

CJEU: Public Prosecutor Executing EIO Cannot Request Preliminary Ruling

News

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On 2 September 2021, the CJEU declared the request for a preliminary ruling by the Public Prosecutor's Office of Trento, Italy inadmissible. By its request, the Public Prosecutor's Office of Trento wished to know whether the German tax authority, which has also investigative powers in criminal tax matters pursuant to the German Fiscal Code, can issue European Investigation Orders (EIOs) without validation by a judge or public prosecutor (case C-66/20).

The judges in Luxembourg argued that when the office of an Italian public prosecutor, such as the Public Prosecutor's Office, Trento, acts as an authority for the execution of an EIO within the meaning of Art. 2(d) of Directive 2014/41, it is not called upon to rule on a dispute and cannot, therefore, be regarded as exercising a judicial function. As a consequence, the referring body cannot be recognised as a "court or tribunal" within the meaning of Art. 267 TFEU.

With its judgment, the CJEU departs from the Advocate General's opinion in this case. He advocated admissibility and advised the ECJ to rule on the merits (→ [eucrim 1/2021, 37](#)). The question now remains unanswered.

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