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NOTE

From: Presidency
To: Delegations

Subject: Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters
- Conclusions of AG Bot in case C-324/17 (Gavanozov) of 11 April 2019
- Paper by the Presidency

Delegations will find attached a paper by the Presidency concerning the conclusions of advocate general Bot of 11 April 2019 in case C-324/17 (Gavanozov).

Paper by the Presidency

The Presidency would like to draw the attention of delegations to the conclusions of advocate general Bot in case C-324/17 (Gavanozov).¹ This case concerns the first reference for a preliminary ruling in respect of Directive 2014/41 regarding the European Investigation Order (EIO).

The questions raised in this case are the following:

1. Are national legislation and case-law consistent with Article 14 of Directive 2014/41/EU regarding the European Investigation Order in criminal matters, 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 the directive 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 connection with Article 6(1)(a) and Article 1(4) of the directive, a concerned party, within the meaning of Article 14(4), if the measures for collection of evidence are directed at 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 connection with Article 14(2) of the directive?

¹ Conclusions of 11 April 2019:
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=212923&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=7841003>

The advocate general proposed to reformulate the questions and to answer them as follows:

- (1) 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 must be interpreted as precluding the legislation of a Member State, such as the Bulgarian legislation, which does not provide for a legal remedy against the substantive reasons for an investigative measure indicated in an EIO, and the issuance of an EIO by the authorities of that Member State.
- (2) Article 14 of Directive 2014/41 cannot be relied on by an individual before a national court to challenge the substantive reasons for issuing an EIO if remedies are not available under national law in a similar domestic case.
- (3) The concept of ‘party concerned’ within the meaning of Directive 2014/41 includes a witness subject to the investigative measures requested in an EIO and the person against whom a criminal charge has been brought but who is not subject to the investigative measures indicated in an EIO.

It seems appropriate to follow this case closely, since the judgment may contain useful clarifications regarding the application of the EIO and the requirements that apply concerning the relevant national implementation measures.

Member States who wish to present any comments on the subject matter addressed by the conclusions are invited to do so at the COPEN meeting that is scheduled for 19 June 2019.