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JUDGMENT OF THE COURT (Third Chamber)

18 December 2025 (*1)

(Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in criminal matters – Directive 2014/41/EU – European Investigation Order in criminal matters – Article 3 – Material scope – Concept of 'investigative measure' – Purpose – Obtaining evidence – Article 10 – Recourse to a different type of investigative measure – Article 11 – Grounds for non-recognition or non-execution – Fundamental rights – Article 22 – Temporary transfer to the issuing State of the person held in custody for the purpose of carrying out an investigative measure – Article 24 – Hearing of the accused person by videoconference – Article 24(2)(b) – Fundamental principles of the law of the executing Member State)

In Case C-325/24 [Bissilli (i)],

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale ordinario di Firenze (District Court, Florence, Italy), made by decision of 5 February 2024, received at the Court on 2 May 2024, in criminal proceedings against

HG

other party:

Procura della Repubblica presso il Tribunale di Firenze,

THE COURT (Third Chamber),

composed of C. Lycourgos, President of the Chamber, O. Spineanu-Matei, S. Rodin, N. Piçarra and N. Fenger (Rapporteur), Judges,

Advocate General: A. Rantos,

Registrar: G. Chiapponi, Administrator,

having regard to the written procedure and further to the hearing on 2 April 2025,

after considering the observations submitted on behalf of:

– the Italian Government, by S. Fiorentino and G. Palmieri, acting as Agents, and by S. Faraci and A. Trimboli, avvocati dello Stato,

– the Belgian Government, by M. Jacobs and M. Van Regemorter, acting as Agents,

– the Netherlands Government, by M.K. Bulterman, A. Hanje and P.P. Huurnink, acting as Agents,

– the Austrian Government, by A. Posch and J. Schmoll, acting as Agents,

– the European Commission, by H. Leupold, P. Rossi and M. Wasmeier, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 June 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 3 and 10, Article 11(1)(f), Article 22(1) and Article 24 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), and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2The request has been made in criminal proceedings brought against HG on charges of participation in a criminal organisation and drug trafficking.

Legal context

3Recitals 5 to 8, 25, 26 and 34 of Directive 2014/41 state:

'(5)Since the adoption of [Council] Framework Decisions [2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ 2003 L 196, p. 45)] and [2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters (OJ 2008 L 350, p. 72)], it has become clear that the existing framework for the gathering of evidence is too fragmented and complicated. A new approach is therefore necessary.

(6)In the Stockholm Programme adopted by the European Council of 10-11 December 2009, the European Council considered that the setting up of a comprehensive system for obtaining evidence in cases with a cross-border dimension, based on the principle of mutual recognition, should be further pursued. The European Council indicated that the existing instruments in this area constituted a fragmentary regime and that a new approach was needed, based on the principle of mutual recognition, but also taking into account the flexibility of the traditional system of mutual legal assistance. The European Council therefore called for a comprehensive system to replace all the existing instruments in this area, including Framework Decision 2008/978/JHA, covering as far as possible all types of evidence, containing time limits for enforcement and limiting as far as possible the grounds for refusal.

(7)This new approach is based on a single instrument called the European Investigation Order (EIO). …

(8)The EIO should have a horizontal scope and therefore should apply to all investigative measures aimed at gathering evidence. However, the setting up of a joint investigation team and the gathering of evidence within such a team require specific rules which are better dealt with separately. Without prejudice to the application of this Directive, existing instruments should therefore continue to apply to this type of investigative measure.

…

(25)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)].

(26)With a view to the proportionate use of an EAW, the issuing authority should consider whether an EIO would be an effective and proportionate means of pursuing criminal proceedings. The issuing authority should consider, in particular, whether issuing an EIO for the hearing of a suspected or accused person by videoconference could serve as an effective alternative.

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…

(34)This Directive, by virtue of its scope, deals with provisional measures only with a view to gathering evidence. …'

4Under Article 1(1) and (2) of that directive:

'1. 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.

2. Member States shall execute an EIO on the basis of the principle of mutual recognition and in accordance with this Directive.'

5Article 3 of that directive provides:

'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 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)] 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 c]onvention and Article 1(8) of the Framework Decision.'

6Article 9(1) of that directive provides:

'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.'

7Article 10(1), (2) and (5) of Directive 2014/41 is worded as follows:

'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;

…

5. Where, in accordance with paragraph 1, the investigative measure indicated in the EIO does not exist under the law of the executing State or it would not be available in a similar domestic case and where there is no other investigative measure which would have the same result as the investigative measure requested, the executing authority shall notify the issuing authority that it has not been possible to provide the assistance requested.'

8Article 11(1) of that directive provides:

'Without prejudice to Article 1(4), recognition or execution of an EIO may be refused in the executing State where:

…

(f)there are substantial grounds to believe that the execution of the investigative measure indicated in the EIO would be incompatible with the executing State's obligations in accordance with Article 6 TEU and the Charter;

…

(h)the use of the investigative measure indicated in the EIO is restricted under the law of the executing State to a list or category of offences or to offences punishable by a certain threshold, which does not include the offence covered by the EIO.

…'

9Articles 22 to 29 of that directive make up Chapter IV, entitled 'Specific provisions for certain investigative measures'.

10Article 22 of that directive, entitled 'Temporary transfer to the issuing State of persons held in custody for the purpose of carrying out an investigative measure', provides in paragraphs 1, 2 and 5 thereof:

'1. 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.

2. In addition to the grounds for non-recognition or non-execution referred to in Article 11 the execution of the EIO may also be refused if:

(a) the person in custody does not consent; or

(b) the transfer is liable to prolong the detention of the person in custody.

…

5. The practical arrangements regarding the temporary transfer of the person including the details of his custody conditions in the issuing State, and the dates by which he must be transferred from and returned to the territory of the executing State shall be agreed between the issuing State and the executing State, ensuring that the physical and mental condition of the person concerned, as well as the level of security required in the issuing State, are taken into account.'

11Article 23(1) and (2) of Directive 2014/41 states:

'1. 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.

2. Paragraph 2(a) and paragraphs 3 to 9 of Article 22 are applicable *mutatis mutandis* to the temporary transfer under this Article.'

12Article 24 of that directive, entitled 'Hearing by videoconference or other audiovisual transmission', is worded as follows:

'1. 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.

2. In addition to the grounds for non-recognition or non-execution referred to in Article 11, execution of an EIO may be refused if either:

(a) the suspected or accused person does not consent; or

(b)the execution of such an investigative measure in a particular case would be contrary to the fundamental principles of the law of the executing State.

3. The issuing authority and the executing authority shall agree the practical arrangements. …

…

5. Where a hearing is held by videoconference or other audiovisual transmission, the following rules shall apply:

(a)the competent authority of the executing State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identity of the person to be heard and respect for the fundamental principles of the law of the executing State.

If the executing authority is of the view that during the hearing the fundamental principles of the law of the executing State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with those principles;

(b)measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the issuing State and the executing State;

(c)the hearing shall be conducted directly by, or under the direction of, the competent authority of the issuing State in accordance with its own laws;

(d)at the request of the issuing State or the person to be heard, the executing State shall ensure that the person to be heard is assisted by an interpreter, if necessary;

(e)suspected or accused persons shall be informed in advance of the hearing of the procedural rights which would accrue to them, including the right not to testify, under the law of the executing State and the issuing State. Witnesses and experts may claim the right not to testify which would accrue to them under the law of either the executing or the issuing State and shall be informed about this right in advance of the hearing.

6. Without prejudice to any measures agreed for the protection of persons, on the conclusion of the hearing, the executing authority shall draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the executing State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the executing authority to the issuing authority.

…'

13Under Article 26(6) of that directive:

'An EIO may also be issued to determine whether any natural or legal person subject to the criminal proceedings concerned holds one or more accounts, in any non-bank financial institution located on the territory of the executing State. Paragraphs 3 to 5 shall apply *mutatis mutandis*. In such case and in addition to the grounds for non-recognition and non-execution referred to in Article 11, the execution of the EIO may also be refused if the execution of the investigative measure would not be authorised in a similar domestic case.'

14Article 27(5) of that directive provides:

'An EIO may also be issued with regard to the information provided for in paragraph 1 with reference to the financial operations conducted by non-banking financial institutions. Paragraphs 3 to 4 shall apply *mutatis mutandis*. In such case and in addition to the grounds for non-recognition and non-execution referred to in Article 11, the execution of the EIO may also be refused if the execution of the investigative measure would not be authorised in a similar domestic case.'

15Article 28(1) of Directive 2014/41 states:

'When the EIO is issued for the purpose of executing an investigative measure requiring the gathering of evidence in real time, continuously and over a certain period of time, such as:

(a)the monitoring of banking or other financial operations that are being carried out through one or more specified accounts;

(b) the controlled deliveries on the territory of the executing State;

its execution may be refused, in addition to the grounds for non-recognition and non-execution referred to in Article 11, if the execution of the investigative measure concerned would not be authorised in a similar domestic case.'

16Article 29(1) and (3) of that directive is worded as follows:

'1. An EIO may be issued for the purpose of requesting the executing State to assist the issuing State in the conduct of investigations into crime by officers acting under covert or false identity ("covert investigations").

…

3. In addition to the grounds for non-recognition and non-execution referred to in Article 11, the executing authority may refuse to execute an EIO referred to in paragraph 1, where:

(a)the execution of the covert investigation would not be authorised in a similar domestic case; or (b)it was not possible to reach an agreement on the arrangements for the covert investigations under paragraph 4.'

17Section C of the form set out in Annex A to that directive enables the issuing authority to state the investigative measures required.

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

18HG is being prosecuted in Italy for participation in a criminal organisation and for drug trafficking.

19Criminal proceedings have been brought against HG in respect of those offences before the Tribunale ordinario di Firenze (District Court, Florence, Italy), which is the referring court.

20As he did not appear in person before that court, HG was declared absent since he was aware of the trial and was represented by a lawyer appointed by him. Further to a request from that lawyer, the referring court ordered HG to be heard.

21Having been informed by the public prosecutor's office that HG had been in custody in Belgium since 15 February 2022, the referring court issued an EIO requesting the Belgian authorities to carry out a hearing by videoconference of HG, as the accused person.

22By letter of 17 February 2023, the Public Prosecutor's Office, Bruges (Belgium) informed the referring court that the EIO issued for the purpose of hearing HG by videoconference would not be executed. That public prosecutor's office, without referring to the specific grounds for refusal provided for in Directive 2014/41, stated, first, that Belgian law authorised the hearing by videoconference of certain witnesses and experts during the trial, without, however, providing for the possibility to hear an accused person by videoconference in the course of that person's trial, since he or she has to appear in person before the trial court. Second, that public prosecutor's office took the view that the Belgian legislation transposing that directive made the hearing by videoconference of an accused person subject to two conditions: (i) the consent of the person concerned; and (ii) respect for the fundamental principles of Belgian law. Third, referring to a judgment of the Cour constitutionnelle (Constitutional Court, Belgium) of 21 June 2018 and to the guidelines adopted by the College of Public Prosecutors (Belgium), the Public Prosecutor's Office, Bruges stated that the appearance of an accused person at his or her trial by videoconference was contrary to the right to a fair hearing.

23Subsequently, the referring court asked for the assistance of the European Union Agency for Criminal Justice Cooperation (Eurojust). However, the efforts made by Eurojust proved to be fruitless since the Belgian authorities ruled out the possibility of a temporary transfer of HG to Italy, suggested by Eurojust.

24In that context, the referring court states that it must ascertain whether those refusals to execute comply with EU law in order to decide whether to issue, if necessary, a new EIO.

25That court states, in the first place, that, in accordance with Italian law, there is no obligation for the accused person to be present at his or her trial. Consequently, the trial may be held in the absence of the accused person, in so far as it is certain that that person is aware of the trial and that his or her absence is the result of his or her choice alone. However, since the accused person has the right to be present at his or her trial, where that person cannot appear because of a legitimate impediment, such as his or her detention abroad, that person's trial must be postponed until his or her appearance in court is possible again, unless that person expressly waives the right to appear. In such a situation, accused persons in custody abroad may be present at their trial by videoconference, where such a possibility is provided for by international agreements.

26Furthermore, in the Italian system of criminal proceedings, evidence is, in principle, only gathered and entered into the file during the trial phase. Accordingly, the hearing of the accused person who requests such a hearing or consents to it during the trial, in addition to ensuring his or her appearance in court, also has an evidential purpose.

27The referring court asks, against that background, whether it is possible to issue an EIO where, as in the present case, the organisation of the hearing of a person by videoconference as an accused person seeks both to obtain evidence and to ensure his or her appearance at the trial.

28In the second place, as regards the grounds relied on by the Public Prosecutor's Office, Bruges to refuse to execute the EIO issued in the main criminal proceedings, the referring court notes that that public prosecutor's office gave a general and a specific ground for refusal.

29The first is connected to the unavailability of a hearing by videoconference in a similar domestic case, that measure not being provided for in Belgian law for the hearing of accused persons. According to the referring court, which notes that the hearing by videoconference of an accused person is amongst the specific investigative measures referred to in Chapter IV of Directive 2014/41, Article 24 of that directive, which governs a hearing by videoconference, does not set out a ground for refusal based on the unavailability of an investigative measure in a similar domestic case, contrary to the regime set out by that directive for certain measures, such as covert investigations.

30The second ground for refusal refers to the incompatibility of a hearing by videoconference with the fundamental principles of the law of the executing Member State. That court points out, in that regard, that although the Belgian authorities have stated that the use of videoconference to hear the accused person in his or her trial is contrary to the right to a fair and equitable hearing, and although those authorities relied on the judgment of 21 June 2018 delivered by the Cour constitutionnelle (Constitutional Court), which annulled the Belgian law concerning the use of videoconference for the appearance at trial of accused persons in pre-trial detention, those authorities did not state the reasons why they considered that the ground for refusal based on the non-compliance of the requested measure with the fundamental principles of Belgian law applies in the present case in the light of the circumstances of the case.

31The referring court is of the view, in the third place, that the execution of the EIO that it issued in the main proceedings could not be refused because the requested measure is incompatible with the fundamental rights of the European Union under Article 11(1)(f) of Directive 2014/41, without first verifying the compatibility of the relevant provisions of Italian law with the case-law of the European Court of Human Rights.

32The referring court states, in the fourth place, that it also intends to issue an EIO seeking the temporary transfer of HG to Italy for the purposes of his hearing before that court. According to the referring court, the principle of mutual recognition would be compromised if the executing Member State could call into question the evidential purpose of the investigative measure requested on the basis of its national law and refuse to execute an EIO on the ground that it does not pursue an evidential purpose. It asks whether it is possible to issue such a decision where, as in the present case, the requested measure seeks not only to obtain evidence, but also to ensure the appearance of the accused person at the trial.

33In those circumstances, the Tribunale ordinario di Firenze (District Court, Florence) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1)Does Article 24 of [Directive 2014/41], read in conjunction with Article 3 of [that directive], permit an EIO to be issued for the hearing by videoconference of an accused person who is in custody in the executing [Member] State during the hearing of oral argument, for the purpose of gathering evidence as part of his or her examination and with the additional aim of ensuring that he or she participates in the trial, having regard to the provisions of Article 24 and recitals 25 and 26 [of that directive], in particular where the conditions for issuing [a European arrest warrant] are not met and the national law of the issuing [Member] State recognises the right of the accused person to participate in the trial and to be examined, including by videoconference, in order to make statements of probative value?

(2)If the answer to the first question is in the affirmative, can the rule laid down in Article 10 of [Directive 2014/41], which empowers the executing [Member] State to refuse the execution of an EIO if the investigative measure would not be authorised in a similar domestic case, be interpreted as empowering the executing [Member] State to refuse the execution of an EIO for the hearing of an accused person who is in custody abroad by videoconference in the trial, in the light of Article 24 [of that directive], which governs the specific rules for the hearing by videoconference without including the ground for refusal at issue?

(3)Must Article 11(1)(f) of [Directive 2014/41], read in the light of Article 47 of the Charter, be interpreted as meaning that the execution of an EIO [issued] for the hearing of an accused person who is in custody abroad by videoconference at the hearing of oral argument cannot be refused if the procedural safeguards applicable to that videoconference under the law of the issuing [Member] State are appropriate in the particular case to ensure the accused person’s effective exercise of his or her rights of defence and the fundamental right to a fair trial within the meaning of Article 47 of the Charter?

(4)Can the concept of “fundamental principles of [the law of] the executing [Member] State”, which may constitute a special ground for refusal within the meaning of Article 24(2)(b) of [Directive 2014/41], constitute a limit to the execution of any request for hearing an accused person by videoconference in the trial, on the basis of a general national directive binding on all executing authorities, without any assessment of the particular circumstances of the specific case and the requirements contained in the national law of the issuing [Member] State to guarantee the rights of defence of the accused person, applicable in the specific case, or, on the contrary, is it incorrect to regard the refusal of execution as an exception which must be interpreted strictly, in relation to specific procedural aspects provided for in the national law of the issuing [Member] State or to particular relevant elements of the specific case?

(5)Does Article 22(1) of [Directive 2014/41], read in conjunction with Article 3 of [that directive], permit the issuing of an EIO for the temporary transfer of an accused person who is in custody abroad in order to allow him or her to be heard at a hearing of oral argument, where that hearing [constitutes an investigative measure] under the national law of the issuing [Member] State?’

Consideration of the questions referred

Admissibility

34The Belgian Government submits that the second and third questions referred for a preliminary ruling are hypothetical.

35According to that government, the refusal to execute the EIO issued by the referring court in the main proceedings was based on the ground, provided for in Article 24(2)(b) of Directive 2014/41, that the requested measure is contrary to the fundamental principles of the law of the executing Member State. The second and third questions referred for a preliminary ruling are said to concern other grounds for refusal, provided for in Article 10 and Article 11(1)(f) of that directive respectively.

36 In that regard, it must be borne in mind that, according to the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, required to give a ruling (see judgments of 21 April 1988, Pardini, 338/85, EU:C:1988:194, paragraph 8, and of 24 July 2023, Lin, C-107/23 PPU, EU:C:2023:606, paragraph 61).

37 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see judgments of 13 July 2000, Idéal tourisme, C-36/99, EU:C:2000:405, paragraph 20, and of 24 July 2023, Lin, C-107/23 PPU, EU:C:2023:606, paragraph 62).

38 In the present case, the referring court states that the request for a preliminary ruling seeks to enable it to decide whether it may issue a new EIO for the purposes of hearing HG, after the execution of a previous EIO issued for the purposes of hearing HG by videoconference was refused.

39 Those considerations justify that court being able, as the issuing judicial authority, to refer questions to the Court concerning the conditions for the execution of an EIO (see, by analogy, judgments of 24 October 2019, Gavanozov, C-324/17, EU:C:2019:892, paragraphs 21 and 22, and of 31 January 2023, Puig Gordi and Others, C-158/21, EU:C:2023:57, paragraph 53).

40 In those circumstances, given that the questions referred for a preliminary ruling seek to establish whether the issuing of a new EIO in order to hear HG might meet with a future refusal to execute and, therefore, to clarify the powers and obligations of the issuing judicial authority, the fact that the second and third questions concern grounds for refusal other than those on which the refusal of a previous EIO issued by the referring court in the main proceedings was based is not sufficient to determine that those questions bear no relation to the actual facts of those proceedings or their purpose (see, by analogy, judgments of 31 January 2023, Puig Gordi and Others, C-158/21,EU:C:2023:57, paragraphs 52 to 57, and of 20 March 2025, Procureur de la République (Concurrence of a European arrest warrant and an extradition request), C-763/22, EU:C:2025:199, paragraph 22).

41 Consequently, all of the questions referred must be answered.

Substance

The first and fifth questions

42 By its first and fifth questions, which it is appropriate to examine together, the referring asks, in essence, whether Articles 3, 22 and 24 of Directive 2014/41 must be interpreted as meaning that the judicial authority of a Member State may issue an EIO for the purposes of either the temporary transfer to its territory of a person in custody in another Member State, in order to hear that

person as an accused person during his or her trial, or the organisation, by the authorities of the latter Member State, of a hearing by videoconference of that person in that same capacity, where the purpose of those measures is both to obtain evidence and to enable that person to appear at that trial.

43According to settled case-law, in order to interpret a provision of EU law it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see judgments of 17 November 1983, Merck, 292/82, EU:C:1983:335, paragraph 12, and of 25 February 2025, BSH Hausgeräte, C-339/22, EU:C:2025:108, paragraph 27).

44In the first place, so far as concerns the wording of the relevant provisions, under Article 3 of Directive 2014/41, the EIO is to cover any investigative measure with the exception, in principle, of the setting up of a joint investigation team and the gathering of evidence within such a team.

45Article 22(1) of that directive provides for the possibility of issuing an EIO for the temporary transfer of a person in custody in the executing Member 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 or she is sent back within the period stipulated by the executing Member State.

46As regards the second subparagraph of Article 24(1) of that directive, it states that the issuing authority may also issue an EIO for the purpose of hearing a suspected or accused person by videoconference or other audiovisual transmission.

47It is apparent from those provisions that the scope of that directive covers a wide range of measures, amongst which are the temporary transfer of a person held in custody in the executing Member State for the purpose of carrying out an investigative measure and the hearing of a suspected or accused person by videoconference or other audiovisual transmission.

48In the second place, so far as concerns the context in which Articles 3, 22 and 24 of Directive 2014/41 occur, it is apparent from recital 25 of that directive that an EIO may be issued at any stage of criminal proceedings, including at the trial phase. Thus, the fact that the investigate measure requested is to be executed during the trial phase in no way precludes, in itself, the issuing of an EIO for the purpose of executing that measure.

49Furthermore, under the first subparagraph of Article 1(1) of that directive, an EIO is a judicial decision which has been issued or validated by a judicial authority of a Member State to have one or several specific investigative measure(s) carried out in another Member State to obtain evidence.

50It is apparent from that provision, read in the light of recitals 5 to 8 of Directive 2014/41, that the purpose of the EIO must be the gathering of evidence. Similarly, recital 34 of that directive states that that directive, by virtue of its scope, deals with provisional measures only with a view to gathering evidence.

51Thus, in order for it to come within the scope of that directive, the requested measure must necessarily have the purpose of the gathering of evidence. Conversely, a measure which has only a purpose other than the gathering of evidence cannot be requested by the issuing of an EIO (see, to that effect, judgment of 9 January 2025, Delda, C-583/23, EU:C:2025:6, paragraph 42).

52By contrast, there is nothing in the provisions referred to in paragraphs 44 to 50 above to suggest that the EU legislature has excluded from the scope of that directive investigative measures which are aimed at gathering evidence through the temporary transfer of the accused person or the hearing of that person by videoconference, on the sole ground that those investigative measures take effect during the criminal trial brought against that person and that those measures have therefore the incidental effect of also ensuring the appearance of that person at part of that trial.

53In the third place, such an interpretation would be liable to prevent the achievement of the objectives pursued by Directive 2014/41.

54That directive seeks, as is apparent from recitals 5 to 8 thereof, to replace the fragmented and complicated existing framework for the gathering of evidence in criminal cases with a cross-border dimension and also seeks, by the establishment of a simplified and more effective system based on a single instrument called the European Investigation Order, to facilitate and accelerate judicial cooperation with a view to contributing to the attainment of the objective set for the European Union to become an area of freedom, security and justice, and has as its basis the high level of trust which must exist between the Member States (see, to that effect, judgments of 30 April 2024, M.N. (EncroChat), C-670/22, EU:C:2024:372, paragraph 86, and of 9 January 2025, Delda, C-583/23, EU:C:2025:6, paragraph 34).

55An interpretation of that directive to the effect that a judicial authority of a Member State cannot issue an EIO for the purposes of the execution, by the competent authorities of another Member State, of an investigative measure in order to gather evidence, on the sole ground that that measure incidentally ensured the presence of the accused person at his or her trial, would run counter to the objective pursued by that directive of accelerating and simplifying judicial cooperation in criminal matters between the Member States, since such an interpretation could markedly slow down and complicate that cooperation.

56Consequently, it must be held that a judicial authority of a Member State may issue an EIO for the purpose of executing an investigative measure in another Member State, such as the temporary transfer of a person in custody in the latter State to the first Member State or the hearing by videoconference of that person as an accused person, since that measure seeks to obtain evidence, irrespective of whether it also involves the appearance of that person at his or her trial.

57By contrast, an EIO cannot have the purpose of ensuring the appearance of that person at his or her trial where it does not have any evidential objective.

58It must however be stated that Directive 2014/41 provides for safeguards to prevent the issuing of an EIO for the purpose of the temporary transfer of the accused person or the hearing of that person by videoconference which may lead to circumventing the scope of that directive, set out in paragraphs 50 and 51 above.

59Thus, Article 22(1) of that directive makes the issuing of an EIO for the purpose of the temporary transfer of a person in custody in a Member State subject to the condition that that person is sent back within the period stipulated by that Member State. Further, that article states, in paragraph 5 thereof, that the practical arrangements regarding the temporary transfer of the person, including the dates by which that person must be returned to the territory of the executing Member State, are to be agreed between the issuing State and the executing State. Those provisions therefore enable the executing Member State to ensure, first, that the duration of the presence of the person concerned in the issuing Member State does not go beyond what is necessary for the purpose of gathering evidence and, second, that such a temporary transfer for evidential purposes does not become part of a transfer for the purposes of prosecution, which requires the issuing of a European arrest warrant, as set out in recital 25 of that directive (see, to that effect, judgment of 9 January 2025, Delda, C-583/23, EU:C:2025:6, paragraph 31).

60Similarly, it is apparent from Article 24(3) of Directive 2014/41 that the issuing authority and the executing authority are to agree the practical arrangements for the hearing by videoconference. It follows that the executing authority is also able to ensure that the execution of that measure does not go beyond what is necessary for the purpose of gathering evidence.

61In the light of all the foregoing considerations, the answer to the first and fifth questions is that Articles 3, 22 and 24 of Directive 2014/41 must be interpreted as meaning that the judicial authority of a Member State may issue an EIO for the purposes of either the temporary transfer to its territory of a person in custody in another Member State, in order to hear that person as an accused person during his or her trial, or the organisation, by the authorities of the latter Member State, of a hearing by videoconference of that person in that same capacity during his or her trial, even if the execution of that measure also involves the appearance of that person at that trial, in so far as that measure has an evidential objective and its execution does not go beyond what is necessary for the purpose of gathering evidence.

The second question

62By its second question, the referring court asks, in essence, whether Articles 10 and 24 of Directive 2014/41 must be interpreted as meaning that an authority of a Member State may refuse to execute an EIO concerning the organisation, during the criminal trial, of a hearing by videoconference of the accused person on the ground that that measure would not be available in a similar domestic case.

63In the first place, so far as concerns the wording of the relevant provisions, it must be stated, first, that, under Article 10(1) of that directive, the executing authority has recourse, wherever possible, to an investigative measure other than that provided for in the EIO where that measure does not exist in the law of the executing Member State or where that measure would not be available in a similar domestic case.

64Second, it is apparent from Article 10(2) of that directive that, without prejudice to Article 11(1) of that directive, paragraph 1 of Article 10 does not apply to the investigative measures referred to in paragraph 2 thereof, amongst which is included, in paragraph 2(c), the hearing in the territory of the executing Member State of an accused person, which always has to be available under the law of that Member State.

65However, the hearing within the meaning of Article 10(2)(c) of Directive 2014/41 cannot be confused with the hearing by videoconference referred to in Article 24 of that directive. It must be noted that Article 24(5)(c) of that directive states that a hearing by videoconference is to be conducted in accordance with the law of the issuing Member State, whereas it is apparent from Article 10(2)(c) of that directive that the hearing referred to in that article is carried out in accordance with the law of the executing Member State. Furthermore, Section C of the form set out in Annex A to Directive 2014/41 refers separately, amongst the investigative measures that it lists, on the one hand, to the hearing of a suspected or accused person and, on the other hand, to the hearing by videoconference or other audiovisual transmission of a suspected or accused person. It follows that Article 10(2)(c) does not apply to a hearing by videoconference.

66Third, in accordance with Article 10(5) of that directive, in the situation referred to in paragraph 1 of that article and where there is no other investigative measure which would have the same result as the investigative measure requested, the executing authority is to notify the issuing authority that it has not been possible to provide the assistance requested.

67Article 10(5) of that directive thus provides for a ground for non-execution of an EIO which may be relied on where the measure requested would not be available in a similar domestic case, provided that it is not one of the measures referred to in paragraph 2 of that article and that there are no other investigative measures which would have the same result as the measure requested.

68Next, the second subparagraph of Article 24(1) of that directive provides for the possibility of issuing an EIO to hear a suspected or accused person by videoconference or by other audiovisual transmission.

69Article 24 states, in paragraph 2 thereof, that in addition to the grounds for non-recognition or non-execution referred to in Article 11 of Directive 2014/41, execution of an EIO may be refused if the suspected or accused person does not consent or if the execution of such an investigative measure in a particular case would be contrary to the fundamental principles of the law of the executing Member State.

70The wording of Article 24(2) of that directive states therefore the grounds which may be relied on to refuse to execute an EIO concerning the organisation of a hearing by videoconference of an accused person without referring, among those grounds, to the ground for non-execution which stems from Article 10(5) of that directive.

71In addition, as stated in paragraph 69 above, Article 24(2)(b) of that directive provides that the executing authority may refuse the execution of an EIO concerning the organisation of a hearing by videoconference where the execution of such an investigative measure, in a specific case, would be contrary to the fundamental principles of the law of the executing Member State.

72The application of that specific ground for refusal to execute necessarily has a more limited scope than the application of the ground for non-execution which stems from Article 10(5) of Directive 2014/41. The latter is based on the fact that the requested measure does not exist or is not available in a similar domestic case in the executing Member State, or on the premiss which necessarily encompasses all the particular cases in which such a measure would prove contrary to the fundamental principles of the law of that Member State. Consequently, the ground provided in Article 24(2)(b) would, in practice, have no real utility if it were to be found that the execution of an EIO concerning the organisation of a hearing by videoconference could, in any case, be refused under Article 10(5).

73By contrast, the application of the ground for refusal provided for in Article 11(1)(h) of that directive to an investigative measure for a hearing by videoconference does not have the effect of depriving the specific ground for refusal set out in Article 24(2)(b) of that directive of any utility. While it is true that, under the first of those provisions, the executing Member State may refuse to execute an investigative measure, including a request for a hearing by videoconference, where the use of the measure is limited under the law of that Member State to certain offences which do not include the offence to which the EIO relates, it must be stated that, unlike the ground for refusal provided for in Article 10(5) of that directive, such a ground for refusal does not necessarily encompass all of the particular cases in which that investigative measure would prove incompatible with the fundamental principles of the law of that Member State.

74It is clear, therefore, from the very wording of Article 24 of Directive 2014/41 that that article excludes the application of paragraphs 2 and 5 of Article 10 of that directive to investigative measures consisting of hearings by videoconference or by any other audiovisual transmission.

75In the second place, so far as concerns the context in which Articles 10 and 24 of Directive 2014/41 occur, it must be stated that Article 24 appears in Chapter IV of that directive, entitled 'Specific provisions for certain investigative measures', which includes Articles 22 to 29 of that directive.

76In that regard, Article 26(6), Article 27(5), Article 28(1) and Article 29(3)(a) of that directive expressly provide a ground for refusal based on the fact that the execution of the measure concerned would not be authorised in a similar domestic case.

77It is therefore apparent from the general scheme of Chapter IV of Directive 2014/41 that, where the EU legislature intended to preserve the right of the executing Member State to refuse to execute one of the specific investigative measures referred to in that chapter on the ground that it could not be ordered in a similar domestic case, it expressly recognised such a right in the provisions which specifically concern that investigative measure. That is not the case for Article 24 of that directive, which concerns the specific investigative measure of the hearing by videoconference or by any other audiovisual transmission.

78That interpretation is substantiated, in the third place, by the objectives pursued by that directive, which aims, as set out in paragraph 54 above, to establish a simplified and more effective system based on a single instrument to facilitate and to accelerate judicial cooperation with a view to contributing to the attainment of the objective set for the European Union to become an area of freedom, security and justice, which has as its basis the high level of trust that must exist between the Member States.

79To that end, it follows from that directive, and in particular from Article 1(2) thereof, that the EIO is an instrument based on the principle of mutual recognition, the execution of which constitutes the rule and refusal to execute is intended to be an exception which must be interpreted strictly (see, to that effect, judgment of 8 December 2020, Staatsanwaltschaft Wien (Falsified transfer orders), C-584/19, EU:C:2020:1002, paragraph 64).

80The obligation to interpret strictly the grounds for refusal to execute an EIO argues in favour of an interpretation of Article 24 of Directive 2014/41 according to which the executing Member State may not refuse to execute, in criminal proceedings, a request for a hearing by videoconference on the sole ground that that measure could not be ordered in a similar domestic case.

81In the light of all the foregoing considerations, the answer to the second question is that Article 10, Article 11(1)(h) and Article 24 of Directive 2014/41 must be interpreted as meaning that an authority of a Member State cannot refuse to execute an EIO concerning the organisation, during the criminal trial, of a hearing by videoconference of the accused person on the sole ground that that measure would not be available in a similar domestic case.

The third question

82By its third question, the referring court asks, in essence, whether Article 11(1)(f) of Directive 2014/41 must be interpreted as meaning that the fact that the ground for refusal provided for in that provision does not preclude the execution of an EIO concerning the organisation, during the criminal trial, of a hearing by videoconference of the accused person prevents the executing authority from refusing to execute it on the basis on another ground provided for in that directive.

83It is apparent from Article 9(1) of Directive 2014/41 that an executing authority may decide not to execute an EIO in reliance on one of the grounds for non-recognition or non-execution or on one of the grounds for postponement provided for in that directive.

84Article 11 of that directive, entitled ‘Grounds for non-recognition or non-execution’, lists, in paragraph 1 thereof, the grounds for non-recognition or non-execution of an EIO.

85Those grounds include, in Article 11(1)(f) of that directive, substantial grounds to believe that the execution of the investigative measure indicated in the EIO would be incompatible with the executing Member State’s obligations in accordance with Article 6 TEU and the Charter.

86In the present case, it appears clear from the reference for a preliminary ruling that the referring court takes the view that the Belgian authorities cannot rely on such a ground to refuse to execute the request to hear HG by videoconference.

87That ground constitutes, however, only one of the grounds for non-recognition or non-execution which are provided for in Article 11(1) of Directive 2014/41.

88The grounds for non-recognition or non-execution provided for in that provision are independent of each other.

89In addition, Article 11(1) of that directive does not set up any hierarchy between those grounds for non-recognition or non-execution and does not envisage any consequence of the non-application of one of those grounds on the possibility for the executing authority to rely on another of those grounds in order to refuse the execution of an EIO.

90Furthermore, as has been stated in paragraphs 68 to 70 above, Article 24(2) of Directive 2014/41 provides for specific grounds for refusal of an EIO concerning the organisation of a hearing by videoconference of an accused person, which are in addition to those referred to in Article 11 of that directive.

91It is apparent from those provisions that the execution of an EIO concerning the organisation, during a criminal trial, of a hearing by videoconference of an accused person may be refused on the basis of any of the grounds for refusal provided for in Article 11(1) or Article 24(2) of Directive 2014/41, such that the finding of the executing authority that one of those grounds may not be relied on in order to refuse the execution of that EIO in no way prevents it from refusing the execution of that EIO on the basis of another of those grounds.

92Consequently, the answer to the third question is that Article 11(1)(f) of Directive 2014/41 must be interpreted as meaning that the fact that the ground for refusal provided for in that provision does not preclude the execution of an EIO concerning the organisation, during a criminal trial, of a hearing by videoconference of the accused person does not prevent the executing authority from refusing to execute it on the basis on another ground for refusal provided for in that directive.

The fourth question

93By its fourth question, the referring court asks, in essence, whether Article 24(2)(b) of Directive 2014/41 must be interpreted as precluding an authority of a Member State from refusing to execute an EIO concerning the organisation, during a criminal trial, of a hearing by videoconference of the accused person solely on the basis of general guidelines issued by that Member State without carrying out an examination which takes into account all of the relevant circumstances of the case.

94Article 24(2)(b) of Directive 2014/41 provides that the execution of an EIO concerning the hearing of a person by videoconference may be refused where the execution of such an investigative measure in a particular case would be contrary to the fundamental principles of the law of the executing Member State.

95 It is apparent from the actual wording of that provision and, more specifically, the use of the words ‘in a particular case’, that the application of the ground for refusal which it lays down requires an examination to be carried out which takes account of all the relevant circumstances of the case.

96 Such an interpretation is substantiated by the requirement, referred to in paragraph 79 above, that the grounds for refusal to execute provided for by that directive must be subject to a strict interpretation.

97 It must nevertheless be stated that the need to carry out an examination which takes into account all of the relevant circumstances of the case for the purposes of the application of the ground for refusal referred to in Article 24(2)(b) of that directive does not preclude, in itself, the Member States from adopting general guidelines which seek to facilitate the implementation of the fundamental principles of their national law by the competent authorities.

98 Consequently, where the fundamental principles of the law of the executing Member State would prevent, during a criminal trial, an accused person from being heard by videoconference, Article 24(2)(b) of Directive 2014/41 does not preclude that Member State from adopting general guidelines in order to draw attention to the content of those fundamental principles and to make clear the consequences which stem from them for the competent authorities of that Member State in the execution of an EIO in so far as those authorities may apply them in the light of all the relevant circumstances of the case in an individual examination.

99 In the light of those considerations, the answer to the fourth question is that Article 24(2)(b) of Directive 2014/41 must be interpreted as precluding an authority of a Member State from refusing to execute an EIO concerning the organisation, during a criminal trial, of a hearing by videoconference of the accused person solely on the basis of general guidelines issued by that Member State without carrying out an examination which takes into account all of the relevant circumstances of the case.

Costs

100 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 (Third Chamber) hereby rules:

1. **Articles 3, 22 and 24 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 the judicial authority of a Member State may issue a European Investigation Order (EIO) for the purposes of either the temporary transfer to its territory of a person in custody in another Member State, in order to hear that person as an accused person during his or her trial, or the organisation, by the authorities of the latter Member State, of a hearing by videoconference of that person in that same capacity during his or her trial, even if the execution of that measure also involves the appearance of that person at that trial, in so far as that measure has an evidential objective and its execution does not go beyond what is necessary for the purpose of gathering evidence.

2. **Article 10, Article 11(1)(h) and Article 24 of Directive 2014/41**

   must be interpreted as meaning that an authority of a Member State cannot refuse to execute an EIO concerning the organisation, during the criminal trial, of a hearing by videoconference of the

accused person on the sole ground that that measure would not be available in a similar domestic case.

3.Article 11(1)(f) of Directive 2014/41

must be interpreted as meaning that the fact that the ground for refusal provided for in that provision does not preclude the execution of an EIO concerning the organisation, during a criminal trial, of a hearing by videoconference of the accused person does not prevent the executing authority from refusing to execute it on the basis on another ground for refusal provided for in that directive.

4.Article 24(2)(b) of Directive 2014/41

must be interpreted as precluding an authority of a Member State from refusing to execute an EIO concerning the organisation, during a criminal trial, of a hearing by videoconference of the accused person solely on the basis of general guidelines issued by that Member State without carrying out an examination which takes into account all of the relevant circumstances of the case.

[Signatures]

(*1) Language of the case: Italian.

(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.