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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Case-law by the Court of Justice of the European Union on the European Investigation Order - Report by Eurojust

Delegations will find attached the above-mentioned report, which is also available at Eurojust's website.

EUROJUST

European Union Agency for Criminal Justice Cooperation

Case-law by the Court of Justice of the European Union on the European Investigation Order

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Criminal justice across borders

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Executive summary

This document provides an overview of the case-law of the Court of Justice of the European Union (CJEU) concerning the application of Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters (EIO DIR). Where relevant, reference is also made to the Treaty on the European Union (TEU), the Treaty on the Functioning of the European Union (TFEU), the Charter of Fundamental Rights of the European Union (CFR) and the European Convention on Human Rights (ECHR).

This case-law overview contains summaries of the CJEU's judgments grouped per topic, reflecting the structure of the EIO DIR. A chronological list of judgments and of pending cases is also provided at the beginning of the document.

The summaries of judgments are not exhaustive and are only to be used for reference and as a supplementary tool for practitioners. They have been prepared by Eurojust and do not bind the CJEU. The summaries contain links to the full texts of the judgments of the CJEU, which can be found, in all EU official languages, on the CJEU's website.

Chronological list of judgments

To date, the CJEU has delivered ten judgments on the EIO DIR, which are presented in this documentin a thematic order:

1. Case C-324/17, ***Gavanozov***, judgmentof 24 October 2019.
2. Case C-584/19, ***Staatsanwaltschaft Wien (Falsified transfer orders)***, judgment of 8 December 2020.
3. Case C-66/20, ***Finanzamt für Steuerstrafsachen und Steuerfahndung Münster***, judgment of 2 September 2021.
4. Case C-852/19, ***Gavanozov II***, judgment of 11 November 2021.
5. Case C-724/19, ***Spetsializirana prokuratura (Traffic and location data)***, judgment of 16 December 2021.
6. Case C-16/22, ***Staatsanwaltschaft Graz (Düsseldorf Tax Office for Criminal Tax Matters)***, judgment of 2 March 2023.
7. Case C-670/22, ***M.N. (EncroChat)***, judgment of 30 April 2024.
8. Joined Cases C-255/23 and C-285/23, ***AVVA and Others (Trial by videoconference in the absence of a European Investigation Order)***, judgment of 6 June 2024.
9. Case C-583/23, ***Delda***, judgment of 9 January 2025.
10. Case C-635/23, ***WBS GmbH***, Judgment of 10 July 2025.

Pending cases

In addition, one case on the EIO DIR is currently pendingbefore the CJEU:

1. Case C-325/24, ***Bissilli***. Request for a preliminary ruling by the Court of Florence (Italy), lodged on 2 May 2024. The questions concern the interpretation of Article 24 EIO DIR (hearing via videoconference) read in conjunction with Article 3 EIO DIR (scope of the EIO), of Articles 10, 11(1)(f) and 24(2)(b) EIO DIR on the possibility to refuse the execution of an EIO for the hearing of the accused via videoconference if such an investigative measure is not available under the law of the executing State, and of Article 22(1) EIO DIR (temporary transferto the issuing State of persons held in custody for the purpose of carrying out an investigative measure) read in conjunction with Article 3 EIO DIR. Opinion of Advocate General Rantos of 26 June 2025.

1. Admissibility of a request for a preliminary ruling on an EIO

The CJEU clarified how certain admissibility conditions of a request for a preliminary rulingapply in the context of an EIO procedure. Firstly, it found that the authority executing an EIO is not a 'court or tribunal' within themeaning of Article 267 TFEU and, consequently, is not entitled to refer a question for a preliminary ruling to the CJEU (*Finanzamt für Steuerstrafsachen und Steuerfahndung Münster*). Secondly, a request for a preliminary ruling is not admissible where national proceedings continue on the question referred, as the request must entail the suspension of the criminal proceedings in the referring Member State (*AVVA and Others (Trial by videoconference in the absence of a European Investigation Order)*).

1.1. Case C-66/20, *FinanzamtfürSteuerstrafsachen undSteuerfahndung Münster*, judgment of 2 September 2021

- ***Facts.*** In the course of an investigation for tax evasion against XK, a German tax office issued an EIO to Italy requesting a search of business premises. The EIO indicated that it was issued by a 'judicial authority'. The Italian executing authority, the public prosecutor, requested to receive an EIO validated by a judicial authority, as a tax office would be an administrative authority. However, the German tax office replied that the EIO would not have to be validated by a judicial authority since, under German law, the tax office can exercise the same rights and responsibilities as a public prosecutor in cases involving tax offences. As such, it would need to be regarded as a judicial authority within the meaning of Article 2 EIO DIR. Therefore, the Italian public prosecutor referred the question to the CJEU as a body ruling 'in complete independence' in the contextof the procedure for enforcement of the EIO.
- ***Main question.*** Does Article 2(1)(c)(ii) EIO DIR on the definition of 'issuing authority' allow a Member State to exempt an administrative authority from the obligation to have the EIO validated by defining it as a 'judicial authority' for the purposes of Article 2 EIO DIR?
- ***CJEU's reply.*** **The request for a preliminary ruling is inadmissible as the public prosecutor, when acting as an executing authority of an EIO, is not a 'court or tribunal' within the meaning of Article 267 TFEU.** The CJEU's main arguments follow.
  - In order to determinewhether a body making a referenceis a 'court or tribunal' for the purposes of Article 267 TFEU, it is necessary to examine, inter alia, whether that body, in the context of the procedure that led it to refer the matter to the Court, is acting in the exercise of a judicial function since, according to settled case-law, a national court may refer a question to the Court only if there is a case pending before it and if it is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature (paras 34–37).
  - The executing authority of an EIO does not act in proceedings that are intended to result in a judicial decision, as it is not called to ruleupon a disputeand it is not entrustedto 'give judgment' within the meaning of Article 267 TFEU since it is exclusively for the competent judicial authorities of the issuing Member State to reach a final decision on that evidence in the context of their criminal proceedings (paras 38, 42–43):
    - the EIO is a judicial decision to have one or several specific investigative measures carried out in another Member State to obtain evidence and the executing authority is required to

ensure its execution based on the principle of mutual recognition, unless it decides not to execute an EIO in reliance on one of the grounds for non-recognition or for postponement (paras 39–40);

- the investigative measures provided for by an EIO are provisional in nature, their sole purpose is to obtain evidence and to transmit it to the issuing authority (para 41);
- the fact that national law did not provide for any judicialreviewof the decision of the public prosecutor not to recognise an EIO is irrelevant for the purposes of determining whether the executing authority exercises a judicial function within themeaning of Article267 TFEU since the investigative measures provided for by an EIO are provisional in nature and the decisions on the execution of an EIO are thereforenot equivalent to judicial decisions (paras 44–45).

1.2. Joined Cases C-255/23 and C-285/23, *AVVA and Others (Trial by videoconference in the absence of a European Investigation Order)*, judgment of 6 June 2024

- ***Facts.*** In criminal proceedings for large-scale money laundering pending before a Latvian court against a Lithuanian national residentin Lithuania, the defendant requestedto participate remotely in the trial hearings. According to Latvian law, the participation of the accused at trials for serious offences is mandatory but can also take place remotely via videoconference. However, if the accused is located outside the national territory, recourse to those technical means may only take place by issuing an EIO. However, considering the duration and cost of executing an EIO, the Latvian court took the view that issuing an EIO to ensure the prolonged participation of the accused person in the hearings is not proportionate within the meaning of Article 6 EIO DIR. Therefore, it referred the issue to the CJEU, without staying the proceedings.
  Similarly, in criminal proceedings for large-scale money laundering and fraud as part of a criminal gang, the Latviancourt, at the requestof the accused, issuedan EIO to Germany to ensurethe remote participation of the accused, a German nationalresident in Germany, at trial. The German authorities refused to execute the EIO on the ground that it was not issued for the purpose of carrying out an investigative measure, but rather for the passive participation of the accused in hearings via videoconference, which was in any case contrary to the fundamental principles of German law. Therefore, the Latvian court referred the issue to the CJEU, without staying the proceedings.
- ***Main questions.*** Can a court enter into contact directly with an accused person who is in a different Member State in order to allow the remote participation of an accused in criminal trial hearings via videoconference without issuing an EIO? Does Article 24(1) EIO DIR on the hearing of the accused via videoconference includealso the hearing for theparticipation of the accused via videoconference in a criminal trial in a different Member State from his or her Member State of residence?
- ***CJEU's reply.*** **Since both proceedings at issue had not been stayed and the hearings continued with the participation of the accused, the CJEU held that the questions raised were devoid of purpose and of relevance to the main proceedings and therefore affirmed that there was no need to answer the questions referred.**

2. Scope of the EIO

The purpose of the EIO is to have one or several investigative measures carried out in the executing Member State to obtain evidence. The CJEU clarified the scope of the EIO DIR by providing a definition of the EU autonomous notion of 'investigative measure', whichrefers to any investigative act intended to establish a criminal offence, the circumstances in which it was committed and the identity of the perpetrator, thus aimed at obtaining evidence. Therefore, measures pertaining to the serving of indictments, the remand in custody and the hearing of a person for purposes other than the gathering of evidence arenot consideredinvestigative as such (*Delda*).

2.1. Case C-583/23, *Delda*, judgment of 9 January 2024

- ***Facts.*** In the Spanish criminal proceedings against AK, who was serving a custodial sentence in France, the Spanish judicial authorities issued an EIO to France, requesting to serve on AK an indictment issued by the Spanish investigative judge, which included an order of custody pending trial and a bail payment of EUR 30 000, and for that person to make any observation on the matters set out in that indictmentin the presence of her lawyer. The French judicial authorities executed the requested measuresin an officially recorded hearing. Subsequently, AK lodged an appeal before the French courts for the hearing to be declared invalid, on the ground that an EIO cannot be issued for the purpose of announcing that criminal charges are being brought against a person. The Court of Appeal of Paris rejected that application, holding that the EIO was issued for carrying out an investigative measure because it requested statements to be taken from the accused person. The French Court of Cassation, called to rule upon an appeal against that decision, noted that the CJEU had not yet ruled on the scope of the EIO and referred the following questions to the CJEU.
- ***Main question.*** Does the request to serve an indictment on an accused person, accompanied by an order for that person to be remanded in custody and make a bail payment, and to allow that person to make observations on the matters set out in that indictment, constitute an investigative measure capable of being the object of an EIO within the meaning of Articles 1 and 3 EIO DIR?
- ***CJEU's reply*. Articles 1 and 3 EIO DIR mean that: 1) a request to serve on a person the indictment relating to him or her does not, as such, constitute an EIO; 2) a request to remand a person in custody pending trial for purposes other than those referred to in Articles 22 and 23 EIO DIR, or to require him or her to make a bail payment, does not constitute an EIO; 3) a request to allow a person to make observations on the matters set out in the indictment relating to him or her constitutes an EIO, insofar as that request for a hearing is intended to gather evidence.** The CJEU's main arguments follow.
  - Article 1 EIO DIR provides that an EIO is a judicial decision to have one or several specific investigative measure(s) carried out in the executing Member State to obtain evidence, and Article 3 EIO DIR states that an EIO covers any investigative measure with the exception, in principle, of the setting up of a joint investigation team (JIT) and the gathering of evidence within such a team (para 26).
  - The concept of 'investigative measure' must be given an autonomous interpretation in EU law, which refers to any investigative act intended to establisha criminal offence, the circumstances

in which it was committed and the identity of the perpetrator, thus aimedat obtaining evidence (paras 27–28). This interpretation is supported by:

- the wording of Articles 1 and 3 EIO DIR (para 28);
- the context of Articles 1 and 3:
  - Article 10(2) EIO DIR, like Articles 24 to 31 EIO DIR, sets out a series of investigative measures that are all aimed at obtaining evidence to establish the facts or the identity of the perpetrator (para 30);
  - under Articles 22 and 23 EIO DIR, an EIO can also have the object of the transfer of a person in custody, but only with a view to gathering evidence, while it is apparentfrom recital 25 that, where the person concerned is to be transferred to another Member State for the purposes of prosecution, a European arrest warrant (EAW) is necessary (para 31);
  - under Articles 13 and 15 EIO DIR, the purpose of an EIO consists in the sending of evidence by the executing Member State to the issuing Member State, that evidence being identified in Article 13(4) and Article 15(1)(b) as objects, documents or data (para 32, with reference to *M.N. (EncroChat)*);
- the objective of the EIO DIR, which is to improve judicial cooperation in the gathering of evidence in cross-border criminal cases and which requires a simple and unequivocal identification of the key elementsof the EIO such asthe concept of 'investigativemeasures' (paras 33–35, with reference to *M.N. (EncroChat)*).

- A request to serve on the person in question the indictment relating to him or her does not, as such, constitute an investigative measure, as its purpose is not to obtain evidence but is a procedural obligation intended to advance the prosecution and is, in principle, governed by Article 5 of the Convention of 29 May 2000 (para 37).
- An order that the person make a bail payment does not constitute an investigative measure either (para 38).
- An EIO may not contain a request that the person be remanded in custody, except in the cases of a temporary transfer for carrying out an investigative measure under Articles 22 and 23 EIO DIR, as the EIO cannot – outside such exceptions – interfere with the right to liberty under Article 6 CFR (paras 39–40, with reference to *Staatsanwaltschaft Wien (Falsified transfer orders)*).
- A request that the indicted person be heard, whichis expressly included in Article 10(2)(c) and the second subparagraph of Article 24(1) EIO DIR, falls within the scope of the EIO DIR only if the purpose of that request for a hearing is to gather evidence, and not if it is intended solely to enable the accused person to make observations on the indictment (paras 41–43).
- In the present case, it is for the referring court to determine the purpose of the request madeby the issuing authorities for the accused to be heard:
  - if the purpose of the hearing was not to gatherevidence, the executing authorities could not have acted lawfully on the EIO (para 43);
  - if the purpose of the hearing was to gather evidence, and theissuing authorities stated that, under their national law, the hearing could take place only after the indictment was served, such service could be requested by means of an EIO since under Article 9(2) the executing authority is, in principle, required to comply with the formalities and procedures expressly indicated by the issuing authority; thus, the French authorities would have been required in principle to execute the EIO both for the service of the indictment and for the hearing,

with the exception of the order that the person be remanded in custody pending trial and make a bail payment, provided that the issuing authorities did not object to said partial execution (paras 44–47);

- if the purpose of the hearing was to gather evidence, and there was no mention thata prior service of the indictment was necessary, the executing authorities would, in principle, have been requiredto grant solely therequest for a hearing, provided that the issuing authorities did not object to said partial execution (para 48).

3. Issuing authority, judicial authority

The CJEU clarified the concept of an 'issuing authority', distinguishing betweenthe two categories of authorities provided in Article 2(c) EIO DIR.

In relation to the first category of issuing authorities under Article 2(c)(i) EIO DIR ('judicial authorities'), the CJEU held that unlike for the EAW, this notion includes public prosecutors regardless of any relationship of legal subordination to the executive of their Member State (*Staatsanwaltschaft Wien (Falsified transfer orders)*). However, the EIO DIR precludes public prosecutors from issuing an EIO where, in a similar domestic case, the judge has exclusive competence to adopt such a measure, and in such case the recognition of that EIO on the part of the executing authority does not replace the requirements applicable in the issuing State (*Spetsializirana prokuratura (Traffic and location data)*).

Next, the CJEU clarified that the concept of a 'judicial authority' competent to issue and validate an EIO refers only to public prosecutors, investigative judges and courts, and it excludes administrative authorities, such as tax offices, regardless of whether they conduct criminal investigations independently with the same powers of a public prosecutor. Accordingly, an EIO issued by an administrative authority mustbe validated by a judicial authority in compliance with Article 2(c)(ii) EIO DIR (*Staatsanwaltschaft Graz (Düsseldorf Tax Office for Criminal Tax Matters)*).

In relation to the second category of issuing authorities under Article 2(c)(ii) EIO DIR ('other authorities'), the CJEU clarified that an administrativeauthority, which is acting in its capacity as an investigating authority in criminal proceedings and whose investigative measures involving an interference with the fundamental rights of the person concerned must, in accordance with national law, first be authorisedby a judicial authority, can be treatedas 'issuing authority' within the meaning of Article 2(c)(ii) EIO DIR (*WBS GmbH*).

Finally, in terms of issuing authorities, a distinction should also be made between the transmission of evidence already in the possession of the executing State and the carrying out of investigative measures for gathering evidence. In this regard, the CJEU clarified that a public prosecutor may be competent to issue an EIO for the transmission of evidence already in the possession of the executing State even where, under the law of the issuing State, the initial gathering of that evidence would have had to be ordered by a judge (*M.N. (EncroChat)*).

3.1. Case C-584/19, *Staatsanwaltschaft Wien (Falsified transfer orders)*, judgment of 8 December 2020

- ***Facts.*** In the course of criminal investigations for fraud against A. and other unidentified persons, the public prosecutor of Hamburg issued an EIO to Austria, requesting banking information. Pursuant to Austrian law, before executing theorder, the public prosecutor of Vienna requestedthat the competent court of Vienna authorise the investigative measure. On the basis of the case-law of the CJEU concerning the 'issuing judicial authority' for EAWs (see, inter alia, *OG and PI (Public Prosecutor's Office in Lübeck and in Zwickau)*) (1), that court had doubts about the necessary

(1) CJEU, Joined Cases C-508/18 and C-82/19 PPU, *OG and PI (Public Prosecutor's Office in Lübeck and in Zwickau)*, judgment

requirements for complying with the concepts of 'judicial authority' and 'issuing authority' within the meaning of the EIO DIR. The court therefore referred the case to the CJEU.

- ***Main question.*** May the public prosecutor's office of a Member State be regarded as a 'judicial authority' having competence to issue an EIO within the meaning of Articles 1(1) and 2(c) EIO DIR, in spite of the fact that it is exposed to a risk of being subject to individual instructions or orders from the executive when adoptingsuch an order?
- ***CJEU's reply.*** **The concepts of 'judicial authority' and 'issuing authority' within the meaning of Articles 1(1) and 2(c) EIO DIR include the public prosecutor of a Member State, regardless of any relationship of legal subordination that might exist between that public prosecutor and the executive of that Member State that exposes them to the risk of being directly or indirectly subject to orders or individual instructions from the executive when adopting an EIO.** The CJEU's main arguments follow.
  - In the light of the differences betweenthe European Arrest Warrant Framework Decision (EAW FD) and the EIO DIR, the Court's interpretation in the judgments *OG and PI (Public Prosecutor's Office in Lübeck and in Zwickau)* ([2]) and *PF (Prosecutor General of Lithuania)* ([3]), according to which the concept of 'issuing judicial authority' under the EAW FD does not cover public prosecutor's offices that are exposed to the risk of being subject to individual instructions from the executive, is not applicable in the context of EIO DIR (para 74).
    - **Wording.** In the EIO DIR, the classification of prosecutors as an 'issuing authority' or 'judicial authority' is not subject to there being no relationship of legal subordination to the executive, and the issuing or validation of an EIO by a public prosecutor confers on that order the status of a judicial decision (paras 54–55):
      - unlike Article 6(1) EAW FD, Article 2(c)(i) EIO DIR expressly includes public prosecutors among the authorities that are understood as an 'issuing authority', subject to the sole condition that they have competence in the case concerned (paras 50–52);
      - public prosecutors are also among the 'judicial authorities' that are, according to Article 2(c)(ii) EIO DIR, entrusted with the validation of an EIO, whenever such an order has been issued by an authority other than a judge, court, investigating judge or public prosecutor (para 53).
    - **Context.** The issuance and execution of an EIO are subject to procedures and guarantees distinct from those of an EAW, which are specific to the adoption of judicial decisions and ensure compliance with the principle of proportionality and fundamental rights and effective judicial protection (para 56, 63 and 69):
      - as regards the issuing of an EIO:
        - under Article 6(1) EIO DIR, the issuing is subject to the twofold condition, first, that it must be necessary and proportionate for the purpose of the criminal proceedings, taking into account the rights of the accused, and, secondly, that the investigative measure could have been ordered under the same conditions in a similar domestic case; thus, a public prosecutor must comply with national procedural guarantees, which must comply with the directives on procedural rights in criminal proceedings (paras 57–58);

of 27 May 2019, on the interpretation of Article 6(1) of Framework Decision 2002/584/JHA.

(2) See *supra* note 1.

(3) CJEU, Case C-509/18, *PF (Prosecutor General of Lithuania)*, judgment of 27 May 2019, on the interpretation of Article 6(1) of Framework Decision 2002/584/JHA.

- the public prosecutor must ensure respect for the CFR, in particular the presumption of innocence and the rights of the defence under Article 48 CFR, and any limitation that an investigative measure places on those rights must comply with Article 52(1) CFR (para 59);
- under Article 14 EIO DIR, the EIO must be capableof being subject to effective legal remedies, at least equivalent to those available in similar domestic cases, and the issuing State must take into account a successful challenge against an EIO in accordance with its own national law; thus, without prejudice to national procedural rules, Member States must ensure that, in criminal proceedings in the issuing State, the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained throughan EIO (paras 60–62);

- as regards execution, even though it is an instrument of mutual recognition, the EIO DIR allows the executing State to ensure respect of the principleof proportionality and the fundamental rights of the person concerned (para 64):
  - under Article 2(d) EIO DIR, the execution of an EIO may require a court authorisation in the executing State where that is provided for by its national law (para 65);
  - under Article 6(3) EIO DIR, where the executing authority has reason to believe that the condition that the investigative measure be necessary and proportionate is not met, it may consult the issuing authority on the importance of executing the EIO, which may lead to the withdrawal of that order (para 63);
  - under Article 10 EIO DIR, the executing authority may also have recourse to an investigative measure other than that indicated in the EIO where it considers that such a measure would achieve the same result by means involving less interference with the fundamentalrights of the person concerned (para 67);
  - under Article 11(1)(f) EIO DIR, execution of an EIO may be refused wherethereare substantial grounds to believe that the execution of the investigative measure would be incompatible with the executing State's obligations under Article 6 TEU and the CFR (para 68).

- **Objective.** The EIO DIR pursues a differentobjective than the EAWFD. While the EAWseeks the arrest and surrender of individuals, the aim of the EIO is to have specific investigative measures carried out to obtain evidence that, although they might be intrusive, do not interfere with the right to liberty under Article 6 CFR, with an exception made for the temporary transfer of persons already in custody (paras 70–73).

3.2. Case C-724/19, *Spetsializirana prokuratura (Traffic and location data)*, judgment of 16 December 2021

- ***Facts.*** In the Bulgarian criminal proceedings against H.P. for the financing of terrorist activities, the public prosecutor issued four EIOs to Belgium, Germany, Austriaand Sweden, without validation by a judge or a court, requesting the collection of traffic and location data relating to telecommunications. The EIOs wereexecutedby public prosecutorsin theaddressed Member States without authorisation or validation by a judge or a court, except in the case of Belgium. The Bulgarian court competent in the case had doubts about the lawfulness of the evidence gathered

since, under national law, that evidence could only have been obtained following judicial authorisation. Therefore, it referredthe following questions to the CJEU.

- ***Main questions***. Does Article 2(c)(i) EIO DIR preclude 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? Does recognition of that EIO by the executing State replace the court order required under the law of the issuing State, where that EIO was improperly issued by a public prosecutor?
- ***CJEU's replies.***
- **Article 2(c)(i) EIO DIR 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 such an investigative measure.** The CJEU's main arguments follow.
  - Where, under national law, the public prosecutor is not competent to order an investigative measure to obtain traffic data and location data associated with telecommunications, he or she cannot be regarded as an issuing authority competentto issue an EIO for that purpose (para 39):
    - the wording of Article 2(c) EIO DIR that defines the concept of 'issuing authorities' and requires that they must be 'competent in the case concerned' does not, in itself, make it possible to determine whetherthose words have the same meaning as 'with competenceto order the gathering of evidence in accordance with national law' (para 30);
    - the context of the EIO DIR confirms that the issuing authority must be the investigating authority in the criminal proceedings concerned, which is thus competent to order the gathering of evidence in accordance with national law (paras 31–35):
      - only such an authority is able to assess the necessity and proportionality of an investigative measure as required under Article 6(1)(a) EIO DIR and to provide the additional explanations required under Articles 27(4) and 28(3) EIO DIR on thereasons why it considers the requested information relevant for the purpose of the criminal proceedings concerned (paras 32–34);
      - under Article 6(1)(b) EIO DIR the issuing authority may only issue an EIO where the investigative measure(s) referred to therein could have been ordered under the same conditions in a similar domestic case (para 35);
    - making a potential distinction between the authority that issues the EIO and the authority that is competent to order investigative measuresin those criminalproceedings would risk complicating the system of cooperation, thereby jeopardising the objective of the EIO DIR to establish a simplifiedand effective systemfor the gathering of evidence in criminal cases with a cross-border dimension (paras 36–38).
  - In the present case, the public prosecutor cannot be competent to issue an EIO with a view to obtaining traffic and location data associated with telecommunications because, although Bulgarian law designates the public prosecutor as the authority competent to issue an EIO, the competent authority to order the gathering of such data in a similar domestic case is the judge of the first instance court having jurisdiction for the case concerned (paras 40–41).
  - Furthermore, in light of the CJEU's *Prokuratuur* judgment ([4]) and the conditions laid down in Article 6(1)(b) EIO DIR, an EIO seeking to obtain traffic and location data associated with

(4) CJEU, Case C-746/18, *Prokuratuur (Conditions of access to data relating to electronic communications)*, judgment of

telecommunications cannot be issued by a public prosecutor where that public prosecutor not only directs the criminal pre-trial procedure, but also brings the public prosecution in subsequent criminal proceedings (paras 42–44).

- **The recognition by the executing authority of an EIO for obtaining traffic and location data associated with telecommunications may not replace the requirements applicable in the issuing State where that EIO was improperly issued by a public prosecutor, whereas, in a similar domestic case, the judge has exclusive competence to adopt an investigative measure seeking to obtain such data.** The CJEU's main arguments follow.
  - The executing authority cannot remedy non-compliance with the conditions for issuing an EIO under Article 6(1) EIO DIR (para 50):
    - under Article 6(3), where the executing authority has reason to believe that such conditions are not met, it may consult the issuing authority on the importance of executing the EIO, who may decide to withdraw it (para 47);
    - under Article 9(1) EIO DIR, the executing authority is to recognise an EIO, without any further formality being required, and to ensure its execution in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution or one of the grounds for postponement exhaustively listed in that directive (paras 48–49).
  - If the executing authority were able to remedy non-compliance with the conditions for issuing an EIO, laid down in Article 6(1) EIO DIR, the balance of the EIO system based on mutual trust would be called into question since that would amount to giving the executing authority the power to review the substantive conditionsfor issuing such an EIO (paras 51–53).
  - By contrast, in accordance with Article 9(3) EIO DIR, where the executing authority receives an EIO that has not been issued by an issuing authority under Article 2(c) EIO DIR, it is to return the EIO to the issuing State (para 54).

3.3. Case C-16/22, *Staatsanwaltschaft Graz (Düsseldorf Tax Office for Criminal Tax Matters)*, judgment of 2 March 2023

- ***Facts.*** In the course of an investigation for tax fraud against M.S., a German tax office issued an EIO to Austria requesting banking information. The EIO indicated that it was issued by a 'judicial authority'. Under Germanlaw, the taxauthority is empowered, as regards certain specified criminal offences, to assume the rights and the obligations of the public prosecutor's office, while being part of the executive as an administrative body. The Austrian judicial authorities authorised and executed the EIO. Subsequently, M.S. appealed before an Austrian court, pleading that the German tax office lacks competence to issue an EIO, as it is neither a 'judicial authority', within the meaning of Article 1(1) EIO DIR, nor an 'issuing authority', within the meaning of Article 2(c) EIO DIR. The referring court, called to rule whether execution of the EIO issued by the German tax office was lawful, noted that it is necessary to determine whether such a tax authority may be equated to a 'judicial authority' and to a 'prosecutor'.

2 March 2021, on the interpretation of Article 15(1) of Directive 2002/58, read in the light of Articles 7, 8 and 11 and Article 52(1) CFR.

- ***Main questions.*** Can a tax authority that conducts, in accordance with national law, criminal tax investigations autonomously, instead of the public prosecutor's office, and assumes the rights and the obligations vested in the latter, be classified as a 'judicial authority' and an 'issuing authority' within the meaning of Articles 1(1) and 2(c)(i) EIO DIR?
- ***CJEU's reply.*** **A tax authority of a Member State that, in accordance with national law, conducts criminal tax investigations autonomously, assuming the rights and the obligations of the public prosecutor's office, while being part of the executive of that Member State, cannot be classified as a 'judicial authority' and an 'issuing authority' under the first subparagraph of Article 1(1) and Article 2(c)(i) EIO DIR. Such an authority may fall within the concept of 'issuing authority' under Article 2(c)(ii) EIO DIR, provided that the conditions set out in that provision are met.** The CJEU's main arguments follow.
  - The concept of 'judicial authority' under the first subparagraph of Article 1(1) EIO DIR must be read in conjunction with Article 2(c) EIO DIR, which defines the notion of 'issuing authority' (paras 26–27).
  - Article 2(c) EIO DIR distinguishes between two mutually exclusive categories of issuing authorities, whichreflect the distinctionbetween the judiciary and theexecutive, inherentin the principle of the separation of powers under the rule of law (para 35–36, with reference to *Poltorak*) ([5]):
    - Article 2(c)(i) EIO DIR designates judges, courts, investigating judges or public prosecutors as 'issuing authorities', subject to the sole condition that they have competence in the case concerned; those four authorities, listed in an exhaustive manner, share the characteristic that they may all participate in the administration of justice and are classified as judicial authorities (paras 30-31, with reference to *Staatsanwaltschaft Wien (Falsified transfer orders)*);
    - Article 2(c)(ii) EIO DIR establishes a second category of 'issuing authority', covering any authority 'other' than those referred to in Article 2(c)(i) EIO DIR, provided that it is competent to act as an investigating authority in criminal proceedings; an EIO issued by such an authority must, before being transmitted to the executing authority, be validated by a 'judicial authority' falling within Article 2(c)(i) EIO DIR (paras 33–34, with reference to *Spetsializirana prokuratura (Traffic and location data)*).
  - Therefore, any authority that is not explicitly referred to in the list set out in Article 2(c)(i) EIO DIR, such as the tax authorities of a Member State, must be regarded as an 'issuing authority' under Article 2(c)(ii) EIO DIR, provided that the conditions of that provision are met (paras 36, 37).
  - This interpretation is also supported by the context of Article 2(c) EIO DIR, which results in judicial authorities being clearly distinguishedfrom other authorities (para 41):
    - Article 4 EIO DIR on the types of procedures for which an EIO can be issued also distinguishes between proceedings brought by a 'judicial authority' and those brought by 'administrativeauthorities' (para 39);
    - under Article 1(1) and Article2(c) EIO DIR, the issuing of an EIO, which is a judicial decision, requires the action of a judicial authority in any event, being eitherissued or validated by a judicial authority (para 40);

(5) CJEU, Case C-452/16 PPU, *Poltorak*, judgment of 10 November 2016, on the interpretation of Article 6(1) of Framework Decision 2002/584/JHA.

- This interpretation also allows a simple and unequivocal identification of the issuing authority ensuring legal certainty in order to achieve the objective of the EIO DIR, relating to simplified and effective cooperation between the Member States (paras 42–45).

3.4. Case C-670/22, *M.N. (EncroChat)*, judgment of 30 April 2024

- See also *infra*, 4.1 (Conditions for issuing an EIO), 5.1 (Admissibility of evidence) and 7.1 (Interception of telecommunications).
- ***Facts.*** In the context of a French investigation, it appeared that accused persons were using encrypted mobile phones operatingunderan 'EncroChat' licencein order to commit primarily drug trafficking offences. This service enabled end-to end encryptedcommunication via a server located in France and could not be intercepted by conventional means. With judicial authorisation, the French police, with the assistance of Dutch experts in the framework of a JIT, were able to develop Trojan horse software that could be used to infiltrate the servers of the encrypted telecommunications service. With the authorisation of a French judge, the software was uploaded to a server in the spring of 2020 and, from there, installed, via a simulated update, on the mobile phones of users located worldwide. In March 2020, ina coordinationmeeting organisedby Eurojust, the French authorities informed, inter alia, the German authorities of their planned interception of data, including from mobile phones located outside of France. The German authorities signalled their interest in thedata of German users. In March 2020, the public prosecutor of Frankfurt opened an investigation against all unknown users of the EncroChat service, on the suspicion of participating in organised drug trafficking. Subsequently, via the Secure Information Exchange Network Application (SIENA), a message was sent from the members of the JIT to the competent authorities of the Member States interestedin the EncroChat data. After receipt, the German police provided the requested confirmation that they had been informed of the methods used to gather data from mobile phones in their territory, in agreement with the public prosecutor of Frankfurt. Between April and June 2020, the German police retrieved the data related to mobile phones used in Germany, which weremadeavailable via the Europol server. On June 2020, thepublic prosecutor of Frankfurt issued an initial EIO to France, requestingauthorisation to use the EncroChat datafrom German users without restrictions in criminal proceedings. Following that request, the French executing authorities authorised the transmission and use of said data in judicial proceedings. Further data weretransmittedsubsequently, based on two supplementary EIOsof September 2020 and July 2021. The public prosecutor of Frankfurt subsequently divided the criminal proceedings against all unknown users and reassigned the investigations against certain users, including M.N., to local public prosecutors. The Regional Court of Berlin, before whichcriminal proceedingsagainst M.N. were brought, queried the lawfulness of the EIOs in light of the EIO DIR and submitted to the CJEU a series of questions for a preliminary ruling.
- ***Main question.*** Do Article 2(c) and Article 6(1) EIO DIR require that an EIO for the transmission of evidence already in the possession of the competent authorities of the executing State benecessarily issued by a judge where, under the law of the issuing State, in a purely domestic case, the initial gathering of that evidence would have had to be ordered by a judge?
- ***CJEU's reply.*** **An EIO for the transmission of evidence already in the possession of the competent authorities of the executing State does not necessarily need to be issued by a judge where, under the law of the issuing State, in a purely domestic case in that State, the initial**

gathering of that evidence would have had to be ordered by a judge, but a public prosecutor is competent to order the transmission of that evidence. The CJEU's main arguments follow.

- Article 1(1) EIO DIR provides that an EIO may be issued in two situations: for having one or several investigative measures carried out in another Member State, or for obtaining evidence that is already in the possession of the executing State. In both cases, a 'judicial authority' must issue or validate the EIO (para 71).
- The concept of 'judicial authority' is not definedin Article 1(1) EIO DIR, but this provision should be read in conjunction with Article 2(c) EIO DIR, which includes 'prosecutors' among 'issuing authorities', subject to the sole condition that they have competence in the case concerned (paras 72-73, with reference to *Staatsanwaltschaft Graz (Düsseldorf Tax Office for Criminal Tax Matters)*).
- If under the law of the issuing State, in a purely domestic case, a public prosecutor is competent to order an investigative measure for the transmission of evidence already in the possession of the competent national authorities, that public prosecutor is covered by the concept of 'issuing authority' in the context of the EIO DIR for the purposes of a similar EIO (para 74, with reference to *Staatsanwaltschaft Wien (Falsified transfer orders)*.
- To the contrary, if in a purely domestic situation, such a transmission would have to be authorised by a judge, the public prosecutor cannot be regarded as a competent issuing authority for a similar EIO (para 75, with reference to *Spetsializirana prokuratura (Traffic and location data)*).
- In the present case, it seems that the German Code of Criminal Procedure permits such transmission of evidence, at a national level, from one national investigative authority to another, without requiring the authorisation of a judge. However, the referring court must determine whether thatis the case (para 76).

3.5. Case C-635/23, *WBS GmbH*, judgment of 10 July 2025

- ***Facts.*** In the Latvian criminal proceedings for large-scale fraud, large-scale unlawful waste of another person's property, forgery and use of forgery, the Latvian Office for Preventing and Combating Corruption (KNAB) wished to search the business premises of WBS GmbH, situated in Germany. For that purpose, the KNAB, being an administrative authority acting in its capacity as investigative authority in criminal proceedings, asked the Latvian investigating judge to authorise the measure, in accordance with Latvian law. After the search was authorised, the KNAB issued an EIO to Germany for the hearing of witnesses and the conduct of the searches, which was consequently validated by the Latvian Prosecutor, in accordance with Article 2(c)(ii) EIO DIR. WBS GmbH brought an action before the Higher Regional Court in Berlin, the referring court, seeking to prohibit the transfer of the evidence gathered in execution of the EIO, claiming that in light of *Spetsializirana prokuratura (Traffic and location data)*, KNAB is not competent to issue that EIO, as the measure in question must be ordered by an investigative judge under Latvianlaw.
- ***Main question.*** Can an administrative authority, acting in its capacity as investigative authorityin criminal proceedings and whose investigative measures involving an interference with the fundamental rights of the person concerned must, in accordance with national law, first be authorised by a judicial authority, be treated as 'issuing authority' within the meaning of Article 2(c)(ii) EIO DIR?

- ***CJEU's reply.*** **An administrative authority, which is acting in its capacity as an investigating authority in criminal proceedings and whose investigative measures involving an interference with the fundamental rights of the person concerned must, in accordance with national law, first be authorised by a judicial authority, can be treated as 'issuing authority' within the meaning of Article 2(c)(ii) EIO DIR.** The CJEU's main arguments follow.
  - Under Article 2(c)(ii) EIO DIR, the'issuingauthority' must bea national authority which satisfies three cumulativeconditions: 1) is not one of the judicial authorities referred to in Article 2(c)(i) EIO DIR, but an authority, such as anadministrative authority, designatedby theissuing Member State as competent to issue an EIO; 2) is an authority which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings; 3) is competent to order the gathering of evidence in accordance with national law (paras 31-35).
  - In relation to the third condition of having 'competence to order the gathering of evidence in accordance with national law'(paras 36-39), the mere fact that the law of the issuing Member State makes the adoption of the investigative measures requested by the authority responsible for the investigation subject to the condition that they are authorised in advance by an investigating judge whenthey involvean interference with the fundamentalrights of the person concerned does not preclude that that authority is considered competentto order the gathering of evidence in accordance with national law, withinthe meaningof Article 2(c)(ii) EIO DIR (para 48):
    - In accordance with Article 6(1)(a) EIO DIR, the issuing of an EIO by 'another competent authority' within the meaning of Article 2(c)(ii) EIO DIR implies a review of the necessity and proportionality of that decision at two stages of the procedure in the issuing Member State: first, when it is prepared in the context of the domestic investigation procedure, and second, when it is validated by a judicial authority before it is transmitted to the executing authority (paras 42-44). As regards the first level:
      - According to recital 10 EIO DIR, the issuing authority is best placed to decide, on the basis of its knowledge of the details of the investigation concerned,which investigative measure is to be used (para 46);
      - The fact that the issuing authority is the authority which, in the specific case, is responsible for the criminal investigation, enables it, taking into account its knowledge of all aspects of that investigation, to carry out, in accordance with Article 6(1)(a) EIO DIR, the review of the necessity and proportionality of the investigative measurethat it wishes to see carried out in another Member State (para 47);
      - The requirement of prior authorization by an investigative judge ensures that the assessment of the necessity and proportionality of those measures, at the first level, is under the supervision of a court (paras 48-49).
    - In accordance with Article 6(1)(b) EIO DIR, the issuing authority may issue an EIO only where the investigative measures referred to in that EIO could have been ordered under the same conditions in a similar domestic case. Therefore, the precise conditions for issuing an EIO depend on the national law of the issuing State alone (paras 50-52);
      - In the present case, the requirement that the investigative measure proposed by the KNAB must be authorised by an investigating judge constitutes precisely a condition under Latvian law that an equivalent investigative measure must also satisfy to be executed solely in the territory of Latvia (para 53);

- The situation at issue is distinct from that of *Spetsializirana prokuratura (Traffic and location data)*, which concerned the interpretation not of point (ii) but of point (i) of Article 2(c) EIO DIR, in a situation where a public prosecutor had issued an EIO for measures that, in a similar domestic case, fall under the exclusive competence of a judge (paras 54-55);

- A different interpretation would runcounterto the distinction between theauthorities falling within Article 2(c)(i) and Article 2(c)(ii) EIO DIR, by which the EU legislature wished to enable non-judicial authorities responsible for criminal investigations and competent to order investigative measures to be treatedas an 'issuing authority', leadingto the result that only judicial authorities are competent to issue an EIO, even though they intervene only sporadically in the context of the domestic criminal investigation procedure (paras 56-58);
- It would also deprive Article 2(c)(ii) EIO DIR of its effectiveness, since, in view of the fact that the authorities referred to in Article 2(c)(ii) EIO DIR are not 'judicial authorities', it is legitimate that the Member States framethe adoption of the investigative measures by those authorities with procedural guarantees, by providing, inter alia, that investigative measures which involve an interference in the fundamental rights of the persons concerned are first authorised by a judicial authority (para 59);
- Such an interpretation pursues the objectiveof the EIO DIR to establish a simplified andmore effective procedure for cross-border evidence gathering, by ensuring that a national authority responsible for the criminal investigation can be characterised as an 'issuing authority' even if certain investigative measures must, in accordance with national law, first be authorised by a judicial authority when they involve an interference in the fundamental rights of the person concerned (paras 60-62);
- Moreover, this interpretation ensures that, wherean issuing authority withinthe meaning of Article 2(c)(ii) EIO DIR proposes several investigative measures, some requiring authorisation by an investigating judge and others not, a single EIO is issued for all of those investigative measures. It also facilities possible exchanges between the issuing and the executing authority under Article 6(3) or Article 10(4) EIO DIR (paras 63-64).

4. Conditions for issuing an EIO

The CJEU was called on to clarify the conditions for issuing an EIO for the transmission of evidence already in the possession of the executing authorities under Article 6 EIO DIR and found that it is not subject to the same conditions that apply in the issuing State in relation to the gathering of that evidence. Moreover, the issuing authority is not authorised to review the lawfulness of the separate procedure by which the executing Member State autonomously gathered the evidence sought to be transmitted (*M.N. (EncroChat)*).

4.1. Case C-670/22, *M.N. (EncroChat)*, judgment of 30 April 2024

- See also *infra*, 3.4 (Issuing authority, judicial authority), 5.1 (Admissibility of evidence) and 7.1 (Interception of telecommunications).
- ***Facts.*** See *supra*, 3.4 (Issuing authority, judicial authority).
- ***Main question.*** Does Article 6(1) EIO DIR preclude a public prosecutor from issuing an EIO for the transmission of evidence already in the possession of the competent authorities of the executing State where that evidence has been acquired followingthe interception, by those authorities, on the territory of the issuing State, of telecommunications of all the users of mobile phones that, through special software and modified hardware, enableend-to-endencrypted communication?
- ***CJEU's reply.*** **A public prosecutor can issue an EIO for the transmission of evidence already in the possession of the competent authorities of the executing State, acquired following the interception, by those authorities, on the territory of the issuing State, of telecommunications of all the users of encrypted mobile phones that, through special software and modified hardware, enable end-to-end encrypted communication, provided that the EIO satisfies all the conditions under the national law of the issuing State for the transmission of such evidence in a purely domestic situation in that State.** The CJEU's main arguments follow.
  - Under Article 6 EIO DIR, the issuing of an EIO is subject to the two following cumulative conditions that must be assessed by the issuing authority.
    - **Necessity and proportionality (Article 6(1)(a) EIO DIR).** This requires an assessment – in the light of the law of the issuing State only – on whether the issuing of the EIO is necessary and proportionate with respect to the purpose of the criminal proceedings that are brought or may be brought before a judicial authority in the issuing State (para 88). Therefore:
      - the existence, at the time of issuing the EIO, of a specific suspicion of a serious offence in respect of each person concerned is not required, unless such a requirement arises under the national law of the issuing State (para 89);
      - an EIO may also be issued where the integrity of the requested data cannot be verified because of the confidentiality of the technology used to intercept it, provided that the right to a fair trial is guaranteed in subsequent criminal proceedings; indeed, the integrity of the evidence transmittedmay be assessed only in the subsequent criminal proceedings, when the competent authorities actually havethe evidence in question at their disposal (para 90).

- **The transmission of the evidence could have been ordered under the same conditions in a similar domestic case (Article 6(1)(b) EIO DIR).** This means that the determinationof the precise conditions required for the issuing of the EIO depends only on the national law of the issuing State (para 92). Therefore:
  - the issuing of an EIO to obtain evidence already in the possession of the executing State and concerning the communications of users of encrypted mobile phones is subject to the same conditions as those that apply to the transmission of such data in a purely domestic case (para 94);
  - by contrast, the issuing of such an EIO is not subject to the same substantive conditions as those that apply in the issuing State inrelation to thegathering of that evidence (para 96);
  - Article 6(1)(b) EIO DIR seeks to ensure that the rules and procedures of the issuing State's law are not circumvented; it does not appear that the gathering and transmission of the evidence would have had that purpose, but it is for the referring court to ascertain this (para 97);
  - the fact that the executing State gatheredevidence on the territory of the issuing State and in its interest is irrelevant (para 98).

- When issuing an EIO for the transmission of evidence already in the possession of the executing State, the issuing authority is not authorised to review the lawfulness of the separate procedure by which the executing Member State gathered the evidence sought to be transmitted. This is because the EIO is based on the principles of mutual recognition and mutual trust, hence on a rebuttable presumption that other Member States comply with EU law and fundamental rights (paras 99–100, with reference to *Staatsanwaltschaft Wien (Falsified transfer orders)*) ([6]).
- The EIO DIR guarantees a judicial reviewof compliance with fundamental rights:
  - Article 14(1) EIO DIR requires Member States to ensure that legal remedies, equivalent to those available in a similar domestic case, are applicable to the investigative measure to which an EIO relates; in that context, it is for the competent court to verify that the conditions for issuing an EIO are satisfied and, if not, to draw the appropriate conclusions as required undernational law (paras 102–104);
  - Article 14(7) EIO DIR requires Member States to ensure that, in the criminal proceedings initiated in the issuing State, the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained through that EIO (para 104); however, if a court takes the view that a party is not in a position to comment effectively on a piece of evidence that is likely to have a preponderant influence on the findings of fact, that court must find an infringement of the right to a fair trial and exclude that evidence (paras 104–105, with reference to *Prokuratuur (Conditions of access to data relating to electronic communications)* ([7]).

(6) See also Case C-281/22, *G. K. and Others (European Public Prosecutor's Office)*, judgment of 21 December 2023, para 64.
(7) CJEU, Case C-746/18, *Prokuratuur (Conditions of access to data relating to electronic communications)*, judgment of 2 March 2021, on the interpretation of Article 15(1) of Directive 2002/58, read in the light of Articles 7, 8 and 11 and Article 52(1) CFR.

5. Admissibility of evidence

Even though the admissibility of evidence gathered in violation of EU law is to be regulated by national law, Member States must ensure the fundamental right to a fair trial under Article 47 CFR when assessing evidence obtained through an EIO. Therefore, the CJEU established an exclusionary rule according to which national courts are required to disregard information and evidence that is likely to have a preponderant influence on the findings of fact when the accused is not in a position to comment effectively on said evidence (*M.N. (EncroChat)*).

5.1. Case C-670/22, *M.N. (EncroChat)*, judgment of 30 April 2024

- See also *infra*, 3.4 (Issuing authority, judicial authority), 4.1 (Conditions for issuing an EIO) and 7.1 (Interception of telecommunications).
- ***Facts.*** See *supra*, 3.4 (Issuing authority, judicial authority).
- ***Main question.*** Does the principle of effectiveness require national courts to disregard, in criminal proceedings against a person suspected of having committed criminal offences, information and evidence obtained in breach of the requirements of EU law?
- ***CJEU's reply.*** **Under Article 14(7) EIO DIR, in criminal proceedings against a person suspected of having committed criminal offences, national criminal courts are required to disregard information and evidence if that person is not in a position to comment effectively on that information and evidence and said evidence is likely to have a preponderant influence on the findings of fact.** The CJEU's main arguments follow.
  - As a preliminary point, there is no need for this question to be answered unless the referring court concludes that the EIOs were made unlawfully (para 127).
  - As EU law currently stands, it is, in principle, for national law alone to determine the rules on the admissibility and assessment in criminal proceedings of evidence obtained in a manner contrary to EU law. In accordance with the principle of procedural autonomy, it is for national laws to establish procedural rules for actions intended to safeguard the rights that individuals derive from EU law. Those rules must be no less favourable than the rules governing similar domestic actions (the principle of equivalence) and must not render impossible in practice or excessively difficult the exercise of rights conferred by EU law (the principle of effectiveness) (paras 28–29, with reference to *La Quadrature du Net and Others*) ([8]).
  - However, Article 14(7) EIO DIR expressly requires Member States to ensure that, without prejudice to the application of national procedural rules, the rights of the defence and the fairness of the proceedings are respected in criminal proceedings in the issuing State when assessing evidence obtained through an EIO. This means that evidence on which a party is not in a position to comment effectively must beexcludedfrom the criminalproceedings (para 130).

(8) CJEU, Case C-511/18, *La Quadrature du Net and Others*, judgment of 6 October 2020, on the interpretation of Article 15(1) of Directive 2002/58, read in the light of Articles 7, 8 and 11 and Article 52(1) CFR.

6. Legal remedies

The CJEU clarified that a description of the legal remedies provided by national legislation against the issuing of an EIO must not be included in the EIO form by the issuing authority (*Gavanozov*). Subsequently, it ruled that legal remedies against the issuing of an EIO for carrying out searches, seizures and the hearing of a witness via videoconference must be available to the person concerned in the issuing State ([9]). In the absence of any legal remedy, Member States are not allowed to issue those EIOs (*Gavanozov II*).

6.1. Case C-324/17, *Gavanozov*, judgment of 24 October 2019

- ***Facts.*** In the Bulgarian criminal proceedings against Mr Gavanozov for participating in a criminal organisation formed for the purpose of committing tax offences, the Bulgarian court competent in the case intended to issue an EIO to Czechia requesting searches and seizures of the residential and business premises of Y, along with the hearing via video conferencing of Y as a witness. However, the court encountered difficulties completing Section J of the EIO form, as Bulgarian law does not provide for any legal remedy, either directly as an appeal against a court decision or indirectly by means of a separate claim for damages, against decisions orderinga search, a seizure or the hearing of witnesses. Therefore, being uncertain about the compatibility between Bulgarian law and Article 14(1) and (2) EIO DIR on legal remedies, the Bulgarian court referred the issue to the CJEU.
- ***Main question*.** Does Article 5(1) EIO DIR, read in conjunction with Section J of the form referred to in Annex A, require the authority issuing an EIO to include in that section a description of the legal remedies, if any, provided for in its Member State against the issuing of such an order?
- ***CJEU's reply*. The judicial authority issuing an EIO is not required to include in Section J of the form set out in Annex A to the EIO DIRa description of the legal remedies, if any, provided for in its Member State against the issuing of such an order.** The CJEU's main arguments follow.
  - Under Article 5(1) EIO DIR, the issuing of an EIO presupposes the completion and signing of the form referred to in Annex A.
  - A description of the legal remedy must be includedin Point 1 of Section J of the EIO form only if a legal remedy has been sought against an EIO (paras 28 and 32):
    - the use in Point 1 of Section J of the wording 'if so' and 'please provide further details' show that the executing authority is to be informed of any action brought against an EIO that had been forwarded to it and not more generally of the legal remedies, if any, that are provided for in the issuing Member State againstthe issuing of an EIO (para 29);
    - Point 2 of Section J of the EIO form, which requires the issuing authority to specify the name and contact details of the competent authority of the issuing Member State that is able to give additional information about the legal remedies in that Member State, would serve no purpose if the EIO already includes an abstract description of the legal remedies available in the issuing Member State againstthe issuing of an EIO (paras 30–31);

(9) In Case C-292/23, *EPPO (Judicial review of procedural acts)*, judgment of 8 April 2025, in relation to the judicial review of the decision to summon a witness taken by the European Public Prosecutor's Office (EPPO), the Court clarified that the right to effective judicial protection under Article 47 CFR does not require a specific direct legal remedy for challenging that act, but that it is satisfied if the judicial review is carried out by the criminal trial court as an incidental question (see, in particular, paras 76–80).

- under Article 14(5) EIO DIR, the issuing and the executing authorities must inform each other about the legal remedies sought against the issuing, the recognition or the execution of an EIO (para 34);
- this interpretation makes it possible to fulfil the aim of the EIO DIR to facilitate and accelerate judicial cooperation between Member States based on the principles of mutual trust and mutual recognition: the introduction of the form is intended to provide the executing authority with the minimum official information required to enable it to adopt the decision on the recognition or execution of the EIO in question and, as appropriate, to carry out the measure requested within the applicable time limits (paras 35–36).

- Therefore, it is not necessary, in the present case, to interpret Article 14 EIO DIR to determine whether it precludes national legislation that does not provide for any legal remedy against the substantive grounds for issuing an EIO requesting a search, a seizure of specific items or the hearing of a witness (para 37).

6.2. Case C-852/19, *Gavanozov II*, judgment of 11 November 2021

- ***Facts.*** Following the judgment of the CJEU in *Gavanozov* (see *supra*, 6.1), the same Bulgarian court harboured doubts as to whether it could issue an EIO for searches, seizures and the hearing of witnesses, on the ground that Bulgarian legislation does not allow for any legal remedies either against those investigative measures, or against the issuing of an EIO issued for that purpose. Therefore, it referred a question to the CJEU.
- ***Main questions.*** Do Article 1(4) and Article 14(1) to (4) EIO DIR, read in the light of recitals 18 and 22 and Articles 7 and 47 CFR, read in conjunction with Articles 8 and 13 ECHR, preclude national legislation that does not provide for any legal remedy against the issuing of an EIO for the carrying out of searches, seizures and the hearing of a witness via videoconference?
- ***CJEU's reply.*** **Article 14 EIO DIR, read in conjunction with Article 24(7) EIO DIR and Article 47 CFR, precludes national legislation that does not provide for any legal remedy against the issuing of an EIO for searches, seizures and the hearing of witnesses via videoconference. In such circumstances, Article 6 EIO DIR, read in conjunction with Article 47 CFR and Article 4(3) TEU, does not allow the competent authority of a Member State to issue an EIO.** The CJEU's main arguments follow.
  - Article 14(1) EIO DIR requires Member States to ensure that legal remedies at least equivalent to those available in a similar domestic case are applicable to the investigative measures indicated in the EIO, but it does not require Member Statesto provide additional legal remedies to those that exist in a similar domestic case (paras 25–27).
  - However, when Member States implement EU law, such as the EIO DIR, they are required to comply with Article 47 CFR, which guarantees the right to an effective remedy before a tribunal against violations of rights under EU law (paras 28–30).
  - As regards EIOs for searches and seizures, the issuing Member State must ensure that the persons concerned by its execution have a remedy available before a court of the same Member State that enables them to contest the need for, and lawfulness of, that EIO, at the very least having regard to the substantive reasons for issuing such an EIO (para 41):
    - searches and seizures constitute interferences with the right to respect for private and family life, home and communications under Article 7 CFR, and the right to property under Article 17(1) CFR; therefore, any person who wishes to rely on the protection of those

provisions must be accorded the right to an effective remedy under Article 47 CFR (paras 31–32);
    - Article 47 CFR, in line with Article 13 ECHR, requires Member States to provide in their national legal systems to the persons concerned by such investigative measures appropriate legal remedies enabling them, first, to contest the need for, and lawfulness of, those measures and, second, to request appropriate redress if those measures have been unlawfully ordered or carried out (paras 33–34);
    - in the context of an EIO, this requires a legal remedy against the EIO by which the judicial authority of the issuing Member State orders that those investigative measures be carried out in another Member State on the basis of the principle of mutual recognition (paras 35–39);
    - under Article 14(2) EIO DIR, the substantive reasons for issuing an EIO may be challenged only in the issuing Member State (para 40).
- As regards an EIO for the hearing of a witness via videoconference, the issuing Member State must ensure that any person who has been subject to an obligation to presenthimself or herself for being heard, or to answer questions during such a hearing, has a remedy before a court of that Member State in order to challenge, at the very least, the substantive reasons for issuing such an EIO (para 49):
    - Article 24(7) EIO DIR implies that the refusal to testify in the context of the execution of an EIO for the hearing of a witness via videoconference could have significant consequences for the person concerned on the basis of the law of the executing Member State, as that person could be required to appear at the hearing and be obliged to answer questions, failing which penalties could be imposed (paras 43–44);
    - according to settled case-law, protection against arbitrary or disproportionateintervention by public authorities in the sphere of private activities constitutes a generalprinciple of EU law that may be relied upon as a right guaranteed by EU law, for the purposes of Article 47 CFR, in order to challenge before a court an act adversely affecting that person, such as an order to provide information or a penalty imposed on the ground of non-compliance with that order (paras 45–46);
    - the execution of an EIO for the hearing of a witness via videoconference is likely to adversely affect the person concerned, and that person must therefore have a legal remedy available against such a decision that orders the execution of such measures; however, under Article 14(2) EIO DIR, the courts of the executing Member State willnot have jurisdiction to examine the substantive reasons for that EIO (para 47).
- The absence of any legal remedies in the issuing Member State against an EIO for searches, seizures and the hearing of a witness via videoconference constitutes an infringement of the right to an effective remedy under Article 47 CFR, which rules out the possibility of mutual recognition and thus also the possibility of issuing an EIO (paras 56 and 62):
    - even though Article 6 EIO DIR on the conditions for issuing an EIO does not mention the taking into account of the rights of the persons concerned other than the suspect or the accused, the EIO procedure is governed by the principle of mutual recognition, which is based on mutual trust and a presumption of compliance by other Member States with EU fundamental rights (paras 52–54);
    - in the context of an EIO, in light of the essential role of the principle of mutual recognition, ensuring compliance withfundamental rights lies primarily with the issuing Member State,

which must create the conditions under which the executing authority will be able to usefully provide its assistance in accordance with EU law (paras 57–58);

- the refusal ground based on fundamental rights under Article 11(1)(f) EIO DIR allows executing authorities to depart from the principle that EIOs are to be executed exceptionally, after an assessment on a case-by-case basis, where there are substantial grounds to believe that the execution of the EIO would be incompatible with the fundamental rights guaranteed in particular by the CFR; however, if there are no remedies available in the issuing State, the application of that provision would become systematic and this would be contrary to both the common sense of the EIO DIR and the principle of mutual trust (para 59).

7. Interception of telecommunications

The CJEU specified that the concept of 'interception of telecommunications' (Articles 30 and 31 EIO DIR) includes not only telephone wiretapping but also the infiltration of terminal devices for gathering traffic, location and communication data of an internet-based communication service. Therefore, such measures are also subject to the notification duty under Article31 EIO DIR, using the form provided in AnnexC, where they target users locatedon the territory of another Member State and technical assistance from the latter Member State is not required. The CJEU clarified that such notification duty also protects the rights of persons affected by such a measure, including in relation to the use of the data for the purposes of criminal prosecution in the notified Member State (*M.N. (EncroChat)*).

7.1. Case C-670/22, *M.N. (EncroChat)*, judgment of 30 April 2024

- See also *supra*, 3.4 (Issuing authority, judicial authority), 4.1 (Conditions for issuing an EIO) and 5.1 (Admissibility of evidence).
- ***Facts.*** See *supra,* 3.4 (Issuing authority, judicial authority).
- ***Main questions.*** Does a measure entailing the infiltration of terminal devices for the purpose of gathering the traffic, location and communication data of an internet-basedcommunication service constitute an 'interception of telecommunications' within the meaning of Article 31 EIO DIR, for which notification must be made to a judge of the Member State on whose territory the subject of the interception is located? Is Article 31 EIO DIR intended to protect the rights of users affected by the interception of telecommunications?
- ***CJEU's replies.***
- **The infiltration of terminal devices for gathering the traffic, location and communication data of an internet-based communication service constitutes an 'interception of telecommunications' within the meaning of Article 31 EIO DIR.**
  - The concept of 'telecommunications' must be given an independentand uniform interpretation in EU law, having regard not only to the wording of this provision, but also to the context in which it occurs and the objectives pursued by the rules of which it is part (paras 109–110, with reference to *Staatsanwaltschaft Wien (Falsified transfer orders)*):
    - first, as regards the wording of Article 31(1) EIO DIR, the term 'telecommunications' refers, in its ordinary meaning, to all processes for the remote transmission of information (para 111);
    - secondly, as regards the context, Article 31(2) EIO DIR specifies that notification is to be made by using the form set out in Annex C EIO DIR, which, in its Point B(III) under the heading 'Target of the interception', envisages a telephone number and an IP address or email address; that the term 'telecommunications' is to be understood in its broad sense is further confirmed by Article 31(3), which envisages, generally, 'any material' already intercepted (para 112);
    - thirdly, as regards the objective of Article 31 EIO DIR, recital 30 EIO DIR provides that the possibilities for cooperating should not be limited to thecontent of the telecommunications, but could also cover collection of traffic and location data associated with such telecommunications (para 113).

- **The intercepting Member State must notify said measure to the authority designated for that purpose by the Member State on whose territory the subject of the interception is located or to any authority of the notified Member State that the intercepting Member State considers appropriate.**
  - Article 31(1) EIO DIR merely refers to the 'competent authority of the notified Member State', without specifying whetherit should be administrative or judicial (para 115).
  - That authority is not included in the information listed in Article 33 EIO DIR of which Member States need to notify the European Commission. Moreover, it is apparent from the form in Annex C, which must be used in order to notify the 'interception of telecommunications' within the meaning of Article 31(1) EIO DIR, that the only piece of information that must be provided in that respect on that form is the 'notified Member State' (para 116).
  - It is for each Member State to designate the authority that is competent to receive the notification. Should the intercepting Member State not be in a position to identify thecompetent authority of the notified Member State, that notification could be submitted to any authority of the notified Member State that the intercepting Member State considers appropriate for that purpose (para 117).
  - If the authority that receives thenotification is not the competent authority underthe law of the notified Member State, it must forward the notification on its own initiative to the competent authority, which may give notice that the interception may not be carried out or is to be terminated if the interception would not be authorised in a similar domestic case (para 118).
- **Article 31 EIO DIR also aims to protect the rights of those users affected by the interception of telecommunications.**
  - Unlike the 'interceptionof telecommunications withthe technicalassistance of another Member State' (Article 30 EIO DIR), interceptions that do not require technical assistance from the Member State on whose territory the subject of the interception is located (Article 31 EIO DIR) are not covered by an EIO; thus, the conditions and guarantees that circumscribe an EIO do not apply (para 121).
  - Pursuant to Article 31(3) EIO DIR, the competent authority of the notified Member State 'may', where the interception wouldnot be authorised in a similar domestic case, notify thecompetent authority of the intercepting Member Statethat thatinterception may not be carried out or is to be terminated, or, where appropriate, thatany material already interceptedmay not be used, or may only be used under conditions which it is to specify (para 122).
  - The use of the verb 'may' implies that the competent authority of the notified Member State has discretion, the exercise of which must be justified by the fact that such an interception would not be authorised in a similar domestic case (para 123).
  - Article 31 EIO DIR thus aims not only to guarantee respect for the sovereignty of the notified Member State but also to ensure that the guaranteed level of protection in that Member State with regard to the interception of telecommunications is not undermined. Insofar as the interception of telecommunications amounts to an interference with the right to respect for private life under Article 7 CFR, Article 31 EIO DIR also aims to protect the rights of persons affected by such a measure, including in relation to the use of the data for the purposes of criminal prosecution in the notified Member State (para 124).

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