European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters. Framework Decision

2003/0270(CNS) - 18/12/2008 - Final act

PURPOSE: to create a device to facilitate proof in cross-border cases on the basis of the principle of mutual recognition.

LEGISLATIVE ACT: Council Framework Decision 2008/978/JHA on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters.

CONTENT: the European Evidence Warrant will be a decision issued by a judicial authority in a Member State and directly recognised and executed in another Member State . By comparison with the existing mutual assistance procedures which it replaces, the European Evidence Warrant will speed up proceedings and provide guarantees for the issue and execution of a warrant.

The European Evidence Warrant applies to specified objects, documents and data needed in the issuing State for the purpose of criminal proceedings or other proceedings which may ultimately give rise to proceedings before a criminal court. This may include, for example: objects, documents or data from a third party, from a search of premises including the private premises of the suspect, historical data on the use of any services including financial transactions, historical records of statements, interviews and hearings, and other records, including the results of special investigative techniques.

The main provisions of the Framework Decision are as follows:

Issuing authority: in order to protect fundamental rights, the European Evidence Warrant should be issued only by judges, courts, investigating magistrates, public prosecutors and certain other judicial authorities as defined by Member States in accordance with this Framework Decision.

Content and form: the European Evidence Warrant set out in the form provided for in the Annex shall be completed, signed, and its contents certified as accurate, by the issuing authority. It shall be written in, or translated by the issuing State into, the official language or one of the official languages of the executing State.

Recognition: the executing authority shall recognise a European Evidence Warrant, transmitted in accordance with the provisions of the text, without any further formality being required and shall take the necessary measures for its execution, unless that authority decides to invoke one of the grounds for non-recognition or non-execution or one of the grounds for postponement provided for in the text.

Deadlines for recognition, execution and transfer: any decision to refuse recognition or execution shall be taken as soon as possible and no later than **30 days** after the receipt of the European Evidence Warrant by the competent executing authority. Unless grounds for postponement exist or the executing authority has the objects, documents or data sought already in its possession, the executing authority shall take possession of the objects, documents or data without delay and no later than **60 days** after the receipt of the European Evidence Warrant by the competent executing authority.

Personal data: personal data obtained under this Framework Decision may be used by the issuing State for the purpose of: (a) proceedings for which the European Evidence Warrant may be issued; (b) other judicial and administrative proceedings directly related to the proceedings referred to under point (a); (c) preventing an immediate and serious threat to public security.

For any purpose other than those set out above, personal data may be used only with the prior consent of the executing State, unless the issuing State has obtained the consent of the data subject.

Double criminality: the Framework Decision provides that, for 32 categories of offence, the executing State shall not invoke double criminality for refusing to execute a European Evidence Warrant if the offence in question is punished in the issuing State by a custodial sentence of at least three years.

Legal remedies: Member States shall put in place the necessary arrangements to ensure that any interested party, including bona fide third parties, have legal remedies against the recognition and execution of a European Evidence Warrant, in order to preserve their legitimate interests. Member States may limit the legal remedies provided for to cases in which the European Evidence Warrant is executed using coercive measures.

Existing mutual assistance procedures: the European Evidence Warrant should coexist with existing mutual assistance procedures. Such coexistence should be considered transitional until, in accordance with the Hague Programme, the types of evidence-gathering excluded from the scope of this Framework Decision are also the subject of a mutual recognition instrument, the adoption of which would provide a complete mutual recognition regime to replace mutual assistance procedures. In this context, mutual assistance requests received before 19 January 2011 shall continue to be governed by existing instruments relating to mutual assistance in criminal matters.

Implementation: Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 19 January 2011.

Through the **opt out** mechanism, Germany may, by a declaration, reserve its right to make the execution of a European Evidence Warrant subject to verification of double criminality in cases relating to terrorism, computer-related crime, racism and xenophobia, sabotage, racketeering and extortion or swindling if it is necessary to carry out a search or seizure for the execution of the European Evidence Warrant, except where the issuing authority has declared that the offence concerned under the law of the issuing State falls within the scope of criteria indicated in the declaration.

The Commission shall, by 19 January 2012, submit a report assessing the extent to which the Member States have taken the necessary measures in order to comply with this Framework Decision, accompanied, if necessary, by legislative proposals.

Review: each Member State shall each year before 1 May inform the Council and the Commission of any difficulties encountered by it during the previous calendar year concerning the execution of European Evidence Warrants in relation to grounds for non-recognition or non-execution.

No later than 19 January 2014, the Commission shall establish a report accompanied by any initiatives it may deem appropriate. On the basis of the report the Council shall review this Framework Decision with a view to considering whether the following provisions should be repealed or modified: Article 13(1) and (3) (grounds for non-recognition or non-execution) and Article 23(4) (opt out mechanism for Germany).

ENTRY INTO FORCE: 20/01/2009.