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From:	Services of the Commission
To:	Delegations
Subject:	Report of the complementary voluntary fact-finding mission to Romania and Bulgaria on the application of the Schengen <i>acquis</i> and its developments since 2011

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Delegations will find attached the report of the complementary voluntary fact-finding mission to Romania and Bulgaria on the application of the Schengen *acquis* and its developments since 2011.

**REPORT OF THE COMPLEMENTARY VOLUNTARY FACT-FINDING MISSION  
TO ROMANIA AND BULGARIA ON THE APPLICATION OF THE SCHENGEN  
*ACQUIS* AND ITS DEVELOPMENTS SINCE 2011**

**1. INTRODUCTION**

Pursuant to Article 4(2) of the 2005 Act of Accession<sup>1</sup>, Bulgaria and Romania successfully accomplished their respective Schengen processes, as recognised by the Council in 2011. Although the European Parliament issued a positive opinion on the draft Council Decision on the full application of the provisions of the Schengen *acquis* in those States<sup>2</sup>, no Council Decision has been taken up to date.

During the last months **important progress has been made to support the full application of the Schengen *acquis* in Bulgaria and Romania**. In particular, following the invitation<sup>3</sup> of these two Member States, the Commission organised a fact-finding mission<sup>4</sup> to Romania (**9 to 11 October 2022**) and Bulgaria (**12 to 14 October 2022**). The team was composed of 17 Member State experts, five Commission experts, representatives of Frontex, Europol and the Fundamental Rights Agency. The on-site team assessed the key elements of the Schengen *acquis* (i.e., management of the external borders, police cooperation, return, Schengen Information System and visa) as well as the respect for fundamental rights, including data protection, and the functioning of the authorities that apply the relevant parts of the Schengen *acquis*. The report stemming from the fact-finding mission provided a thorough and comprehensive assessment of the application of the Schengen *acquis* by Bulgaria and Romania. The on-site team did not identify any issue in the application of the Schengen *acquis* by Romania and Bulgaria and concluded that **these Member States continue to meet the conditions necessary to apply all relevant parts of the Schengen *acquis* in full**. After the presentation of the report at the Council's Working Party for Schengen Matters, Coreper took note of the report on 9 November 2022. The Commission endorsed the outcome of the

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<sup>1</sup> OJ L 157, 21.6.2005, p 1-395.

<sup>2</sup> European Parliament legislative resolution of 8 June 2011 on the draft Council decision on the full application of the provisions of the Schengen *acquis* in the Republic of Bulgaria and Romania (14142/2010 – C7-0369/2010 – 2010/0820(NLE)).

<sup>3</sup> Joint Declaration at the COREPER meeting of 2 March 2022

<sup>4</sup> A new verification of the necessary conditions for the application of all relevant parts of the Schengen *acquis* cannot be relaunched in respect of Romania and Bulgaria, pursuant to Recital 43 Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, and repealing Regulation (EU) No 1053/2013, OJ L 160, 15.6.2022, p. 1–27,

report in its Communication<sup>5</sup> of 16 November, and it was published on the same day by the Council and the Commission<sup>6</sup>.

In view of continuously supporting Member States to make a subsequent decision on the full application of the Schengen *acquis* in Bulgaria and Romania, and particularly in view of responding to the interest for additional information expressed by one Member State, the Commission coordinated a complementary fact-finding mission **between 14 and 18 November 2022**, including on-site visits in Sofia and in the consulate of Bulgaria in Istanbul (on 16 November) and in Bucharest and in the consulate of Romania in Istanbul (on 17 November). Both Bulgaria and Romania expressed their full openness for this complementary mission to be organised.

The aim of this complementary fact-finding mission was to provide recent and additional information on Romania's and Bulgaria's implementation of visa policy, data protection and judicial cooperation in criminal matters.

Experts from several Member States, the Council, the European Commission and Eurojust took part in the complementary mission. Regarding **Bulgaria**, the mission was carried out by a team consisting of experts from the Czech Republic, Germany, Sweden, together with two Council experts and seven experts from the European Commission. Regarding **Romania**, the mission was carried out by a team consisting of experts from the Czech Republic, Germany, the Netherlands and Sweden, together with two Council experts, and seven experts from the European Commission.

The team visited the following authorities and sites:

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<sup>5</sup> Communication from the Commission to the European Parliament and the Council 'Making Schengen stronger with the full participation of Bulgaria, Romania and Croatia in the area without internal border controls (COM(2022) 636 final).

<sup>6</sup> [Bulgaria and Romania fact-finding mission report \(europa.eu\)](https://european-council.europa.eu/media/en/press-room/item/131475/detail)

## **Bulgaria**

- Bulgarian consulate in Istanbul
- Commission for Personal Data Protection (hereafter: Data Protection Authority – DPA)
- Ministry of Interior
- Communication and Information Systems Directorate
- Ministry of Foreign Affairs – National Visa Centre
- International Operational Police Cooperation Directorate – SIRENE Bureau
- Sofia Metropolitan Police Directorate

## **Romania**

- Romanian consulate in Istanbul
- National Supervisory Authority for Personal Data Processing (hereafter: Data Protection Authority – DPA)
- Ministry of Home Affairs
- Office of the Personal Data Protection Officer (Ministry of Home Affairs)
- SIRENE Bureau
- Schengen Information System National Centre
- Ministry of Foreign Affairs – National Visa Centre
- National Police
- Bucharest Police Station 2

The assessment on judicial cooperation in criminal matters was based on a desk review of different sources: implementation reports prepared by the Commission, reports prepared by experts in the context of the 9<sup>th</sup> round of mutual evaluation, statistics based on information provided by the Member States, information provided by Bulgaria and Romania in the context of this fact-finding mission, information provided by Eurojust, reports issued by the Fundamental Rights Agency (‘FRA’) and the Council of Europe Committee on the Prevention of Torture (‘CPT’).

This report is drafted by the team based on information received and observed during the complementary fact-finding mission, as well as additional information Bulgaria and Romania provided during the process. The team received sufficient information to come to a balanced assessment about the continued application of the Schengen *acquis* by Romania and Bulgaria.

## **2. EXECUTIVE SUMMARY**

Since the finalisation of the Schengen evaluation of Bulgaria and Romania in 2011, the Bulgarian and Romanian authorities have taken the necessary measures to continue implementing the Schengen *acquis* and its developments in the intervening period.

The additional fact-finding mission confirms the results of the voluntary fact-finding mission that took place in October 2022. After assessing the fields of visa policy, data protection and judicial cooperation in criminal matters, **the fact-finding team considers that Bulgaria and**

## **Romania continue to meet the conditions necessary to apply all relevant parts of the Schengen *acquis* in full:**

- The team has not identified fundamental issues as regards the application by Bulgaria and Romania of the latest developments of **the visa *acquis*** and confirms the two Member States' readiness to start processing Schengen visa applications. At both consulates that the applications are examined in a solid manner, decisions are well-founded and decision-makers have a good knowledge of migratory risks and trends. Although Bulgaria and Romania are not entitled yet to issue Schengen visas, both Member States already recognise multiple-entry Schengen visas, long-stay visas and residence permits issued by other Schengen States (as well as the Schengen aspiring ones) as equivalent to their national short-stay visas. In order to ensure the smooth start of Schengen visa processing it is important to continue and reinforce the training of the staff especially as regards the expected procedural changes as well as the changes in the national IT systems.
- The team has not identified any fundamental issue as regards the application by Bulgaria and Romania of the Schengen *acquis* in the area of **data protection**. It found that both countries comply with the applicable data protection rules when they use the Schengen Information System and their read access to the Visa Information System<sup>7</sup>. Both Member States are encouraged to continue their good efforts regarding training of their staff as well as further develop and strengthen their self-auditing measures and Romania also the auditing activities. In both Member States the legislation provides for complete independence of the Data Protection Authority.
- No substantial issues have been found with regard to the implementation and use of European Investigation Orders and European Arrest Warrants by Bulgaria and Romania, notwithstanding the ongoing work to adjust the legal framework. Overall, **judicial cooperation in criminal matters** in both States works well. The statistics of the Commission and Eurojust show that both Member States are actively engaging in judicial cooperation with other Member States to fight crime, including trafficking in human beings, migrant smuggling and mobile organised crime groups. The adoption of the new legislation will enable the further improvement of judicial cooperation between Member States.

### **3. VISA**

#### **3.1 Visa processing**

**Bulgaria** processes visa applications in some 60 locations outside the territory of the EU/Schengen area and in 2019 (the last year which was not affected by the Covid-related

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<sup>7</sup> The team that carried out the visits related to data protection, positively noted that experts from Bulgaria and Romania participated in a high number of Schengen Evaluations on data protection. The experience these experts gained during those evaluations in terms of good practices and lessons learnt are well reflected in the way Bulgaria and Romania apply the relevant data protection requirements of the Schengen *acquis*.

travel restrictions) it processed almost 310.000 short-stay visa applications. With this, they would rank 13<sup>th</sup> among the Schengen Member States in terms of short-stay visa processing.

While **Romania** has a bigger consular network and it is processing short-stay visas in over 80 locations outside the territory of the EU/Schengen, it received 51.000 short-stay visa applications in 2019, with which they would rank 21<sup>st</sup> among the Schengen Member States.

In view of assessing the state of preparedness of the implementation of the **common visa policy**, the on-site team visited the Bulgarian and Romanian consulates in Istanbul, which is a major visa issuing post for both Member States, ranking 4<sup>th</sup> for Bulgaria with 12.000 visa applications and 1<sup>st</sup> for Romania with 10.000 applications (2019 data).

Both Member States already recognise multiple-entry Schengen visas, long-stay visas and residence permits issued by other Schengen States (as well as the Schengen aspiring ones) as equivalent to their national short-stay visas. Therefore, no major drop is expected in terms of the visa applications following their full Schengen accession. In line with their obligations stemming from the full application of the Schengen *acquis*, Bulgaria and Romania will need to continue working to ensure a thorough examination of the applications as well as a very close cooperation with other Member States.

Neither of them has concluded **representation agreements** with any other Schengen States to increase access to Bulgarian/Romanian Schengen visas following the start of processing them. It is thus desirable that both Member States launch the process of concluding representation arrangements with Member States to increase the (Schengen) visa processing coverage worldwide in line with the possibilities provided for in the Visa Code. In the discussions with the experts' team, the Romanian authorities mentioned that they are fully aware of the need to conclude these representation agreements and that they will evaluate this option.

### 3.2 Information to the public

Both the website of the **Bulgarian Ministry of Foreign Affairs** and the website of the **Romanian Ministry of Foreign Affairs** (the 'eViza' application portal, in particular) provides the **necessary information of the visa process in a structured manner** and demonstrates that Bulgaria and Romania already apply the major parts of the visa *acquis*. In the case of Bulgaria, it would be desirable to provide more country specific information especially regarding the supporting documents to be submitted. The website of the consulate merely redirects to the Ministry's main visa information website, which contains information about the whole world.

### 3.3 Cooperation with external service providers

**Bulgaria** cooperates with an external service provider thus far in nine countries, including in Istanbul. The team paid a visit to the visa application centre and found no major

shortcomings. In fact, the staff serving the Bulgarian counters were considered as dedicated, speaking not only Turkish, but also Bulgarian, which facilitates the data entry in Cyrillic to the IT-system. According to the consulate, the cooperation with the external service provider and the quality of their work is overall good. Despite this, the team considers that more communication and formalised monitoring would be necessary to maintain the quality and supervise the work of the visa application centres, not only in Istanbul, but also in other locations throughout Türkiye, including by providing more robust training to the staff of the visa application centres.

In view of processing Schengen visas, Bulgaria needs to assess the expected constraints related to collecting biometric data, either by expanding the cooperation with external service providers or by standing ready to adapt its premises, if necessary.

**Romania** does not cooperate with external service provider(s). Applications are received by the consulates and the process is facilitated by the online visa application portal ('eViza') through which even supporting documents could be uploaded and appointment to lodge the application can be arranged.

Romania is aware that following the Schengen visa processing the number of applications will likely increase and it will be obligatory to collect the fingerprints of visa applicants. The Romanian authorities explained that their consulates are expected to cope with the additional work without the involvement of external service providers. While this is appreciated by the team, Romania may nevertheless consider the possibility of outsourcing especially in large countries (e.g. China, India) to provide easier access to 'Romanian' Schengen visas in the future.

### 3.4 Procedure and conditions for issuing visas

Overall, as far as the application phase of the process is concerned, the team found that the majority of the provisions of the Visa Code – to the extent possible and necessary before the full implementation of the visa *acquis* – are already complied with by **Bulgaria** and **Romania**.

Bulgaria and Romania largely comply with the requirements related to the lodging of the applications set out in Article 9 and 10 of the Visa Code. As far as the time to receive an appointment to lodge visa application is concerned – which is a major challenge for many Member States – the team found that during the visit, there was no waiting time for Bulgaria, with appointments at the external service provider readily available (including walk-ins). The consulate does not impose a cap on slots. In the case of Romania, the team observed that during the visit (17 November) the consulate was receiving visa applicants who requested appointment on 15-16 October. This suggests a longer waiting time than the 14 days set out in

the Visa Code. The Romanian authorities explained that this situation is of a temporary nature and that efforts are being made to address this issue. In this context, the team acknowledged that the central visa authority, being aware of the workload, has temporarily reinforced the staff with a ‘floater’ from Bucharest to address this issue. The team also noted that the consulate is able to accommodate urgent applications.

The visa application form in both Member States is largely conformed with the uniform format. The team confirmed that the Bulgarian and Romanian national IT system contain the necessary fields to register the application data in the Central Visa Information System.

Bulgaria and Romania already charge the visa fees in accordance with the Visa Code and the visa facilitation agreements concluded by the EU. However, in the case of the Romanian consulate in Istanbul, applicants can only pay the visa fee in a neighbouring bank. The consulate is considering establishing the possibility of payment at the consulate and the team encourages it to do so in order to increase efficiency. The consulate for both Member States require travel medical insurance in accordance with Article 15 of the Visa Code.

As regards the supporting documents, and in particular the implementation of the harmonised list of supporting documents in Türkiye (C(2021) 5156 final), the team found that the harmonised list is correctly implemented by the Romanian and Bulgarian consulates.

The team found that the consulates of both Romania and Bulgaria have a flexible approach as regards the assessment of the consular territorial competence (Article 6(1) of the Visa Code) and as long as the applicant is staying legally in Türkiye, they accept visa applications without requiring that the person resides (for long-term) in the country. This practice should be changed following the full Schengen membership.

Since Bulgarian national law allows submission of visa applications without personal appearance (in combination with the fact that fingerprints are not taken in Türkiye), accredited travel agencies can perform the same tasks as those carried out by the external service provider, notably collecting applications and lodging them at the consulate whenever the stated purpose of travel is tourism. This is done by using a dedicated software to encode the data from visa applications and making it available to the consulate for further processing. The team, therefore, considers that, taking into account the lower degree of scrutiny to which travel agencies are subject to, the Bulgarian consulate will need to adjust its cooperation with travel agencies in line with the requirements of Article 45 of the Visa Code.

Bulgaria and Romania systematically check the requirements related to the validity/characteristics of the travel documents. While the Romanian consulate is equipped to check the authenticity of the travel documents, this is not the case for the Bulgarian consulate. In this regard, they rely on the support of document advisors of other Member States. Bulgaria informed the team that this practice will be accordingly restricted and accommodated, including fingerprint collection and personal appearance, following the full Schengen membership.



The fingerprint functionality is already operational and included in the Bulgarian national IT system. While Bulgaria collects fingerprints from applicants worldwide, this is not yet the case in Türkiye (and Russia), in particular. The external service provider appears equipped to take up this task swiftly and the consulate has the necessary equipment at its disposal, too (one biometric station at the counter). Romanian consulates do not collect fingerprints yet, but they are equipped with fingerprint readers and the necessary functionality already exists in the national IT-system. This was verified by the team in Istanbul.

### 3.5 Examination and decision-making process

The average processing time at the **Bulgarian** consulate was 7 days and 3-4 days in the case of the Romanian consulate, well within the 15 days deadline set out in the Visa Code. In the case of Bulgaria, the proportion of multiple-entry visas is below the Schengen-average and Bulgarian consulates cannot issue multiple-entry visas with a validity for longer than one year without consulting the central visa authority. The team questions the value added of this consultation, in particular in light of the ‘cascade model’ set out in Article 24(2) of the Visa Code. Concerning **Romania**, according to available statistics, while the proportion of the multiple-entry visas is above the Schengen-average, the team observed that validity of most of these visas do not go beyond 6 months. According to the Romanian national law, as a rule, multiple-entry visas can be issued only for 6 months, with the exception for business travellers where it is possible to issue visas with 5 years validity. Staff at the consulate is already aware that this needs to be changed in light of the ‘cascade model’ set out in Article 24(2) of the Visa Code.

The team noted that in order to get access to the Schengen visa history of an applicant, the Bulgarian consulate needs to consult the central visa authority. The consulate can only see its own files; they do not even see the files processed by the Bulgarian Embassy in Ankara. Thus, while the central visa authority can consult the Visa Information System, Bulgarian consulates do not yet effectively benefit from Council Decision (EU) 2017/1908, which granted passive access to the Visa Information System for Bulgaria (and Romania). Bulgaria informed the team that this practice will be accordingly accommodated before the full Schengen membership.

**The team found that both consulates examine applications in a solid manner and decisions are well-founded and decision-makers have a good knowledge of migratory risks and trends.** However, the visa refusal rate is lower than the Schengen-average in Istanbul. In 2022, the refusal rate continues to be low. Decision-makers at the consulates explained that Turkish nationals do not pose a migratory threat for Bulgaria and Romania and the profile of the applicants is generally solid. Due to the geographical proximity, close historical and socio-economic ties, between Bulgaria and Türkiye, the vast majority of applicants are regarded as *bona fide* travellers, be they family members, business people or even frequently travelling tourists. This is acknowledged by the team. Furthermore, the consulates are client-oriented and making considerable efforts in ensuring that they receive complete and solid application files.

In case of refusal, the Bulgarian and Romanian consulates issue a refusal form which is, to the extent possible conform with the uniform refusal form. The team learned that judicial appeal against the refusal is possible in Bulgaria. However, in Romania, the appeal against the refusal for short-term visas is not possible. This will only be introduced from the full Schengen accession.

### **3.6 National IT-system / preparedness for the Visa Information System**

The team found that the **Bulgarian national IT-system** and the **Romanian national IT-system** are well-structured and the workflow corresponds to the logic implied by the Visa Code. The team observed that the data required by Article 8-13 of the VIS Regulation is entered into the system. Bulgaria informed the team that the functionalities necessary to process Schengen visa applications (e.g. prior consultation/ex-post information /VIS Mail / determining the territorial validity of the visas) have already been developed but not released yet. Bulgaria informed the team that this will be immediately activated following the full Schengen membership. Functionality tests have been conducted with eu-LISA and Bulgaria informed the team that their N.VIS is ready to connect and send all mandatory data to the Central Visa Information System from the date of the full Schengen membership. In the case of Romania, these functionalities are already embedded in the IT-system, even the Table of the Travel Documents as well as the EU sanctions list. The visa processing is also supported by the online application portal ('eViza'). The team considered the Romanian IT infrastructure exemplary. The Romanian authorities informed the team that they have recently reconfirmed with eu-LISA their readiness for full connection to the Central Visa Information System.

**In Romania, querying the Schengen Information System** is embedded in the system but not (yet) automated. However, the team found that in Bulgaria the **querying the Schengen Information System**, which is not (yet) automated, it is only launched by the decision-makers at the end of the examination of the application while already taking the decision. Although Article 21(3) of the Visa Code does not provide that the check in the Schengen Information System should be carried out at the beginning of the examination of the applications, in order to increase efficiency, it is a common practice to carry out the SIS-check upfront.

### **3.7 Staff situation**

The **Bulgarian consulate** in Istanbul employs four expatriate decision-makers and eight locally employed staff supporting the work of short-stay visa processing. This was found to be sufficient by the team, despite that the decision-makers have series of other consular duties not related to visa processing. The consulate has no backlog (with the exception of the files awaiting for reaction from the central visa authority) and the provisions regarding the processing time of the Visa Code are complied with.

The **Romanian consulate** in Istanbul employs two expatriate decision-makers and during the visit a ‘floater’ from Bucharest provided additional support for few weeks. Four administrative staff supports the work of short-stay visa processing. The staff was found to be sufficient. However, the team found that efficiency can be improved with increasing the tasks of the administrative staff (e.g. to ‘validate’ applications in the ‘eViza’ system, to attend applicants at the counter, print visa stickers). The Romanian authorities informed the team that they are in the process of recruiting 120 additional consular staff, including visa officers to strengthen the activity of the Visa Centre in the Capital and to be posted worldwide to reinforce short and long-stay visa processing which was appreciated by the team.

### 3.8 Awareness of the visa *acquis* and training

The team inquired as to what extent **Bulgarian staff** is already aware of the provisions of the Visa Code and visa facilitation agreements in general, and the provisions that cannot be put in practice without becoming a full Schengen Member State<sup>8</sup>, in particular. While, online training was reportedly organised on Schengen-specific issues, the team found that the staff would need further efforts to build up a solid and sufficient knowledge about them. Easy and full access to the EU law and all relevant national instructions is not provided via the Ministry’s intranet.

Concerning **Romanian**, the team found that the staff members are properly trained and have access to the EU law and relevant national instructions in a dedicated platform.

### 3.9 Physical infrastructure and security

In both the **Romanian** and **Bulgarian** consulates in Istanbul, the physical infrastructure and security is adequate. Visa stickers are securely stored and distributed and the consulate complies with the rules on archiving set out in Article 37 of the Visa Code.

### 3.10 Conclusion

**Bulgaria** implements the visa *acquis* adequately, to the extent that is applicable. Information is provided to the public in a structured manner. Although the cooperation with the external service provider is reported as good, more robust training could be provided to guarantee the overall quality of the visa applications centres. Bulgaria complies with the provisions regarding the processing time of the Visa Code. The consulate examines applications in a solid manner and decisions are well-founded and decision-makers have a good knowledge of migratory risks and trends. The Bulgarian national IT-system is well-structured and the workflow corresponds to the logic implied by the Visa Code. Following the full Schengen membership, Bulgaria will immediately activate all functionalities necessary to process

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<sup>8</sup> E.g. Member State competent to examine the application, relevance of the Table of Travel documents, prior consultation, issuing limited territorial validity visas, consulting previous applications and linking/grouping of applications in the Visa Information System.

Schengen visa applications. In order to ensure the smooth start of Schengen visa processing it is important to continue and reinforce the training of the staff especially as regards the expected procedural changes as well as the changes in the national IT systems.

**Romania** implements the *visa acquis* adequately, to the extent that is applicable. Information is provided to the public in a structured manner. Furthermore, Romania complies with the provisions regarding the processing time of the Visa Code. The consulate examines applications in a solid manner and decisions are well-founded and decision-makers have a good knowledge of migratory risks and trends. Romania systematically checks the requirements related to the validity/characteristics of the travel documents and the consulates are adequately equipped. The Romanian IT infrastructure is exemplary. The team found that the staff members are properly trained and have access to the EU law and relevant national instructions in a dedicated platform. In order to ensure the smooth start of Schengen visa processing it is important to continue training staff on the expected changes. Romania needs to continue working, in line with the ongoing plans, to increase staff in view of reinforcing short and long-stay visa processing.

#### 4. DATA PROTECTION

##### 4.1 Data Protection Authority

The **Bulgarian Data Protection Authority** (DPA) is the supervisory authority for Bulgaria's use of the Schengen Information System (SIS) and the Visa Information System (VIS). The DPA has complete **independence** legally and, as reported by the DPA, in practice. As a first-level budget administrator in the Bulgarian system, it has full **budgetary autonomy**. The DPA proposes a draft budget for three years to the Finance Ministry, which in turn submits a draft budget to the responsible Committee in the National Assembly. That Committee might ask the DPA for further input before deciding on the national budget as preparation for the final endorsement by the Plenary. The DPA comprises of 87 staff, including 31 legal experts and 7 IT experts. The **recruitment** of its staff is under the full responsibility of the DPA. The DPA was granted with **full investigative and corrective powers** listed in the Law Enforcement Directive. The DPA can also impose fines on public authorities.

In 2021, the Bulgarian DPA carried out comprehensive **audits** of the Communication and Information Systems Directorate, the National Europol Unit (in the context of SIS), the SIRENE Bureau and the National Visa Centre. In relation to the national visa system, the DPA inspected several consulates and external service providers. The DPA carries out these audits also in line with documents provided by the SIS II Supervision Coordination Group and the VIS Supervision Coordination Group as an assistance tool for supervisory authorities. In general, the DPA carries out audits of the data processing operations of national authorities in the SIS every four years as per the legal requirement, notwithstanding delays caused by COVID-19.

As a point of interest, the DPA provides comprehensive **information material** on its website on the Schengen Information System, including model letters for exercising the rights of data

subjects. With three language versions in Bulgarian, English and French, the website of the DPA has a dedicated section for Schengen, provides direct links to the respective authorities and offers information bulletins. It is also available through a mobile application.

As another points of interest, the DPA is strongly involved in the **data protection training** of police officers in general through the Academy of the Ministry of Interior, and of police officers using the SIS in the SIRENE in particular. In cooperation with the DPA, the Academy of the Ministry of Interior addresses data protection in the initial training and also as part of the specialised lecture courses it provides, by way of in-class training and online. Data protection is also an important part of subsequent training programmes of the officers undertaking further professional qualification and specialisation.

The **Romanian Data Protection Authority** (DPA) is the supervisory authority for Romania's use of the Schengen Information System (SIS) and the Visa Information System (VIS). The legislation provides that the DPA acts with complete **independence** in performing its tasks and exercising its powers. It enjoys full **budgetary autonomy**. As a point of interest, in case the Government changes the budgetary proposal elaborated by the DPA, the latter's objections are submitted to the Parliament as budgetary authority. The DPA comprises of 85 staff, including experts with legal and IT background, and the **recruitment** of its staff is under the exclusive authority of the DPA. The legislative proposals – currently in parliamentary procedure – related to the strengthening of the Schengen Information System and to the European Criminal Records Information System for third-country nationals provide for the financing of a total of 27 additional posts for the DPA. In addition to the powers set out in the General Data Protection Regulation, the DPA was granted with **all the investigative and effective corrective powers** listed in the Law Enforcement Directive. The DPA can also impose fines on public authorities.

The Romanian DPA is currently carrying out a comprehensive **audit** of the data processing operations of national authorities in the SIS also in line with documents provided by the SIS II Supervision Coordination Group as an assistance tool for supervisory authorities. As a point of attention, given that this is the first audit since 2013 when such audits became a legal requirement, Romania should ensure that the DPA will carry out further such audits in future at least every four years as per the legal requirement. In addition to inspections the DPA carried out in the past in diplomatic missions on their processing of visa data, the DPA is currently carrying out a comprehensive audit into the data processing by the National Visa Centre.

The Romanian DPA provides **information material** on its website on the Schengen Information System, including on exercising the rights of data subjects. The website of the DPA (which is available in Romanian and English) has a dedicated Section on Schengen. The DPA is involved in the data protection **training** of police officers using the SIS, as well as in the data protection training of visa personnel before their deployment to diplomatic missions.

## 4.2 Schengen Information System

In **Bulgaria**, the **Communication and Information Systems Directorate** develops information and communication systems for the Ministry of Interior and manages the access rights to such systems, including the access of Bulgarian authorities to the SIS. To that end, it grants individual access rights in line with functional activities and specific roles on the basis of predefined user profiles. The Ministry of Interior ensures system security based on a security plan.

As regards data protection, the **SIRENE Bureau** is responsible for dealing with data subjects' rights in relation to the SIS. The DPA forwards to the SIRENE Bureau any related request that it receives. Based on standard replies, the SIRENE Bureau provides replies to such requests either in Bulgarian or in English. The website of the Ministry of Interior provides general information on data subjects' rights, and general templates for requests by data subjects can be downloaded from the website.

The **Data Protection Officer** of the Bulgarian Ministry of Interior provides the Ministry's leadership and employees with advice on data protection. She monitors compliance with the EU data protection framework, helps enhancing data protection training activities in the Ministry and interacts with the DPA on all issues of relevance to data protection. Instead of a separate team, the DPO is supported by dedicated staff in the Directorates of the Ministry who are specialised in data protection.

At the Sofia Metropolitan Police Directorate, an Operational Duty Centre supports the police officers during field patrol checks with search in the SIS, based on communication through radio connection. The **search application** to access relevant databases, including the SIS, is accessed at the Operational Duty Centre and other workstations by way of (a) logging into the device with a password and (b) logging into the application with a different password. Hence, one factor is used for each authentication. As a point of interest, internal policy requires the police officer to log out of the search application after each search. In addition, some motor vehicles for patrol duty are equipped with tablets to allow for remote access to relevant databases including the SIS.

As regards **log control** and **self-auditing procedure**, there is a dedicated unit at the Communication and Information Systems Directorate in the Bulgarian Ministry of Interior with access to the log files to investigate the activity of an end-user upon request from the Director of the end-user concerned. So far no unlawful data access has been detected, and as a consequence there has been **no data breach notification** to the DPA regarding that. In general, the Bulgarian DPA has not received any data breach notifications in relation to SIS, VIS and the national visa system in the past three years. As a point of attention, the measures taken to ensure data protection compliance should also include proactive self-auditing.

In **Romania**, the **Schengen Information System National Centre** is responsible for ensuring the access of the competent Romanian authorities to the SIS. It ensures system security based on a security plan and a business continuity plan and manages centrally the SIS access rights. The data protection officer of the centre performs self-audits on technical and administrative aspects such as the backup environment or the production environment, including based on logs.

As regards data protection, the **SIRENE Bureau** is responsible for dealing with data subjects' rights in relation to the SIS. The website of the Romanian Police, of which the SIRENE Bureau is part, provides information on personal data processing in the SIS and the exercise of the rights of the data subjects, including with samples of requests for the exercise of these rights. Data subjects' requests submitted to any data controller within the Ministry of Home Affairs will be sent to the SIRENE Bureau within 5 days from their receipt. The SIRENE Bureau has standard replies to such data subjects' requests, including in English.

As every entity of the Romanian Ministry of Home Affairs, the Schengen Information System National Centre and the SIRENE Bureau have their dedicated data protection officers (DPO). The **Office of the Personal Data Protection Officer (OPDPO)** in the Ministry of Home Affairs ensures the counselling of these DPOs. The team of the OPDPO consists of 15 posts, they work closely together with the DPA as regards the data processing performed by the Ministry of Home Affairs. This includes bilateral consultations on issues on data protection arising from EU legislation, advice for the OPDPO on procedures or documents on data protection aspects, or joint participation in the framework of negotiations of EU legislation.

The OPDPO is also involved in **data protection training** at various levels. For example, it holds training for staff in the Police Academy and the Police Agents School. More generally, every police officer that starts working in the Romanian Ministry of Home Affairs has to go through a guardianship programme that contains data protection. Moreover, every unit in the Ministry of Home Affairs is obliged to have an annual training programme including data protection. This level of data protection training was reflected in the **data protection awareness** shown in the on-site visit in Bucharest Police Station 2.

At the Bucharest Police Station 2, the police officers showed the **tools and applications** used to search the SIS at the workstations and in the field (tetra device and tablet). The main working tool – called interID application – is the search engine to access relevant databases established for operational purposes, including the SIS. The search application is accessed at the workstations, the tetra device or the tablet by way of (a) logging into the device with a password and (b) logging into the application with a different password. Hence one factor is used for each authentication. As a point of interest, internal policy requires the police officer to log out of the search application after each search.

As regards **log control**, the General Inspectorate of the Romanian Police established in August 2022 a **self-auditing procedure** at the level of each data controller within the Romanian Police, with an obligation for each DPO to carry out periodical random checks to identify possible cases of personal data breaches. This includes randomly selecting the users, consulting the information retained in the logs and selecting the queries for self-monitoring. These checks are carried out manually on dedicated platforms available to the DPOs. Automated tools might be added in the future. In addition, the DPOs carry out incident-related log controls. So far no unlawful data access has been detected, and hence there has been **no data breach notification** to the DPA regarding that.

### 4.3 Visa authority

In both Bulgaria and Romania, the **National Visa Centres** – as part of the Ministries of Foreign Affairs – are the controller for the national visa system as well as for the read access of Bulgarian and Romanian authorities to the Visa Information System, respectively. In that role, the National Visa Centres apply the same data protection rules for the national visa systems that Schengen countries apply for the Visa Information System. The same is true for the information that the National Visa Centres provide on their websites on data processing and data subjects' rights related to the national visa system. In the case of Bulgaria it includes a link to the website of the DPA with further information and in the case of Romania, it includes templates for exercising such rights. The procedures applied for access and authentication to the national visa systems mirror the procedures that Bulgaria and Romania apply for the SIS. Upon employment in the Romanian Ministry of Foreign Affairs, there is a mandatory training on the General Data Protection Regulation. Romania has **an integrated approach to the consular services** offered to Romanian citizens and foreign citizens, with a keen interest towards interoperability and ease of access, including to visa services.

The Bulgarian and Romanian National Visa Centres have their own designated **Data Protection Officers**. In Bulgaria this is assisted by one IT expert and one legal expert. The Bulgarian DPO provides data protection training for staff in the National Visa Centre, diplomatic missions and consular posts, including mandatory training for staff involved in the processing of personal data. In every **diplomatic mission and consular post of Romania**, the National Visa Centre has its own designated DPO. The DPOs of diplomatic missions and consular posts maintain a record of all data processing activities and report to the DPO at central level. There is also a handbook for consular procedures with a special chapter on data protection. Moreover, before being posted to a Romanian diplomatic mission or a consular post, each employee has to undertake a specific training on the General Data Protection Regulation. This training is finalised through a theoretical and practical test.

As regards **log controls** and **self-auditing**, there is a culture in Bulgaria and Romania of on-going monitoring of the activity of consular staff, with permanent and constant controls by their hierarchy. In Bulgaria, every nine months, there is an audit of the external service provider. There are checks based on logs at a central level in the Bulgarian Ministry of Foreign Affairs, as well as in the diplomatic missions and consular posts, both upon request and randomly. These checks are carried out manually. In Romania, there are two layers of logs available to the hierarchy in diplomatic missions and consular posts, as well as at central level in the Ministry of Foreign Affairs. While the first layer of audit allows for immediate action, the second level is accessed for investigative purposes only.

No irregularities have been detected so far in Bulgaria and Romania, and hence there have not been any data breaches notified to the Bulgarian and Romanian Data Protection Authorities regarding that.



## 4.4 Conclusion

In conclusion, no fundamental issues have been identified as regards the application by **Bulgaria** of the Schengen *acquis* in the area of data protection. Bulgaria complies with the applicable data protection rules when its authorities use the Schengen Information System and their read access to the Visa Information System. The legislation provides for complete independence of the Data Protection Authority. The provision of information material by Bulgaria on the Schengen Information System, and the level of data protection training provided to relevant staff in the Bulgarian authorities, are positive. This good effort regarding training, and the awareness on data protection that it raises, are reflected in the way field officers use the Schengen Information System. The Bulgarian National Visa Centre applies the same data protection rules for its national visa system that Schengen countries apply for the Visa Information System. Bulgaria is encouraged to further develop and strengthen its self-auditing measures.

No fundamental issues have been identified as regards the application by **Romania** of the Schengen *acquis* in the area of data protection. Romania complies with the applicable data protection rules when its authorities use the Schengen Information System and their read access to the Visa Information System. The legislation provides for complete independence of the Data Protection Authority. The provision of information material by Romania on Schengen issues and the level of data protection training provided to relevant staff in the Romanian authorities are positive. This raises the awareness on data protection among field officers, as reflected in the way they use the Schengen Information System. The Romanian National Visa Centre applies the same data protection rules for its national visa system that Schengen countries apply for the Visa Information System. Romania is encouraged to further develop and strengthen its self-auditing measures and its auditing activities.

## 5. JUDICIAL COOPERATION IN CRIMINAL MATTERS

This section assesses how Bulgaria and Romania deal with incoming and outgoing European Investigation Orders<sup>9</sup> ('EIOs') and European Arrest Warrants<sup>10</sup> ('EAWs'), with a particular focus on cases of trafficking in human beings, migrant smuggling and mobile organised crime groups, as far as information was available on these areas of crime. It is noted that Directive 2014/41/EU regarding the EIO and the Framework Decision 2002/584/JHA on the European Arrest Warrant are not part of the Schengen *acquis*.

### 5.1 European Investigation Order

<sup>9</sup> In accordance with Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, OJ L 130, 1.5.2014, p. 1.

<sup>10</sup> In accordance with Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States OJ L 190, 18.7.2002, p. 1.

Directive 2014/41/EU on the European Investigation Order in criminal matters ('the Directive') is one of the most used mutual recognition instruments in the European Union and is an essential tool to investigate and prosecute crime effectively. On 20 July 2021, the Commission issued a report on the implementation of the Directive<sup>11</sup>.

In accordance with the Joint Action 97/827/JHA of 5 December 1997<sup>12</sup>, which establishes a mechanism for peer evaluation of the application and implementation at national level of Union and other international acts and instruments in criminal matters, the 10th round of mutual evaluations, which will begin in 2023, will be devoted to the EIO. Preparations for the upcoming evaluations are currently ongoing with a visit to Bulgaria planned in March 2023 and to Romania in May 2023. The country reports are expected to be ready by Q3 2023.

The Directive was transposed by **Bulgaria** by the European Investigation Order Act, which was promulgated in State Gazette, issue No. 16 of 20 February 2018, and became effective as of 24.02.2018. In the case of **Romania**, the Directive was transposed by Law 236/2017 amending and supplementing the Law No. 302/2004 on international judicial cooperation in criminal matters, which was published in the Official Journal No. 993 on 14 December 2017 and entered into force on the same day.

The Court of Justice of the European Union has issued two judgements on the interpretation of certain provisions of the Directive in Cases C-724/19, *Spetsializirana prokuratura*,<sup>13</sup> and C-852/19, *Gavanozov II*,<sup>14</sup> which concern the national legislation of Bulgaria. Following the judgment in the Case C-852/19, *Gavanozov II*, according to the information communicated by the Bulgarian authorities, a working group was set up by the Minister of Justice. The working group includes representatives of the judiciary (the Supreme Court of Cassation and Supreme Prosecution Cassation Office), Supreme Bar Council, academia, and experts from the Ministry of Justice and Ministry of Interior. The working group has decided to include also the judgment in Case C-724/19, *Spetsializirana prokuratura*, in the discussions. The working

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<sup>11</sup> Report from the Commission to the European Parliament and the Council on the implementation 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, COM/2021/409 final.

<sup>12</sup> Joint Action 97/827/JHA of 5 December 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime (OJ L 344, 15.12.1997, p. 7).

<sup>13</sup> In this case, the Court of Justice, gave an interpretation of Article 2(c)(i) of the Directive, whereby it ruled that this article precludes a public prosecutor from having competence to issue, during the pre-trial stage of criminal proceedings, an EIO, 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.

<sup>14</sup> In this case, the Court of Justice ruled that the national legislation of an issuing Member State, which does not provide for any legal remedy against the issuing of an EIO, the purpose of which is the carrying out of searches and seizures as well as the hearing of a witness by videoconference, is not compatible with Article 14 of the Directive, read in conjunction with Article 24(7) of the Directive and Article 47 of the Charter of Fundamental Rights of the European Union, and that the issuance of an EIO in such scenario is contrary to Article 6 of the Directive, 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.

group has proposed legislative amendments in the European Investigation Order Act in relation to the outcome in Case C-724/19. The work on Case C-852/19 is still ongoing with various proposals for amendments from the members of the working group under consideration. The working group has to finalise its work by the end of January 2023.

**Statistics**

The following statistics on the EIOs issued and received by **Bulgaria** were provided by the Bulgarian authorities:

<b>Year</b>	<b>Incoming</b>	<b>Outgoing</b>
<b>2019</b>	807	846
<b>2020</b>	843	981
<b>2021</b>	1024	1254

According to the information received by the European Commission in 2020, **Romanian** authorities received and issued in total 3752 and 2726 EIOs respectively<sup>15</sup>.

In comparison, according to the data collected by the Commission in 2020 from all EU Member States, the number of EIOs issued and executed since the start of application of the Directive varied between a low three-digit number (for example, 1 Member State issued 364 EIOs and received 180 for execution) and a low five-digit number (for example, 1 Member State issued around 15 900 EIOs and received around 10 500 for execution)<sup>16</sup>.

**Crime areas of trafficking in human beings, migrant smuggling and mobile organised crime groups**

With regard to the crime areas of trafficking in human beings, migrant smuggling and mobile organised crime groups, Bulgarian authorities provided the following information<sup>17</sup>:

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<sup>15</sup> Note: The short time did not allow detailed checks. Initially the EIO did not benefit from its own heading in the statistics, being registered as a request of judicial assistance, because it coexisted for a period with this form of assistance.

<sup>16</sup> Comprehensive statistics are unavailable, in particular, while some Member States communicated yearly data, others counted all EIOs issued during the whole period communicated, and some of the figures show only approximate estimates.

<sup>17</sup> Statistics derived from the Unified Information System of the Bulgarian Public Prosecution Office on incoming and outgoing EIOs for pre-trial proceedings initiated for trafficking in human beings, migrant smuggling and mobile organized crime groups (OCG with an international element related to human trafficking and illegal migration).

<b>Year</b>	<b>Outgoing EIOs on pre-trial proceedings for trafficking in human beings</b>	<b>Outgoing EIOs on pre-trial proceedings for migrant smuggling</b>	<b>Outgoing EIOs on pre-trial proceedings for mobile organised crime groups</b>
<b>2020</b>	18	3	3
<b>2021</b>	14	6	8
<b>Year</b>	<b>Incoming EIOs for trafficking in human beings and for migrant smuggling</b>		<b>Incoming EIOs for mobile organised crime groups</b>
<b>2020</b>	45		158
<b>2021</b>	38		232

Romanian authorities provided the following information<sup>18</sup>:

<b>Year</b>	<b>Trafficking in human beings</b>		<b>Trafficking of minors</b>		<b>Trafficking of migrants</b>		<b>Trafficking of human beings, trafficking of minors + organised crime groups</b>	
	<b>Incoming</b>	<b>Outgoing</b>	<b>Incoming</b>	<b>Outgoing</b>	<b>Incoming</b>	<b>Outgoing</b>	<b>Incoming</b>	<b>Outgoing</b>
<b>2019</b>	35	55	2	22	8	2	4	3
<b>2020</b>	31	46	3	25	10	6	14	16
<b>2021</b>	27	66	2	17	13	11	6	8
<b>2022</b>	22	18	-	1	7	13	4	1

Bulgarian and Romanian authorities have indicated that so far they have not identified any particular issues with regard to incoming or outgoing EIOs for the crime areas of trafficking in human beings, migrant smuggling and mobile organised crime groups.

<sup>18</sup> Period covered: 1 January 2019 – 15 November 2022.

## 5.2 European Arrest Warrant

The Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (‘the Framework Decision’) is an essential tool to ensure that open borders are not exploited by those seeking to evade justice, and has contributed to the EU objective of developing and maintaining an area of freedom, security and justice. The Commission issued four reports on the implementation of the Framework Decision<sup>19</sup>. The Council published a Handbook on how to issue the European arrest warrant to assist practitioners in 2008<sup>20</sup> and revised it in 2010<sup>21</sup>. The Commission updated the Handbook in 2017<sup>22</sup>.

Between October 2020 and May 2022, the Commission launched infringement procedures against 26 Member States for non-conforming transposition of the Framework Decision. The Commission sent a Letter of Formal Notice to Bulgaria in the beginning of 2022 and to Romania in May 2022, on the ground that some provisions of the Framework Decision on EAW have not been transposed in a conform manner.

According to the information communicated by the **Bulgarian authorities**, an interagency working group to the Minister of Justice (consisting of representatives from the relevant stakeholders – judiciary, academia, bar association) was set up to address the grievances. This interagency working group has elaborated and proposed draft legislative amendments in the Extradition and European Arrest Warrant Act<sup>23</sup>, which transposes the Framework Decision. The proposed amendments aim at addressing the findings, accepted by Bulgaria, in relation to the grounds for refusal of an EAW and the requirements for effective judicial protection of a person against whom an EAW has been issued for the purposes of criminal prosecution (the latter is also ensuring compliance with the outcome of the judgment in Case C-648/20). In July 2022, the abovementioned draft Law on amendment of the European Arrest Warrant Act was published for consultations and sent for interagency coordination with the relevant

<sup>19</sup> Report from the Commission on the implementation since 2005 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (COM(2007) 407 final) <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588746623870&uri=CELEX:52007DC0407>; Report from the Commission to the European Parliament and the Council on the implementation since 2007 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, (COM(2011)175 final) <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588746744852&uri=CELEX:52011DC0175> and Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, COM(2020) 270 final: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0270&from=EN>.

<sup>20</sup> Final version of the European handbook on how to issue a European Arrest Warrant: <https://data.consilium.europa.eu/doc/document/ST-8216-2008-REV-2/en/pdf>.

<sup>21</sup> Revised version of the European handbook on how to issue a European Arrest Warrant: <https://data.consilium.europa.eu/doc/document/ST-17195-2010-REV-1/en/pdf>

<sup>22</sup> Handbook on how to issue and execute a European arrest warrant, OJ C 335, 6.10.2017: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC1006\(02\)&from=DA](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC1006(02)&from=DA).

<sup>23</sup> [REPUBLIC OF BULGARIA, THIRTY-NINTH NATIONAL ASSEMBLY \(imolin.org\)](https://www.imolin.org/).

institutions. By 25 November 2022, the draft law will be submitted to the Council of Ministers for approval. Upon its approval, the draft will be submitted to the National Assembly for consideration and adoption.

According to the information communicated by the **Romanian authorities**, to address the grievances, the Romanian Parliament adopted on 26 October 2022 the draft Law amending and supplementing Law no.302/2004 on international judicial cooperation in criminal matters. The Law was promulgated by the President on 17 November 2022 and published in the Official Journal on 18 November 2022. The draft law was also discussed with the Commission prior to be submitted to the Parliament.

### **Outcome of the 9th round of Mutual Evaluations for Bulgaria**

In November 2019, the Council started a peer review on mutual recognition instruments in the field of deprivation or restriction of liberty, which also concerns the Framework Decision on EAW (9<sup>th</sup> round of mutual evaluations). The 9<sup>th</sup> round of Mutual Evaluation for Bulgaria took place from 13 to 17 September 2021 and resulted in the following main findings:

**The overall impression of Bulgaria's application of the Framework Decision on the EAW is positive.** The procedures for executing and issuing EAWs are clearly regulated and structured in the Bulgarian Extradition and European Arrest Warrant Act and run efficiently. Both executing and issuing Bulgarian judicial authorities have wide experience in dealing with EAW matters. The national and European Union legal frameworks are well known and applied by the practitioners, and detailed guidelines for the prosecutors have been issued by the Prosecutor General's Office.

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

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

At the level of both practitioners and policymakers, it was clear that the Bulgarian authorities are familiar with the recent case law of the Court. Especially the recent judgments in Case C-648/20 and Case C-206/20 have created a need for immediate action from the Bulgarian authorities. Following these judgements, the requirements inherent in the effective judicial protection that must be afforded to a person who is the subject of an EAW for the purpose of criminal prosecution are not satisfied where both the EAW and the judicial decision on which

that warrant is based are issued by a public prosecutor but cannot be reviewed by a court prior to the surrender of the requested person by the executing Member State.

The Ministry of Justice has reacted fast, and a broad ministerial working group of both practitioners and independent experts has been established to analyse the legal implications of the decisions of the CJEU and to make proposals for amendments to Bulgarian legislation that will provide an effective judicial remedy for persons sought by means of an EAW for participation in criminal proceedings, prior to their transfer from the executing State.

As these recent judgments render both the current and any future arrest warrants issued by a prosecutor for participation in criminal proceedings impossible to execute, this issue must be dealt with urgently. Bulgaria is encouraged to find a practical legal solution to make the pending and any future arrest warrants subject to review by a court prior to the surrender. Furthermore, the Bulgarian authorities need to ensure the systematic substitution of any pending EAWs in the SIS that do not meet the requirement of effective judicial control.

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

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

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

In the fourth round of mutual evaluations, the application of the principle of proportionality was a recommendation for Bulgaria. Considering the follow-up answer, experts believe that in the meantime the subject has been discussed extensively in various contexts at EU level.

Therefore, Bulgaria is in a position to decide on the issuance of some form of regulatory measures to ensure that this principle is observed when issuing EAWs.

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

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

### **Outcome of the 9th round of Mutual Evaluations for Romania**

The 9<sup>th</sup> round of Mutual Evaluations for Romania took place from 4 to 7 October 2021 and resulted in the following main findings:

**The EAW is a much-used instrument, which has been well accepted by practitioners. Consequently, it is handled as a matter of routine and does not pose significant problems.** The execution of EAWs is treated as an emergency procedure under Romanian procedural law and therefore usually swiftly effected unless additional information is needed and not provided in time by the requesting state. Neither *ne bis in idem* nor the consequences of the *Aranyosi & Căldăraru* judgment of the Court have been issues for the Romanian authorities as the executing authority.

When Romania is the issuing Member State, detention conditions have frequently been a reason for additional information requests from prospective executing countries, although the penitentiary system has been improved to ensure that appropriate detention standards can be guaranteed for persons handed over to the Romanian authorities. This has resulted in delays in some cases due to the extent of the information requested from Romania.

From the Romanian point of view the consent of a surrendered person should waive any need for the executing authorities to request further information on detention conditions, the more so since Romanian law and practice provide for the reduction of prison terms if detention conditions are poor. However, it is questionable whether this understanding of Article 6 of the ECHR is reconcilable with the case law of the Court of Justice and the European Court of Human Rights. Prison conditions have also sometimes been cited as a ground for refusal to make good on the assurance given of surrender after a sentence in the issuing state.



Communication between the issuing and executing states can be a challenge when the foreign authorities do not make use of English or French as an alternative to the Romanian language.

Finally, a lack of sufficient criteria for establishing the identity of wanted persons named in incoming EAWs has been identified as a source of occasional problems.

That said, Romania has developed a practice of bilateral consultations with some of the Member States it has most often cooperated with on EAW issues in general, as well as on specific aspects of a pending EAW request. Another option to facilitate EAW procedures bilaterally is a memorandum of understanding, comparable to the one established with Italy regarding the transfer of sentenced persons.

### **Statistics on the practical operation of the EAW<sup>24</sup>**

#### **a. General figures**

The following statistics on the EAWs issued and received by Bulgaria and Romania were provided by the Bulgarian and Romanian authorities:

<b>BULGARIA</b>		
<b>Year</b>	<b>European Arrest Warrant (EAW)</b>	
	<b>Incoming</b>	<b>Outgoing</b>
<b>2019</b>	165	239
<b>2020</b>	202	221
<b>2021</b>	248	153
<b>ROMANIA</b>		
	<b>Incoming</b>	<b>Outgoing</b>
<b>2019</b>	689	1373

<sup>24</sup> To have a comparison with other Member States for 2019, cf. the Statistics on the practical operation of the European arrest warrant – 2019, [eaw\\_statistics\\_2019\\_swd\\_2021\\_227\\_final\\_08\\_2021\\_en.pdf \(europa.eu\)](#)

<b>2020</b>	574	755
<b>2021</b>	-	-

**b. 2019 Statistics<sup>25</sup>**

The following statistics are extracts of the Statistics on the practical operation of the European arrest warrant – 2019<sup>26</sup>:

**Bulgaria as issuing State**

<b>EAWs issued</b>	<b>Of which resulted in effective surrender</b>
<b>239</b>	<b>117</b>

**Bulgaria as executing State**

<b>Arrests under EAW</b>	<b>Surrender proceedings</b>	<b>Of which resulted in effective surrender</b>
165	165	124

**Romania as issuing state <sup>27</sup>**

<b>EAWs issued</b>	<b>Of which for the purpose of prosecution</b>	<b>Of which for the purpose of executing a sentence</b>	<b>Of which resulted in effective surrender</b>
1373	72	1301	655

**RO as executing state <sup>28</sup>**

<sup>25</sup> [eaw\\_statistics\\_2019\\_swd\\_2021\\_227\\_final\\_08\\_2021\\_en.pdf\(europa.eu\)](#)

<sup>26</sup> [eaw\\_statistics\\_2019\\_swd\\_2021\\_227\\_final\\_08\\_2021\\_en.pdf\(europa.eu\)](#)

<sup>27</sup> Romania issued significantly more EAWs for executing a sentence or a detention order (1301 out of 1373). This discrepancy is also strongly noticeable in Croatia (340 out of 494 EAWs issued), Estonia (64 out of 102), Italy (822 out of 1 430) and Poland (1 887 out of 2 338). It could be argued that these differences correspond to the percentage of in absentia proceedings in some of these Member States, leading to lower numbers of EAWs issued for prosecution purposes, page 6 of the [eaw\\_statistics\\_2019\\_swd\\_2021\\_227\\_final\\_08\\_2021\\_en.pdf\(europa.eu\)](#).

Arrests under EAW	Surrender proceedings	Of which resulted in effective surrender
689	747	560

### c. Issued EAWs by category of offence

The following statistics are extracts of the Statistics on the practical operation of the European arrest warrant – 2019 and of information provided by **Romania** for the 2020 statistical exercise<sup>29</sup>:

	2019	2020
Terrorism	0	0
Drug Offences	40	49
Sexual Offences	9	14
Fire Arms/explosives	6	0
Theft offences and criminal damage	147	147
Robbery	25	35
Fraud and corruption offences	67	79
Tax fraud	38	55
Counterfeiting the euro	0	0

<sup>28</sup> Note: Romania is one of the Member States with the highest number of arrests recorded in 2019, right after Germany (1590), Spain (907) and the Netherlands (701)Page 10 of the [eaw\\_statistics\\_2019\\_swd\\_2021\\_227\\_final\\_08\\_2021\\_en.pdf\(europa.eu\)](#).

<sup>29</sup> Having issued 33 out of the total of 183 EAWs for the trafficking of human beings in 2019, makes Romania one of the Member States with the most issued EAWs in that category of offence, following France with 63 and Hungary with 33, page 8 of the [eaw\\_statistics\\_2019\\_swd\\_2021\\_227\\_final\\_08\\_2021\\_en.pdf\(europa.eu\)](#).

Homicide/fatal offences	6	22
Non-fatal offences against the person	28	74
<b>Trafficking human beings</b>	<b>33</b>	<b>92</b>
Road traffic offences	156	147
Smuggling	49	13
Organised crime	39	67
Cybercrime	11	5
Other	-	-

Romanian authorities have indicated that so far they have not identified any particular issues with regard to incoming or outgoing EAWs for the crime areas of trafficking in human beings, migrant smuggling and mobile organised crime groups.

### **Detention Conditions**

Detention conditions led to requests for additional information/guarantees for EAWs issued by **Bulgaria** (see above the Outcome of the 9th round of Mutual Evaluations). However, the 2021 Report on Bulgaria of the Council of Europe Committee for the Prevention of Torture found that even though there is still room for improvement of the living conditions, facilities and safeguards for detainees in Bulgarian prisons, some positive changes were made when comparing the 2021 report with the previous ones.

In the case of **Romania**, detention conditions are one of the issues that has led to refusals or delays in the execution of EAWs issued by Romania (see above the Outcome of the 9th round of Mutual Evaluations). However, following the Aranyosi and Căldăraru and Dumitru-Tudor Dorobantu judgments<sup>30</sup>, some improvements in the detention conditions have been observed,

<sup>30</sup> CJEU Aranyosi and Căldăraru (C-404/15 and C-659/15 PPU): <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62015CJ0404> and in Dumitru-Tudor Dorobantu (C-128/18): [EUR-Lex - 62018CJ0128 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62018CJ0128).

as reported in the 2021 Report on Romania of the Council of Europe Committee for the Prevention of Torture<sup>31</sup>, although important challenges still remain.

According to information provided by Romania, as mentioned in the 9<sup>th</sup> round of mutual evaluations report on Romania, the penitentiary system in Romania has been constantly improved in order to ensure compliance with the Council of Europe standards. This assessment is also proved by the statistics on the EAWs issued by Romania and refused because of detention conditions in Romania for the last three years:

	2019	2020	2021	2022 (partial data)
Detention conditions	81	40	27	3

The above-mentioned statistics should be read in parallel with the number of **additional information requests under Article 15(2) of the Framework Decision on EAW** received for assurances on appropriate detention conditions for detainees surrendered under EAWs issued by national courts:

Year	Total assurance requests
2019	326
2020	312
2021	398
2022	363

At the same time, the National Administration of Penitentiaries has provided specific replies to all the requests sent by the Ministry of Justice and the courts for the execution by other Member States of EAWs issued by Romanian courts. None of the minimum assurances granted was of a general nature. Following, the case law of the Court on detention conditions, the National Administration of Penitentiaries carried out the individual assessment of the person who is the subject of a European arrest warrant, personal circumstance to assess the

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<sup>31</sup> According to the 2021 Report on Romania of the Council of Europe Committee for the Prevention of Torture, even though the living conditions, facilities and safeguards for detainees in Romanian prisons are still insufficient and still have to be improved considerably, and overcrowding remains a serious problem, some positive changes are noticed when comparing the 2018 report with the 2021 report.

“real risk of being subjected to inhuman or degrading treatment, within the meaning of this Article 4” taking into account “all the relevant material aspects of the conditions of detention in which that person is actually to be held”. Thus, depending on the length of the custodial sentence and the place of residence of the person deprived of liberty, the guarantees issued provide detailed information on the enforcement arrangements to which they will be assigned, the prisons where they will be held, and the arrangements for the exercise of their rights (telephone calls, daily visits, visits in private, to receive visits, medical care, treatment and care, to receive, purchase and hold property, to work and education, etc.), all individually tailored to the rights of each person to whom they are granted.

According to information provided by Romania in reply to a question for the purposes of this assessment, the Romanian authorities are granting special attention to the improvement of the detention conditions. Thus, through the Action Plan adopted by the Government on the 20<sup>th</sup> of October 2020, the National Administration of Penitentiaries has undertaken to modernize 946 places of detention and create 7,849 new places of accommodation by the end of 2025<sup>32</sup>. The investment objectives to be achieved in the penitentiary system include the creation of new accommodation places, in accordance with the Council of Europe standards.

Based on the progress made in the penitentiary system, as of 1 February 2020, on the basis of a detailed analysis, the National Administration of Penitentiaries has decided to re-evaluate *ex officio* the minimum conditions to be provided, so it was decided to considerably improve the assurances as regards prison conditions, by granting a minimum individual space of 3 m<sup>2</sup> also for the semi-open regime, in case of new requests. The National Administration of Penitentiaries is committed to respect the assurances granted and will ensure permanent monitoring of the conditions issued by them, for each individual case.

The assessment carried out in 2022, on the potential of the penitentiary system regarding the individual space that can be guaranteed, reconfirmed the maintenance of the minimum individual space of at least 3m<sup>2</sup> for all persons to be surrendered to Romania under an EAW.

### **5.3 Highlights of recent contributions by Bulgaria and Romania to Eurojust casework**

#### ***Workload***

On average, Bulgarian judicial authorities have been involved in around **670** Eurojust cases per year, since 2018, both as case owner (i.e. Bulgaria registered the case at Eurojust) or requested participant. This represents around **8%** of Eurojust average cumulative workload (newly registered plus on-going from previous years) per year, since 2018.

Romanian judicial authorities have been involved, on average, in around **1.000** Eurojust cases per year, since 2018, both as case owner (i.e. RO registered the case at Eurojust) or requested

<sup>32</sup> 210 places by the end of 2021 (216 new places being brought into use, exceeding the amount initially proposed), 445 places by the end of 2022, 1275 places by the end of 2023, 4019 places by the end of 2024 and 1900 places through the construction of two new penitentiaries.

party. This represents around **11%** of Eurojust average cumulative workload (newly registered plus on-going from previous years) per year, since 2018.

### ***Crime types***

Eurojust cases involving Bulgaria in the last three years (2020, 2021 and 2022) mainly focus on the following crime types: fraud, drug trafficking, money laundering, mobile organized criminal groups and organised property crime, trafficking of human beings and PIF crimes.

Cases supported by Eurojust between 1 January 2018 and 31 October 2022 and involving Romania (as owner or requested party) mainly focus on the following crime types:

- fraud (600 cases)
- organised crime (462 cases)
- trafficking in human beings (296 cases)
- organised property crime including organised robbery and aggravated theft (213 cases)
- money laundering (291 cases)
- cybercrime (145 cases)
- drug trafficking (139 cases) and
- crimes against life, limb or personal freedom (197 cases).

### ***Judicial cooperation***

Most of the cases registered by Bulgaria in 2022 involve the facilitation of EIOs, EAWs, or other mutual legal assistance requests, as well as judicial cooperation issues including transfer of prisoner (Framework Decision 2008/909/JHA), *ne bis in idem* and transfer of proceedings.

Most of the cases registered by Romania between 1 January 2018 and 31 October 2022 involve the facilitation of European Investigation Orders (429 cases), mutual legal assistance requests (264 cases), European Arrest Warrants (106 cases), as well as other judicial cooperation issues including extradition, *ne bis in idem* and transfer of proceedings.

### ***Operational tools***

Between 1 January and 31 October 2022, Bulgaria has been involved in:

- 11 coordination meetings
- 1 coordination centre organised to support an international joint action
- 6 Joint Investigation Teams (of which 4 continuing from previous years and 2 newly signed in 2022).

Between 1 January 2018-31 October 2022, Romania has been involved in:

- 316 coordination meetings (that is 15% of the overall number of coordination meetings organised by Eurojust in the same reporting period)

- 37 coordination centres (which amounts to 35% of the total number of coordination centres organised by Eurojust in the same reporting period to support international joint action days)
- 112 Joint Investigation Teams [of which 79 are newly signed] (which is around 20% of all JITs supported by Eurojust in the same reporting period).

### **Selected cross-border operations led by Bulgaria and Romania, with Eurojust support (2022)**

On 10 November, Bulgarian authorities joined a [coordinated action against massive investment fraud](#) with hundreds of thousands of victims worldwide.

On 28 June, Italy, Romania, Bulgaria and Switzerland carried out a [cross-border join action against an organised criminal group](#) suspected of carrying out money laundering activities for the Italian *'Ndrangheta* mafia.

On 27 January, Bulgarian authorities took down an [international criminal network responsible for online investment scam](#) of more than EUR 10 million.

On 13 October, Romania became the seventh member of the [Joint Investigation Team on alleged core international crimes committed in Ukraine](#).

On 14 June, Romania and UK took down a [human trafficking criminal network](#) involved in the trafficking of Romanian women for sexual exploitation in the United Kingdom.

On 20 April, the Moldovan and Romanian authorities dismantled an [organised crime group \(OCG\) that was responsible smuggling migrants](#) to Austria and Germany since 2021.

### **5.4 Conclusion**

Judicial cooperation in criminal matters in **Bulgaria** works well. Bulgaria is actively engaging in judicial cooperation with other Member States to fight crime, including trafficking in human beings, migrant smuggling and mobile organised crime groups. The statistics available show that Bulgaria issues and executes EIOs and EAWs on a regular basis. The procedures for executing and issuing European Arrest Warrants are clearly regulated and structured in the Bulgarian legal framework and run efficiently. Both executing and issuing Bulgarian judicial authorities have wide experience in dealing with these matters. The national and European Union legal frameworks are well known and applied by the practitioners, and detailed guidelines for the prosecutors have been issued by the Prosecutor General's Office. The Bulgarian authorities make significant efforts to execute EAWs, apply the principle of mutual recognition efficiently and ensure the surrender of sought persons, observing the deadlines under the Framework Decision. Bulgaria also reacted quickly to both the ECJ cases concerning its legislation on the EIO and to infringement procedures. The number of cases and support tools offered by Eurojust (Coordination Meetings/Coordination Centres/Joint



Investigation Teams) demonstrates that the Bulgarian authorities are proactive, willing to cooperate and act in a coordinated manner with all relevant States in this area.

Judicial cooperation in criminal matters in **Romania** works well. Romania is actively engaging in judicial cooperation with other Member States to fight crime, including trafficking in human beings, migrant smuggling and mobile organised crime groups. The statistics available show that Romania issues and executes EIOs and EAWs on a regular basis. The EAW is a much-used instrument, which has been well accepted by practitioners. Consequently, it is handled as a matter of routine and does not pose significant problems. Romania has also made important efforts to improve its detention conditions. These improvements, in addition to a practice of providing assurances in individual cases, have significantly reduced the number of cases where detention conditions were a ground for refusal for EAWs over the last years. Romania also reacted quickly to infringement procedures. The number of cases and support tools offered by Eurojust (Coordination Meetings/Coordination Centres/Joint Investigation Teams) demonstrates that the Romanian authorities are proactive, willing to cooperate and act in a coordinated manner with all relevant States in this area.