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NOTE

From: Presidency
To: Delegations

Subject: Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters
- Rule of speciality
= Paper by the Presidency

Delegations will find attached a paper by the Presidency addressing the issue of the rule of speciality in the context of the EIO Directive.

Presidency Paper

While the Presidency does not intend to enter into a full-ranging discussion on the application 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 (EIO), it would like to address the issue of the rule of speciality.

In previous discussions in the EJM and Eurojust, no solution was found as regards whether the rule of speciality applies to evidence transmitted based on an EIO.

In the Directive, there are no provisions dealing in particular with the rule of speciality. However, in principle the approach is that the rule of speciality is typical for extradition cases and only applies to mutual legal assistance where the respective instrument contains provisions concerning the further use of provided evidence. In the absence of specific provisions, the rule of speciality applies only if expressly stated as a condition in the responding note of the executing authority.

On the other hand, the Directive provides for a 'specific investigation'.

It seems that Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, provides no solution to this problem. If every Member State has the same level of data protection in respect of law enforcement, the rule of speciality has to be based on grounds other than data protection.

Delegations are invited to share their views on this issue.