

ECJ: EIO Can Be Issued Instead of EAW

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News

In its [judgment](#) of 18 December 2025 in [Case C-325/24 \(Bissilli\)](#), the European Court of Justice (ECJ) ruled that a European Investigation Order (EIO) can be issued for the temporary transfer or for a videoconference hearing of an accused person held in custody abroad, if the EIO has an evidential objective and is necessary for the purpose of gathering evidence. The judges in Luxembourg also clarified the relationship between the various refusal grounds set out in Directive 2014/41 regarding the European Investigation Order in criminal matters (EIO Directive).

Background to the case and questions referred

In the case at issue, the Tribunale ordinario di Firenze (District Court of Florence, Italy) is conducting criminal proceedings against HG on charges of participation in a criminal organisation and drug trafficking. The proceedings were conducted in absence of HG but he was represented by a lawyer. HG's lawyer requested that he be heard at the trial, as he is serving a custodial sentence in Belgium. Consequently, the Florence court issued an EIO for the purpose of hearing HG by videoconference. However, the Belgian authorities refused to execute the EIO, arguing that Belgian law does not allow for the videoconferencing of accused persons during their trial, and that the appearance of an accused person at his/her trial by videoconference is contrary to the right to a fair trial (and thus contrary to the fundamental principles of Belgian law). Belgian authorities also declined HG's temporary transfer to Italy.

In essence, the Florence District Court sought guidance from the ECJ as to whether it is entitled to issue EIOs for the accused person's hearing by videoconference or his temporary transfer, given that these measures would not only ensure HG's appearance at trial but also have an evidential purpose. In addition, the Florence District Court asked whether the Belgian authorities could justify refusing to execute such EIOs without examining the concrete circumstance of the case and the safeguards enshrined in Italian law.

The ECJ's reasoning: EIO or EAW?

First, the ECJ considered whether the Italian judicial authorities are entitled to issue an EIO if the measures in question - hearing an accused person by videoconference or temporarily transferring that person (Arts. 3, 22, and 24 of the EIO Directive) - have the purpose of both to obtain evidence and to enable the accused person's appearance at his/her trial. Or would such an EIO circumvent the surrender rules on the basis of the European Arrest Warrant (EAW)?

The ECJ concluded that, based on the wording of the relevant provisions in the EIO Directive, their context and the Directive's objectives, the authorities of EU Member States are not precluded from issuing an EIO if

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the investigative measures has a purpose of gathering evidence and incidentally ensures the presence of the accused at their trial. However, the ECJ makes an important clarification: it can be deduced from both Art. 22 and Art. 24 of the EIO Directive that an EIO may only serve as the basis for the accused's participation in the main hearing for as long as is necessary to obtain evidence.

Refusal to hear an accused person by videoconference?

Regarding the various grounds giving the possibility for the executing authorities to refuse an EIO concerning the organisation of a hearing by videoconference of the accused person during the criminal trial, the ECJ clarified the following points:

- Art. 24(2) of the EIO Directive provides for specific grounds for the non-recognition of a videoconference concerning suspected or accused persons. This ground would have no real utility if a refusal could also be based on Art. 10(5) of the EIO Directive, which allows for refusal if the requested measure does not exist or is not available in a similar domestic case in the executing Member State.
- However, Art. 24(2) of the EIO Directive does not deprive the executing authority from applying the refusal grounds established in Art. 11(1), in particular Art. 11(1)(h).
- The refusal ground in Art. 24(2)(b), which states that the execution of a videoconference concerning a suspected or accused person would be contrary to the fundamental principles of the law of the executing State, is independent from the refusal ground in Art. 11(1)(f), which relates to a videoconference that would run counter fundamental rights.

Lastly, the ECJ ruled that the executing State may adopt general guidelines for applying the refusal ground in Art. 24(2)(b) - refusal due to fundamental principles of the law of the executing State - provided that the executing authorities carry out an individual examination considering all the relevant circumstances of the case.

Put in focus

As far as can be seen, the ruling in *Bissilli* is the ECJ's first judgment that tackles the question of whether a European Investigation Order can be issued instead of a European Arrest Warrant. This is important as discussions have gained momentum favouring the increased possibilities to hear defendants who are staying abroad via videoconference in the course of their criminal proceedings, including the trial. It remains to be seen whether the delimitation focusing on the purpose of the measure can be implemented in practice without major distortions.

In the specific case at hand, the ECJ paved the way for the Italian court to issue an EIO allowing the court to hear the defendant either via videoconference or via his temporary transfer. The judges in Luxembourg also made clear that the executing authorities cannot base their decision of refusal on general justifications or general guidelines, including those derived from the case law of supreme or constitutional courts. However, the ECJ's ruling does not answer all questions. For instance, it remains unclear when the "purpose of gathering evidence" as the essential element of an EIO is achieved and when a hearing shifts "to a transfer for the purposes of prosecution", as stated in para. 59 of the judgement.

Furthermore, the ECJ avoided making a clear statement on whether the Belgian judicial authorities can in effect refuse the execution of the EIO in question again. For example, the ECJ did not respond to the referring court's argument that a refusal is not possible due to fair trial considerations, given that Italian law provides sufficient procedural safeguards for hearings by videoconference for accused persons. The yardstick for verifying concerns relating to fundamental rights concerns remained unanswered.

In the specific case, the issues might be resolved as it was the defendant's lawyer who requested the hearing. Therefore, it would be contrary to his own interests if the EIO were refused again in the country "of his current residence".

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