

Provisional text

JUDGMENT OF THE COURT (First Chamber)

24 October 2019 (*)

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Directive 2014/41/EU — European Investigation Order (EIO) in criminal matters — Article 5(1) — Form set out in Annex A — Section J — Absence of legal remedies in the issuing Member State)

In Case C-324/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), made by decision of 23 May 2017, received at the Court on 31 May 2017, in the criminal proceedings against

Ivan Gavanozov,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, M. Safjan and L. Bay Larsen (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Czech Government, by M. Smolek, J. Vláčil and A. Brabcová, acting as Agents,
- the Hungarian Government, by M.Z. Fehér, G. Koós and R. Kissné Berta, acting as Agents,
- the Netherlands Government, by M.K. Bulterman and J. Langer, acting as Agents,
- the Austrian Government, by G. Eberhard, acting as Agent,
- the European Commission, by R. Troosters and I. Zaloguin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 April 2019,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 1(4), Article 6(1)(a) and Article 14 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 criminal proceedings brought against Mr Ivan Gavanozov, who is accused of leading a criminal gang and of committing tax offences.

Legal context

- 3 Recitals 21, 22 and 38 of Directive 2014/41 are worded as follows:

‘(21) Time limits are necessary to ensure quick, effective and consistent cooperation between the Member States in criminal matters. The decision on the recognition or execution, as well as the actual execution of the investigative measure, should be carried out with the same celerity and priority as for a similar domestic case. Time limits should be provided to ensure a decision or execution within reasonable time or to meet procedural constraints in the issuing State.

(22) Legal remedies available against an EIO should be at least equal to those available in a domestic case against the investigative measure concerned. In accordance with their national law Member States should ensure the applicability of such legal remedies, including by informing in due time any interested party about the possibilities and modalities for seeking those legal remedies. ...

...

(38) Since the objective of this Directive, namely the mutual recognition of decisions taken to obtain evidence, cannot be sufficiently achieved by the Member States ...’

- 4 Article 1(4) of Directive 2014/41 provides:

‘This Directive shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the TEU, including the rights of defence of persons subject to criminal proceedings, and any obligations incumbent on judicial authorities in this respect shall remain unaffected.’

- 5 The first subparagraph of Article 5(1) of that directive provides:

‘The EIO in the form set out in Annex A shall be completed, signed, and its content certified as accurate and correct by the issuing authority.’

- 6 Article 6(1) of that directive provides:

‘The issuing authority may only issue an EIO where the following conditions have been met:

- (a) the issuing of the EIO is necessary and proportionate for the purpose of the proceedings referred to in Article 4 taking into account the rights of the suspected or accused person; and

...’

- 7 Article 14 of Directive 2014/41 is worded as follows:

‘1. Member States shall ensure that legal remedies equivalent to those available in a similar domestic case are applicable to the investigative measures indicated in the EIO.

2. The substantive reasons for issuing the EIO may be challenged only in an action brought in the issuing State, without prejudice to the guarantees of fundamental rights in the executing State.

3. Where it would not undermine the need to ensure confidentiality of an investigation under Article 19(1), the issuing authority and the executing authority shall take the appropriate measures to ensure that information is provided about the possibilities under national law for seeking the legal remedies when these become applicable and in due time to ensure that they can be exercised effectively.

4. Member States shall ensure that the time limits for seeking a legal remedy shall be the same as those that are provided for in similar domestic cases and are applied in a way that guarantees the possibility of the effective exercise of these legal remedies for the parties concerned.

5. The issuing authority and the executing authority shall inform each other about the legal remedies sought against the issuing, the recognition or the execution of an EIO.

6. A legal challenge shall not suspend the execution of the investigative measure, unless it is provided in similar domestic cases.

7. The issuing State shall take into account a successful challenge against the recognition or execution of an EIO in accordance with its own national law. Without prejudice to national procedural rules Member States shall ensure that in criminal proceedings in the issuing State the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained through the EIO.'

8 Under Article 36(1) of that directive:

'Member States shall take the necessary measures to comply with this Directive by 22 May 2017.'

9 Section J of the form set out in Annex A to Directive 2014/41, entitled 'Legal remedies', reads as follows:

'1. Please indicate if a legal remedy has already been sought against the issuing of an EIO, and if so please provide further details (description of the legal remedy, including necessary steps to take and deadlines):

...

2. Authority in the issuing State which can supply further information on procedures for seeking legal remedies in the issuing State and on whether legal assistance and interpretation and translation is available:

Name: ...

Contact person (if applicable): ...

Address: ...

Tel. No: (country code) (area/city code) ...

Fax No: (country code) (area/city code) ...

E-mail: ...'

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

- 10 Mr Gavanozov is being prosecuted in Bulgaria for participating in a criminal organisation formed for the purpose of committing tax offences.
- 11 In particular, he is suspected of having imported, via shell companies, sugar into Bulgaria from other Member States, supplied in particular by a company established in the Czech Republic and represented by Mr Y, and of subsequently having sold that sugar on the Bulgarian market without assessing or paying value added tax (VAT), by submitting incorrect documents according to which that sugar had been exported to Romania.
- 12 In those circumstances, the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria) decided, on 11 May 2017, to issue an EIO requesting the Czech authorities to carry out searches and seizures at both the office of the company established in the Czech Republic and the home of Mr Y, and to examine Mr Y as a witness through video conferencing.
- 13 That court states that, after that decision had been adopted, it encountered difficulties in completing Section J of the form set out in Annex A to Directive 2014/41, which deals with legal remedies.
- 14 In that regard, that court points out that Bulgarian law does not provide for any legal remedy against decisions ordering a search, a seizure or the hearing of witnesses. Nevertheless, the referring court considers that Article 14 of Directive 2014/41 requires Member States to provide for such a legal remedy.
- 15 The referring court also notes that, under Bulgarian law, judicial decisions ordering such measures are not among those where the State may be held liable in the event of damage caused, as they are not directed at the accused person.
- 16 In those circumstances, the Spetsializiran nakazatelen sad (Specialised Criminal Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Are national legislation and case-law consistent with Article 14 of Directive [2014/41] in so far as they preclude a challenge, either directly as an appeal against a court decision or indirectly by means of a separate claim for damages, to the substantive grounds of a court decision issuing a European investigation order for a search on residential and business premises and the seizure of specific items, and allowing examination of a witness?
- (2) Does Article 14(2) of Directive 2014/41 grant, in an immediate and direct manner, to a concerned party the right to challenge a court decision issuing a European investigation order, even where such a procedural step is not provided for by national law?
- (3) Is the person against whom a criminal charge was brought, in the light of Article 14(2), in conjunction with Article 6(1)(a) and Article 1(4), of Directive 2014/41, a concerned party, within the meaning of Article 14(4), if the measures for collection of evidence are directed at a third party?
- (4) Is the person who occupies the property in which the search and seizure was carried out or the person who is to be examined as a witness a concerned party within the meaning of Article 14(4), in conjunction with Article 14(2), of Directive 2014/41?'

Admissibility of the request for a preliminary ruling

- 17 The Czech Government submits, as a preliminary point, that the request for a preliminary ruling is inadmissible on the grounds that the EIO at issue in the main proceedings was issued before the expiry of the period within which Directive 2014/41 had to be transposed and that that directive had not been transposed by the issuing Member State.
- 18 In that regard, it must be noted, first, that the period prescribed in Article 36 of Directive 2014/41 for transposition of that directive had expired when the referring court submitted the present request for a preliminary ruling to the Court.
- 19 Secondly, as the Advocate General observed in point 46 of his Opinion, that directive was transposed in both Bulgaria and the Czech Republic during the course of the proceedings before the Court.
- 20 Lastly, it is apparent from the documents before the Court that, although the referring court decided to issue an EIO with a view to having the investigative measures of the order at issue in the main proceedings carried out in the Czech Republic, that court has not yet proceeded to issue that EIO due to the difficulties which it is encountering in completing Section J of the form set out in Annex A to Directive 2014/41.
- 21 The referring court is therefore required, in the main proceedings, to issue, as appropriate, an EIO governed by that directive.
- 22 It follows that the request for a preliminary ruling is admissible.

Substance

- 23 It must be borne in mind that, according to the Court's settled case-law, in the procedure laid down by Article 267 TFEU, providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to determine the case before it. With that in mind, the Court may have to reformulate the questions referred to it (judgment of 12 September 2019, *A and Others*, C-347/17, EU:C:2019:720, paragraph 32).
- 24 As is apparent from the order for reference, the referring court is uncertain, in the context of issuing an EIO, how to complete Section J of the form set out in Annex A to Directive 2014/41.
- 25 In those circumstances, it must be considered that, by its questions, which it is appropriate to examine together, the referring court is asking, in essence, whether Article 5(1) of Directive 2014/41, read in conjunction with Section J of the form referred to in Annex A to that directive, must be interpreted as meaning that the judicial authority of a Member State must, when issuing an EIO, include in that section a description of the legal remedies, if any, which are provided for in its Member State against the issuing of such an order.
- 26 It must be noted at the outset that it is apparent from the wording of Article 5(1) of Directive 2014/41 that the issuing of an EIO presupposes the completion and signing of the form referred to in Annex A to that directive and the certification of its content as accurate and correct.
- 27 Point 1 of Section J of that form provides that the issuing authority is to indicate 'if a legal remedy has already been sought against the issuing of an EIO, and if so, [to provide] (description of the legal remedy, including necessary steps to take and deadlines)'.
- 28 It follows from the actual wording of point 1 of Section J of that form, in particular from the use of

the words 'if so', that a description of the legal remedy must be included in that point only if a legal remedy has been sought against an EIO.

- 29 In addition, the use of the words 'please provide further details' in relation to the description of the legal remedy that in such a case must be included in that point shows that the EU legislature intended to ensure that the executing authority will be informed of any action brought against an EIO that had been forwarded to it and not, more generally, of the legal remedies, if any, that are provided for in the issuing Member State against the issuing of an EIO.
- 30 Likewise, the purpose of point 2 of Section J of the form referred to in Annex A to Directive 2014/41 is to ensure that the executing authority is informed of any legal remedy sought against an EIO and not to provide it with a description of the legal remedies, if any, that are available in the issuing Member State against the issuing of an EIO.
- 31 It is apparent from the wording of that provision that the issuing authority, in that point of Section J of the EIO which it issues, is solely required to provide the name and contact details of the competent authority of the issuing Member State that is able to furnish additional information about the legal remedies, legal assistance, and interpretation and translation services in that Member State.
- 32 Moreover, such information would serve no purpose if the EIO already includes an abstract description of the legal remedies, if any, that are available in the issuing Member State against the issuing of an EIO.
- 33 It follows from these considerations that the issuing authority does not, when issuing an EIO, have to include in Section J of the form set out in Annex A to Directive 2014/41 a description of the legal remedies, if any, that are available in its Member State against the issuing of such an order.
- 34 This interpretation is supported by Article 14(5) of Directive 2014/41, which provides that the issuing authority and the executing authority must inform each other about the legal remedies sought against the issuing, the recognition or the execution of an EIO.
- 35 Further, such an interpretation is apt to ensure the full attainment of the objective pursued by that directive, as apparent from recitals 21 and 38 thereof, of facilitating and accelerating judicial cooperation between Member States on the basis of the principles of mutual trust and mutual recognition.
- 36 The introduction of a form such as that provided for in Annex A to Directive 2014/41, which the judicial authority of a Member State seeking to issue an EIO is required to complete by furnishing the information specifically requested, is intended to provide the executing authority with the minimum official information required to enable it to adopt the decision on the recognition or execution of the EIO in question and, as appropriate, to carry out the measure requested within the time limits laid down in Article 12 of that directive (see, by analogy, judgment of 6 December 2018, *IK (Enforcement of an additional sentence)*, C-551/18 PPU, EU:C:2018:991, paragraphs 49 and 50 and the case-law cited).
- 37 Since a description of the legal remedies, if any, that are available in the issuing Member State against the issuing of an EIO need not be included in Section J of the form referred to in Annex A to Directive 2014/41, it is not necessary, in the present case, to interpret Article 14 of that directive in order, in particular, to determine whether that provision precludes national legislation which does not provide for any legal remedy against the substantive grounds for issuing an EIO requesting a search, a seizure of specific items and the hearing of a witness.

- 38 In the light of all the foregoing considerations, the answer to the questions referred is that Article 5(1) of Directive 2014/41, read in conjunction with Section J of the form referred to in Annex A to that directive, must be interpreted as meaning that the judicial authority of a Member State does not, when issuing an EIO, have to include in that section a description of the legal remedies, if any, which are provided for in its Member State against the issuing of such an order.

Costs

- 39 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (First Chamber) hereby rules:

Article 5(1) 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, read in conjunction with Section J of the form set out in Annex A to that directive, must be interpreted as meaning that the judicial authority of a Member State does not, when issuing a European Investigation Order, have to include in that section a description of the legal remedies, if any, which are provided for in its Member State against the issuing of such an order.

[Signatures]

* Language of the case: Bulgarian.