (Art 82 (1), p. 5 thereof). In addition, the Code states that irrespective of the interruption and termination of prescription, the punishment shall not be enforced where a term has elapsed which exceeds the previously mentioned term by one half (Art 82 (4) thereof). Therefore, in the present case, the enforcement of the punishment was time-barred.

Moreover, under national law confiscation orders, issued in another Member state are recognised and executed in Bulgaria if they relate to acts which constitute offences and for which confiscation is also envisaged under the Bulgarian legislation. Thus, the requirements of the FW Decision 2006/783 are transposed. However, the provisions of the Bulgarian Criminal Code on human trafficking do not provide for confiscation as a punishment.

Against all these factors, the District Court - Sliven refuses to recognise and execute the confiscation order.

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some courts continue to refer to this ground for non-recognition and non-execution of confiscation orders in the proceedings even after 19 December 2020[524].

#### *4.4.2.2 Fundamental rights and proportionality issues*

It is the existence and enforcement of the so-called civil forfeiture, as explained above, that raises a lot of issues, mostly relating to protection and guarantee of the rights of the affected persons. Specifically for Bulgaria, the problem is deepening due to the numerous judgments of the ECtHR against the country, concerning the civil confiscation under the two repealed laws governing this matter, namely the *Criminal Assets Forfeiture Act* adopted in 2005, repealed in 2012[525] and the *Act on Forfeiture to the Exchequer of Unlawfully Acquired Assets,* enacted in 2012 and repealed in 2018[526].

The European Court found that national courts did not look for a causal link between the crime committed and the acquisition of the assets for which the confiscation was requested[527]. According to Court, it is not enough to simply prove a discrepancy between the established "legitimate" income and the expenses incurred by the applicants. Due to this too formalistic approach, the Court concluded that there had been a violation of Art 1 of the Additional Protocol of ECHR, namely the right to property. In addition, in the *Yordanov and others v. Bulgaria* case, the European Court pointed out that the *Unlawfully Acquired Assets Forfeiture Act,* adopted in 2018 [528] and currently in force provides essentially for the same mechanism for the forfeiture of "unlawfully acquired assets" as

[524] See in this context Judgment № 36/3.05.2022 of the District Court-Vidin. The proceedings is initiated on the basis of a confiscation certificate received in the District Court - Vidin under Art. 17 of Regulation 2018/1805 for the recognition and execution of a confiscation order, issued by a Slovenian court against a Bulgarian citizen, that concerns an amount of money - 1100 euros, representing proceeds derived from the crime of trafficking in human beings. According to the court, there are no reasons for non-recognition and non-execution of confiscation order, including that relating to the expired statute of limitations. Against all these factors, the court recognises the confiscation order.

[525] SG N 19/1.03.2005. It provides for confiscation of the benefits of crimes after a final criminal conviction, as well as, in accordance with the national case law, a causal link between the crime committed and the property subject to confiscation.

[526] SG N 38/18.05.2012. The main novelty is that it provides for the forfeiture of "unlawful" assets and not necessarily proceeds of crime. The law remained in force until 2018 when it was repealed with the adoption of the Unlawfully Acquired Assets Forfeiture Act currently in force.

[527] *Todorov and Others v. Bulgaria* App nos 50705/11 and 6 others (ECtHR, 13 July 2021); *Sabouni and Others v. Bulgaria* App nos. 25795/15 and 59286/16 (ECtHR, 2 March 2023); *Lyapchev and Others v. Bulgaria* App nos 75478/13 and 30713/15 (ECtHR, 2 March 2023); *Yordanov and others v. Bulgaria* App nos. 265/17 and 26473/18 (ECtHR, 26 September 2023).

[528] SG No. 7/19.01.2018 (Heading amended, SG No. 84/2023, effective 6.10.2023).

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the one under the repealed 2012 Act, namely assets "for the acquisition of which a legitimate source has not been identified" (Art 5 (1) thereof), and does not require a criminal conviction[529]. Therefore, according to the opinion of some Bulgarian human rights defenders, these decisions of the Court require a change both in the current law (also providing for confiscation of illegally acquired property, not based on a verdict and independently from the criminal proceedings), and in case law regarding their compliance with the ECHR principles and standards[530]. In addition, according to some scholars, the civil forfeiture regime, as explained above, provided for in the Bulgarian legislation, which extends the confiscation outside the field of criminal law, is potentially problematic and significantly influences the rights of the affected persons[531], while at the same time excludes the same rights from the "(protective) assessment of the CJEU"[532].

The matter related to the expansion of the scope of confiscation not only at the national but also at the European level is a subject of scientific interest[533]. According to some scholars, "*the expectation that, e.g., the instruments from the wider spectrum of non-conviction-based confiscation (usually associated with lower standards), in order to meet the requirements of the Regulation (EU) 2018/1805, will either be reinforced with enhanced*

[529] Yordanov and others v. Bulgaria App nos. 265/17 and 26473/18 (ECtHR, 26 September 2023), para 36.
[530] See Mirela Veselinova, ECtHR: Only property related to criminal activity is confiscated, Capital, 13 July 2021, https://www.capital.bg/politika_i_ikonomika/pravo/2021/07/13/4232261_espch_konfiskuva_se_samo_imushtestvo_koeto_ima_vruzka/; Mirela Veselinova, Jonko Grozev: Civil forfeiture is not a universal instrument, Capital, 6 October 2023, https://www.capital.bg/politika_i_ikonomika/pravo/2023/10/06/4535371_ionko_grozev_grajdanskata_konfiskaciia_ne_e/.
[531] See in this context Elżbieta Hryniewicz-Lach, Expanding Confiscation and its Dimensions in EU Criminal Law in: European Journal of Crime, Criminal Law and Criminal Justice, Online Publication Date: 27 December 2023, 253-254, https://brill.com/view/journals/eccl/31/3-4/article-p243_003.xml?language=en. The article presents the partial results of a research project called 'Extended confiscation and its justification in light of fundamental rights and general principles of EU law', financed by the National Science Centre, Poland, in years 2021–2024. The article refers to the Bulgarian report on the subject drawn up within the project.
[532] Ibid, 254. The "protective assessment of the CJEU" mentioned above means the Judgment of the CJEU of 28 October 2021 (Case C-319/19) on a preliminary inquiry of a Bulgarian court, according to which "Directive 2014/42/EU … must be interpreted as not applying to legislation of a Member State which provides that confiscation of illegally obtained assets is to be ordered by a national court in the context of or following proceedings which do not relate to a finding of one or more criminal offences".
[533] See Elżbieta Hryniewicz-Lach, (n 87) and the literature quoted in the article. See also Dimitris Liakopoulos, Mutual Cooperation and Criminal Efficiency under Regulation (EU) 2018/1805 for the Mutual Recognition of Freezing and Confiscation Measures in: International Criminal Law Review, 20 (2020) 346-370, brill.com/icla.

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*protection of the rights of affected persons or will not be recognized or executed, might be too optimistic*"[534].

As regards the rights of the victims of crimes under the Regulation, due to its direct effect, the national legislation does not provide for explicit provisions in this regard. In this sense, the application of Regulation in judicial practice remains to be seen.

### 4.4.3 Execution procedure

#### *4.4.3.1 Issues for the rights of the suspect, accused and other parties*

With the recent legislative changes made in July 2022 concerning the recognition and execution of freezing or confiscation orders, the relevant competent authorities in Bulgaria as an executing State under Regulation 1805/2018 were explicitly indicated, namely the district courts[535].

When it comes to proceedings for recognition of a freezing order, such court shall hear the case in a single-judge panel and in a closed session[536]. As regards the proceedings for recognition of a confiscation order, the court shall hear the case in a panel of three judges in an open session with the participation of a prosecutor and the affected person[537].

As regards the rights of the affected persons, and in particular the rights of the persons that own the property covered by the freezing order, there is national case law where the courts refuse to recognize and execute such freezing orders. The courts conclude that where at the time of imposing the foreclosure on the property, the latter is not the property of the affected person, but is acquired by a *bona fide* third party, the freezing order could not fulfil its purpose and could not oppose to the right of ownership of that third party[538]. In general, this approach appears to be consistent with European law insofar as in

[534] Ibid, 256 and the literature quoted in the article.
[535] Art 24 (1) of the *Recognition, Execution, Issuance and Transmission of Property Freezing Orders Act* and Art 44 of the *Recognition, Execution and Transmission of Confiscation or Seizure Orders and Decisions Imposing Financial Penalties Act,* respectively.
[536] Article 24 (2) of *Recognition, Execution, Issuance and Transmission of Property Freezing Orders Act.*
[537] Article 45 (1) of *Recognition, Execution and Transmission of Confiscation or Seizure Orders and Decisions Imposing Financial Penalties Act.*
[538] See in this context Ruling N 272/21.05.2018 of the Appellate Court – Sofia. The proceedings is initiated by appeal against a decision of the Sofia City Court, which recognises a freezing order, issued by a Spanish court for seizure of property of four Bulgarian citizens for purposes of execution of subsequent confiscation order issued by Spain authority. Criminal proceedings are being conducted against them in Spain on charges of participation in an organized criminal group for human trafficking, fraud and money laundering. By the decision under appeal, a foreclosure was imposed on real estate property located in the territory of Bulgaria, including an immovable property, for which the attached freezing certificate states that it is owned by one of

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the relevant European acts the freezing order is defined as a preventive measure concerning property with a view to possible subsequent confiscation thereof. Therefore, if in the proceedings for recognition of a freezing order it is established that the property is acquired by a *bona fide* third party, this calls into question the subsequent confiscation of such property. However, it should be noted that such national case law is settled prior to the entry into force of Regulation 1805/2018.

### 4.4.4 Cooperation issues between executing and issuing authorities

As regards cooperation issues between executing and issuing authorities, the Bulgarian legislator held that it was not necessary to introduce in national law specific provisions other than those set out in Regulation 1805/2018.

### 4.4.5 Remedies

Both laws on recognition and execution of freezing or confiscation orders provide for legal remedies for persons involved in these proceedings.

Specific provisions in this regard were introduced by the 2022 amendments. According to Art 26 of the *Recognition, Execution, Issuance and Transmission of Property Freezing Orders Act*, each interested party, including a *bona fide* third party, may appeal the

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the affected persons. However, it is clear from the documents submitted as evidence, that at the time of imposing the foreclosure on that immovable property, the latter was not the property of the one of the affected persons, but was acquired by the appellant through a purchase contract between them a few years ago. Therefore, the freezing order based on the recognized and executed judgment of the Spanish judicial authorities could not fulfill its purpose and could not oppose to the right of ownership of the applicant. Against all these factors, the Appellate Court - Sofia annuls the decision of the Sofia City Court.
A similar approach has been followed in Ruling № 526/1.11.2017 г. of the same court. The proceedings is initiated by an appeal against a ruling of the Sofia City Court, which recognises a freezing order, issued by a Romanian court for seizure of property of Bulgarian citizens for purposes of execution of subsequent confiscation order issued by said Romanian authority. Criminal proceedings are being conducted against them in Romania for participation in an organized criminal group and money laundering.
By the decision under appeal, a foreclosure was imposed on real estate property located in the territory of Bulgaria, including an immovable property, for which the attached freezing certificate states that it is owned by one of the affected persons. The complainant claims that she is the owner of the foreclosed property in question and should be considered as a third interested party.
However, it is clear from the documents submitted as evidence, that with regard to the same property, its confiscation was ordered in favour of the Bulgarian state. Subsequently, this property was sold by the National Revenue Agency at an auction to the applicant. Therefore, the freezing order based on the recognized and executed judgment of the Romanian judicial authorities could not fulfil its purpose and could not oppose to the right of ownership of the applicant. Against all these factors, the Appellate Court - Sofia annuls the ruling of the Sofia City Court. See in this context Ruling N 330/11.10.2016 and Ruling N 84/17.03.2014 of the Appellate Court – Sofia.

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ruling on the recognition of the freezing order before the Court of Appeal in accordance with the Code of Civil Procedure within 14 days from coming into knowledge of the issuance of such ruling. Such an appeal does not stay the execution. The parties may also appeal, in accordance with the Code of Civil Procedure, actions for the execution of the freezing order within 14 days of knowledge thereof.

The *Recognition, Execution and Transmission of Confiscation or Seizure Orders and Decisions Imposing Financial Penalties Act* provides for similar rule. Pursuant to Art 46, any person concerned, including a *bona fide* third party, may appeal the decision of the district court on recognition of the confiscation order before the Court of Appeal within 7 days of becoming aware of the ruling of the court. The appeal shall not stop the process of execution of the order. The case is decided in an open court session, in the presence of a prosecutor, the person concerned and his/her counsellor, and the *bona fide* third party admitted to participate. The ruling of the Court of Appeal is final.

These remedies as laid down in domestic law seem to be satisfactory and in compliance with Regulation 1805/2018, and more particularly with Art 33 thereof. Nevertheless, it should be noted that as laid down in Art 33 of the Regulation, this national legislative framework refers to the remedies in Bulgaria as the executing State. As regards the legal remedies in the issuing State, the situation is problematic, in so far as the Regulation itself does not contain sufficient provisions in this regard. Such a lack raises questions about the way in which the affected persons can protect their rights, especially since *per argumentum a contrario* the substantive reasons for issuing the freezing order or confiscation order could be challenged before a court in the issuing State[539].

# 5 Conclusions

With regard to the EAW FD, it seems that, by the latest changes in the regulatory framework made in December 2023, national legislation in the field of recognition and execution of European arrest warrants has been brought into line with the European standards established both in the Framework decision 2002/584 and in the case law of the CJEU. In the national case law, no special issues emerge. This is largely due to the fact that

[539] For critical appraisal whether the rights of defence of affected persons under Regulation 1805/2018 are sufficient to effectively safeguard the interests of such persons see Nuno Brandão, The right of defence under Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders in: New Journal of European Criminal Law, 2022, Vol. 13(1) 28–41 and the literature quoted in the article.

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the European requirements in this area were introduced a long time ago and have been consistently applied by the national competent judicial authorities for more than 15 years. A challenge for the practice will rather be the recent legislative amendments, which implemented the two levels of protection in the cases of European arrest warrant, issued by a prosecutor in the pre-trial proceedings.

A positive assessment can be drawn also with regard to Directive 2014/41/EU. In particular, it is clear from the preliminary ruling of the Bulgarian judges that they apply national law taking into account the ideas and meaning of the Directive. Their continuous training and their good cooperation with the judges of other Member States in the implementation of the Directive ensure a timely reaction in identifying and solving the problems related to the application of the rules of the Directive.

The greatest challenge in Bulgaria stems instead from the application of Regulation 1805/2018. The issues arise, on the one hand, from the fact that, at the European level, the matter related to the mutual recognition and the execution of freezing or confiscation orders was initially regulated by two Framework Decisions, duly implemented into Bulgarian law since 2006 and 2010, respectively. The settlement of this matter, however, by an European legislative act with direct applicability, such as Regulation 1805/2018, which replaces the Framework Decisions and introduces different requirements both in terms of the grounds for refusal and the rights of the affected persons, causes difficulties especially in the implementation by the national competent authorities.

In addition, it should be taken into account the too broad scope of freezing and confiscation of property provided for in Bulgarian legislation in the cases of the so-called civil forfeiture (forfeiture of unlawfully acquired assets, i.e. any assets for the acquisition of which a legitimate source has not been identified) and the problems resulting from the application of this regime, related to the violation of the rights of the affected persons, established in the practice of the ECtHR in cases against Bulgaria.

The relatively recent introduction into the national legislation of measures for the implementation of the Regulation 1805/2018 and the insufficient case law of the national courts in this regard, make the application of the European standards on recognition and execution of freezing or confiscation orders a challenge. It remains to be seen how and to what extent the application of these standards will be ensured in Bulgaria.

To sum up, the implementation of the rules of the EU cooperation mechanisms in the criminal law matter represents a serious test for the Bulgarian legislator.

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This is because, regardless of the participation of the Member States in the legislative procedure for the adoption of the acts of the European Union, the national legislation has its specificities, and sometimes they can hardly be overcome.

Traditionally, Bulgarian legislation is characterized by a high level of abstraction of legal norms, and this makes it possible to take into account the specifics of each case when applying the law. Conversely, the acts of the European Union are characterized by the detailed settlement of all issues that are subject to discussion in the legislative procedure. This makes it difficult to implement provisions in the domestic legislation, because, on the one hand, the excessive detailing of the legal framework risks always leaving specific cases without a clear answer, and on the other hand, this approach of excessive detailing creates a visible discrepancy between the style of national and European legislation.

This is also the reason for the adoption of more and more normative acts, that follow the style of European acts, different from the style of national laws. On the one hand, this approach ensures an almost identical content of national normative acts to that of European acts, but on the other, it displaces the codification of law. The desire of the Bulgarian legislator to fully implement the rules of the European acts created a new trend, as some issues related to criminal proceedings are regulated in special laws, which are applied together with the *Code of Criminal Procedure* (*Extradition and European Arrest Warrant Act; European Investigation Order Act; Act on the Recognition, Enforcement and Forwarding of Judicial Instruments Imposing Custodial Sentences or Measures Involving Deprivation of Liberty; Recognition, Execution and Transmission of Decisions on Supervision Measures Other Than Measures Which Require Detention Act; Act on Recognition, Execution and Forwarding of Judgments and Probation Decisions with a View to Exercising Supervision of Probation Measures and Alternative Sanctions; Recognition, Execution, Issuance and Transmission of Property Freezing Orders Act; Recognition, Execution and Transmission of Confiscation or Seizure Orders and Decisions Imposing Financial Penalties Act; European Protection Order Act).* This creates a danger of internal contradiction in the legislation and ambiguity for citizens.

In particular, it makes it difficult for citizens to know the rules and their easier understanding and interpretation, given not only their increasing quantity, but also their quality. And as Voltaire says, “The multitude of laws is, in a state, what the great number of doctors is: a sign of illness and weakness”[540].

[540] Voltaire Lettre à l'abbé Moussinot, le 14 septembre 1736: “La multitude des lois est, dans un état, ce qu'est

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# 6 References

[1] Pavlina Panova, The European Arrest Warrant (Ciela 2009).

[2] Gergana Marinova, The Extradition and European Arrest Warrant (Sibi 2009).

[3] Alegre, S., & Leaf, M. (2004). Mutual Recognition in European Judicial Cooperation: A Step Too Far Too Soon? Case Study—the European Arrest Warrant. European Law Journal, 10, 200-217.

[4] Margarita Chinova, Pavlina Panova. The new Directive on the right of access to a lawyer in criminal proceedings in: - Norma, 3/2014.

[5] Klip, André. A Next Level Model for the European Arrest Warrant, European Journal of Crime, Criminal Law and Criminal Justice 30 (2022) 107–126.

[6] Ivo Hinov, Elena Popova. The European arrest warrant in Bulgaria in the light of the latest case law of the CJEU, 9 April 2017, https://evropeiskipravenpregled.eu/t174/.

[7] Andrey Jankulov. The European arrest warrants, issued by a prosecutor in our country, and the new case law of the CJEU, 3 January 2020, https://defakto.bg/2020/01/03/evropeyskite-zapovedi-za-arest-izdav/.

[8] Alexander Stoynov, Criminal Law (Ciela 2019).

[9] Lazar Gruev, Punishment of Crime (Prof Marin Drinov Publishing House of BAS 2020).

[10] Mirela Veselinova, ECtHR: Only property related to criminal activity is confiscated, Capital, 13 July 2021, https://www.capital.bg/politika_i_ikonomika/pravo/2021/07/13/4232261_espch_konfiskuva_se_samo_imushtestvo_koeto_ima_vruzka/.

[11] Mirela Veselinova, Jonko Grozev: Civil forfeiture is not a universal instrument, Capital, 6 October 2023, https://www.capital.bg/politika_i_ikonomika/pravo/2023/10/06/4535371_ionko_grozev_grajdanskata_konfiskaciia_ne_e/.

le grand nombre de médecins: signe de maladie et de faiblesse." (https://citations.ouest-france.fr/citation-voltaire/multitude-lois-etat-grand-nombre-117047.html).

[12] Elżbieta Hryniewicz-Lach, Expanding Confiscation and its Dimensions in EU Criminal Law in: European Journal of Crime, Criminal Law and Criminal Justice, Online Publication Date: 27 December 2023, 253-254, https://brill.com/view/journals/eccl/31/3-4/article-p243_003.xml?language=en.

[13] Dimitris Liakopoulos, Mutual Cooperation and Criminal Efficiency under Regulation (EU) 2018/1805 for the Mutual Recognition of Freezing and Confiscation Measures in: International Criminal Law Review, 20 (2020) 346-370, brill.com/icla.

[14] Nuno Brandão, The right of defence under Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders in: New Journal of European Criminal Law, 2022, Vol. 13(1).