

European Investigation Order

**Bulgarian approach – legal provisions,
procedural characteristics, statistics.**

The role of BG EJP CPs.



eu2018bg.bg

Bulgarian Presidency of the Council
of the European Union



DIRECTIVE 2014/41/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 3 April 2014 /proposed in May 2010/

regarding the **European Investigation Order in criminal matters**

“THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in
particular Article 82 (1)(a) thereof,

Having regard to the initiative of the **Kingdom of Belgium**, the
Republic of Bulgaria, the **Republic of Estonia**, the **Kingdom of
Spain**, the **Republic of Austria**, the **Republic of Slovenia** and the
Kingdom of Sweden...”



eu2018bg.bg

Bulgarian Presidency of the Council
of the European Union

The part of BG EJM CPs in the process of the implementation of EIO Directive

- In April 2017 The National Network of Judges for the International Cooperation in criminal matters /which all 9 members are EJM CPs/, had presented to Supreme Judicial Council the initiative for the practitioners' meeting on the topics regarding EIO Directive and its implementation in the period of transposition of the instrument.
- The idea had been approved by the SJC and realized with the assistance of the National Institute of Justice.
- On 29.05.2017 in the premises of NIJ in Sofia were representatives of the National judges' and prosecutor' networks, National Desk at EUROJUST, Ministry of Justice, SJC, and the Deputy President of the Supreme Court of Cassation, the Head of NIJ, the National correspondent at EJM, Bulgarian tool correspondent at EJM and many experts.


The National Meeting - 29.05.2017



НАЦИОНАЛЕН ИНСТИТУТ
НА ПРАВОСЪДИЕТО



Opinions of the magistracy regarding Bulgarian Legal Act during the legislative process




Становище

По предложения за обсъждане Проект на
Закон за европейска заповед за разследване

От съдиите-членове на Националната съдебна мрежа за международно сътрудничество
по наказателни дела в Република България

От позицията на практикуващи съдии, задълбочили компетентността си в областта на международното сътрудничество по наказателни дела и лица за контакт на Европейската съдебна мрежа, отдаваме изключително значение на въвеждането на Директива 2014/41/ЕС в националното законодателство. Европейската заповед за разследване /ЕЗР/ ще бъде основен инструмент при търсенето и предоставянето на съдействие с цел събиране на доказателства, необходими в рамките на различни наказателни и административнонаказателни производства, поради което е необходимо постигането на максимална обвързаност между европейския и национален правен източник при съобразяване на основните положения на българското наказателно-процесуално право.

29.09.2017г.



ПРОКУРАТУРА НА РЕПУБЛИКА БЪЛГАРИЯ

ВЪРХОВНА КАСАЦИОННА ПРОКУРАТУРА ЗАМЕСТИК НА ГЛАВНИЯ ПРОКУРОР

№ 734/2016 г.
София, 26.01.2018 г.

НАРОДНО СЪБРАНИЕ

Вх. № K17-753-03-EG

гата 24.01.2018 г.

ДО
Г-Н ДАНАИЛ КИРИЛОВ
ПРЕДСЕДАТЕЛ НА
КОМИСИЯТА ПО ПРАВНИ ВЪПРОСИ
ПРИ 44-ТО НАРОДНО СЪБРАНИЕ

На Ваш изх. № 753-03-66/12.12.2017 г.

УВАЖАЕМИ Г-Н КИРИЛОВ,

По предоставяния проект на Закон за Европейската заповед за разследване № 702-01-47 изразяваме следното становище.

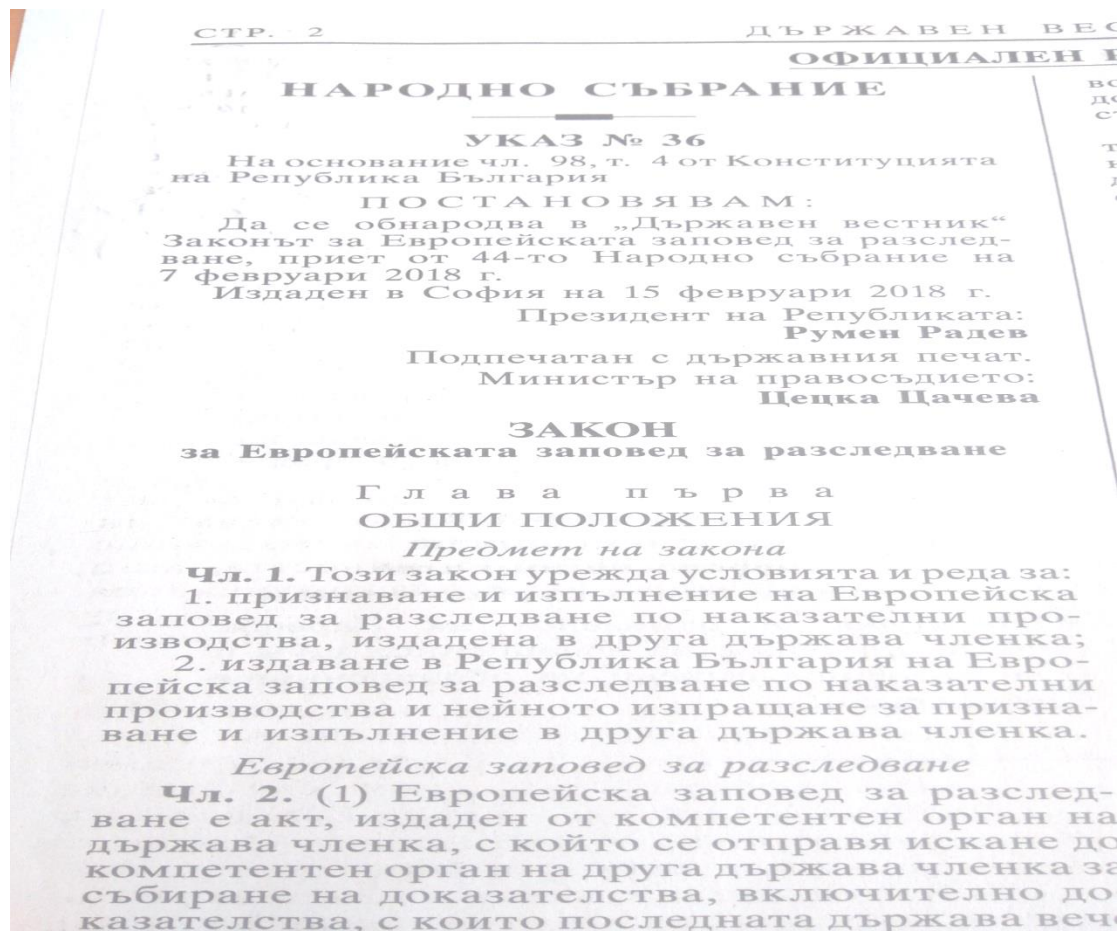
Потвърждаваме подкрепата за приемането на закона, изразена от Прокуратурата до министъра на правосъдието в съгласувателната процедура по реда на чл. 26 и сл. от Закона за нормативните актове.

Същевременно констатираме, че част от отправените бележки не са били възприети, а се установяват и някои други пропуски, чието отстраняване би подобрило и прецизирило законопроекта.

1. Неудачен е правният акт, който...

European Investigative Order Act

Promulgated, SG No. 16/20.02.2018, entered into force on the 23.02.2018



- 6 CHAPTERS
- 36 ARTICLES
- SUPPLEMENTARY PROVISIONS
- TRANSITIONAL AND FINAL PROVISIONS
- Amendments in The Recognition, Enforcement and Issuance of Writs for Securing of Assets or Evidence Act and in the Credit Institutions Act
- 3 forms – EIO, CONFIRMATION OF THE RECEIPT, NOTIFICATION

European Investigative Order Act – general provisions

- European Investigative Order may be issued with respect to:
 - **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; **proceedings brought by administrative or 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; **acts in connection with proceedings**, which relate to criminal offences or infringements for which **a legal person may be held liable or punished** in the issuing State
 - **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;
 - **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.
- OUT of the scope of the Act are regulations for:
 - a joint investigation team under Article 476 (3) of the Criminal Procedure Code,
 - the freezing of property subject to confiscation, which has not been stated,
 - cross-border surveillance requested upon Article 40 of the Convention implementing the Schengen Agreement.

EIO Act – recognition and execution of EIO in Bulgaria.

Authority Competent to recognise an EIO.

- Depending on the grounds of the stage of proceeding, territorial competence /location of evidence/ or within the jurisdiction of the specialised criminal court /based on the statement of facts contained in the accusation, e.g. OCG/:
 - in a pre-trial proceeding: a prosecutor of the relevant district prosecution office or military district prosecution office within whose judicial district the relevant investigative measure or other procedural measures are requested to be carried out, of evidence which is already in possession is requested to be transferred, or a prosecutor of the specialised prosecution office;
 - in a trial proceeding: the relevant district court or military court within whose judicial district the investigative measure concerned or other procedural measures are requested to be carried out, of evidence which is already in possession is requested to be transferred, or the specialised criminal court.
- In case of measures which would affect multiple judicial districts, the authority competent to recognise any such order shall be the authority within whose judicial district the most urgent measure is to be carried out.

EIO Act – recognition and execution of EIO in Bulgaria.

Mandatory Conditions.

- The EIO should contain data, signature and stamp of the issuing authority; object and reasons for issuing the EIO; the necessary information available on the person in respect of whom the investigative measures and other procedural measures will be carried out; a description of the criminal act, which is the subject of the investigation or proceedings, and the relevant applicable provisions of the criminal law of the issuing State; a description of the investigative measures and other procedural measures requested and the evidence to be obtained.
- The EIO form should be translated in Bulgarian or English language.
- The EIO should relate a conduct which constitute a criminal offence:
 - under Bulgarian legislation as well, where, irrespective of the difference in the legal descriptions, there is a coincidence in the constituent elements underlying the said offences, or
 - in the “list of 32 European criminal offences” if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years, or
 - in connection with taxes or duties, customs and exchange.

EIO Act – recognition and execution of EIO in Bulgaria.

Proceeding for recognition, execution and time limits.

- Upon receipt of an EIO by postal mail, email, fax or other means capable of establishing in writing the authenticity of the receipt and the content of the order, the competent authority – court or prosecutor should institute a proceeding for recognition.
- The court's ruling/prosecutor's warrant for the recognition should be delivered not later than 30 days after the receipt of the EIO, but in exceptional cases and after consultation with the issuing country the time limit could be extended by no more than 30 days. The decision could be appealed before the competent appellate court or before a prosecutor with a higher-standing prosecution office.
- The authorities competent to execute an EIO should take steps without delay for the execution of measures complying with the time limits provided for in this Act – no later than 90 days after recognition, and in the Criminal Procedure Code, and with the formalities and procedures indicated by the issuing authority, unless otherwise provided for in this Act and provided that such formalities and procedures are not contrary to Bulgarian law.
- Recourse to different type of investigative and other procedural measures – non/options.

EIO Act – recognition and execution of EIO in Bulgaria.

Optional grounds for refusal or postponement of recognition or execution.

- Grounds for refusal – implementing the provided in Directive 2014/41 + in case of a decision which has been rendered regarding a legal remedy, where by the EIO is invalidated.
- Postponement could be announced when:
 - the execution of the EIO might prejudice the revelation of the objective truth in an ongoing criminal proceeding until such time as the competent authority – court/prosecutor, deems reasonable; or
 - the evidence concerned is already being used in another proceeding, until such time as the said evidence is no longer required for that purpose.
- The importance of the direct contact between the authorities of the concerned countries – information, confidentiality, consultations.

Bulgarian Statistics by the end of May 2018

Issued EIO

- 34 in pre-trial proceedings to Germany, Romania, Greece, Poland, Belgium, Estonia, France, Sweden, etc.
- 2 in trial proceedings.



EIO received for recognition and execution

- 51 in pre-trial proceedings from France, Netherlands, Italy, Romania, Germany, Belgium, etc.
- 16 in trial proceedings from Germany, Netherlands, Greece, etc.

Note: The figures for the trial stage are approximate due to the absence of:

- a case code for the received EIO, and
- an obligation to the judge to report the issued EIO.

The role and activities of BG EJM CPs in order to facilitate EIO cooperation

- Assistance for defining competent National/European authorities, transmitting of an EIO and exchange of information.
- Identification of problematic provisions/practices and taking the necessary steps to correct and improve them through cooperation with the representatives of Ministry of Justice, National Institute of Justice, jurisprudence and the academic society.
- Organization of meetings, discussions, training for the Bulgarian prosecutors and judges.
- Popularization of the best EU EIO solutions.

Thank you for your attention



eu2018bg.bg

Bulgarian Presidency of the Council
of the European Union

ON BEHALF OF BG EJM CPs
and NATIONAL JUDICIAL NETWORK FOR INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

ANGELINA LAZAROVA – JUDGE IN COURT OF APPEALS VARNA, BULGARIA, NCP, EJM CP