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**Workshop exercise**

Mr Sandoz resides in Lithuania. He is prosecuted for his alleged participation in a large, cross-border money laundering scheme before a District Court in Finland. Mr Sandoz's lawyer requests that Mr Sandoz be heard by videoconference from his home in Lithuania. The lawyer explains that Mr Sandoz has recently fractured his pelvis and needs a wheelchair to move around. According to the lawyer, it would be impossible for Mr Sandoz to personally attend the long trial.

The case is heard by a three-judge bench consisting of a presiding judge and two lay judges. Adopting a fairly broad reading of national procedural rules, they consider that the national law authorizes the accused to participate from his home in Lithuania by videoconference, at least for the time when he is not being heard personally to gather evidence. The prosecutor objects to Mr Sandoz's participation by videoconference in the informal manner contemplated by the court. It claims that the only way to hear him remotely would be by issuing a European Investigation Order (EIO) under Directive 2014/41, which contains a procedure to that end.<sup>1</sup>

The prosecutor requests that the court submit a question to the Court of Justice of the European Union for a preliminary ruling, pursuant to Article 267 of the Treaty on the Functioning of the European Union (TFEU), to clarify whether the EIO Directive precludes such a parallel, more informal way under national law to hear the accused by videoconference from his home. The prosecutor claims that such informal proceedings frustrate an effective prosecution and undermine the system established by the EIO Directive.

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<sup>1</sup> Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters [2014] OJ L130/1.

As the presiding judge considers the prosecutor's request to refer a question to the Court of Justice in Luxembourg, how should s/he address the following issues:

- The trial court is a first-instance court from whose judgments there is a possibility of appeal
- The judge is unsure as to whether the EIO Directive is relevant in the proceedings
- It appears that there is no clear precedent from the Court of Justice on these matters
- The judge is concerned that making the reference will lead to a substantial delay in the trial
- The judge is unsure regarding how to draft a request for a preliminary ruling
- The judge wonders whether a bench with lay judges meets the requirements of judicial independence in light of the case law of the Court of Justice

*Discuss.*