Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

9 January 2025 *

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Directive 2014/41/EU – European Investigation Order in criminal matters – Material scope – Concept of 'investigative measure' – Service of an indictment accompanied by an order that the person be remanded in custody pending trial and make a bail payment – Hearing of the accused person)

In Case C-583/23 [Delda], [i]

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, France), made by decision of 19 September 2023, received at the Court on 22 September 2023, in the proceedings on the recognition and execution of a European Investigation Order concerning

AK,

Other party:

Ministère public,

THE COURT (Fourth Chamber),

composed of C. Lycourgos (Rapporteur), President of the Third Chamber, acting as President of the Fourth Chamber, S. Rodin and O. Spineanu-Matei, Judges,

Advocate General: A.M. Collins,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– AK, by I. Zribi, avocate,

– the French Government, by R. Bénard, B. Dourthe and B. Fodda, acting as Agents,

– the Netherlands Government, by M.K. Bulterman and J.M. Hoogveld, acting as Agents,

* Language of the case: French.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

– the European Commission, by F. Blanc, H. Leupold and J. Vondung, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 October 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 1 and 3 of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ 2014 L 130, p. 1).

2 The request has been made in the context of a request for the execution, in France, of a European Investigation Order issued by the Spanish judicial authorities concerning AK.

Legal context

European Union law

The Convention of 29 May 2000

3 Article 5 of the Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ 2000 C 197, p. 3; 'the Convention of 29 May 2000'), entitled 'Sending and service of procedural documents', states in paragraph 1:

'Each Member State shall send procedural documents intended for persons who are in the territory of another Member State to them directly by post.'

Directive 2014/41

4 Recital 25 of Directive 2014/41 provides:

'This Directive sets out rules on carrying out, at all stages of criminal proceedings, including the trial phase, of an investigative measure, if needed with the participation of the person concerned with a view to collecting evidence. For example an EIO may be issued for the temporary transfer of that person to the issuing State or for the carrying out of a hearing by videoconference. However, where that person is to be transferred to another Member State for the purposes of prosecution, including bringing that person before a court for the purpose of the standing trial, a European Arrest Warrant (EAW) should be issued in accordance with Council Framework Decision 2002/584/JHA [of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1)]'.

5 Article 1(1) of that directive provides:

'A European Investigation Order (EIO) is a judicial decision which has been issued or validated by a judicial authority of a Member State ("the issuing State") to have one or several specific investigative

measure(s) carried out in another Member State ("the executing State") to obtain evidence in accordance with this Directive.

The EIO may also be issued for obtaining evidence that is already in the possession of the competent authorities of the executing State.'

6 Article 3 of that directive states:

'The EIO shall cover any investigative measure with the exception of the setting up of a joint investigation team and the gathering of evidence within such a team as provided in Article 13 of the Convention [of 29 May 2000] and in Council Framework Decision 2002/465/JHA [of 13 June 2002 on joint investigation teams (OJ 2002 L 162, p. 1)], other than for the purposes of applying, respectively, Article 13(8) of [that] Convention and Article 1(8) of [that framework decision].'

7 Article 9 of Directive 2014/41 provides:

'1. The executing authority shall recognise an EIO, transmitted in accordance with this Directive, without any further formality being required, and ensure its execution in the same way and under the same modalities as if the investigative measure concerned had been ordered by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution or one of the grounds for postponement provided for in this Directive.

2. The executing authority shall comply with the formalities and procedures expressly indicated by the issuing authority unless otherwise provided in this Directive and provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing State.

…

6. The issuing authority and executing authority may consult each other, by any appropriate means, with a view to facilitating the efficient application of this Article.'

8 Article 10(1) and (2) of that directive provides:

'1. The executing authority shall have, wherever possible, recourse to an investigative measure other than that provided for in the EIO where:

(a) the investigative measure indicated in the EIO does not exist under the law of the executing State; or

(b) the investigative measure indicated in the EIO would not be available in a similar domestic case.

2. Without prejudice to Article 11, paragraph (1) does not apply to the following investigative measures, which always have to be available under the law of the executing State:

…

(c) the hearing of a witness, expert, victim, suspected or accused person or third party in the territory of the executing State;

…’

9 Under Article 13 of that directive:

‘1. The executing authority shall, without undue delay, transfer the evidence obtained or already in the possession of the competent authorities of the executing State as a result of the execution of the EIO to the issuing State.

Where requested in the EIO and if possible under the law of the executing State, the evidence shall be immediately transferred to the competent authorities of the issuing State assisting in the execution of the EIO in accordance with Article 9(4).

…

4. Where the objects, documents, or data concerned are already relevant for other proceedings, the executing authority may, at the explicit request of and after consultations with the issuing authority, temporarily transfer the evidence on the condition that it be returned to the executing State as soon as it is no longer required in the issuing State or at any other time or occasion agreed between the competent authorities.’

10 Article 15(1) of that directive provides:

‘The recognition or execution of the EIO may be postponed in the executing State where:

…

(b) the objects, documents, or data concerned are already being used in other proceedings, until such time as they are no longer required for that purpose.’

11 Article 22(1) of Directive 2014/41 states:

‘An EIO may be issued for the temporary transfer of a person in custody in the executing State for the purpose of carrying out an investigative measure with a view to gathering evidence for which the presence of that person on the territory of the issuing State is required, provided that he shall be sent back within the period stipulated by the executing State.’

12 Article 23(1) of that directive is worded as follows:

‘An EIO may be issued for the temporary transfer of a person held in custody in the issuing State for the purpose of carrying out an investigative measure with a view to gathering evidence for which his presence on the territory of the executing State is required.’

13 Under Article 24(1) of that directive:

‘Where a person is in the territory of the executing State and has to be heard as a witness or expert by the competent authorities of the issuing State, the issuing authority may issue an EIO in order to hear the witness or expert by videoconference or other audiovisual transmission in accordance with paragraphs 5 to 7.

The issuing authority may also issue an EIO for the purpose of hearing a suspected or accused person by videoconference or other audiovisual transmission.’

14 The European Investigation Order form, which is set out in Annex A to that directive, includes, in particular, a section entitled 'Investigative measure(s) to be carried out', which contains several boxes to tick, amongst which the box 'Hearing suspected or accused person' and a section entitled 'Grounds for issuing the EIO', in which the judicial authority of the issuing Member State is invited to set out the reasons why that decision is issued.

French law

15 Article 694-16 of the code de procédure pénale (French Code of Criminal Procedure) provides:

'A European Investigation Order is a judicial decision issued by a Member State, "the issuing State", requesting that another Member State, "the executing State", through the use of forms common to all States, carry out investigations on its territory and within a certain time frame in order to obtain evidence relating to a criminal offence or to transmit evidence already in its possession.

The purpose of the investigation order may also be to prevent, temporarily, in the territory of the executing State, any act to destroy, alter, move, transfer or dispose of information which may be used as evidence.

Its purpose may likewise be the temporary transfer to the issuing State of a person held in custody in the executing State, to allow procedural measures to be carried out which require the presence of that person in the issuing State, or the temporary transfer to the executing State of a person held in custody in the issuing State for the purpose of participating in the investigations requested in the territory of that State.

The evidence referred to in the first two subparagraphs may also relate to the breach by a person of the obligations arising from a criminal conviction, even where that breach does not constitute an offence.'

16 Article 696-44 of that code provides:

'Where, in criminal proceedings taking place abroad, a foreign government deems it necessary for a procedural document or a judgment to be served on an individual residing in France, the document shall be sent in accordance with the formal requirements laid down in Articles 696-8 and 696-9, accompanied, where appropriate, by a translation in French. Service shall be made in person, at the request of the ministère public [(Public Prosecutor's Office)]. The original record of the service shall be returned to the requesting government via the same channel.'

The dispute in the main proceedings and the question referred for a preliminary ruling

17 On 1 March 2021, the Spanish judicial authorities issued a European Investigation Order addressed to the French judicial authorities to serve on AK, who was in custody in France, an indictment issued on 30 September 2009 by the Juzgado Central de Instrucción nº 4 de la Audiencia Nacional (Central Court of Preliminary Investigation No 4, National High Court, Spain) and for that person 'to state her case as to the matters in question' in the presence of her lawyer. That indictment included an order that the person be remanded in custody pending trial and requiring a bail payment of EUR 30 000.

18 On 19 July 2021, an investigating judge at the tribunal judiciaire de Paris (Court of Paris, France), served AK with that indictment in the presence of her lawyer, gave her and her lawyer a copy of that indictment in Spanish and took statements from her, all of which was minuted in the official

record. On 20 July 2021, AK lodged an application with the cour d'appel de Paris (Court of Appeal, Paris, France) for that hearing to be declared invalid, on the ground that the request made by the Spanish authorities did not constitute a European Investigation Order, as defined in Article 694-16 of the French Code of Criminal Procedure.

19 On 20 April 2022, the cour d'appel de Paris (Court of Appeal, Paris) rejected that application, holding, inter alia, that the Spanish judicial authorities had requested not only that the indictment be served on AK but also that AK be allowed 'to state her case as to the matters in question'. That court also noted, first, that the decision of the Spanish judicial authorities stated, in the section headed 'Grounds for issuing the European Investigation Order' that the measures requested were 'to verify whether offences have been committed and all the circumstances that may affect the classification and the guilt of offenders' and, second, that, even though those authorities did not tick the box 'Hearing [of] suspected or accused person', in the section 'Investigative measure(s) to be carried out', the Spanish authorities had clearly requested that the statements made by AK in relation to the offences which she is suspected of committing were obtained and formally recorded. The cour d'appel de Paris (Court of Appeal, Paris) took the view that, in requesting that AK explain her position regarding the facts, in the presence of her lawyer and in accordance with the rights of the defence, the Spanish judicial authorities were asking for investigations to be carried out for the purpose of obtaining evidence relating to a criminal offence.

20 AK brought an appeal against that judgment before the Cour de cassation (Court of Cassation, France), the referring court. She submitted that the purpose of issuing a European Investigation Order cannot be to announce the criminal charges being brought against a person and inform that person of the referral of the matter to a court of law, since communication of that information falls within the scope of other judicial cooperation instruments and in particular Article 696-44 of the Code of Criminal Procedure.

21 In the context of the proceedings before the Cour de cassation (Court of Cassation), the Advocate General at that court, by contrast, was of the view that the order issued by the Spanish judicial authorities contained investigative measures inextricably linked to the service of the indictment on AK and to the gathering of her comments by a judge in the presence of her lawyer in order to ensure compliance with her rights of defence, and that that order sought, therefore, to carry out investigations in order to obtain evidence relating to a criminal offence.

22 The referring court, which points out that Directive 2014/41 was transposed into the French legal order by Articles 694-15 et seq. of the Code of Criminal Procedure, observes that the Court has never ruled on the material scope of the European Investigation Order and, more specifically, on whether it includes the service of an indictment accompanied by an order that the person be remanded in custody pending trial and make a bail payment.

23 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Must Articles 1 and 3 of Directive 2014/41 be interpreted as allowing the judicial authorities of a Member State to issue or validate a European Investigation Order the purpose of which is, first, to serve on the person concerned an indictment, which also includes an incarceration order and an order to make a bail payment and, second, to hear that person so that he or she may, in the presence of his or her lawyer, make any relevant observations on the matters set out in the indictment?'

Procedure before the Court

24 In response to a request for information from the Court on 27 October 2023, the referring court stated that, on 23 November 2023, first, that AK had been surrendered to the Spanish judicial authorities on 9 September 2022, pursuant to three judgments of the cour d'appel de Paris (Court of Appeal, Paris) on 26 September 2018 and 9 October 2019 and, second, that the official record of the hearing of 19 July 2021 had been sent to the Spanish judicial authorities.

Consideration of the question referred

25 By its question, the referring court asks, in essence, whether Articles 1 and 3 of Directive 2014/41 must be interpreted as meaning that an order by which the judicial authority of one Member State asks the judicial authority of another Member State, first, to serve on the person concerned an indictment relating to him or 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, constitutes an investigative measure capable of being the object of a European Investigation Order, within the meaning of that directive.

26 Article 1 of Directive 2014/41 provides that a European Investigation Order is a judicial decision which has been issued or validated by a judicial authority of the issuing Member State to have one or several specific investigative measure(s) carried out in the executing Member State to obtain evidence. As regards Article 3 of that directive, it states that the European Investigation Order covers any investigative measure with the exception, in principle, of the setting up a joint investigation team and the gathering of evidence within such a team.

27 In that regard, it should be noted, in the first place, that Directive 2014/41 does not define what is meant by an 'investigative measure' within the meaning of Articles 1 and 3, nor is any reference made to the laws of the Member States to define that concept. That concept must therefore be given an autonomous interpretation in EU law, having regard not only to the wording of those provisions but also to the context in which they occur and the objectives pursued by the rules of which they are a part (see, to that effect, judgment of 30 April 2024, *M.N. (EncroChat)*, C-670/22, EU:C:2024:372, paragraph 109).

28 First, as regards the wording of Articles 1 and 3 of Directive 2014/41, the concept of 'investigative measure' for law enforcement purposes refers, in its ordinary meaning, to any investigative act intended to establish a criminal offence, the circumstances in which it was committed and the identity of the perpetrator. Such an interpretation is confirmed by the assertion contained, in particular, in Article 1, according to which the investigative measure must aim to ensure that the issuing Member State obtains 'evidence'.

29 Second, as the Advocate General noted, in essence, in points 28 to 30 of his Opinion, the context of Articles 1 and 3 of Directive 2014/41 supports that interpretation.

30 Thus, first of all, Article 10(2), like Articles 24 to 31 of Directive 2014/41, sets out a series of investigative measures which are all aimed at obtaining evidence to establish the facts or the identity of the perpetrator.

31 Next, although it follows from Articles 22 and 23 of that directive that a European Investigation Order can also have the object of the transfer of a person in custody, those articles state nevertheless that such a transfer can only take place with a view to gathering evidence requiring the presence of that person on the territory of the Member State to which his or her transfer is requested. By contrast, it is apparent from recital 25 of that directive that, where the person concerned is to be transferred to another Member State for the purposes of prosecution, including bringing that person before a court in that Member State for the purposes of standing trial, a European arrest warrant is to be issued, without it being possible for a European Investigation Order to replace it.

32 Lastly, it is apparent from Articles 13 and 15 of Directive 2014/41 that the purpose of issuing a European Investigation Order consists in the transfer of evidence obtained or already in the possession of the authorities of the executing Member State to the issuing Member State (see, to that effect, judgment of 2 September 2021, *Finanzamt für Steuerstrafsachen und Steuerfahndung Münster*, C-66/20, EU:C:2021:670, paragraph 41). The ultimate purpose of the investigative measure must therefore be to ensure that the executing Member State sends certain evidence to the issuing Member State, that evidence being identified in Article 13(4) and Article 15(1)(b) as objects, documents or data.

33 Third, the objective pursued by Directive 2014/41 also confirms such an interpretation of the concept of 'investigative measures'.

34 The purpose of that directive is to replace the fragmented and complicated existing framework for the gathering of evidence in criminal cases with a cross-border dimension and that it seeks, by the establishment of a simplified and more effective system based on a legal instrument called the European Investigation Order, to facilitate and accelerate judicial cooperation (judgment of 30 April 2024, *M.N. (EncroChat)*, C-670/22, EU:C:2024:372, paragraph 86). It follows that, by adopting that directive, the EU legislature intended to improve judicial cooperation in the gathering of evidence in cross-border criminal cases.

35 Moreover, the objective of simplified and effective judicial cooperation pursued by Directive 2014/41 requires a simple and unequivocal identification of the key elements of the European Investigation Order mechanism (see, to that effect, judgment of 2 March 2023, *Staatsanwaltschaft Graz (Düsseldorf tax office for criminal tax matters)*, C-16/22, EU:C:2023:148, paragraph 43). The very concept of 'investigative measure' is one of those key elements, so that that objective also militates in favour of a simple and usual definition of that concept, such as that set out in paragraph 28 above.

36 In the second place, it is necessary to examine whether the measures sought by an order such as that at issue in the main proceedings constitute investigative measures within the meaning of Directive 2014/41.

37 As regards, first, the request made by the judicial authorities of one Member State to the judicial authorities of another Member State to serve on the person in question the indictment relating to him or her, it should be noted that such service cannot, as such, constitute an investigative measure within the meaning of that directive. The purpose of such service is not to obtain evidence, but is a procedural obligation intended to advance the public prosecution of the person who is the subject of it. Accordingly, as the Advocate General observed in point 34 of his Opinion, service of such a document in another Member State is, in principle, governed not by that directive but by Article 5 of the Convention of 29 May 2000.

38 Second, the fact that, as in the present case, the indictment is accompanied by an order that the person make a bail payment does not in any way alter that finding, since the obligation to make that payment does not constitute an investigative measure either, within the meaning of Directive 2014/41, as is apparent from paragraphs 27 to 35 above.

39 As regards, third, the order that the person be remanded in custody pending trial, which may also accompany the indictment, it is apparent from the case-law of the Court that, except in the cases of the transfer of persons already held in custody for the purpose of carrying out an investigative measure, which are referred to in Articles 22 and 23 of that directive, the European Investigation Order is not such as to interfere with the right to liberty of the person concerned, enshrined in Article 6 of the Charter of Fundamental Rights of the European Union (judgment of 8 December 2020, *Staatsanwaltschaft Wien (Falsified transfer orders)*, C-584/19, EU:C:2020:1002, paragraph 73).

40 It follows that, except in the cases referred to in Articles 22 and 23, which do not appear to be relevant in the present case, a European Investigation Order may not contain a request that the person who is the subject of that request be remanded in custody or kept in custody.

41 As regards, fourth, the request that the person who is the subject of the indictment be heard, it is true that Article 10(2)(c) and the second subparagraph of Article 24(1) of Directive 2014/41 expressly refer to the hearing of a suspected or accused person among the measures which may be the object of a European Investigation Order, within the meaning of that directive.

42 That said, as the Advocate General stated, in essence, in point 41 of his Opinion, in order for it to come within the scope of Directive 2014/41, the purpose of that request for a hearing must be to gather evidence, within the meaning of that directive. Conversely, a hearing which is intended solely to enable the accused person to make observations on the indictment laid against him or her cannot be regarded as an investigative measure within the meaning of that directive. In the present case, it is for the referring court to determine the exact purpose of the request made by the Spanish judicial authorities for AK to be heard.

43 In order to provide the referring court with a full answer, it must further be stated, first of all, that if that request for a hearing did not have as its purpose the gathering of evidence, the French authorities could not have acted lawfully, on the basis of Directive 2014/41, on the order made by the Spanish judicial authorities.

44 By contrast, if the purpose of that request for a hearing was to gather evidence and if the Spanish judicial authorities had stated, in the order at issue in the main proceedings, that, under their national law, the hearing of AK could take place only after the indictment was served, it would have to be considered that, notwithstanding what has been stated in paragraph 37 above, such service could be requested by means of a European Investigation Order. It follows from Article 9(2) of Directive 2014/41 that the executing authority is, in principle, required to comply with the formalities and procedures expressly indicated by the issuing authority.

45 Thus, in the latter case, the French judicial authorities would have been required, in principle, without prejudice to the grounds for non-recognition, refusal and postponement provided for by Directive 2014/41, to execute the order at issue in the main proceedings, in so far as it concerned both the service of the indictment on AK and the hearing of AK, with the exception of the order that the person be remanded in custody pending trial and make a bail payment, which accompanied that indictment.

46 However, such partial execution of the order at issue in the main proceedings could have taken place only after, pursuant to Article 9(6) of Directive 2014/41, the French authorities checked with the Spanish authorities that those authorities did not object to that request being executed only in part.

47 It follows from the duty of sincere cooperation laid down in the first subparagraph of Article 4(3) TEU that, in order to ensure effective cooperation in criminal matters, the issuing and executing authorities must make full use of the instruments provided for in Directive 2014/41 in order to foster mutual trust on the basis of that cooperation (see, by analogy, judgment of 18 April 2023, *E.D.L. (Ground for refusal based on illness)*, C-699/21, EU:C:2023:295, paragraphs 45 and 46).

48 Lastly, if the purpose of the request to hear AK was to gather evidence and there was no mention made in the order of the Spanish authorities at issue in the main proceedings such as that referred to in paragraph 44 above, it would have to be held that, without prejudice to the grounds for non-recognition, refusal and postponement provided for in Directive 2014/41, the French authorities would, in principle, have been required to grant solely that request for a hearing, after checking with the Spanish judicial authorities that those authorities did not object to that request being executed only in part.

49 It follows from all of the foregoing considerations that Articles 1 and 3 of Directive 2014/41 must be interpreted as meaning that:

– 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 or her does not, as such, constitute a European Investigation Order within the meaning of that directive;

– an order by which a judicial authority of a Member State requests a judicial authority of another Member State to remand a person in custody pending trial for purposes other than those referred to in Articles 22 and 23 of that directive, or to require him or her to make a bail payment, does not constitute a European Investigation Order within the meaning of that directive;

– 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 or her constitutes a European Investigation Order within the meaning of Directive 2014/41, in so far as that request for a hearing is intended to gather evidence.

Costs

50 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Articles 1 and 3 of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters

must be interpreted as meaning that:

– **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 or her does not, as such, constitute a European Investigation Order within the meaning of that directive;**

– **an order by which a judicial authority of a Member State requests a judicial authority of another Member State to remand a person in custody pending trial for purposes other than those referred to in Articles 22 and 23 of that directive, or to require him or her to make a bail payment, does not constitute a European Investigation Order within the meaning of that directive;**

– **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 or her constitutes a European Investigation Order within the meaning of Directive 2014/41, in so far as that request for a hearing is intended to gather evidence.**

[Signatures]