

First CJEU Judgment on European Investigation Order



Thomas Wahl

News

On 24 October 2019, the CJEU delivered its first judgment interpreting Directive 2014/41/EU regarding the European Investigation Order in criminal matters (*Case C-324/17 – Ivan Gazanov*). The case at issue dealt with the particularity of Bulgarian law that does not provide for any legal remedy against decisions ordering the search, seizure, and hearing of witnesses through a European Investigation Order. The referring Specialised Criminal Court, in essence, wanted to know whether the Bulgarian legislation, which (directly and indirectly) precludes a challenge to the substantive grounds of a court decision issuing an EIO, is in line with Art. 14 of the Directive (for the reference and the opinion of Advocate General Yves Bot, see [eucrim 1/2019](#), pp. 36-37).

The judges in Luxembourg decided to reformulate the question referred to and clarified that the referring court is actually uncertain as to how to complete Section J of the form set out in Annex A to the Directive, which is entitled “Legal remedies.” In this context, the CJEU stated that a description of the legal remedy must be included only if a legal remedy has been sought against an EIO. It is not necessary to include an abstract description of the legal remedies, if any, that are available in the issuing Member States against the issuing of an EIO. The CJEU is of the opinion that this interpretation results from the wording of Section J of the form in the Annex of the Directive as well as from the objectives pursued by the Directive.

Put in focus: The CJEU’s answer can be considered disappointing in view of the protection of defence rights. The judges in Luxembourg did not follow the more far-reaching opinion of the Advocate General. He had concluded that Art. 14 of the EIO Directive not only obliges the Member State to install legal remedies, which enable concerned persons to challenge the substantive reasons for issuing the EIO, but the use of the EIO by that Member State must be frozen until the respective legislation on legal remedies is in place. The CJEU actually reduced the dispute in the main proceedings to a mere formal question. According to the CJEU, it is not necessary to interpret Art. 14 “in the present case.” Thus, it implicitly backed the Bulgarian legislation, which does not foresee any legal remedy against the issuance of the EIO – to the detriment of the accused’s rights.

AUTHOR

Thomas Wahl

Senior Researcher
Max Planck Institute for the
Study of Crime, Security and
Law

ISSN: 1862-6947

<https://eucrim.eu>



About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and “criministrative” law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to eucrim-subscribe@csl.mpg.de to receive alerts for new releases of issues.

The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).



**Co-funded by
the European Union**