

# AG: High Hurdles for Executing Authority to Refuse Videoconference Hearing

Thomas Wahl

On 26 June 2025, Advocate General (AG) *Athanasios Rantos* issued his [opinion](#) in the case "*Bissilli*" (Case C-325/24). In this case, the *Tribunale ordinario di Firenze* (District Court, Florence, Italy) wishes to clarify the lawfulness of a refusal by Belgian authorities to execute a European Investigation Order (EIO) issued by the Florence court. Belgian judicial authorities considered that both the Italian request for a hearing by videoconference of the accused person and his temporary transfer to Italy cannot be authorised.

## Facts of the case and questions referred

The District Court of Florence is conducting criminal proceedings against HG for his participation in a criminal organisation and drug trafficking. Given that HG is in custody in Belgium, it issued an EIO requesting from the Belgian judicial authorities to hear HG, as the accused person, via videoconference in accordance with Art. 24 of [Directive 2014/41](#) regarding the European Investigation Order in criminal matters (EIO Directive). The Florence court argued that the purpose of this request was twofold: first, gathering evidence, by means of the accused person's examination and, second, enabling that person to participate in his trial. In this context, the Florence Court pointed out that the videoconference hearing was an effective alternative to a European Arrest Warrant (EAW), given that the conditions for issuing the latter were no longer met. Moreover, the referring court requested a temporary transfer to Italy in accordance with Art. 22 of the EIO Directive, as an alternative to the hearing by videoconference.

The Belgian judicial authorities refused to execute that EIO, arguing that the investigative measure requested did not exist under Belgian law and that the appearance of the accused person by videoconference would, under that same national law, be contrary to the fundamental right to a fair trial. The alternative request for a temporary transfer was also refused on the ground that the hearing of the accused person at the trial did not constitute an investigative measure under Belgian law.

Considering that the position of the Belgian judicial authorities did not comply with the provisions of the EIO Directive which exhaustively identify the grounds for non-recognition or non-execution of an EIO, the Florence court referred several questions for a preliminary ruling concerning the compatibility of those refusals. The questions concern the possibilities and leeway of the executing state to refuse specific measures regulated in the EIO Directive, i.e., videoconference hearings of accused persons and the temporary transfer of persons held in custody to the issuing State, the relationship between the various grounds for refusal provided for in the EIO Directive, and the compatibility of the appearance of an accused person by videoconference with regard to fundamental rights.

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## The Advocate General's Opinion

AG *Rantos* takes the view that the Belgian authorities had to take into account the justifications put forward by Italy and they should have applied the principle of mutual recognition more rigorously. In particular, there are high hurdles for the executing authorities to reject the authorisation for a hearing of the accused person by videoconference. In detail, he proposes that the ECJ provides guidance as follows:

- The dual purpose put forward in an EIO request to gather evidence by the examination of an accused person and to ensure his presence in the trial does not preclude the issuance of an EIO for the hearing by videoconference;
  - With regard to the relationship between Art. 24 and Art. 10 of the EIO Directive, an executing judicial authority cannot refuse the execution of an EIO for a videoconference hearing of the accused person during his or her trial on the ground that such a measure would not be authorised in a similar domestic case;
  - The videoconference of an accused person who is in custody in the executing State cannot be refused by the executing authority on the basis of Art. 11(1)(f) EIO Directive unless there are substantial grounds to believe, on the basis of actual and specific indications, that that hearing would infringe the fundamental rights of the accused person, in particular his or her right to a fair trial and his or her rights of defence in accordance with the second paragraph of Art. 47 and Art. 48(2) of the Charter of Fundamental Rights of the EU;
  - The specific refusal ground in Art. 24(2)(b) of the EIO Directive, namely that the videoconference hearing is contrary to the fundamental principles of the law of the executing State, may be based on the executing Member State's general directives, which are neither binding nor absolute; however, the executing authority must carry out an examination which takes account of all the relevant circumstances of the case, including the requirements contained in the national law of the issuing State to guarantee the rights of defence of the accused person;
  - The issuing authority can choose to hear the accused person via videoconference or request his temporary transfer pursuant to Art. 22 of the EIO Directive; the temporary transfer must, however, serve at least in part the purpose to gather evidence.
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