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**NOTE**

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From:	Presidency
To:	Delegations
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Subject:	Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters - Recent developments and practical application - Exchange of views = CJEU judgment in case C-324/17 (Gavanozov)

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**Introduction**

On 24 October 2019, the Court of Justice delivered its judgment in case C-324/17, Gavanozov. This case concerns the first reference for a preliminary ruling in respect of Directive 2014/41 regarding the European Investigation Order (EIO).

Section J of the form set out in Annex A to Directive 2014/41, entitled ‘Legal remedies’, reads as follows:

- 1. Please indicate if a legal remedy has already been sought against the issuing of an EIO, and if so please provide further details (description of the legal remedy, including necessary steps to take and deadlines):*

## **Opinion Advocate General of 11 April 2019**

Following the delivery of the opinion of advocate general Bot on 11 April 2019, the COPEN Working Party discussed this case at its meeting on 19 June 2019, on the basis of 9976/19.

In his opinion, the advocate general proposed *inter alia* to rule the following:

*"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."*

At the meeting on 19 June 2019, several Member States voiced strong concerns on this opinion, some even saying that if the CJEU would endorse the opinion of the advocate general, they would no longer be able to issue European Investigation Orders (see 12149/19, point 4 (ii)).

## **Judgment of 24 October 2019**

In its judgment of 24 October, the CJEU took a different avenue than the one proposed by the advocate general. In order to provide the referring court with an answer which would be of use to it and enable it to determine the case before it, the CJEU reformulated the question posed by the referring court.

According to the CJEU, it was apparent from the order for reference that the referring court was uncertain, in the context of issuing an EIO, how to complete Section J of the form set out in Annex A to Directive 2014/41.

The CJEU noted that it follows from the actual wording of point 1 of Section J of that form, in particular from the use of the words 'if so', that a description of the legal remedy must be included in that point only if a legal remedy has been sought against an EIO.

Following several considerations, the CJEU concluded that Article 5(1) of Directive 2014/41, read in conjunction with Section J of the form referred to in Annex A to that directive, must be interpreted as meaning that the judicial authority of a Member State does **not**, when issuing an EIO, have to include in that section a description of the legal remedies, if any, which are provided for in its Member State against the issuing of such an order.

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