

ECJ Ruled on Material Scope of EIO Directive



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News

On 9 January 2025, the ECJ [rendered a judgment](#) on the material scope of [Directive 2014/41/EU](#) regarding the European Investigation Order in criminal matters (EIO Directive). The ECJ had to decide whether French authorities were to refuse the execution of a Spanish order that requested first to serve on an accused person an indictment related to her, accompanied by an order that that person be remanded in custody and make a bail payment and, second, to allow that person to make observations on the matters set out in that indictment ([Case C-583/23, Delda](#)).

In essence, the ECJ had to define the concept of "investigative measure" for law enforcement purposes within the meaning of Arts. 1 and 3 of Directive 2014/41. Considering the wording of the term, its context and the purpose of the EIO, the ECJ clarified that the investigative measure must aim to ensure that the issuing Member State obtains "evidence". And evidence is identified as objects, documents or data pursuant to the EIO Directive.

In application of this definition, the ECJ concludes that neither an order by which a judicial authority of one Member State requests a judicial authority of another Member State to serve on a person an indictment relating to him/her nor an order to request a judicial authority of a Member State to remand a person in custody pending trial or to require the person concerned a bail payment, does constitute a European Investigation Order. An order by which a judicial authority of a Member State requests a judicial authority of another Member State to allow a person to make observations on the matters set out in the indictment relating to him/ her constitutes a European Investigation Order, in so far as that request for a hearing is intended to gather evidence. It had been up to the French authorities to check this intention with the issuing Spanish authority. If the Spanish authority had no objection, the request could have been partly executed.

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Published in
2024, Vol. 19(4) [euclid](#)
ISSN: 1862-6947
<https://euclid.eu>



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The project is co-financed by the [Union Anti-Fraud Programme \(UAFB\)](#), managed by the [European Anti-Fraud Office \(OLAF\)](#).



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