

CJEU: German Public Prosecutor's Office Considered "Issuing Judicial Authority" in the EIO Context

News

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The German public prosecutor's offices may issue European Investigation Orders (EIOs) despite being contingent upon individual instructions from the executive. The Grand Chamber of the CJEU came to this [conclusion on 8 December 2020 in Case C-584/19 \(Staatsanwaltschaft Wien v A. and Others\)](#), following the opinion of Advocate General *Campos Sánchez-Bordona* (→ [eucrim 2/2020, 113](#)).

The underlying case concerned an EIO from the Hamburg Public Prosecutor's Office to the Vienna Public Prosecutor's Office, with the aim of obtaining account records of an Austrian bank. In particular, the CJEU had to deal with the question (referred to it by the Vienna Regional Court for criminal matters) of whether its case law on the European Arrest Warrant (EAW) (cf. [Joined Cases C-508/18 \(OG\) and C-82/19 PPU \(PI\)](#) = [eucrim 1/2019, 31-32](#)), according to which the German Public Prosecutor's Office was not considered sufficiently independent to issue an EAW, should be applied to the interpretation of Directive 2014/41/EU on the EIO. The CJEU denied this and justified its conclusion by clarifying essential differences between the FD EAW and the EIO Directive:

- The EIO Directive expressly specifies the concept of "issuing judicial authority" where the public prosecutor is named next to the judge, court, or investigative judge entitled to issue EIOs. The public prosecutor is also one of the authorities empowered to validate an EIO stemming from other authorities that are not a judge, court, investigative judge, or prosecutor;
- The issuance and validation of an EIO and its execution are subject to distinct procedures and guarantees that ensure the fundamental rights protection of the person concerned;
- The EIO and the EAW pursue different objectives. While an EAW strongly interferes with the right to liberty of the person concerned, an EIO's investigative measures are less intrusive.

In the light of these differences, the CJEU concluded that the criteria for the independence of the issuing judicial authority in the context of an EAW cannot be transferred to the EIO. By contrast, the EIO also covers the public prosecutor's offices of a Member State, even though they are in a relationship of legal subordination to the executive of that Member State, which exposes them to the risk of being directly or indirectly subject to orders or individual instructions from the executive when adopting an EIO.

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