

AG: Tax Authority Cannot Issue EIO without Prior Judicial Validation

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News

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In his [Opinion of 11 March 2021](#) in Case C-66/20 (*XK / Finanzamt für Steuerstrafsachen und Steuerfahndung Münster*), Advocate General (AG) *Sánchez-Bordona* rejects the authorisation of administrative authorities – despite exercising powers as a prosecution office in criminal tax matters – to issue a European Investigation Order (EIO) without the involvement of a judge, court or public prosecutor. Even if the tax authority performs investigative tasks, independence from the executive cannot be guaranteed due to the administrative hierarchy and the special interest in tax matters. The EIO of a national administrative authority must therefore be validated by a judge or public prosecutor in accordance with Art. 2 lit. c) ii) of Directive 2014/41/EU.

According to the AG, the purpose of the validation procedure (as established by the EIO Directive) would be countered if a Member States could easily allow the administrative authorities belonging to the executive – by equating them with the judicial authorities – to transmit such an order which had not been validated by the judicial authorities (including the public prosecutor's office).

The AG also points out that, in Case C-452/16 PPU, the CJEU had extended the term “judicial authority” to all authorities participating in the administration of criminal justice while explicitly excluding administrative authorities that are part of the executive. In certain countries, the public prosecutor's office is also subject to individual instructions by the executive, but unlike administrative authorities – as organs of the executive – it has an autonomous status. In an investigation of tax evasion, the tax authority of Münster, Germany felt entitled to transmit an EIO requesting the search of business premises directly to an Italian public prosecutor's office, since under German law the tax authorities assume the investigative power of the public prosecutor's office.

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