

ECJ: Judicial Review under National Law Does Not Hinder Issuance of EIO by Administrative Authority

Thomas Wahl

The fact that an investigative measure must be authorised by a court under national law does not necessarily mean that a corresponding European Investigation Order (EIO) can only be issued by a court. According to the ECJ's ruling of 10 July 2025 in case C-635/23 (*WBS GmbH*), an administrative authority that investigates crimes can be treated as "issuing authority" within the meaning of Directive 2014/41 regarding the European Investigation Order in criminal matters (EIO Directive), even if certain investigative measures sought (involving an interference with the fundamental rights of the person concerned) must, in accordance with national law, first be authorised by a judicial authority.

Facts of the case and question referred

The question was posed to the judges in Luxembourg by the Higher Regional Court (HRC) of Berlin, Germany (*Kammergericht Berlin*). In the case at issue, the Latvian Office for Preventing and Combating Corruption (KNAB) is conducting criminal proceedings for large-scale fraud, large-scale unlawful waste of another person's property, forgery and use of forgery. Under Latvian law, KNAB is considered an administrative authority acting in its capacity as investigative authority in criminal proceedings. KNAB wished to search the business premises of the company WBS, situated in Germany. After having obtained the authorisation for the search by the Latvian investigative judge, KNAB issued an EIO to Germany for the hearing of witnesses and the search of the premises, which was validated by the Latvian Prosecutor, in accordance with Art. 2(c)(ii) EIO Directive. WBS opposed the submission of the evidence gathered in execution of the EIO before the HRC of Berlin. It argued that KNAB was not competent to issue the EIO, as the measure in question had to be ordered by a judge under Latvian law.

Therefore, the HRC of Berlin asked:

"Can an EIO concerning a measure reserved to the courts under the law of the issuing State be issued by another competent authority, within the meaning of Art. 2(c)(ii) EIO Directive, in collaboration with a non-judicial validating authority, if a court of the issuing State has previously authorised the investigative measure in compliance with the obligations provided for in that Directive to make assessments and state reasons?"

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The ECJ's ruling

The ECJ clarified that the first two conditions of [Art. 2\(c\)\(ii\) EIO Directive](#) are fulfilled, however the fulfillment of the third condition, i.e, whether the KNAB as administrative authority "is competent to order the gathering of evidence in accordance with national law", is in dispute. The ECJ mainly takes into account the context of which the provision forms part and argues that the following three points are in favour of KNAB being regarded as "competent issuing authority":

- It suffices for the verification of the necessity and proportionality under Art. 6(1)(a) EIO Directive if the measure(s) to be carried out are under the supervision of a court and the subsequent EIO was validated by a judicial authority as defined in Art. 2(c)(i) EIO Directive;
- This concept is also in line with Art. 6(1)(b) EIO Directive, which provides that the issuing authority may issue an EIO only where the investigative measure(s) referred to in that EIO could have been ordered under the same conditions in a similar domestic case;
- Regarding the relationship with Art. 2(c)(i), Art. 2(c)(ii) would be deprived of its effectiveness if non-judicial authorities could not be regarded as issuing authorities if investigative measures involving an interference in the fundamental rights of the persons concerned must first be authorised by a judicial authority and then only this authority could issue EIOs.

Furthermore, the ECJ stressed that the objectives of Directive 2014/41 support the result: Considering that the Directive identifies the issuing authority as being best placed to decide, on the basis of its knowledge of the details of the investigation concerned, which investigative measure is to be used and having in mind the objective that the Directive provides for a simplified and more effective procedure, "it seems justified that a national authority which is actually responsible for the criminal investigation can be characterised as an "issuing authority", within the meaning of Art. 2(c)(ii), even if certain investigative measures that it wishes to have carried out must, in accordance with national law, first be authorised by a judicial authority."

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