

OM 13/41/2014

Innanen Tanja (OM)

Lähetäjä: Innanen Tanja (OM)
Lähetetty: 1. syyskuuta 2017 10:47
Vastaanottaja: 'Bencze András dr.'
Kopio: Välimaa Asko (OM); Kunsági Emma - BEU (Emma.Kunsagi@mfa.gov.hu); Forman Tünde Dr.; Manninen Sami (OM); Andersson Lena (OM); 'Brander Sampo'
Aihe: EIO implementation, bilateral agreements (HU and FI)

Dear Colleagues,

Please find below the answer of the Ministry of Justice of Finland to your latest e-mail relating to the EIO implementation and the bilateral Agreement between Hungary and Finland.

Best regards,

Tanja Innanen

Senior Adviser, Legislative Affairs
Ministry of Justice, Finland
Law Drafting Department, Criminal and Procedural Law Unit
e-mail tanja.innanen@om.fi

Dear dr. Benze András,

Thank you for your message and I apologize for the late response due to the holiday season.

The result of the e-mail discussion at the level of officials in relation to the interpretation of Article 34 (3) of the Directive 2014/41/EU regarding the European Investigation Order (*EIO Directive*) was that there is a common understanding on the substance between Hungary and Finland. Both Parties had the opinion that there is no need to notify the bilateral Agreement on Legal Protection and Mutual Assistance in civil-, family- and criminal matters concluded in 22 May 1981 (*bilateral Agreement*) to the Commission in accordance with Article 34 (4) of the EIO Directive, since the corresponding provisions of the bilateral Agreement should not be continued to apply and the other provisions are not included in the scope of the EIO Directive. There was also a common understanding that the corresponding provisions to the EIO Directive are Articles 2, 3, 4, 5, 6, 9, 11, 13, 14, 15 and 16 of the bilateral Agreement.

At the level of officials Finland proposed that some kind of formal procedure (for example an exchange of letters between Ministers of Justice) could be applied to confirm the common understanding. The Hungarian side had the opinion that there is no need to conclude a formal agreement about not applying the bilateral Agreement and that it is sufficient if neither Party provide the Commission a notification on the bilateral Agreement.

The Ministry of Justice of Finland can now confirm that the procedure you have suggested is acceptable and that it is not essential that there is a formal procedure between Hungary and Finland.

Best regards,

Asko Välimaa
Kansliapäällikkö/ Kanslichef/ Permanent Secretary
Oikeusministeriö/ Justitieministeriet/ Ministry of Justice

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Lähetäjä: Bencze András dr. [<mailto:Andras.Bencze@im.gov.hu>]

Lähetetty: 17. heinäkuuta 2017 16:27

Vastaanottaja: Brander Sampo

Kopio: Kunsági Emma - BEU (Emma.Kunsagi@mfa.gov.hu); Forman Tünde Dr.; Innanen Tanja (OM); Kiriakos Sami (OM); Andersson Lena (OM)

Aihe: RE: EIO implementation, bilateral agreements (HU and FI)

Dear Colleagues,

We agree that the corresponding provisions to the EIO Directive are Articles 2, 3, 4, 5, 6, 9, 11, 13, 14, 15 and 16 of the Agreement.

Nevertheless, in Hungary, MLAs and EIOs should be executed by prosecutors and courts. An agreement between ministers for justices would not bind any prosecutors or judges. As a consequence, it would be preferable if we leave this question to the practice.

The situation was similar when both our States joined to the Council of Europe Convention on Mutual Assistance in Criminal Matters signed in Strasbourg on 20th April 1959 (CoE Convention). According to Article 26(1) of the CoE Convention, "subject to the provisions of Article 15, paragraph 7, and Article 16, paragraph 3, this Convention shall, in respect of those countries to which it applies, supersede the provisions of any treaties, conventions or bilateral agreements governing mutual assistance in criminal matters between any two Contracting Parties".

As far as I know, there was no agreement between our ministers or other authorities on which provisions of the Agreement should be applied after we joined to the CoE Convention. Nonetheless, the practice has been handling the situation without any problems.

Kind regards,

dr. Bencze András

osztályvezető/Head of Unit

Igazságügyi Minisztérium/Ministry of Justice of Hungary

Nemzetközi Büntetőjogi és Emberi Jogi Főosztály/Department of International Criminal Law and Human Rights

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From: Brander Sampo [<mailto:Sampo.Brander@formin.fi>]

Sent: Friday, July 07, 2017 4:39 PM

To: Bencze András dr.

Cc: Kunsági Emma - BEU (Emma.Kunsagi@mfa.gov.hu); Forman Tünde Dr.; Innanen Tanja (OM); Kiriakos Sami (OM); Andersson Lena (OM)

Subject: RE: EIO implementation, bilateral agreements (HU and FI)

Dear dr. Bencze András, dear Colleagues,

Thank you very much for giving your position on this question!

Could I ask if you have had a chance to consider whether you would agree with us on the provisions of the Agreement between Finland and Hungary which correspond to the scope of the EIO Directive when applied to collecting evidence in criminal matters, namely Articles 2, 3, 4, 5, 6, 9, 11, 13, 14, 15 and 16 of the Agreement?

We also think that there is no need for formal agreement about not applying the bilateral Agreement for the purposes of notifying the Commission. However, we think such formal agreement (like the one enclosed in my earlier e-mail) could be beneficial for the future practice. Such agreement would clearly set out the provisions in the bilateral Agreement which will no longer be applied because they are replaced by the EIO. Could I ask what you might think of this?

Best regards,

Sampo Brander
Counsellor, Judicial cooperation (criminal matters)
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sampo.brande@formin.fi

From: Bencze András dr. [<mailto:Andras.Bencze@im.gov.hu>]
Sent: 6. heinäkuuta 2017 14:55
To: Brander Sampo; tanja.innanen@om.fi; sami.kiriakos@om.fi
Cc: Kunsági Emma - BEU (Emma.Kunsagi@mfa.gov.hu); Forman Tünde Dr.
Subject: RE: EIO implementation, bilateral agreements (HU and FI)

Dear Colleagues,

The Hungarian Party is also of the opinion that the Commission should not be notified on the bilateral Agreement on Legal Protection and Mutual Assistance in civil-, family- and criminal matters concluded in 22 May 1981 (bilateral Agreement), since the corresponding provisions of the bilateral Agreement should not be continued to apply and the other provisions are not included in the scope of the Directive 2014/41/EU regarding the European Investigation order in criminal matters (EIO Directive).

Hungary has already implemented the EIO Directive and provided with the Commission on the prescribed notifications which did not include the bilateral Agreement.

According to Article 34 (4) of the EIO Directive, providing the Commission with negative notifications is not necessary (i.e. there is no need to provide with notifications about not applying an agreement). Consequently, there is no need to conclude a formal agreement about not applying the bilateral Agreement. It is sufficient if neither Party provides the Commission with notification on the bilateral Agreement.

Best regards,

dr. Bencze András

osztályvezető/Head of Unit
Igazságügyi Minisztérium/Ministry of Justice of Hungary
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From: Kunsági Emma - BEU [<mailto:Emma.Kunsagi@mfa.gov.hu>]
Sent: Thursday, June 22, 2017 9:11 AM
To: Forman Tünde Dr.; Bencze András dr.
Cc: Kara Ákos dr.; Szentmihályi-Soós Viktória dr.; Jancsó Gábor dr.
Subject: FW: EIO implementation, bilateral agreements (HU and FI)

Sziasztok,

FI az alábbi levelet küldte az EIO vs. meglévő kétoldalú egyezmények témájában. Szerintük a finn-magyar kétoldalú nem felel meg az EIO 34. cikkében leírt feltételeknek, ezért nem akarnának a 34. cikk (4) szerint notifikálni. Véleményük szerint megfontolandó egy közös nyilatkozat tétele (arra nézve, hogy a meglévő bilat helyett az EIOt alkalmazzuk), ennek tervezete található a mellékletben.

Üdv
Emma

From: Brander Sampo [<mailto:Sampo.Brander@formin.fi>]
Sent: Wednesday, June 21, 2017 8:39 PM
To: Kunsági Emma - BEU <Emma.Kunsagi@mfa.gov.hu>
Subject: EIO implementation, bilateral agreements (HU and FI)

Hi Emma,

With reference to our discussion today, my capital (Ms. Tanja Innanen & Mr. Sami Kiriakos) would like to send the following e-mail and attachment to your Ministry of Justice. Could you be so kind to forward it to the person(s) in charge of EIO?

Best,
Sampo

I'm contacting you relating to the implementation of the Directive 2014/41/EU regarding the **European Investigation Order** (EIO Directive). Article 34 of the Directive stipulates relations to other legal instruments, agreements and arrangements. Paragraph 3 of the Article allows Member States to continue to apply bilateral agreements or arrangements with other Member States if the conditions set in the article are met. According to paragraph 4 Member States shall notify to the Commission by 22 May 2017 the existing agreements they wish to continue to apply.

Hungary and Finland have a bilateral Agreement (dated 22.5.1981) that includes provisions also on mutual legal assistance in criminal matters. The Directive would enable to continue to apply this Agreement if the conditions set in its Article 34 are met.

At the level officials we have the view in Finland that relating to provisions where the bilateral Agreement between Hungary and Finland has *corresponding provisions* with the EIO Directive, the Agreement does not meet the requirements of Article 34. This would mean that relating to these provisions the EIO Directive would be applied between Hungary and Finland and not the Agreement. Relating to questions where *the scope* of the EIO Directive and the Agreement between Hungary and Finland *is different*, the Agreement could be applied.

To our preliminary view Articles 2, 3, 4, 5, 6, 9, 11, 13, 14, 15 and 16 of the Agreement between Hungary and Finland *are corresponding* to the Articles of the EIO Directive when applied *to collecting evidence in criminal matters*. The service of documents and transfer of proceedings are not included in the scope of the EIO Directive. The other Articles of the Agreement have *a different scope* than the Directive.

If we could agree on this view, Hungary and Finland would not make a declaration stipulated in paragraph 4 of Article 34 of the Directive.

The implementing legislation of the Directive will come into force in Finland most probably in about three weeks. It would be important to coordinate our views on this question as soon as possible. To our information the implementing legislation is already in force in Hungary.

When we would reach an common view on this question, we would also have to consider if some kind of formal procedure should be applied for example between Ministers of Justice or high level officials. I have attached to this message a draft text for a common view on this question.

Best regards,

Tanja Innanen
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Ezen üzenet és annak bármely csatolt anyaga bizalmas, jogi védelem alatt áll, a nyilvános közléstől védett. Az üzenetet kizárólag a címzett, illetve az általa meghatalmazottak használhatják fel. Ha Ön nem az üzenet címzettje, úgy kérjük, hogy telefonon, vagy e-mail-ben értesítse erről az üzenet küldőjét és törölje az üzenetet, valamint annak összes csatolt mellékletét a rendszeréből. Ha Ön nem az üzenet címzettje, abban az esetben tilos az üzenetet vagy annak bármely csatolt mellékletét lemásolnia, elmentenie, az üzenet tartalmát bárkivel közölnie vagy azzal visszaélnie.

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