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NOTE

From: Presidency
To: Delegations

Subject: Regulation (EU) 2016/95 of the European Parliament and of the Council of 20 January 2016 repealing certain acts in the field of police cooperation and judicial cooperation in criminal matters
= Information in relation to the Framework Decision on the European Evidence Warrant and the Directive on the European Investigation Order

Regulation (EU) 2016/95 of the European Parliament and of the Council of 20 January 2016 repealing certain acts in the field of police cooperation and judicial cooperation in criminal matters ¹ (Repeal Regulation) entered into force on 22 February 2016.

One of the instruments that has been repealed by the Regulation is Framework Decision 2008/978/JHA on the European Evidence Warrant (FD EEW), which means that this Framework Decision, since the entry into force of the Repeal Regulation, does not anymore produce legal effects. It should be noted that the FD EEW had been transposed by several Member States, but not by all of them.

However, Article 2 of the Repeal Regulation contains a transitional provision in relation to the FD EEW, stating as follows: "*Any European evidence warrant executed under Framework Decision 2008/978/JHA shall continue to be governed by that Framework Decision until the relevant criminal proceedings have been concluded with a definitive decision*".

¹ OJ L 26, 2.2.2016, p. 9.

In accordance with this Article 2, only EEWs that were *executed* before the date of entry into force of the Repeal Regulation - thus before 22 February - are still be governed by the FD EEW.

It seems relevant to bring this to the attention of delegations in order to avoid confusion about the consequences of the Repeal Regulation for certain provisions of Directive 2014/41/EU on the European Investigation Order (EIO Directive ²), which entered into force on 22 May 2014 and which Member States have to transpose by 22 May 2017.

Articles 34(2) of the EIO Directive provides as follows:

"Framework Decision 2008/978/JHA [FD EEW] is hereby replaced for the Member States bound by this Directive. (...) For the Member States bound by this Directive, references to Framework Decision 2008/978/JHA (...) shall be construed as references to this Directive."

Article 35(1) of the EIO Directive provides as follows:

"Mutual assistance requests received before 22 May 2017 shall continue to be governed by existing instruments relating to mutual assistance in criminal matters. (...)"

In the light of the Repeal Regulation, which is of a later date than the EIO Directive, Articles 34(2) and 35(1) of this Directive have lost their relevance.

Until the EIO Directive is transposed in the legal orders of the Member States - which should be the case by 22 May 2017 at the latest - the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its protocol and the 1959 European Convention on Mutual Assistance in Criminal Matters of the Council of Europe as well as its two additional protocols, should apply, unless an EEW was executed before 22 February 2016 and the relevant criminal proceedings will be concluded with a definitive decision after that date (Article 2 of the Repeal Regulation).

Furthermore, Member States may transpose the EIO Directive before 22 May 2017 if they wish to use the advantages of the newer rules.

² OJ L 130, 1.5.2014, p. 1.