



MINISTRY OF JUSTICE
KRISZTIÁN KECSMÁR
Minister of State for European and International Judicial Cooperation

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Tiina Astola,
Director-General
DG Justice and Consumers
European Commission

Brussels

Subject: Notification provided for in Article 33 of Directive 2014/41/EU of the European Parliament and of the Council regarding the European Investigation Order in criminal matters

Dear Ms Astola,

Article 33 of Directive 2014/41/EU of the European Parliament and of the Council regarding the European Investigation Order in criminal matters provides as follows:

‘(1) By 22 May 2017 each Member State shall notify the Commission of the following:

- a) the authority or authorities which, in accordance with its national law, are competent according to Article 2(c) and (d) when this Member State is the issuing State or the executing State;*
- b) the languages accepted for an EIO, as referred to in Article 5(2);*
- c) the information regarding the designated central authority or authorities if the Member State wishes to make use of the possibility under Article 7(3). This information shall be binding upon the authorities of the issuing State.*

(2) Each Member State may also provide the Commission with the list of necessary documents it would require under Article 22(4).’

In accordance with the Member State notification requirement under the above article, I wish to submit the notification in the annex. I would ask you to take note of the notification.

Budapest, 19 June 2017

Yours sincerely,

Krisztián Kecsmár

Notification pursuant to Article 33(1)(a) of Directive 2014/41/EU of the European Parliament and of the Council regarding the European Investigation Order in criminal matters

1. If Hungary is the Member State executing the European Investigation Order (EIO), the following provisions of *Act CLXXX of 2012 on cooperation with the Member States of the European Union in criminal law matters* apply to the competent authorities:

- general reasons of competence and jurisdiction that apply unless otherwise provided by law in respect of the various procedural measures specified

‘Section 37 (1) Unless otherwise provided by this Act, the district court, or the public prosecutor with competence based on [Act XIX of 1998 on] the Criminal Procedure Code, to investigate the criminal act underlying the EIO, shall have competence to execute the EIO.

(2) If the competence of the public prosecutor under paragraph (1) cannot be determined, the district public prosecutor shall have competence to execute the EIO.

(3) Unless otherwise provided by this Act, the jurisdiction of the court or public prosecutor shall be determined by the place where the procedural measure identified in the EIO is conducted, in particular the place where the person to be heard or questioned resides or is present or established, or the place where the physical evidence can be found. If it is determined that the procedural measure or measures are to be conducted in several places, or the place where the procedural measure is to be conducted cannot be determined, the court or public prosecutor that acted earlier in the case shall have competence.

(4) Unless the EIO indicates otherwise, an EIO submitted in respect of a legal person shall be executed by the court or public prosecutor in whose jurisdiction the legal person is established or present.

(5) On the order of the prosecutor general or the supervising prosecutor, a public prosecutor without competence or jurisdiction on the basis of paragraphs (1)-(4) may have competence to act, in order to ensure the efficient execution of the EIO.’

- provisions on provisional measures

‘Section 60 (1) The public prosecutor in whose jurisdiction the evidence can be found shall have competence to execute an EIO issued with a view to provisionally preventing the destruction, transformation, removal, transfer or disposal of evidence (hereinafter referred to collectively as ‘securing of evidence’).

(2) An EIO issued for the purposes specified in paragraph (1) shall be executed by a court if the Member State authority explicitly requests so.’

- provision of data on accounts held in financial institutions and operations on such accounts

‘Section 62 (1) If the Member State authority issued the EIO with a view to

(a) determining any accounts held or controlled, whether as account holder or attorney holder, in a bank or other financial institution operating in Hungary, by a natural or legal person subject to criminal proceedings in the Member State, and transferring the account data held by the bank or other financial institution, and/or

(b) transferring data held by the account-holding bank or other financial institution relating

to financial operations conducted during a specific period on any account held by a bank or other financial institution operating on the territory of Hungary – including all account data concerning the particular financial operation – and/or transferring account data held by a bank or other financial institution operating on the territory of Hungary, then the EIO shall be executed by the public prosecutor in whose jurisdiction the bank or other financial institution where the account is held is located.

(2) The EIO shall be executed by a court if the Member State authority explicitly requests so. In that case, the court in whose jurisdiction the bank or other financial institution in which the account is held is located shall have competence to execute the EIO.'

- temporary transfer of persons held in custody to the Member State issuing the EIO

'Section 62/B (1) An agreement with the Member State authority on the temporary transfer of a person held in custody in Hungary to ensure the person is present at the procedural measure to be conducted on the territory of the Member State shall be concluded by:

- a) the competent court or public prosecutor in the case of a person held in pre-trial detention, or*
- b) the sentencing judge in the case of a person serving a custodial sentence or detention order.'*

- temporary transfer of persons held in custody to the Member State executing the EIO

'Section 63/A (1) The court or public prosecutor shall conclude an agreement with the Member State authority on the conduct in Hungary of the procedural measure indicated in the EIO and on the provisional transfer to Hungary of the person held in custody in the Member State, to ensure the person is present at the procedural measure.'

- hearings via a closed-circuit telecommunications network

'Section 63/C (2) The court in whose jurisdiction the person to be heard as a witness or as an accused person resides, is present or is held in custody, or in whose jurisdiction the person to be interviewed as an expert resides or is present or established, shall have competence to execute the EIO. If the person at large who is to be heard as a witness or as an accused person does not reside or is not present in Hungary, or the person to be questioned as an expert does not reside or is not present or established in Hungary, Pest Central District Court shall have competence to execute the EIO.'

- hearings via telephone

'Section 64/A (2) The district public prosecutor in whose jurisdiction the person to be heard as a witness resides, is present or is held in custody, or in whose jurisdiction the person to be questioned as an expert resides or is located or established, shall have competence and jurisdiction to execute the EIO. If the person at large who is to be heard as a witness does not reside or is not present in Hungary, or the person to be questioned as an expert does not reside or is not located or established in Hungary, the Office of the Budapest Prosecutor General shall have competence and jurisdiction to execute the EIO.

(3) The EIO shall be executed by a court if the Member State authority explicitly requests so. In that case, the district court with jurisdiction in accordance with paragraph (2) to execute the EIO shall have competence to act, with the provision that if no jurisdiction can be determined, Pest Central District Court shall have competence and jurisdiction. If the court

has competence to execute the EIO, the rules relating to the public prosecutor shall apply mutatis mutandis to the court's proceedings.'

- controlled delivery

'Section 64/B (1) The county prosecutor general shall have competence to execute an EIO issued with a view to carrying out a controlled delivery through the territory of Hungary.

(...)

(4) Where a delay cannot be tolerated, i.e. where the conclusion or the approval by the public prosecutor of an ad hoc agreement could jeopardise or frustrate the successful execution of the controlled delivery, the controlled delivery may be authorised within a 24-hour period by the head of the body of the police or National Tax and Customs Administration with competence in respect of the criminal act underlying the EIO and designated by law to execute controlled deliveries. In that case, the head of the body shall inform the public prosecutor immediately of the provisional authorisation of the controlled delivery. The public prosecutor shall decide whether to allow the controlled delivery immediately after being informed. If the public prosecutor does not allow the controlled delivery, the result of the controlled delivery executed on the basis of a provisional authorisation shall not be used as evidence.'

- use of a covert investigator

'Section 64/E (1) A public prosecutor with the power to authorise the use of a covert investigator shall have competence and jurisdiction to execute an EIO issued with a view to using a Member State covert investigator on the territory of Hungary or a Hungarian covert investigator on the territory of Hungary or another Member State.

(...)

(3) Where a delay cannot be tolerated, i.e. where the conclusion or the approval by the public prosecutor of an ad hoc agreement could jeopardise or frustrate the successful use of the covert investigator, the use referred to in paragraph (1) of the covert investigator may be authorised within a 24-hour period by the head of the body of the police or National Tax and Customs Administration with competence in respect of the criminal act underlying the EIO and designated by law to authorise the use of covert investigators. In that case, the head of the body shall inform the public prosecutor immediately of the provisional authorisation of the use of the covert investigator. The public prosecutor shall decide whether to allow the use of the covert investigator immediately after being informed. If the public prosecutor does not allow the covert investigator to be used, the result of the use of the covert investigator on the basis of the provisional authorisation shall not be used as evidence.'

- interception subject to court authorisation

'Section 65/A (1) An EIO issued with a view to accessing and recording in a covert manner, without the knowledge of the person concerned, communications transmitted via an electronic communication service or a computer device or network, shall be executed by a public prosecutor in accordance with the rules of [Act XIX of 1998 on] the Criminal Procedure Code governing interception and other forms of covert information gathering subject to court authorisation.

(2) The county prosecutor general shall have competence to execute such EIO. If the public prosecutor in whose jurisdiction the EIO is to be executed cannot be determined, the Office of the Budapest Prosecutor General shall have competence and jurisdiction to execute it.'

'Section 65/C (1) The Office of the Budapest Prosecutor General shall have competence and

jurisdiction to receive a notification issued by a Member State authority – using the form indicated in Annex 20 in Hungarian or an available translation of the form into English, French or German – relating to the accessing and recording in a covert manner, without the knowledge of the person concerned, and without Hungarian technical assistance, of communications transmitted via an electronic communication service or a computer device or network regarding a person who is present in Hungary.’

- legal assistance in respect of infringements in accordance with Section 12/J of Act XXXVI of 2007 on legal assistance in respect of infringements

‘Section 12/J (1) The court or infringement authority authorised by Infringements Act II of 2012 to act in the procedural measure underlying the EIO shall have competence to execute the EIO.

(2) The jurisdiction of the court or infringement authority shall be determined by the place where the procedural measure indicated in the EIO is conducted, in particular the place where the person to be heard resides or is present or established, or the place where the physical evidence can be found. If it is determined that the procedural measure or measures are to be conducted in several places, or the place where the procedural measure is to be conducted cannot be determined, the central authority shall designate the executing authority.’

2. If Hungary is the Member State issuing the EIO, the following provisions of Act CLXXX of 2012 on cooperation with the Member States of the European Union in criminal law matters apply to the competent authorities:

- General reasons of competence and jurisdiction that apply unless otherwise provided by law in respect of the various procedural measures specified

‘Section 53 (2) An EIO may be issued ex officio, or at the request of the accused or the defence, by the court or public prosecutor before which or whom the criminal proceedings are pending.

(...)

(4) If the investigating judge is authorised to order a procedural measure during the investigation, the court shall issue an order by approving the EIO at the request of the public prosecutor.

(5) Where paragraph (4) applies, the public prosecutor shall submit the EIO to the court, together with its request, in accordance with the provisions of [Act XIX of 1998 on] the Criminal Procedure Code, for a decision by the investigating judge. If the court rejects the public prosecutor’s request, it shall return the EIO to the public prosecutor. If the conditions for ordering the procedural measure indicated in the public prosecutor’s request are met, the court shall approve the EIO by completing section L of the form indicated in Annex 18.’

- Controlled delivery

‘Section 64/C (1) The public prosecutor may issue an EIO with a view to executing a controlled delivery through the territory of one or more Member States.

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(4) Where a delay cannot be tolerated, i.e. where the conclusion of an ad hoc agreement could jeopardise or frustrate the successful execution of the controlled delivery, the controlled delivery may be initiated within a 24-hour period by the head of the body of the police or National Tax and Customs Administration designated by law to execute

controlled deliveries. In that case, the head of the body shall inform the public prosecutor immediately of the provisional initiation of the controlled delivery. The public prosecutor shall decide whether to initiate the controlled delivery immediately after being informed. If the public prosecutor does not initiate the controlled delivery, the result of the controlled delivery executed on the basis of the provisional initiation shall not be used as evidence.'

- Use of a covert investigator

'Section 65 (1) A public prosecutor may issue an EIO with a view to using a Hungarian covert investigator on the territory of another Member State, or a Member State covert investigator on the territory of Hungary or another Member State.

(...)

(3) Where a delay cannot be tolerated, i.e. where the conclusion of an ad hoc agreement could jeopardise or frustrate the successful use of the covert investigator, the use of the covert investigator referred to in paragraph (1) may be initiated within a 24-hour period by the head of the body of the police or National Tax and Customs Administration designated by law to authorise the use of covert investigators. In that case, the head of the body shall inform the public prosecutor immediately of the provisional initiation of the use of the covert investigator. The public prosecutor shall decide whether to initiate the use of the covert investigator immediately after being informed. If the public prosecutor does not initiate the use of the covert investigator, the result of the use of the covert investigator on the basis of the provisional initiation shall not be used as evidence.'

- Interception subject to court authorisation

'Section 65/A (1) A public prosecutor may issue an EIO with a view to accessing and recording in another Member State, in a covert manner, without the knowledge of the person concerned, communications transmitted by an electronic communication service or a computer device or network.'

'Section 65/D (1) If, in ongoing criminal proceedings in Hungary, the person concerned by the use of interception during a covert investigation subject to court authorisation referred to in Section 65/B(1) is not present on the territory of Hungary, but the assistance of the Member State where the person concerned is present is not required in order to access or record the communications transmitted, the public prosecutor shall notify the authority of the Member State where the person concerned is present of the conduct or planned conduct of the interception as soon as the place where the person concerned is present is established, using an available translation of the form indicated in Annex 20 into the official language, or one of the official languages, of the Member State or into the language indicated by the Member State.'

- Legal assistance in respect of infringements pursuant to Section 4(1) of Act XXXVI of 2007 on legal assistance in respect of infringements

'Section 4(1) (...) The EIO may be issued ex officio, using the form in Annex 1, or at the request of the person subject to the proceedings or his or her representative, by the court or infringement authority before which the infringement proceedings are pending.'

Notification pursuant to Article 33(1)(b) of Directive 2014/41/EU of the European Parliament and of the Council regarding the European Investigation Order in criminal matters

If Hungary is the Member State executing the EIO, it will accept the EIO in Hungarian; in urgent cases, or where submitting the EIO in Hungarian is extremely difficult, it will accept the EIO in English, French or German.

Within the framework of legal assistance in respect of infringements, Hungary will accept the EIO in Hungarian; in urgent cases, or where submitting the EIO in Hungarian is extremely difficult, it will accept the EIO in English, French or German.

Notification pursuant to Article 33(1)(c) of Directive 2014/41/EU of the European Parliament and of the Council regarding the European Investigation Order in criminal matters

Hungary has not designated any central authority within the framework of cooperation in criminal law matters. Section 3(4) of Act XXXVI of 2007 on legal assistance in respect of infringements designates the prosecutor general as the central authority for issuing and executing EIOs within the framework of legal assistance in respect of infringements.

Notification pursuant to Article 33(2) of Directive 2014/41/EU of the European Parliament and of the Council regarding the European Investigation Order in criminal matters

For the purposes of Article 22(4) (i.e. where execution of an EIO submitted to Hungary involves transit of the person held in custody through a third Member State), Hungary does not require any documents other than the EIO and related documents submitted to it within the framework of legal assistance. However, pursuant to Section 62/B(5) of Act CLXXX of 2012 on cooperation with the Member States of the European Union in criminal law matters:

‘(5) If the transfer to a Member State or return to the territory of Hungary of the person held in custody involves transit through a third Member State, the person may be transferred temporarily provided that the Member State authority undertakes to ensure that the person held in custody will remain in custody on the territory of the third Member State.’