Basic information

2003/0270(CNS) CNS - Consultation procedure JHA act	Procedure completed
European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters. Framework Decision Repealed by 2014/0339(COD) **Subject** 7.40.04 Judicial cooperation in criminal matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	DEPREZ Gérard (ALDE)	15/09/2008

Former committee responsible	Former rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs		
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	PACIOTTI Elena Ornella (PSE)	25/11/2003

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs	The committee decided not to give an opinion.	22/09/2008

Former committee for opinion	Former rapporteur for opinion	Appointed
JURI Legal Affairs and Internal Market	GARGANI Giuseppe (PPE-DE)	01/12/2003

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2642	2005-02-24
Justice and Home Affairs (JHA)	2807	2007-06-12
Justice and Home Affairs (JHA)	2725	2006-04-27
Justice and Home Affairs (JHA)	2709	2006-02-21

	Justice and Home Affairs (JHA)	2696	2005-12-01
	Justice and Home Affairs (JHA)	2768	2006-12-04
	Justice and Home Affairs (JHA)	2664	2005-06-02
	Justice and Home Affairs (JHA)	2683	2005-10-12
	Justice and Home Affairs (JHA)	2626	2004-12-02
	Justice and Home Affairs (JHA)	2732	2006-06-01
	Agriculture and Fisheries	2917	2008-12-18

European Commission	Commission DG	Commissioner
	Justice and Consumers	BARROT Jacques

Key events

Date	Event	Reference	Summary
14/11/2003	Legislative proposal published	COM(2003)0688	Summary
15/12/2003	Committee referral announced in Parliament		
18/03/2004	Vote in committee		
18/03/2004	Committee report tabled for plenary, 1st reading/single reading	A5-0214/2004	
31/03/2004	Decision by Parliament	T5-0243/2004	Summary
31/03/2004	Results of vote in Parliament		
02/12/2004	Debate in Council		
24/02/2005	Debate in Council		Summary
02/06/2005	Debate in Council		Summary
12/10/2005	Debate in Council		Summary
01/12/2005	Debate in Council		Summary
21/02/2006	Debate in Council		Summary
27/04/2006	Debate in Council		Summary
01/06/2006	Debate in Council		Summary
04/12/2006	Debate in Council		
12/06/2007	Debate in Council		Summary
18/07/2008	Formal reconsultation of Parliament		
18/07/2008	Amended legislative proposal for reconsultation published	13076/2007	Summary
13/10/2008	Vote in committee		Summary
15/10/2008	Committee report tabled for plenary, reconsultation	A6-0408/2008	
21/10/2008	Decision by Parliament	T6-0486/2008	Summary
21/10/2008	Results of vote in Parliament		

18/12/2008	Act adopted by Council after consultation of Parliament		
18/12/2008	End of procedure in Parliament		
30/12/2008	Final act published in Official Journal		

Technical information

Procedure reference	2003/0270(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	JHA act
Amendments and repeals	Repealed by 2014/0339(COD)
Legal basis	EC Treaty (after Amsterdam) EC 034-p1 EC Treaty (after Amsterdam) EC 031
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/65997 LIBE/5/20347

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0214/2004	18/03/2004	
Text adopted by Parliament, 1st reading/single reading		T5-0243/2004 OJ C 103 29.04.2004, p. 0452-0659 E	31/03/2004	Summary
Committee draft report		PE412.355	24/09/2008	
Amendments tabled in committee		PE413.953	25/09/2008	
Committee final report tabled for plenary, reconsultation		A6-0408/2008	15/10/2008	
Text adopted by Parliament after reconsultation		T6-0486/2008	21/10/2008	Summary

Council of the EU

Document type	Reference	Date	Summary
Amended legislative proposal for reconsultation	13076/2007	18/07/2008	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2003)0688	14/11/2003	Summary
Commission response to text adopted in plenary	SP(2008)6664	12/11/2008	

Additional information		
Source	**Document**	**Date**
European Commission	EUR-Lex	

Final act	
Justice and Home Affairs act 2008/0978 OJ L 350 30.12.2008, p. 0072	Summary

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.

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

2003/0270(CNS) - 27/04/2006

The Council examined two important outstanding issues in this proposal:

1) **definition of offences** : the proposal provides that, for 32 categories of offence, double criminality may not be invoked by the executing State as a ground for refusing an EEW if the offence concerned is punishable in the issuing State with a maximum of at least 3 years of imprisonment. This approach is in line with earlier instruments such as the European arrest warrant, freezing orders, financial penalties or the draft text on confiscation orders. However, one delegation called for the introduction of legally binding criteria defining 6 of these 32 offences. The other delegations and the Commission could not agree to that, but could only accept the inclusion of criteria of an advisory nature. The matter was sent back to the relevant Council working parties with a view to exploring different possibilities for finding a compromise;

2) **telecommunication and electronic data** : the competent bodies of the Council should examine if it could be included in the scope of the Framework Decision.

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

2003/0270(CNS) - 31/03/2004 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a non-binding resolution drafted by Ornella PACIOTTI (PES, I) on the European Evidence Warrant for obtaining objects, documents and data for use in proceedings in criminal matters. However, certain amendments were made to this text, these are as follows: - the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States was the first concrete measure in the field of criminal law implementing the principle of mutual recognition, though its implementation by Member States has been disappointingly slow and incomplete; - the issuing authority shall certify in the warrant that all necessary conditions have been fulfilled; - where data is exchanged pursuant to this Framework Decision, a data subject may claim the rights relating to data protection, including blocking, correction, deletion, and access to personal data and related remedies, which would accrue to him or her under the law of either the issuing or the executing Member State. In particular, a data subject may claim the rights that would accrue to him or her under the law of either the issuing or the executing Member State regarding the use of a criminal record in the executing Member State transmitted pursuant to this Framework Decision, including the rules on rehabilitation of offenders and concerning use of that record to determine guilt or sentencing in criminal proceedings; - a judge, investigating magistrate or prosecutor in the executing State shall oppose the recognition or execution of the European Evidence Warrant if the offence on which the evidence

warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law; the person who is the subject of the European evidence warrant may not, owing to his age, be held criminally responsible for the acts on which the evidence warrant is based under the law of the executing State; there are reasons to believe, on the basis of objective elements, that the warrant is issued for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons; the execution of the warrant would prevent a Member State from applying its constitutional rules relating to due process, privacy and the protection of personal data, freedom of association, freedom of the press and freedom of expression in other media; or there are substantial grounds to believe that the execution of the warrant would undermine the obligation to respect the fundamental rights and fundamental legal principles enshrined in Article 6 of the EU Treaty, in particular regarding the right to a fair trial or the right to respect for private life, including data protection; - on the issue of the subsequent use of evidence, Parliament states that the use of the evidence acquired pursuant to this Framework Decision shall in no way prejudice the rights of the defence in subsequent criminal proceedings in which that evidence is used, in particular as regards the admissibility of the evidence, the obligation to disclose that evidence to the defence and the ability of the defence to challenge thatevidence; - no later than 1 October 2006, and annually thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Framework Decision, paying special attention to the application of procedural safeguards; - Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 1 January 2005 and shall make every effort to agree a Framework Decision on procedural safeguards for defendants, including in relation to the collection and admissibility of evidence, before that date; - each Member State shall make a statement, which it shall deposit with the General Secretariat of the Council, naming the issuing authorities and executing authorities it designates.

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

2003/0270(CNS) - 18/07/2008 - Amended legislative proposal for reconsultation

Before proceeding with the final adoption of the Framework Decision, and in view of the substantial amendments made to the Commission’s initial proposal, the Council has requested that the European Parliament give a second opinion in time for the 20-23 October 2008 plenary session.

The key features of the draft Decision as agreed upon by the Council are the following:

Main purpose of the EEW: the underlying idea is that the European Evidence Warrant is an order that would be issued by a judicial authority in one Member State and 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.

Scope of application and type of proceedings concerned: the European Evidence Warrant covers the objects, documents and data specified needed in the issuing State for the purpose of criminal proceedings or other proceedings that might give rise to further proceedings before a criminal court.

The EEW is being established in **two steps**. The first step covers in principle evidence which exists and is readily available. The Commission will in due course make a proposal for a second instrument to cover other evidence. This means that the following evidence is not included in the provisions just agreed and will be covered by the second instrument:

- to conduct interviews, taking statements or initiating other types of hearings involving suspects, witnesses, experts or any other party;
- to carry out bodily examinations or obtain bodily material or biometric data directly from the body of any person, including DNA samples or fingerprints;
- to obtain information in real-time such as through the interception of communications, covert surveillance or monitoring of bank accounts;
- to conduct analysis of existing objects, documents or data.

The Council added to the Commission's proposal, the obtaining from the executing authority of communications data retained by providers of a publicly available electronic communications service or a public communications network.

Nevertheless, under the text agreed, evidence falling in these categories which has been gathered prior to the issuing of the warrant it is also covered.

Issuing and transmission of an EEW: the European Evidence Warrant will be a single document translated by the issuing authority into an official language of the executing State. No further translation would be necessary. This means that the European Evidence Warrant could be executed immediately in the same way as a domestic procedural measure. It would lay down the objective to be achieved, while leaving it to the executing State to decide on the most appropriate way of obtaining the evidence in accordance with its domestic law.

Before sending an EEW, the issuing authority has to assess that the objects, documents or data can be obtained under the law of the issuing State in a comparable case if they were available on the territory of the issuing State, even though different procedural measures might be used.

Recognition and execution of a EEW: the executing authority will recognise a EEW, transmitted in accordance with rules provided for in the text, without any further formality being required and 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 specified in the text.

In principle, any decision to refuse recognition or execution must 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 either grounds for postponement exist or the executing authority has the objects, documents or data sought already in its possession, the executing authority will, in general, execute the EEW without delay, and no later than 60 days after the receipt of the European Evidence Warrant.

Grounds for non-recognition and non-execution of a EEW:

1) Territoriality: the original Commission proposal did not provide for any territoriality clause. The solution retained in the compromise text limits the scope of that ground for refusal to the cases where the offence concerned has been committed wholly or partly in the territory of the executing State, but the decision to refuse must be taken exceptionally and on a case-by-case basis. Where a competent authority considers using the ground for refusal, it shall consult Eurojust before taking the decision. Where a competent authority is not in agreement with Eurojust's opinion, Member States shall ensure that it give the reasons for its decision and that the Council be informed.

2) Double criminality: regarding the definition of offences, the proposal provides that for 32 categories of offences, double criminality may not be invoked by the executing State as a ground for refusing an EEW if the offence concerned is punishable in the issuing State with **at least three years** of imprisonment. If the EEW is not related to any of the offences set out in the list and its execution would require a search or seizure, recognition or execution of the EEW may be subject to the condition of double criminality

If the EEW is not related to any of the offences set out in the list and its execution would require a search or seizure, recognition or execution of the EEW may be subject to the condition of double criminality. In relation to offences in connection with taxes or duties, customs and exchange, recognition or execution may not be opposed on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

Germany may, by a declaration, reserve its right to make the execution of an EEW 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 EEW, 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 condition of double criminality shall be further examined by the Council five years after the entry into force of the Framework Directive in the light of any information transmitted to the Council. The Council may decide, acting unanimously, after consultation of the European Parliament, to add other categories of offences to the list.

The Council preparatory bodies will finalise the necessary form for the EEW and the recitals of the text with a view to the adoption of the text as soon as possible.

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

2003/0270(CNS) - 01/12/2005

The Council held an exchange of views on a Framework Decision on the European Evidence Warrant (EEW) for obtaining objects, documents and data for use in proceedings in criminal matters.

The debate focused on grounds for refusal based on the principle of territoriality, definitions of offences and legal remedies, and on the question of which authorities should be competent for issuing, postponing and refusing EEWs.

The Council asked the Permanent Representatives Committee to continue negotiations on this file.

The text adopts the same approach to mutual recognition as the European arrest warrant. The EEW would thus be a single document translated by the issuing authority into an official language of the executing State. No further translation would be necessary. This means that the EEW could be executed immediately in the same way as a domestic procedural measure. It would lay down the objective to be achieved, while leaving it to the executing State to decide the most appropriate manner for obtaining the evidence in accordance with its domestic law.

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

2003/0270(CNS) - 12/10/2005

The Council broadly agreed on certain principles which will apply when issuing and executing an EEW. The debate focused on the conditions under which the obligation to assist a Member State should arise and the cases in which a State can refuse the warrant.

The EEW is a judicial decision intended to improve existing cooperation arrangements for crossborder exchange of evidence (objects, documents or data) in criminal proceedings. This facilitates national investigations and prosecutions.

The EEW could be issued when evidence is necessary for the purpose of proceedings, provided that the evidence sought could have been obtained under the law of the issuing State.

The Framework Decision on the EEW is a mutual recognition measure, with a deadline for completion by the end of 2005. Its adoption requires unanimity.

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.

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

2003/0270(CNS) - 12/06/2007

At its meeting on 1 and 2 June 2006, the Justice and Home Affairs Council agreed on a general approach to the proposal for a Framework Decision on the European evidence warrant and instructed its preparatory bodies to give further consideration to the broader issue of the categories of offence, with a view to the adoption by the Council of a horizontal approach by the end of 2007 in relation to terrorism, computer-related crime, racism and xenophobia, sabotage, racketeering and extortion, and swindling.

The horizontal approach stems from the wish of a Member State which argued that those categories of offence might differ greatly in substance and in coverage from one legal system to another. In its view, a common understanding by Member States of the substance of the six categories in question could eliminate that scope for differing interpretations.

The Council believes that legal instruments based on the principle of mutual recognition, such as the European arrest warrant, have not yet been in application for long enough to identify any problems in putting them into practice. In order to discover any such problems, the European evidence warrant would also need to be assessed. This will have to wait until the evidence warrant has been implemented in all Member States. Only then will it be possible to ascertain whether and, if so, on what basis any specific steps can be taken towards a horizontal instrument.

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.

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

2003/0270(CNS) - 21/10/2008 - Text adopted by Parliament after reconsultation

The European Parliament adopted, by 568 votes to 67 with 34 abstentions, a legislative resolution amending the Council framework decision on the European Evidence Warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters. The report had been tabled for consideration in plenary by Gérard **DEPREZ** (ALDE, BE), on behalf of the Committee on Civil Liberties, Justice and Home Affairs.

The European Parliament is asked to give a second opinion on this proposal, which was the subject of a Council compromise.

The main amendments – adopted in the framework of the consultation procedure – are as follows :

Issuing authority: the definition of issuing authority is narrowed so that it includes only a judge, investigating magistrate or public prosecutor competent under national law to issue a European Evidence Warrant.. Members deleted the part of Council's text where issuing authority could also mean a court and any other judicial authority as defined by the issuing State and, in the specific case, acting in its capacity as an investigating authority in criminal proceedings with competence to order the obtaining of evidence in cross-border cases in accordance with national law.

Scope: a new clause states that the European Evidence Warrant is an instrument available to both the defence and the prosecution. Consequently both the defence and the prosecution may ask the competent judicial authority to issue a European Evidence. Members deleted the Council's text stating that the EEW may, if requested by the issuing authority, also cover taking statements from persons present during the execution of the EEW and directly related to the subject of the EEW. They felt that there was no reason for this clause.

Issuing conditions: the issuing authority shall certify in the warrant that the conditions laid down have been fulfilled.

Administration: Parliament deleted the clause in the Council's text stating that a Member State may, if necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of the EEW as well as for other official correspondence relating thereto

Data protection: anyone affected by an exchange of data carried out in accordance with the present framework decision may claim the right to data protection, including blocking, correction, deletion and access to information pertaining to them, as well as access to any means of redress to which they are entitled under the legislation of the issuing State or the executing State.

Safeguards for execution: pending the adoption of a far-reaching instrument in the field of procedural safeguards, Members proposed to establish, at the least, minimum procedural safeguards concerning execution of the European Evidence Warrant. A new clause stipulates that each Member State shall take the necessary measures to ensure that the European Evidence Warrant is executed in accordance with certain minimum conditions. Each Member State must also take the necessary measures to ensure that, where a search and seizure is considered necessary in order to obtain objects, documents or data, certain minimum safeguards shall apply. Parliament added that Member States must do everything they can before the date of application of the Framework Decision to agree a Framework Decision on procedural rights in criminal proceedings throughout the European Union, taking the European Parliament's opinion into consideration.

Requirements by issuing authority: the issuing authority may also require the executing authority to: preserve the confidentiality of the investigation; allow a competent authority from the issuing State to be present at the execution of the warrant and to have access, to any object, document or item of data obtained; record the names of the people through whose hands the evidence has passed between the execution of the warrant and its transfer to the issuing State.

Grounds for non-recognition or non-execution: recognition or execution of the EEW may be refused in the executing State: (i) if the offence on which it is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law; (ii) if the person who is the subject of the European evidence warrant may not, owing to his age, be held criminally responsible for the acts on which the evidence warrant is based under the law of the executing Member State.

Territoriality: the Council had inserted a 'territoriality clause' which was not in the original proposal. This allowed a Member State to refuse an EEW if the EEW relates to criminal offences which: (i) under the law of the executing State are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory; or (ii) 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. Parliament deleted this clause.

Double criminality: the Council had stated that if it is necessary to carry out a search or seizure for the execution of the EEW, certain offences, if they are punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years, shall not be subject to verification of double criminality under any circumstances. Members deleted the text on custodial sentence and detention orders, and felt that verification of double criminality should gradually disappear from instruments founded on mutual recognition.

Deadlines: Members stated that it was necessary to set a maximum deadline for the transfer of the objects, documents or data obtained under a European Evidence Warrant. Accordingly, the executing State shall transfer to the issuing State the objects, documents or data obtained by virtue of the European Evidence Warrant, immediately where the latter are already under the control of the executing authority or, where this is not the case, as early as possible and no later than 30 days following the date on which the executing authority takes possession of the evidence. Failure to meet deadlines can only be justified by exceptional circumstances.

Remedies: Members deleted a clause stating that Member States may limit the legal remedies provided for to cases in which the EEW is executed using coercive measures.

Opt-out clause: an opt-out clause in favour of Germany was deleted. The clause had stated that Germany may reserve its right to make the execution of an EEW 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 EEW, 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.

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

2003/0270(CNS) - 21/02/2006

The Council discussed the following questions concerning this draft Framework Decision:

1) definition of offences, and

2) measures available for execution.

Regarding definition of offences, a large majority of delegations supported the approach suggested by the Presidency, which consisted in:

• keeping the draft Framework Decision unchanged regarding a list of 32 offences for which double criminality may not be invoked as a ground for refusal;

• drafting a Council Statement defining certain of the offences listed in the text, i.e. racism and xenophobia and sabotage;

• introducing a recital regarding peer evaluation on the application of the European Evidence Warrant (EEW).

The Council confirmed agreement on a provision regarding certain measures that Member States must have available for the purpose of executing EEWs. These measures include those which would be available in a similar domestic case. The measures available must include search and seizure in respect of a list of 32 offences. It was also accepted that it should be possible to refuse to execute the EEW where the measures which must be available do not allow for execution in a specific case.

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

2003/0270(CNS) - 01/06/2006

The Council reached a general approach on a draft Decision on the EEW for obtaining objects, documents and data for use in proceedings in criminal matters. The aim of this proposal is to establish a mechanism to facilitate the obtaining of evidence in cross-border cases based on mutual recognition principles.

The Council's agreement is based on a compromise text put forward by the Presidency which, in particular, addressed the two main outstanding issues, i.e. the possibility of a refusal of an EEW because of reasons linked to territoriality, and the definition of offences.

The key features of the draft Decision as agreed upon by the Council are the following:

Main purpose of the EEW :

The underlying idea is that the European Evidence Warrant is an order that would be issued by a judicial authority in one Member State and 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.

Scope of application and type of proceedings concerned :

The European Evidence Warrant covers the objects, documents and data specified needed in the issuing State for the purpose of criminal proceedings or other proceedings that might give rise to further proceedings before a criminal court.

The EEW is being established in two steps. The first step covers in principle evidence which exists and is readily available. The Commission will in due course make a proposal for a second instrument to cover other evidence. This means that the following evidence is not included in the provisions just agreed and will be covered by the second instrument:

- to conduct interviews, taking statements or initiating other types of hearings involving suspects, witnesses, experts or any other party;
- to carry out bodily examinations or obtain bodily material or biometric data directly from the body of any person, including DNA samples or fingerprints;
- to obtain information in real-time such as through the interception of communications, covert surveillance or monitoring of bank accounts;
- to conduct analysis of existing objects, documents or data.

The Council added to the Commission's proposal, the obtaining from the executing authority of communications data retained by providers of a publicly available electronic communications service or a public communications network.

Nevertheless, under the text agreed, evidence falling in these categories which has been gathered prior to the issuing of the warrant it is also covered. For example, this would include obtaining a statement previously given by a suspect to an investigating authority in the executing State with respect to an earlier investigation conducted by that State.

Issuing and transmission of an EEW: The European Evidence Warrant will be a single document translated by the issuing authority into an official language of the executing State. No further translation would be necessary. This means that the European Evidence Warrant could be executed immediately in the same way as a domestic procedural measure. It would lay down the objective to be achieved, while leaving it to the executing State to decide on the most appropriate way of obtaining the evidence in accordance with its domestic law.

Before sending an EEW, the issuing authority has to assess that the objects, documents or data can be obtained under the law of the issuing State in a comparable case if they were available on the territory of the issuing State, even though different procedural measures might be used.

The EEW may be transmitted to a Member State in which the competent authority of the issuing State has reasonable grounds to believe that relevant objects, documents or data are located or, in the case of electronic data, directly accessible under the law of the executing State.

Recognition and execution of a EEW: The executing authority will recognise a EEW, transmitted in accordance with rules provided for in the text, without any further formality being required and 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 specified in the text.

In principle, any decision to refuse recognition or execution must 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 either grounds for postponement exist or the executing authority has the objects, documents or data sought already in its possession, the executing authority will, in general, execute the EEW without delay, and no later than 60 days after the receipt of the European Evidence Warrant.

Grounds for non-recognition and non-execution of a EEW:

- **Territoriality**: the original Commission proposal did not provide for any territoriality clause. However, the Council decided to include it in the text at its February 2005 meeting. The solution retained in the compromise text limits the scope of that ground for refusal to the cases where the offence concerned has been committed wholly or partly in the territory of the executing State, but the decision to refuse must be taken exceptionally and on a case-by-case basis.
    - Where a competent authority considers using territoriality as a ground for refusal of a EEW, it will consult Eurojust before taking the decision. If the competent authority is not in agreement with Eurojust's opinion, Member States shall ensure that it will motivate its decision and that the Council be informed.
- **Double criminality**: regarding the definition of offences, the proposal provides that, for 32 categories of offences, double criminality may not be invoked by the executing State as a ground for refusing an EEW if the offence concerned is punishable in the issuing State with at least three years of imprisonment.
    - This approach is in line with earlier instruments such as the European arrest warrant, freezing orders, financial penalties or the draft text on confiscation orders.

However, Germany may by a declaration reserve its right to make the execution of an EEW 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 EEW, 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 provisions relating to territoriality and to the German possibility for opting-out for the definition of offences will be reviewed by the Council no later than 5 years after the entry into force of this framework Decision.

The Council preparatory bodies will finalise the necessary form for the EEW and the recitals of the text with a view to the adoption of the text as soon as possible.

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

2003/0270(CNS) - 24/02/2005

The Council agreed on a general approach to certain aspects of the proposal for a Framework Decision on the European Evidence Warrant (EEW) for obtaining objects, documents and data for use in proceedings in criminal matters.

The Council agreed to a list of 32 offences with regard to which it will not be possible to invoke double criminality (the list is the same as that in the Framework Decision on the European arrest warrant). Other offences may be added later by unanimous agreement. The offences concerned must be punishable in the State of issue of the warrant by a term of imprisonment of more than three years.

It was also decided that the Framework Decision should include the principle of a "territoriality clause" enabling a Member State to refuse a European evidence warrant where the offences were committed wholly or partly on its territory. The scope of the clause will be reviewed at technical level.

The Council will review the Framework Decision five years after its adoption, in the light of practical experience.