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

2003/0270(CNS) - 14/11/2003 - Legislative proposal

PURPOSE : to improve judicial co-operation by applying the principle of mutual recognition to a judicial decision, in the form of a European warrant, for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters. PROPOSED ACT : Council framework Decision. CONTENT : the aim of this proposal is to create a European Evidence Warrant which would apply the principle of mutual recognition to obtaining certain types of evidence for use in criminal proceedings. The proposal is part of ongoing efforts by the European Union to create an area of freedom, security and justice. The proposal is based on the principle of mutual recognition of judicial decisions established by the 1999 Tampere European Council as the cornerstone of judicial cooperation. The underlying idea is that the European Warrant is an order that would be issued by a judicial authority in one Member State and which would be directly recognised and enforced by a judicial authority in another Member State. As compared to the existing mutual assistance procedures that it would replace, the European Evidence Warrant would bring benefits including faster procedures and clear safeguards for the issuing of a warrant and for its execution. The proposal focuses on objects, documents or data obtained under procedural law measures such as production orders and search & seizure orders. It includes requests for copies of criminal records. It does not address taking statements (in whatever manner) from suspects, defendants, witnesses or victims. Nor does it address procedural investigative measures which involve obtaining evidence in real-time, such as interception of communications and monitoring of bank accounts. Although this proposal does not cover the obtaining of these other types of evidence, the Commission considers it to be the first step towards replacing the existing regime of mutual assistance within the European Union by a single EU body of law based on mutual recognition and subject to minimum safeguards. The proposal also excludes: - taking body samples, such as DNA; - obtaining evidence in real-time, such as interception of communications and monitoring of bank accounts; - requiring further enquiries, such as the commissioning of an expert's report. The obtaining of those types of evidence from another Member State will therefore continue to be governed by existing mutual assistance rules. The Commission considers that the entirety of those mutual assistance rules should in due course be replaced by EU rules based on the mutual recognition principle. The current proposal is a first step towards that goal. This proposal adopts the same approach to mutual recognition as the European arrest warrant. The European Evidence Warrant would thus be a single document translated by the issuing authority into an official language of the executing State. No further translation would be is necessary. This means that the European Evidence Warrant could be executed immediately in the same way as a domestic procedural measure. The European Warrant approach also overcomes the significant differences in Member States' criminal procedural laws. It would lay down the objective to be achieved, while leaving it to theexecuting State to decide the most appropriate manner to obtain the evidence in accordance with its domestic law. This would avoid the situation in a system based on mutual recognition of national orders in which some Member States would be obliged to execute a search warrant despite the fact that they would normally use a less intrusive measure. For example, obtaining bank information is carried out in some Member States using a search warrant and in other Member States by using a less intrusive "production order". The proposal contains specific safeguards for the issuing and executing States. These would be intended to supplement domestic law. In the issuing State, a European Evidence Warrant could an be issued only by a judge, investigating magistrate or prosecutor. The issuing authority would have to be satisfied that it could obtain the objects, documents or data in similar circumstances if they were on the territory of its own Member State. This would prevent the European Evidence Warrant from being used to circumvent national safeguards on obtaining evidence.

For example, it would ensure that prohibitions in the issuing State on obtaining evidence subject to legal, medical or journalistic privilege would apply equally where its judicial authorities sought such evidence from the territory of another Member State. The executing State would, there is a need to ensure that the fundamental right not to incriminate oneself was protected, and respect the need for additional safeguards with respect to search and seizure. Effective legal remedies would also be required in the issuing and executing States when coercive measures were used to obtain the evidence. Further safeguards would be provided by the ne bis in idem (double jeopardy) principle being a ground for refusal to execute the European Evidence Warrant. The European Evidence Warrant would be available for use with respect to documents and data held electronically. The proposal addresses the jurisdictional issue that arises where a business holds computer data about its customers in one Member State on a server located in another Member State. The proposal ensures that the evidence can be obtained from the Member State in which the customer was located without the need to seek the agreement of the Member State in which the server was located. This would enhance the effectiveness of cross-border investigations while at the same time providing legal clarity for industry. Lastly, the implementation of the proposed Framework Decision would entail no additional operational expenditure to be charged to the budgets of the Member States or to the budget of the European Communities.