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

2003/0270(CNS) - 02/06/2005

The Council held a policy debate on two questions relating to the draft Framework Decision on the European Evidence Warrant: the territoriality clause and the question of possible inclusion of a provision on computer data in the territory of another Member State.

The JHA Council had discussed the need for a territoriality clause at its meeting on 24 February 2005 and agreed that the text should contain such a clause but decided to discuss the scope and exact wording of the clause at a subsequent meeting.

The present wording provides that a European Evidence Warrant may be refused if it relates to criminal offences which:

- under the law of the executing State are regarded as having been committed wholly or partly within its territory, or in a place equivalent to its territory, or

- were committed outside the territory of the issuing State, and the law of the executing State does not permit legal proceedings to be taken in respect of such offences where they are committed outside that State's territory.

Several delegations considered that the inclusion of such a territoriality clause would involve too great a limitation on mutual assistance in criminal matters.

The other question related to the possibility of obtaining computer information from another Member State for procedural purposes. The majority of delegations considered that judicial cooperation questions in this area should be dealt with more fully in a separate instrument and that it would be desirable to gain greater experience first with the application of other instruments, such as the 2000 Convention on Mutual Assistance in Criminal Matters and the 2001 Council of Europe Convention on Cybercrime.