



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL FRAMEWORK DECISION

on the European Evidence Warrant for obtaining objects, documents and data for use in proceedings in criminal matters

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

1. This proposal for a Council Framework Decision applies the principle of mutual recognition to a European warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters. The European warrant is referred to hereafter as the European Evidence Warrant. It will result in quicker, more effective judicial co-operation in criminal matters, and will replace the existing mutual assistance regime in this area in line with the conclusions of the Tampere European Council. Minimum safeguards for such co-operation are also introduced.
2. 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.
3. The background to this proposal is explained below.

1.1. National approaches for obtaining evidence

4. Member States' legal systems use a variety of procedural measures during the process of collecting evidence for proceedings in criminal matters. These include:

1.1.1. Preservation powers.

5. At international level, the Council of Europe 2001 Convention on Cybercrime¹ has introduced a distinction between "preservation orders" and "seizure" orders. Preservation orders apply only to third parties, and require them to preserve evidence without handing it over to the competent investigating authorities. A separate order is then required for the disclosure or production of the evidence.

1.1.2. Seizure powers.

6. Seizure goes beyond mere preservation of the evidence by involving (where necessary) the temporary possession of the evidence by the competent investigating authorities. It applies to evidence under the control of suspects as well as third parties.

¹ Council of Europe, European Treaty Series No 185 (see <http://conventions.coe.int>).

7. Seizure is a commonly accepted notion in national and international criminal law, although its scope and modalities may vary. All Member States have given their police and judicial authorities powers to seize evidence. Seizure powers can be exercised by judicial authorities and, in certain circumstances, by law enforcement authorities under their own powers.

1.1.3. Powers to require production / disclosure of evidence.

8. In some Member States, judicial authorities have general powers to require third parties to disclose evidence. These powers rely on the co-operation of the third party. Where such co-operation is lacking, the judicial authority can use a search order to seize the evidence.

9. Other Member States have a specific investigative power known as a “production order” used for obtaining evidence (in particular documents) from a third party. These powers can be limited to serious offences and to specific categories of evidence (such as documents held in confidence), or they can be a more general power. “Production orders” are coercive since they place the third party under an obligation to hand over the evidence. Sanctions – including criminal sanctions – are used to ensure co-operation. Nevertheless, production orders are less intrusive than search and seizure powers.

10. Production orders can be useful when a third party is content to co-operate but, for legal reasons such as liability issues associated with breaching the confidentiality of its customers, it would rather be forced to disclose evidence than to co-operate voluntarily with the competent investigating authority. In other circumstances, however, it may be necessary to search the premises of a third party to obtain the evidence. This includes the situation where there is a real risk that the third party might destroy the evidence.

11. All these production powers apply only to material that already exists. Separate powers are used for “real-time” disclosure of information, such as orders for the interception of communications or the monitoring of bank account transactions.

1.1.4. Search & seizure orders

12. Member States’ legislation on entering and searching premises contain significant differences. In some Member States, the power is limited only to serious offences. Other Member States have a much wider power available for the investigation of all offences.

13. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) provides the minimum standard for safeguards for search and seizure. However, within this framework, there are significant variations in the safeguards. These include: the level of certainty that evidence is on the premises to be searched; the time of day when search powers can be used; notification of the person whose premises have been searched; the rules applicable when the occupier of premises is absent; and the need for independent third parties to be present at the search.

1.2. Existing international co-operation mechanisms to obtain evidence

14. The Council of Europe 1959 Convention on Mutual Assistance in Criminal Matters² provides the basic framework for co-operation on obtaining evidence. This provides for the execution of requests for mutual assistance to be executed in accordance with the law of the requested State, and provides a number of grounds of refusal for mutual legal assistance. The 1959 Convention has been supplemented in order to improve co-operation by its additional protocols of 1978³ and 2001⁴. Within the EU, the 1959 Convention has been supplemented by the 1990 Schengen Convention⁵, the EU Convention of May 2000 on Mutual Assistance in Criminal Matters⁶ and its 2001 Protocol⁷. The EU 2000 Convention and its 2001 Protocol have not yet entered into force.
15. Despite the improvements introduced by these instruments, co-operation on obtaining evidence is nevertheless still carried out using traditional mutual assistance procedures. This can be slow and inefficient. Moreover, differences in national laws (as described in section 1.1) result in barriers to co-operation.
16. The variation in national laws on search and seizure is mirrored by differences in the extent to which Member States are able to provide mutual assistance. Under Article 5 of the 1959 Convention, each Contracting Party may declare that the execution of letters rogatory for search or seizure of property may be made dependent on one or more of the following conditions: dual criminality exists; the offence is extraditable in the requested Party; or the execution must be consistent with the law of the requested Party.
17. Article 51 of the 1990 Schengen Convention, however, limits the possibility for Member States to make use of such reservations under the 1959 Convention: Member States may not, according to Article 51, make the admissibility of letters rogatory for search and seizure dependent on conditions other than the following. First, that the offence is punishable under the law of both Member States by a custodial sentence of a maximum of at least six months, or is punishable under the law of one of the two Member States by an equivalent penalty and under the law of the other as an infringement which is prosecuted by administrative authorities where the decision may give rise to proceedings before a criminal court. The second condition is that the execution is otherwise consistent with the law of the requested Member State.

² Council of Europe, European Treaty Series No 30.

³ Council of Europe, European Treaty Series No 99.

⁴ Council of Europe, European Treaty Series No 182.

⁵ Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders, OJ L 239, 22.9.2000, p. 19.

⁶ Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, p. 1.

⁷ Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 326, 21.11.2001, p. 1.

18. Under this proposal, these existing mutual assistance procedures would be replaced by a European Evidence Warrant based on the principle of mutual recognition. The following benefits would result.
- A request made by judicial decision from another Member State will be directly recognised without the need for its transformation into a national decision (by way of an *exequatur* procedure) before it can be enforced.
 - Requests will be standardised by the use of a single form.
 - Deadlines will be laid down for the execution of requests.
 - Minimum safeguards will be introduced both for the issuing of a request and for its execution.
 - The grounds for refusing to execute requests will be limited. In particular, dual criminality will not be a ground of refusal except for a transitional period for those Member States that have already made execution of a request for search and seizure dependent on the condition of dual criminality.

1.3. The principle of mutual recognition

19. At the European Council in October 1999 in Tampere, it was agreed that the principle of mutual recognition should become the cornerstone of judicial co-operation in both civil and criminal matters, including for pre-trial orders in criminal investigations.
20. The European Council also asked the Council and the Commission to adopt, by December 2000, a programme of measures to implement the principle of mutual recognition in criminal matters⁸. The first instrument to be adopted on mutual recognition in criminal matters is the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States⁹.
21. The programme of measures attached the highest priority (priority 1) to the following action:

“2.1.1. Orders for the purpose of obtaining evidence

Aim: To ensure that evidence is admissible, to prevent its disappearance and to facilitate the enforcement of search and seizure orders, so that evidence can be quickly secured in a criminal case (point 36 of the conclusions of the Tampere European Council). Article 26 of the European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972 and Article 8 of the Rome Convention of 6 November 1990 on the Transfer of Proceedings in Criminal Matters should be borne in mind.

⁸ OJ C 12, 15.01.2001, p. 10.

⁹ OJ L 190, 18.07.2002, p. 1.

Measure 5: Seek feasible ways of:

- ensuring that the reservations and declarations provided for in Article 5 of the European Convention on Mutual Assistance of 1959, supplemented by Articles 51 and 52 of the Convention implementing the Schengen Agreements with regard to coercive measures, are not invoked between Member States, in particular in the field of combating organised crime, laundering of proceeds from crime, and financial crime,
- ensuring that the grounds for refusal of mutual aid provided for in Article 2 of the 1959 Convention, supplemented by Article 50 of the Convention implementing the Schengen Agreement, are not invoked between Member States.

Measure 6: Drawing up of an instrument concerning the recognition of decisions on the freezing of evidence, in order to prevent the loss of evidence located in the territory of another Member State.”

1.4. The Council Framework Decision of 22 July 2003 on the execution in the European Union of orders freezing property or evidence

22. Measure 6 of the programme of measures is fulfilled by the Framework Decision on the execution in the European Union of orders freezing property or evidence¹⁰. This requires the mutual recognition of orders issued for the purpose of freezing evidence with a view to its eventual transfer to the issuing State, or for the purpose of freezing property with a view to its eventual confiscation. The Framework Decision applies to orders issued by a judicial authority, as defined under national law, in respect of any criminal offence.

1.5. The need for further action on mutual recognition of orders to obtain evidence

23. The Framework Decision on freezing orders deals with only part of the spectrum of co-operation with respect to evidence. Indeed, the purpose of the Framework Decision is explicitly limited to provisional measures to “prevent the destruction, transformation, moving, transfer or disposal of ... evidence”. In some cases, such provisional action prior to transfer of the evidence to another Member State will not be necessary.

24. There is also a need to resolve significant outstanding problems in co-operation with respect to evidence falling within the scope of the Framework Decision on freezing orders. For example, the Framework Decision explicitly provides that any additional coercive measures rendered necessary by the freezing order should be taken in accordance with the applicable procedural rules of the executing State¹¹. This leaves open the possibility that co-operation might be ineffective where, in the circumstances of a particular case, the national procedural rules do not allow for a search to be carried out in order to seize evidence.

¹⁰ OJ L 196, 2.8.2003, p. 45.

¹¹ Article 5(2).

25. Moreover, the Framework Decision requires the freezing order to be accompanied by a request for the transfer of the evidence to the issuing Member State (or a statement that such a request will be forthcoming). Normal mutual assistance rules apply to this transfer. This means that, with the exception of dual criminality, other grounds of refusal for mutual assistance will continue to apply. As a result, there will be a substantial difference – at least in theory – between the rules applicable to the freezing of evidence (mutual recognition principles) and the rules applicable to the subsequent transfer of the evidence (mutual assistance principles).
26. The Final Report on the first evaluation exercise on mutual legal assistance in criminal matters¹² saw the additional stage in the transfer of material relating to the execution of the requests as “*a pointless requirement, which could hardly be regarded as providing additional guarantees, and was therefore simply a cause of delay*”. Recommendation 8 of the Final Report therefore called upon Member States to “*simplify the procedure for transfer of material to the requesting Member State by dispensing with multiple controls*”.
27. During negotiations on the Framework Decision on freezing orders, it was recognised that there was a need for two further initiatives as a consequence of the Framework Decision on freezing orders:
- (i) an initiative on mutual recognition of confiscation orders. The Danish Presidency brought forward an initiative for a draft Framework Decision on the execution in the European Union of confiscation orders¹³. This supplements the Framework Decision on freezing orders by providing for full mutual recognition of orders to confiscate property.
 - (ii) an initiative on mutual recognition of orders to obtain evidence. The Commission announced during negotiations of the Framework Decision on freezing orders that it would bring forward a proposal on this subject. This proposal was therefore included in the Commission Work Programme for 2003¹⁴.

1.6. The objectives and scope of the proposed Framework Decision

28. This proposal for a Framework Decision supplements the Framework Decision on freezing orders by applying the principle of mutual recognition to orders with the specific objective of obtaining objects, documents and data for use in proceedings in criminal matters. The European Evidence Warrant will provide a single, fast and effective mechanism for obtaining evidence and transferring it to the issuing State. It will not be necessary for a prior freezing order to have been issued.
29. The proposal for a Framework Decision applies to objects, documents or data obtained under various procedural powers, including seizure, production or search powers. However, the European Evidence Warrant is not intended to be used to initiate the interviewing of suspects, taking statements, or hearing of witnesses and victims. These require special consideration. In particular, the Commission adopted in February 2003 a Green Paper on procedural safeguards for suspects and

¹² OJ C 216, 1.8.2001, p. 14.

¹³ OJ C 184, 2.8.2002, p. 8.

¹⁴ Available from http://europa.eu.int/comm/off/work_programme/index_en.htm

defendants in criminal proceedings in the European Union¹⁵, and will continue work during 2003 on other aspects of taking evidence from suspects, defendants, victims and witnesses. The taking of evidence from the body of a person, in particular DNA samples, is also excluded from the scope of the European Evidence Warrant.

30. The European Evidence Warrant is also not intended to be used to initiate procedural investigative measures which involve obtaining evidence in real-time such as interception of communications and monitoring of bank accounts. These specific forms of co-operation have recently been the subject of considerable discussion in the Council. A specific regime for co-operation on interception of communications has been established in the EU 2000 Convention¹⁶, and a regime for co-operation with respect to monitoring bank accounts has been established by Article 3 of the 2001 Protocol to the Convention¹⁷. The Convention and its Protocol have yet to enter into force. However, as regards assistance relating to bank accounts, it is proposed that the European Evidence Warrant should be used for requests for information on operations which have been carried out during a specified period on a specified bank account. Such assistance is provided for by the 1959 Convention and has been clarified by Article 2 of the 2001 Protocol.
31. Nor is the European Evidence Warrant intended to be used to obtain evidence that can only result from further investigation or analysis. It could therefore not be used to require the commissioning of an expert's report. Nor, for example, could it be used to require an executing authority to undertake computerised comparison of information (computer matching) in order to identify a person. Conversely, however, the European Evidence Warrant should be used where the evidence is directly available in the executing State for example by extracting the relevant information from a register (such as a register of criminal convictions). The European Evidence Warrant should also be used for requesting data on the existence of bank accounts (as also provided for by Article 1 of the 2001 Protocol) where such data is available in the requested State.
32. Nevertheless, the European Evidence Warrant may be used for the purpose of obtaining objects, documents or data falling within the excluded categories provided that they had already been gathered prior to the issuing of the warrant. In these circumstances, it will be possible to obtain existing records of intercepted communications, surveillance, interviews with suspects, statements from witnesses and the results of DNA tests.
33. Given that the proposal for a Framework Decision is intended to replace the existing mutual assistance regime, its scope should be the same as the EU 2000 Convention. This means that the European Evidence Warrant should be available for use:
 - (a) with respect to any criminal offence; and

¹⁵ COM (2003) 75 final, 19.2.2003.

¹⁶ Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, p. 1.

¹⁷ Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union. OJ C 326, 21.11.2001, p. 1.

- (b) with respect to acts which are punishable under the national law of the issuing Member State by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

1.7. How to apply the principle of mutual recognition to orders to obtain evidence

- 34. The Commission proposal for a European Evidence Warrant adopts the same approach to mutual recognition as the Framework Decision on the European arrest warrant¹⁸. This has several advantages over the approach adopted in the Framework Decision on freezing orders.
- 35. First, it is more practical. A European Evidence Warrant should result in faster and more effective co-operation than a system of mutual recognition based on a combination of a national order and a European certificate. The European Evidence Warrant is a single document translated by the issuing authority into an official language of the executing State. No further translation is necessary. In contrast, the Framework Decision on freezing orders is based upon the mutual recognition of national orders supplemented by a standard European certificate annexed to the Framework Decision. Although the issuing State is required to translate only the certificate into an official language of the executing State, in practice many executing Member States are likely to consider it necessary also to translate the original national order. The result of this additional translation is likely to be slower co-operation.
- 36. Secondly, as illustrated in section 1.1, an “order to obtain evidence” has many different meanings in the Member States’ procedural laws. It can range from a prosecutor’s request to disclose evidence to more coercive measures such as a court order issued for the purpose of the entry and search of private premises. Mutual recognition of specific types of national orders to obtain evidence could therefore result in the executing State being required to carry out a search and seizure in circumstances in which it would normally use less intrusive mechanisms such as the general powers of a prosecutor or a production order.
- 37. For this reason, the proposal for a European Evidence Warrant allows the issuing State to specify only the objective to be achieved (i.e. to obtain specific evidence), and leaves the executing State to obtain the evidence in accordance with its domestic procedural law. Although it is mandatory under the European Evidence Warrant to obtain the evidence, it is left to the executing State to determine, in the light of the information supplied by the issuing State, the most appropriate way to obtain the evidence in accordance with its domestic procedural law.

1.8. Replacing mutual assistance by mutual recognition

- 38. Notwithstanding the advantages of the proposed European Evidence Warrant, it remains the case that practitioners need to rely on a variety of co-operation instruments in order to obtain evidence from other Member States. Indeed, the proposed European Evidence Warrant risks introducing the inconvenience for the practitioner of having to use different types of instruments for different aspects of the

¹⁸ OJ L 190, 18.7.2002, p. 1.

same case (for example, a European Evidence Warrant for objects and documents, but a mutual assistance request for taking witness statements).

39. It is therefore necessary to make clear that the European Evidence Warrant is, in the Commission's view, the first step towards a single mutual recognition instrument that would in due course replace all of the existing mutual assistance regime. The steps towards a single instrument could be as follows.
- The first step would be the proposed European Evidence Warrant, which provides for the obtaining of evidence that already exists and that is directly available.
 - The next stage would be to provide for the mutual recognition of orders for the obtaining of other types of evidence. These can be divided into two categories.
 - First, there is evidence that does not already exist but which is directly available. This includes the taking of evidence in the form of interviews of suspects, witnesses or experts, and the taking of evidence through the monitoring of telephone calls or banking transactions.
 - Secondly, there is evidence which, although already existing, is not directly available without further investigation or analysis. This includes the taking of evidence from the body of a person (such as DNA samples). This category also includes situations where further inquiries need to be made, in particular by compiling or analysing existing objects, documents or data. An example is the commissioning of an expert's report.
 - In a final stage these separate instruments could be brought together into a single consolidated instrument which would include a general part containing provisions applicable to all co-operation.
40. Such a single consolidated instrument would within the EU replace mutual legal assistance in the same way that the European arrest warrant will replace extradition. The existing mosaic of international and EU conventions governing the cross-border gathering of evidence within the EU would thus be replaced by a single EU body of law. Achieving that end objective straightaway by means of a single instrument would, however, be unduly complex. This proposal is therefore limited to a first step.

1.9. Minimum safeguards

41. Article 6 of the Treaty on European Union provides that the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and as they result from the constitutional traditions common to Member States. Moreover, in December 2000, the European Commission, the Council and the Parliament jointly signed and solemnly proclaimed the Charter of Fundamental Rights of the European Union. The Charter covers the whole range of civil, political, economic and social rights of European citizens, by synthesising the constitutional traditions and international obligations common to the Member States. It asserts that respect for fundamental rights will be at the foundation of all European law.

42. The European Court of Justice has recognised the importance of mutual trust, which is the basis for the application of the principle of mutual recognition, by holding that the *ne bis in idem* principle enshrined in Article 54 of the 1990 Schengen Convention implied that the "Member States have mutual trust in their criminal justice systems and that each of them recognises the criminal law in force in the other Member States even when the outcome would be different if its own national law were applied."¹⁹ The *ne bis in idem* principle is a safeguard, and Article 54 does not make its application conditional upon the approximation of the criminal laws of the Member States. However, in the different field of judicial co-operation, in particular where coercive measures are envisaged, the Commission considers that the building of mutual trust should be fostered by specific action at the Union level in order to achieve a common minimum level of safeguards.
43. The Commission Communication to the Council and the European Parliament of 26 July 2000 on Mutual Recognition of Final Decisions in Criminal Matters²⁰ expressed the position that "*it must therefore be ensured that the treatment of suspects and the rights of the defence would not only not suffer from the implementation of the principle [of mutual recognition] but that the safeguards would even be improved through the process*".
44. This was endorsed in the Programme of Measures to Implement the Principle of Mutual Recognition of Decisions in Criminal Matters²¹, adopted by the Council and the Commission, which stated that "*mutual recognition is very much dependent on a number of parameters which determine its effectiveness*", one of which is "*the definition of common minimum standards necessary to facilitate the application of the principle of mutual recognition*".
45. To take forward these commitments, the Commission adopted in February 2003 a Green Paper on procedural safeguards for suspects and defendants in criminal proceedings²². The Green Paper stressed the fact that the Member States of the EU are all signatories of the principal treaty setting these standards, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as are all the acceding states and candidate countries, so the mechanism for achieving mutual trust is already in place. Nevertheless, the Green Paper explained that divergent practices ran the risk of hindering mutual trust and confidence, which justifies the EU taking action on procedural standards pursuant to Article 31 TEU.
46. The Green Paper does not address the issue of procedural safeguards for obtaining evidence using the coercive powers covered by this Framework Decision. However, in line with the general approach described in the Green Paper, this proposal contains specific safeguards for the issuing and executing States to enhance the effectiveness, consistency and visibility of some of the standards relevant for obtaining evidence at EU level.

¹⁹ Joined Cases C-187/01 and C-385/01, *Gözütok and Brügge*, judgement of 11 February 2003, at paragraph 33.

²⁰ COM (2000) 495 final, 26.7.2000.

²¹ OJ C 12, 15.1.2001, p. 10.

²² COM (2003) 75 final, 19.2.2003.

47. In the issuing State, the issuing judicial authority is limited to judges, investigating magistrates or prosecutors. There is also a need to ensure equivalence with the domestic criminal procedural law of the issuing State when dealing with evidence obtained in another Member State. For this reason, the judicial authority issuing a European Evidence Warrant must be satisfied that it would be able to obtain the objects, documents or data in similar circumstances if they were on the territory of its own Member State. This prevents the European Evidence Warrant from being used to circumvent national safeguards on obtaining evidence. As an example, this would preclude using the European Evidence Warrant to obtain objects, documents or data from the executing State that would be impossible to obtain in the issuing State because it is protected by legal, medical or journalistic privileges.
48. In the executing State, there is a need to ensure that the fundamental right not to incriminate oneself is protected, as well as a need for additional safeguards with respect to search and seizure. When coercive measures are used to obtain the evidence, it is essential that effective legal remedies exist in both the issuing and executing States. Further safeguards are provided in the grounds of refusal to execute the European Evidence Warrant.

1.10. Obtaining official records of criminal convictions

49. In its Communication on mutual recognition²³, the Commission identified the necessity of being aware of decisions taken in other Member States. As a first step, the Commission proposed “*developing common European multi-language forms that could be used to request information on existing criminal records. By using such forms, practitioners could send a demand for information to the competent (central, one would hope) authorities of all other EU [Member States] to find out whether a person they are dealing with has a criminal history there.*”
50. This was subsequently reflected in Measure 3 of the programme of measures for mutual recognition in criminal matters²⁴:
- “*Measure 3: In order to facilitate the exchange of information, a standard form like that drawn up for the Schengen bodies, translated into all the official Union languages, should be introduced for criminal records applications*”.
51. The 1959 Convention²⁵ provides the basic framework for the exchange of criminal records between judicial authorities. It provides for two types of exchange: information to be provided upon request (Article 13); and the automatic communication of criminal convictions of nationals of other contracting parties (Article 22). Article 4 of the 1978 Additional Protocol²⁶ to the 1959 Convention added a second paragraph to Article 22 providing for information to be provided, again upon request, further to an automatic communication under the first paragraph of Article 22.

²³ COM (2000) 495 final, 26.7.2000.

²⁴ OJ C 12, 15.1.2001, p. 10.

²⁵ Council of Europe, European Treaty Series No 30.

²⁶ Council of Europe, European Treaty Series No 99.

52. Article 13(1) of the 1959 Convention states that “a requested Party shall communicate extracts from and information relating to judicial records, requested from it by the judicial authorities of a Contracting Party and needed in a criminal matter, to the same extent that these may be made available to its own judicial authorities in like case”. The term “judicial records” means records of criminal convictions.
53. Having considered the possibility of a separate initiative for a standard form for criminal records applications, the Commission has decided that it is appropriate to combine the standard form for criminal records applications with the standard form in this Framework Decision for obtaining objects, documents and other data. It is therefore proposed that this Framework Decision should be used to implement measure 3 of the programme of measures for mutual recognition in criminal matters.
54. This means that the existing mutual assistance regime for records of criminal convictions will be replaced by a system that places an obligation on the executing State to produce such records. The procedure for obtaining such records will be the same as for more general documentary evidence under the European Evidence Warrant. This proposal therefore requires that criminal records held in one Member State should be available to a judicial authority in another Member State with respect to any person relevant to the proceedings and at any stage during those proceedings (pre-trial, sentencing and the subsequent execution of the sentence).
55. It is proposed that there should be an obligation on Member States to establish a “central criminal records authority” responsible for dealing with European warrants asking for production of criminal records. In cases where the only information sought relates to a criminal record, the issuing authority would send the form annexed to this Framework Decision directly to the central criminal records authority. However, in situations where the issuing authority is seeking a wide range of objects, documents or data including a criminal record, it might be more appropriate for a judicial authority in the executing State to co-ordinate the gathering of this information and thus take it upon itself to obtain the criminal record from the central authority. Flexibility is therefore required to allow the issuing and executing authorities to determine the most appropriate way to co-operate in such situations.

1.11. Mutual admissibility of evidence

56. The European Council in Tampere in 1999 concluded that “evidence lawfully gathered by one Member States’ authorities should be admissible before the courts of other Member States, taking into account the standards that apply there”.

57. The Commission's Green Paper on the European Public Prosecutor²⁷ addressed the issue of the mutual admissibility of evidence. In summary, the Green Paper concluded that "*the prior condition for any mutual admissibility of evidence is that the evidence must have been obtained lawfully in the Member State where it is found. The law that must be respected if evidence is not to be excluded is first and foremost the national law of the place where the evidence is situated*". A number of comments were submitted in response to the question in the Green Paper on mutual admissibility of evidence²⁸. This issue was also discussed at the public hearing on the European Public Prosecutor on 16-17 September 2002 and in subsequent seminars.
58. This proposal for a Framework Decision does not directly address the issue of mutual admissibility of evidence. This is because consultation with experts has identified the need for further preparatory work. However, the proposal is nevertheless intended to facilitate the admissibility of evidence obtained from the territory of another Member State.
59. First, the admissibility of evidence should be facilitated by the inclusion of some procedural safeguards to protect fundamental rights.
60. Secondly, admissibility should be facilitated by maintaining and clarifying the approach in Article 4 of the EU 2000 Convention²⁹. This lays down a new principle in which the requested State must provide assistance in accordance with the formalities and procedures expressly indicated by the requesting State to the maximum extent possible. The requested State can only refuse to comply with these requirements where this would be contrary to its fundamental principles of law or where the Convention itself expressly states that the execution of requests is governed by the law of the requested State. This is also consistent with the approach in the Council Regulation on the taking of evidence in civil or commercial matters³⁰. In respect of four specific formalities (points (a) to (d) of Article 13) that may be required by the issuing authority, this Framework Decision goes further than the EU 2000 Convention by removing the possibility to refuse to comply with those formalities.
61. Thirdly, as described above, it is proposed that the European Evidence Warrant should be issued only when the issuing authority is satisfied that it would be possible to obtain the objects, documents or data in similar circumstances if they were on the territory of its own Member State. This should also facilitate the subsequent admissibility of the objects, documents or data as evidence in proceedings in the issuing State.

²⁷ COM (2001) 715 final, 11.12.2001.

²⁸ Follow-up report on the Green Paper on the criminal-law protection of the financial interests of the Community and the establishment of a European Prosecutor, COM (2003) 128 final, 19.3.2003, at page 18.

²⁹ Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, p. 1.

³⁰ Council Regulation (EC) No 1206/2001 of 28 May 2001 on co-operation between the courts of the Member States in the taking of evidence in civil or commercial matters, OJ L 174, 27.6.2001, p. 1.

62. Fourthly, there is an obligation to inform the issuing authority immediately if the executing authority believes that the warrant was executed in a manner contrary to its national law. This should provide further reassurance that the evidence was lawfully obtained, and thus facilitate its admissibility in the courts of the issuing State.

1.12. Jurisdiction issues associated with computer data

63. The European Evidence Warrant will be available for use with respect to documents and data held electronically. In fact, it is reasonable to anticipate that a significant proportion of cases in which the warrant will be used will relate to computer data.

64. In principle, there should be no difference between a document held electronically and a document held in physical form. However, there is a difference with respect to jurisdiction. As an example, some multinational businesses will hold computer data about their customers in one Member State on a server located in another Member State. The issuing State is likely to send the European Evidence Warrant to the Member State in which the customer is located rather than the Member State in which the server is located. In such cases, it is important that there is legal clarity to ensure that the evidence can be obtained without the need to seek the agreement of the Member State on which the server is located. This will ensure the effectiveness of cross-border investigations, and will provide legal clarity for industry.

65. These issues have been discussed (and, to a certain extent, solutions have been found) in the context of the Council of Europe 2001 Convention on Cybercrime³¹. In particular, Article 18 of the Convention provides an order to require production of specified computer data in a person's "possession or control", or to require a service provider offering its services in the territory of a Party to submit subscriber information relating to such services in that service provider's "possession or control". In the Explanatory Report to the Convention, it is indicated that this is intended to cover situations in which the data to be produced is outside of the person's physical possession but the person can nonetheless freely control production of the data from within the State's territory.

66. This Framework Decision aims to go beyond the 2001 Convention on Cybercrime by resolving some of the jurisdictional questions that arise with respect to obtaining computer data held on servers within the European Union. It clarifies that it is lawful for the executing State to obtain computer data that is lawfully accessible from its territory and relates to services provided to its territory, even though it is stored on the territory of another Member State. The Framework Decision is without prejudice to other jurisdictional issues related to computer data, in particular where third countries are involved.

³¹ Council of Europe, European Treaty Series No 185.

2. LEGAL BASIS

67. This proposal has a legal basis under Article 31 of the Treaty on European Union (TEU), as amended by the Treaty of Nice, which deals with common action on judicial co-operation in criminal matters. It aims at “facilitating and accelerating co-operation between competent ministries and judicial or equivalent authorities of the Member States, including, where appropriate, co-operation through Eurojust, in relation to proceedings and the enforcement of decisions” (Article 31(1)(a)). It also provides for “ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such co-operation” (Article 31(1)(c)), in particular by providing for some approximation of minimum procedural rules in the Member States to enhance mutual trust and confidence. The Framework Decision also seeks to encourage co-operation through Eurojust and the European Judicial Network in line with Article 31(2) TEU.
68. The Commission considers that this proposal constitutes a development of the Schengen *acquis*³². It builds upon Article 51 of the Schengen Convention³³ by improving co-operation with respect to search and seizure. It also contains provisions which build upon Articles 3, 6 and 23 of the EU 2000 Convention³⁴, all of which the Council has decided represent developments of the Schengen *acquis*.

3. FINANCIAL STATEMENT

69. 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.

³² With the consequence that it is necessary to associate Iceland and Norway: Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis, OJ L 176, 10.7.1999, p. 36; Council Decision of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis, OJ L 176, 10.7.1999, p. 31.

³³ Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders, OJ L 239, 22.9.2000, p. 19.

³⁴ Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, p. 1.

4. EXPLANATION OF THE ARTICLES

Title I – The European Evidence Warrant

Article 1 – Definition of the European Evidence Warrant and obligation to execute it

70. This Article adopts the same approach as Article 1 of the Framework Decision on the European arrest warrant³⁵. It establishes the European Evidence Warrant as a judicial decision issued by a Member State with a view to obtaining objects, documents and data from another Member State for the purpose of the proceedings referred to in Article 4. It contains an obligation on Member States to execute the European Evidence Warrant on the basis of the principle of mutual recognition.

Article 2 – Definitions

71. This Article establishes definitions for the issuing State, executing State, issuing authority, and the executing authority. It is important to note that the issuing authority must be a judge, investigating magistrate or prosecutor. Other competent authorities (including police, customs and administrative authorities) are not permitted to issue a European Evidence Warrant. Such authorities must seek the decision of a judge, investigating magistrate or prosecutor in order to have a European Evidence Warrant issued.

72. To assist the interpretation of Title IV on jurisdiction for obtaining data over electronic communications networks, this Article contains definitions of “information system” and “computer data” which are taken from the draft Framework Decision on attacks against information systems³⁶. It also contains a definition of electronic communications network which is the same as that adopted by the EC 2002 Directive on a common regulatory framework for electronic communications networks and services³⁷.

73. Finally, this Article defines an “offence” as meaning a criminal offence or an act which is punishable under the national law of the issuing State by virtue of being an infringement of the rules of law, provided that the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters. This means that such infringements, which are covered by the existing dual criminality regime in Article 51 of the 1990 Schengen Convention³⁸, are also covered by the dual criminality regime of this proposal (Articles 16 and 24).

³⁵ OJ L 190, 18.7.2002, p. 1.

³⁶ Consensus – including on the definitions - was reached on this draft Framework Decision at the Justice and Home Affairs Council on 27 and 28 February 2003.

³⁷ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), OJ L 108, 24.4.2002, p. 33.

³⁸ Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders, OJ L 239, 22.9.2000, p. 19.

Article 3 – Types of objects, documents or data covered

74. This Article defines the types of objects, documents or data for which the European Evidence Warrant may be issued. It covers any objects, documents or data which could be used in proceedings referred to in Article 4. This is based upon the definition of evidence contained in the Framework Decision on freezing orders.
75. However, it is not permitted to use the European Evidence Warrant to initiate the following action:
- (a) the taking of evidence in the form of interviews, statements or other types of hearings (including telephone conferences and videoconferences) involving suspects, witnesses, experts or any other party;
 - (b) the taking of evidence from a person's body, in particular the taking of DNA samples (whether from the hair, mouth or blood of the person);
 - (c) real-time evidence gathering such as through the interception of communications, covert surveillance or monitoring of bank accounts; and
 - (d) requiring further inquiries, in particular the compilation or analysis of existing objects, documents or data.
76. Co-operation with respect to gathering these types of evidence is governed by existing mutual assistance agreements, in particular the EU 2000 Convention³⁹ and its 2001 Protocol⁴⁰. In due course, there will be a need to replace these forms of co-operation with a system based on the principle of mutual recognition. But that is not the purpose of this Framework Decision.
77. Nevertheless, this Article does allow the European Evidence Warrant to be used to obtain evidence falling in these categories which has been gathered prior to the issuing of the warrant. 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. It would also cover historical records of intercepted communications, surveillance or monitoring of bank accounts.

Article 4 – Type of proceedings for which the European Evidence Warrant may be issued

78. This Article establishes the type of proceedings for which the European Evidence Warrant may be issued. It is available for criminal proceedings, as well as for administrative proceedings for infringements where there is a right of appeal to a court with jurisdiction in criminal matters. It is also available for any such proceedings which relate to offences or infringements for which a legal person may be held liable in the issuing State.

³⁹ Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, p. 1.

⁴⁰ Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 326, 21.11.2001, p. 1.

79. This ensures that the proposal has the same scope as existing instruments on mutual assistance in criminal matters within the European Union, in particular as a result of the EU 2000 Convention⁴¹.

Article 5 – Content and form of the European Evidence Warrant

80. This Article ensures that the European Evidence Warrant will be issued in accordance with the standard Form A in the Annex to the Framework Decision. It must be signed, and its contents certified as accurate, by the issuing authority (i.e. by a judge, investigating magistrate or prosecutor).
81. The European Evidence Warrant must be translated by the issuing State into the official language or one of the official languages of the executing State. The executing State may accept translations into other official EU languages by submitting a declaration to the General Secretariat of the Council. This is the same approach as in other mutual recognition instruments, including for the European Arrest Warrant.

Title II – Procedures and safeguards for the issuing State

Article 6 – Conditions for issuing the European Evidence Warrant

82. This Article provides some important minimum safeguards to help protect fundamental rights.
83. It ensures that the European Evidence Warrant will be issued only when the issuing authority is satisfied that the following conditions have been met:
- (a) the objects, documents or data sought are necessary and proportionate for the purpose of the proceedings for which the warrant is issued. This is intended to avoid unnecessary intrusions on privacy as well as situations where, for example, a disproportionate quantity of documents is sought for an investigation into a relatively minor offence. Form A in the Annex requires that the issuing authority must include a description of the offence(s) under investigation, the relevant grounds for issuing the warrant and a summary of the facts as known to it.
 - (b) it would be possible to obtain the objects, documents or data under the law of the issuing State in similar circumstances if they were available on the territory of the issuing State. This prevents the European Evidence Warrant from being used to circumvent protections in the national law of the issuing State to obtain certain types of objects, documents and data, for example legally privileged material. For this reason, Form A contains a specific section about whether the objects, documents and data are likely to be covered by any privileges or immunities. However, this subparagraph does not mean that the same procedural measures must be available to both the issuing and executing States. Indeed, the issuing State might need to obtain a specific order to search the premises of a third party to seize the evidence, whereas the executing State

⁴¹ Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, p. 1.

might have a less intrusive procedure in which it can require a third party to produce the evidence without the need for a search.

- (c) the objects, documents and data are likely to be admissible in the proceedings for which it is sought. This prevents the European Evidence Warrant from being used to circumvent protections in the national law of the issuing State on admissibility of evidence, particularly if further action is taken in the future on the mutual admissibility of evidence obtained pursuant to the European Evidence Warrant.

- 84. Form A in the Annex also requires the issuing authority to specify, to the extent known, the identity of the natural or legal person(s) in respect of whom the objects, documents or data are sought as well as the person(s) believed to hold the objects, documents or data.

Article 7 – Transmission of the European Evidence Warrant

- 85. This Article provides for direct transmission of the European Evidence Warrant between competent judicial authorities. This principle was established by Article 6 of the EU 2000 Convention⁴².
- 86. In cases where the competent executing authority is not known, provision is made to use the European Judicial Network. If the competent authority receiving the European Evidence Warrant has no jurisdiction to recognise and execute it, it is required to transmit the warrant to the relevant competent judicial authority for execution and to inform the issuing authority.

Article 8 – Central criminal records authority

- 87. This Article requires each Member State to establish a central authority for the purpose of obtaining a copy of any official record in that Member State of a criminal conviction, and subsequent measures, with respect to a natural or legal person. The purpose is to ensure that a European Evidence Warrant limited to obtaining a copy of a criminal record can be sent directly to an authority which controls, or at least has access to, official records of criminal conviction.

Article 9 – Warrant for additional evidence

- 88. This Article addresses the need to deal with situations where multiple requests for objects, documents or data are made with respect to the same investigation. A similar provision is contained in Article 6 of the 2001 Protocol⁴³ to the EU 2000 Convention.

⁴² Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, p. 1.

⁴³ Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 326, 21.11.2001, p. 1.

89. To avoid duplication of effort, the issuing authority may use Form B in the Annex to obtain objects, documents or data which are additional to an earlier European Evidence Warrant issued for the purpose of the same proceedings. There is no need to issue a new European Evidence Warrant, provided that the content of the original warrant (in particular the facts known to the issuing authority and identity of the person(s) in respect of whom the objects, documents or data are sought) remains accurate.
90. The executing State is required to comply with any such warrant for additional evidence in the same way as for the original European Evidence Warrant.
91. If the competent issuing authority participates in the execution of the European Evidence Warrant in the executing State, it may address a warrant for additional evidence directly to the executing authority while present in that State.

Article 10 – Conditions on the use of personal data

92. This Article is based upon Article 23 of the EU 2000 Convention⁴⁴. It supplements the protection afforded by the Council of Europe 1981 Convention for the protection of individuals with regard to the automatic processing of personal data⁴⁵. The 1981 Convention, which has been ratified by all Member States, provides that personal data undergoing automatic processing may amongst other things only be stored and used for specified and legitimate purposes except where necessary in a democratic society in the interests of protecting State security, public safety or the suppression of criminal offences. The EC 1995 Data Protection Directive⁴⁶ does not apply to judicial co-operation in criminal matters.
93. The purpose limitation in this Article follows the approach in Article 23(1) of the EU 2000 Convention.
94. In the circumstances of a particular case, the executing State may also require the Member State to which the personal data have been transferred to give information on the use made of the data. This requirement to provide information about the use made of the data is in line with Article 23(3) of the EU 2000 Convention.
95. Paragraph 4, in line with Article 23(6) of the EU 2000 Convention, excludes from the scope of Article 10 personal data obtained by a Member State under the Framework Decision and originating from that Member State.

⁴⁴ Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, p. 1.

⁴⁵ Council of Europe, European Treaty Series No 108.

⁴⁶ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 25.11.95, p. 31.

Title III – Procedures and safeguards for the executing State

Article 11 – Recognition and execution

96. This Article requires that the competent authorities of the executing State recognise a European Evidence Warrant without any further formality being required and forthwith take the necessary measures for its execution. The execution of the warrant should be carried out in the same way as the objects, documents or data would be obtained by an authority of the executing State.

Article 12 – Safeguards for execution

97. This Article ensures that the European Evidence Warrant will be executed in accordance with the following minimum conditions:
- (a) the least intrusive means necessary should be used to obtain the objects, documents or data;
 - (b) a natural person should not be required to produce objects, documents or data which might result in self-incrimination; and
 - (c) the issuing authority should be informed immediately if the executing authority discovers that the warrant was executed in a manner contrary to the law of the executing State.
98. The following additional safeguards are provided with respect to search and seizure:
- (a) a search of private premises should not start at night, unless this is exceptionally necessary due to the particular circumstances of the case;
 - (b) a person whose premises have been searched should be entitled to receive written notification of the search. This should state, as a minimum, the reason for the search, the objects, documents or data seized and the legal remedies available; and
 - (c) in the absence of the person whose premises are being searched, the notification of the search should be provided to that person by leaving the notification on the premises or by other suitable means.

Article 13 – Formalities to be followed in the executing State

99. This Article allows the issuing authority to require that the executing authority follows certain formalities for the execution of the warrant. Four specific formalities are mentioned:
- (a) where, in the opinion of the issuing authority, there is a significant risk that the objects, documents or data sought might be altered, moved or destroyed, the issuing authority may require that the executing authority uses coercive measures to execute the warrant. This is designed to ensure that the executing authority obtains the objects, documents and data in a way that ensures that they will not be altered or destroyed, for example by avoiding any reliance on the voluntary co-operation of the party in control of them. Any such requirement must be justified in Form A in the Annex.

- (b) the fact that an investigation is being carried out, and the substance of the investigation, shall be kept confidential except to the extent necessary for the execution of the European Evidence Warrant. Similar obligations of confidentiality can be found in Article 4 of the 2001 Protocol⁴⁷ to the EU 2000 Convention in respect of monitoring and information on banking transactions, and in Article 33 of the 1990 European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime⁴⁸.
 - (c) the executing State should allow a competent authority of the issuing State, or an interested party nominated by the issuing authority, to be present during the execution of the warrant. This is based on Article 4 of the 1959 Convention⁴⁹. However, unlike the 1959 Convention, it is proposed that the executing State could not refuse to accept the presence of such parties. Moreover, the executing State should allow the authority from the issuing State that is present to have the same access as the executing authority to any object, document or data obtained as a result of the execution of the warrant. This is in order to ensure that the presence of the issuing authority has some practical value notably with a view to issuing a warrant for additional evidence in accordance with Article 9(3).
 - (d) the issuing authority should be able to require the executing authority to keep a record of who has handled the evidence from the execution of the warrant to the transfer of the evidence to the issuing State. This should help to demonstrate the integrity of the “chain of evidence”.
100. Subparagraph (e) follows the approach of Article 4 of the EU 2000 Convention⁵⁰. It allows the issuing authority to require that the executing authority complies with other specified formalities and procedures expressly indicated by it, unless such formalities and procedures are contrary to the fundamental principles of law in the executing State. For example, an issuing authority seeking the seizure and transfer of computer data will need to consider indicating formalities and procedures that will ensure the security and integrity of the computer data.

Article 14 – Obligation to inform

101. This Article is based upon Article 5 of the 2001 Protocol⁵¹ to the EU 2000 Convention. It requires the executing authority, in the course of the execution of the European Evidence Warrant, to inform immediately the issuing authority when it considers that it may be necessary to undertake investigations not initially foreseen.

⁴⁷ Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 326, 21.11.2001, p. 1.

⁴⁸ Council of Europe, European Treaty Series No 141.

⁴⁹ Council of Europe, European Treaty Series No 30.

⁵⁰ Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, p. 1.

⁵¹ Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 326, 21.11.2001, p. 1.

Article 15 – Grounds for non-recognition or non-execution

102. This Article addresses grounds for refusing to recognise and execute the European Evidence Warrant. The only grounds for refusal are those in this Article as well as, for a transitional period, dual criminality as provided for in Articles 16 and 24. A decision of non-recognition or non-execution is explicitly limited to a judge, investigating magistrate or prosecutor in the executing State. This avoids the situation in which a police or administrative authority would have the power to overturn a judicial decision. In cases where a police or administrative authority is responsible for the execution of the warrant, that authority must nevertheless seek the decision of a judge, investigating magistrate or prosecutor in order to refuse to recognise and execute the warrant.
103. With respect to *ne bis in idem*, a distinction is made between situations in which there is a *ne bis in idem* in another Member State, and situations in which *ne bis in idem* might arise as a result of proceedings in a third State. As regards the principle of *ne bis in idem* with respect to another Member State, this will be governed by the outcome of discussions on the initiative of the Hellenic Republic for a Council Framework Decision concerning the application of the *ne bis in idem* principle⁵². In such circumstances, it should be mandatory to refuse to recognise and execute the European Evidence Warrant. With respect to *ne bis in idem* as a result of proceedings in a third State, there is an optional ground of refusal to recognise and execute. This distinction is consistent with the approach adopted in the Framework Decision on the European arrest warrant⁵³.
104. Refusal is also permitted where an immunity or privilege under the law of the executing State makes it impossible to execute the European Evidence Warrant. This is the approach adopted in the Framework Decision on freezing orders.

Article 16 – Dual criminality

105. Refusal to execute the European Evidence Warrant on the grounds that the act on which it is based does not constitute an offence under the national law of the executing State (dual criminality) is inconsistent with the principle of mutual recognition of a judicial decision. It should consequently not be possible to refuse execution on such grounds. However, in order to facilitate the change-over from the existing rules to the new mutual recognition regime of the European Evidence Warrant, a two-stage approach is proposed. First, this Article narrows the conditions in which execution can be made dependant on dual criminality. Secondly, Article 24 provides that dual criminality, as more narrowly defined by Article 16, can be invoked only for a transitional period.

⁵² OJ C 100, 26.4.2003, p. 24.

⁵³ OJ L 190, 18.7.2002, p. 1.

106. Under the 1959 Convention⁵⁴, dual criminality may be imposed as a condition of co-operation to obtain evidence only with respect to search and seizure powers. This was further restricted by Article 51 of the 1990 Schengen Convention⁵⁵, which addressed the issue of administrative proceedings in criminal matters. Dual criminality cannot be imposed as a condition of execution where the objects, documents or data are already under the control of the executing authority.
107. This Article builds on the position in existing instruments that dual criminality is abolished except where the executing State considers it necessary to carry out a seizure or a search of premises. It goes further by abolishing the ability to refuse co-operation on the ground of dual criminality where either:
- (a) it is not necessary to carry out a search of private premises for the execution of the warrant. This reflects the added sensitivity of searching private premises; or
 - (b) the offence is on the list of offences specified in this Article.
108. The list of offences in this Article is copied from the list of offences in Article 2 of the draft Framework Decision on the application of the principle of mutual recognition to financial penalties. This builds upon the list of offences in Article 2 of the Framework Decision on the European arrest warrant⁵⁶, which is also incorporated in Article 3 of the Framework Decision on freezing orders.
109. In line with the approach adopted in the draft Framework Decision on the application of the principle of mutual recognition to financial penalties, the list does not contain a threshold level of imprisonment or other penalty in the issuing State.
110. Paragraph 3 provides that even if it is necessary to carry out a search of private premises and the offence is not on the list, then dual criminality can be invoked as a ground of refusal only as provided for by the transitional arrangements in Article 24.

Article 17 – Deadlines and procedures for recognition, execution and transfer

111. This Article establishes deadlines for the recognition and execution of the European Evidence Warrant. Deadlines are necessary to ensure quick, effective and consistent co-operation on obtaining objects, documents or data for use in proceedings in criminal matters throughout the European Union.
112. The issuing authority is able to indicate in Form A in the Annex that, due to procedural deadlines or other particularly urgent circumstances, a shorter deadline than otherwise laid down in this Article is necessary. In such cases, the executing authority is required to take as full account as possible of the shorter deadline. This is the approach already adopted in Article 4 of the EU 2000 Convention⁵⁷.

⁵⁴ Council of Europe, European Treaty Series No 30.

⁵⁵ Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders, OJ L 239, 22.9.2000, p. 19.

⁵⁶ OJ L 190, 18.7.2002, p. 1.

⁵⁷ Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, p. 1.

113. This proposal goes further by requiring that any decision to refuse recognition or execution must be taken and notified as soon as possible and, whenever practicable, within 10 days of the receipt of the European Evidence Warrant. This is the same deadline as used in Article 17(2) of the Framework Decision on the European arrest warrant with regard to persons who have consented to surrender.
114. Execution of the warrant may be postponed for one of the reasons set out in Article 18. Otherwise it should be executed immediately in situations where the objects, documents or data sought by the issuing authority are already under the control of the executing authority, or where a copy of an official record of criminal conviction is sought from a central criminal records authority. In other circumstances, such as where coercive measures are required, the warrant should be executed, wherever practicable, within 60 days of its receipt.
115. Transfer of the objects, documents or data obtained under the European Evidence Warrant to the issuing State should take place immediately where the objects, documents or data are already under the control of the executing authority, or where a copy of an official record of criminal conviction is sought from a central criminal records authority. In other cases, transfer should take place without delay and, wherever practicable, within 30 days of the execution of the warrant. The only exception to this rule is where there is a legal remedy is underway in the executing State, in which case the procedures and deadlines of Article 19 apply.
116. In accordance with Article 6(2) of the 1959 Convention⁵⁸, the executing authority may require that the objects, documents or data should be returned to the executing State as soon as they are no longer required by the issuing State. No further conditions may be placed on the transfer of the objects, documents or data to the issuing State.
117. Reasons must be given for any refusal or failure to execute the European Evidence Warrant. Where, in exceptional circumstances, a Member State cannot observe the time limits provided for in this Article, it is required to inform Eurojust giving the reasons for the delay. This information is intended to assist Eurojust in its efforts to improve judicial co-operation in criminal matters. This requirement is based on Article 17 of the Framework Decision on the European arrest warrant⁵⁹.

Article 18 – Grounds for postponement of execution

118. This Article establishes the grounds for which postponement of execution is justified.
119. Postponement of execution may occur where the form is incomplete; its execution might damage an ongoing criminal investigation; or the objects, documents or data concerned are already being used in other proceedings falling within the scope of this Framework Decision. The relevant competent authority in the issuing State should be informed of the reasons for the postponement and its likely duration.
120. As soon as the ground for postponement has ceased to exist, the executing authority must forthwith take the necessary measures for the execution of the European Evidence Warrant and inform the relevant competent authority in the issuing State.

⁵⁸ Council of Europe, European Treaty Series No 30.

⁵⁹ OJ L 190, 18.7.2002, p. 1.

Article 19 – Legal remedies for coercive measures

121. Member States must provide legal remedies available to interested parties, including bona fide third parties, in order to preserve their legitimate interests for situations in which the execution of the European Evidence Warrant requires coercive measures. It is therefore not compulsory for Member States to introduce legal remedies in situations where, for example, the objects, documents and data are already under the control of a judicial authority in the executing State and are simply being transferred to the issuing authority. In such circumstances, it is left to the Member States to protect the rights of persons affected by the proceedings in accordance with domestic law and in conformity with the ECHR.
122. This Article is based on the approach adopted in the Framework Decision on freezing orders. However, in this proposal, the legal remedies can have suspensive effect on the transfer of the objects, documents and data to the issuing State, subject to the deadline below.
123. In general, the legal remedy should be brought before a court in the issuing State or in the executing State in accordance with the national law of each. However, it is not possible for the substantial reasons for issuing the European Evidence Warrant to be challenged in the executing State. Instead, the reasons for issuing the warrant may be challenged only in an action brought before a court in the issuing State.
124. The issuing State is required to ensure that any time limits for bringing an action are applied in a way that guarantees the possibility of an effective legal remedy for interested parties. Both the issuing and executing States are required to take the necessary measures to facilitate the exercise of the right to bring an action, in particular by providing relevant and adequate information to interested parties.
125. As mentioned above, the executing State may suspend the transfer of the objects, documents or data pending the outcome of a legal remedy. However, despite the existence of a legal remedy in the executing State, the issuing authority may require the executing State to transfer the objects, documents or data 60 days after the execution of the European Evidence Warrant. This is intended to provide an appropriate balance between the need to avoid paralysis in judicial co-operation as a result of legal challenges to the transfer of the objects, documents or data, and the need to provide adequate legal remedies to interested parties in the executing State prior to the transfer. In such cases, however, if, as the outcome of the legal remedy the transfer would not have been allowed, the objects, documents and data shall immediately be returned to the executing State.

Article 20 – Reimbursement

126. This Article deals with reimbursement by the issuing State to the executing State in respect of any sums paid in damages by virtue of the responsibility of the issuing State except if, and to the extent that, the injury or any part of it is exclusively due to the conduct of the executing State. This is the same approach as that adopted in the Framework Decision on freezing orders.

Title IV – Jurisdiction over electronic communications networks

Article 21 – Jurisdiction for computer data held on an information system on the territory of another Member State

127. As described in Section 1.12, this Article clarifies that it is lawful for the executing State to obtain evidence in the form of computer data that is lawfully accessible from its territory using an electronic communications network, provided that it relates to services provided to its territory, even though it is stored on the territory of another Member State. Each Member State is also required to verify that, with respect to data on its territory, its domestic law does not prohibit another Member State from taking such action.

Title V – Final provisions

Article 22 – Monitoring the effectiveness of the Framework Decision

128. It is important that the Commission is able to monitor the effectiveness of this Framework Decision, in particular to assist the future development of policy at EU level on how to improve the effectiveness of judicial co-operation in criminal matters. With this in mind, there is a requirement to inform the Commission if there are repeated problems in the execution of European evidence warrants. This requirement is based on Article 17 of the Framework Decision on the European arrest warrant⁶⁰, except that it is the Commission rather than the Council that is informed of any repeated problems so as to assist its preparation of the report to the European Parliament and Council on the implementation of the Framework Decision.
129. This Article also requires each Member State to provide, by 31 March each year, the following information in respect of the preceding calendar year:
- (a) the number of European Evidence Warrants issued by its own authorities to each Member State;
 - (b) the average number of days taken to receive the objects, documents or data specified in the warrant from each Member State; and
 - (c) the number of European Evidence Warrants issued by its own authorities to each Member State for which recognition was refused, or for which execution was not possible, and a summary of the reasons for this.
130. The information is gathered centrally by the issuing State. It is reasonable to assume that the issuing State will attach importance to ensuring that its investigations are facilitated effectively and quickly by other Member States. There is, of course, nothing to stop each Member State from also keeping central information about the effectiveness of its own judicial authorities' execution of European Evidence Warrants issued by other Member States.

⁶⁰ OJ L 190, 18.7.2002, p. 1.

131. In addition, similar information is required to be produced each year by central criminal records authorities with respect to their execution of warrants they receive for the production of official records of criminal convictions.

Article 23 – Relation to other legal instruments

132. This Article ensures that this Framework Decision replaces existing mutual assistance provisions in relevant Conventions of the Council of Europe and of the European Union in so far as these deal with objects, documents or data falling within the scope of this instrument. A similar approach was adopted for the European Arrest Warrant, which will replace existing extradition instruments from 1 January 2004.
133. This Article also ensures the repeal of Article 51 of the Schengen Implementation Convention and Article 2 of the 2001 Protocol to the EU 2000 Convention.
134. The Framework Decision is without prejudice to co-operation arrangements between Member States with respect to obtaining objects, documents or data in so far as such agreements or arrangements achieve more effective and efficient co-operation in criminal matters. Such arrangements might include co-operation between police authorities with respect to objects, documents and data already held by them, as well as co-operation with respect to public documents which are easily available and do not involve the exercise of coercive measures. It is not the intention of this Framework Decision to add new barriers to such co-operation. However, it is proposed that any new arrangements or agreements should be notified to the Commission and the Council.

Article 24 – Transitional arrangements

135. Paragraph 1 of this Article clarifies that mutual assistance requests received before 1 January 2005 will continue to be governed by existing instruments relating to mutual assistance in criminal matters. After that date, this Framework Decision will govern judicial co-operation in criminal matters with respect to objects, documents or data falling within its scope.
136. Paragraphs 2 and 3 of this Article provide for a five-year transitional period during which dual criminality, to the extent that it is not abolished by Article 16, may continue to be invoked as a ground for refusal by those Member States that have already under existing rules made execution of a request for search and seizure dependent on the condition of dual criminality. During that transitional period those Member States may allow a judicial authority to refuse recognition or execution on the ground of dual criminality as defined in Article 16. As with the grounds of refusal provided for in Article 15, a decision of non-recognition or non-execution is explicitly limited to a judge, investigating magistrate or prosecutor in the executing State. Dual criminality cannot be invoked as a ground for non-recognition or non-execution of the European Evidence Warrant other than as provided for in this Article.

Article 25 – Implementation

137. This Article requires that Member States must implement the Framework Decision by 1 January 2005 and, by the same date, send the text of the provisions transposing this Framework Decision into national law. Six months after implementation, the Commission must submit a report to the European Parliament and to the Council, 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.

Article 26 – Entry into force

138. This Article provides that the Framework Decision will enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Annex

Form A – the European Evidence Warrant

139. This is the form for the European Evidence Warrant itself. It has been produced specifically for the purposes of this Framework Decision. However, it is also based upon the approach adopted in the annex to the Framework Decision on the European arrest warrant⁶¹, and the annex to the Framework Decision on freezing orders.
140. Form A contains the following sections: (a) the judicial authority which issued the warrant; (b) reasons for issuing the warrant; (c) information on person in respect of whom objects, documents or data are sought; (d) objects, documents or data sought by the warrant; (e) formalities to be complied with for the execution of the warrant; (f) legal remedies against the warrant available in the issuing State; and (g) final provisions and signature.

Form B – the Warrant for additional evidence

141. This is the form for seeking additional objects, documents or data required by the issuing authority with respect to an earlier European Evidence Warrant. The original European Evidence Warrant must be attached to this form.
142. Form B contains the following sections: (a) details of the original European Evidence Warrant; (b) objects, documents or data sought by the additional warrant; (c) formalities to be complied with for the execution of the additional warrant; and (d) final provisions and signature.

⁶¹ OJ L 190, 18.7.2002, p. 1.

Proposal for a

COUNCIL FRAMEWORK DECISION

on the European Evidence Warrant for obtaining objects, documents and data for use in proceedings in criminal matters

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31 and 34(2)(b) thereof,

Having regard to the proposal of the Commission⁶²,

Having regard to the opinion of the European Parliament⁶³,

Whereas,

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 33 thereof, the principle of mutual recognition should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union.
- (2) On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition in criminal matters⁶⁴. This Framework Decision is necessary to complete measures 5 and 6 of the programme of measures, which deal with the mutual recognition of orders to obtain evidence, and measure 3 of the programme of measures, which suggests that a standard form like that drawn up for the Schengen bodies, translated into all the official languages, should be introduced for the purpose of obtaining criminal records.
- (3) The Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States⁶⁵ was the first concrete measure in the field of criminal law implementing the principle of mutual recognition.
- (4) The Council Framework Decision of 22 July 2003 on the execution in the European Union of orders freezing property and evidence⁶⁶ addresses the need for immediate mutual recognition of orders to prevent the destruction, transformation, moving, transfer or disposal of evidence. However, this deals only with part of the spectrum of

⁶² OJ C ...

⁶³ OJ C ...

⁶⁴ OJ C 12, 15.1.2001, p. 10.

⁶⁵ OJ L 190, 18.7.2002, p. 1.

⁶⁶ OJ L 196, 02.08.2003, p. 45

judicial co-operation in criminal matters with respect to evidence, and subsequent transfer of the evidence is left to mutual assistance procedures.

- (5) It is therefore necessary to further 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. This European Evidence Warrant should replace the traditional mutual assistance arrangements under the 1959 Convention of the Council of Europe on Mutual Assistance in Criminal Matters, and related instruments, in so far as these arrangements fall within the scope of this instrument. It should be transmitted directly to the competent authority for execution.
- (6) The European Evidence Warrant should be used to obtain any objects, documents and data for use in proceedings in criminal matters for which the European Evidence Warrant may be issued. This includes 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 electronic communications networks; historical data on the use of any services including financial transactions; forensic evidence except where this involves taking evidence from a person's body; historical records of statements, interviews and hearings; and other records from police or judicial files including official records of criminal convictions and the results of special investigative techniques.
- (7) The European Evidence Warrant should not be used to initiate the taking of evidence in the form of interviews, statements or other types of hearings involving suspects, witnesses or any other party; to initiate the taking of evidence from the body of suspects, witnesses or any other person, including DNA samples; to initiate the taking of evidence in real-time such as through the interception of communications, covert surveillance or monitoring of bank accounts; or to initiate further inquiries, in particular the compilation or analysis of existing objects, documents or data.
- (8) The principle of mutual recognition is based on a high level of confidence between Member States. In order to promote this confidence, this Framework Decision should contain important safeguards to protect fundamental rights. It should therefore be issued only by judges, investigating magistrates and prosecutors, and only when certain minimum conditions have been satisfied. These should include the tests of necessity and proportionality. There is also a need to prevent the issuing State from circumventing its national law by obtaining objects, documents or data that it would not be able to obtain in similar circumstances if they were available on its own territory.
- (9) The execution of the European Evidence Warrant should also be subject to safeguards, including protection against self-incrimination and safeguards for the search of premises, as well as other safeguards which exist under the national law of the executing State.
- (10) To ensure the effectiveness of judicial co-operation in criminal matters, the possibility of refusing to recognise or execute the European Evidence Warrant, as well as the grounds for postponing execution, should be limited. In particular, refusal to execute the European Evidence Warrant on the grounds that the act on which it is based does not constitute an offence under the national law of the executing State (dual criminality) is inconsistent with the principle of mutual recognition of a judicial decision and consequently it should not be possible to refuse execution on such

grounds. However, in order to facilitate the change-over to the European Evidence Warrant, exception should be made for a transitional period for those Member States that have under existing rules made execution of a request for search and seizure dependent on the condition of dual criminality.

- (11) Deadlines are also necessary to ensure quick, effective and consistent co-operation on obtaining objects, documents or data for use in proceedings in criminal matters throughout the European Union.
- (12) Any interested party, including bona fide third parties, should have legal remedies against a European Evidence Warrant executed using coercive measures. Such legal remedies may have suspensive effect on the transfer of the evidence, at least until the maximum deadline laid down in this Framework Decision has expired.
- (13) It is necessary to clarify that the executing State may obtain data that is lawfully accessible from its territory and relates to services provided to its territory, but is nevertheless stored on the territory of another Member State. This without prejudice to situations involving third countries.
- (14) It is necessary to establish a mechanism to assess the effectiveness of this Framework Decision. Member States should therefore gather and record centrally a minimum amount of information for the purpose of monitoring the co-operation they receive from other Member States pursuant to this Framework Decision. Similar information should be gathered and recorded by Member States' central criminal records authorities.
- (15) As regards Iceland and Norway, this Framework Decision constitutes a development of the provisions of the Schengen acquis which falls within the area referred to in Article 1 of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two State with the implementation, application and development of the Schengen acquis⁶⁷. The procedures set out in that Agreement have been followed in respect of this Framework Decision.
- (16) A European Evidence Warrant should not be executed if this would infringe the *ne bis in idem* principle according to the Framework Decision 2003/.../JHA on the application of the principle of *ne bis in idem*⁶⁸.
- (17) Since the aim of replacing the system of mutual assistance in criminal matters for obtaining objects, documents or data cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

⁶⁷ OJ L 176, 10.7.1999, p. 31

⁶⁸ OJ L ...

- (18) The personal data processed in the context of the implementation of this Framework Decision will be protected in accordance with the principles of the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to the automatic processing of personal data, as well as by the additional protection afforded by this Framework Decision in line with Article 23 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000⁶⁹.
- (19) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union.

HAS ADOPTED THIS FRAMEWORK DECISION:

TITLE I – THE EUROPEAN EVIDENCE WARRANT

Article 1

Definition of the European Evidence Warrant and obligation to execute it

1. The European Evidence Warrant is a judicial decision issued by a competent authority of a Member State with a view to obtaining objects, documents and data from another Member State for use in proceedings referred to in Article 4.
2. Member States shall execute any European Evidence Warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

Article 2

Definitions

For the purposes of this Framework Decision,

- (a) "issuing State" shall mean the Member State in which the European Evidence Warrant has been issued.
- (b) "executing State" shall mean the Member State in whose territory the objects, documents or data are available.
- (c) "issuing authority" shall mean a judge, investigating magistrate or prosecutor with competence under national law to issue a European Evidence Warrant.
- (d) "executing authority" shall mean an authority with competence under national law to execute a European Evidence Warrant.

⁶⁹ OJ C 197, 12.7.2000, p. 1.

- (e) “information system” means any device or group of inter-connected or related devices, one or more of which, pursuant to a program, performs automatic processing of computer data, as well as computer data stored, processed, retrieved or transmitted by them for the purposes of their operation, use, protection and maintenance.
- (f) “computer data” means any representation of facts, information or concepts in a form suitable for processing in an information system, including a program suitable for causing an information system to perform a function.
- (g) “electronic communications network” means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.
- (h) “offence” means criminal offence or act which is punishable under the national law of the issuing State by virtue of being an infringement of the rules of law, provided that the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

Article 3

Types of objects, documents or data covered

1. The European Evidence Warrant may be issued with respect to obtaining any type of object, document or data which could be used in proceedings referred to in Article 4.
2. The European Evidence Warrant shall not be issued for the purpose of initiating:
 - (a) the taking of evidence in the form of interviews, statements or other types of hearings involving suspects, witnesses, experts or any other party;
 - (b) the taking of evidence from the body of any person, including DNA samples;
 - (c) the taking of evidence in real-time such as through the interception of communications, covert surveillance or monitoring of bank accounts; and
 - (d) the taking of evidence requiring further inquiries, in particular the compilation or analysis of existing objects, documents or data.
3. The European Evidence Warrant may be issued with respect to obtaining existing evidence falling within paragraph 2 where the evidence has been gathered prior to the issuing of the warrant.

Article 4

Type of proceedings for which the European Evidence Warrant may be issued

The European Evidence Warrant may be issued with respect to the following proceedings:

- (a) criminal proceedings;
- (b) proceedings brought by administrative authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters; and
- (c) proceedings referred to in points (a) and (b) which relate to offences for which a legal person may be held liable in the issuing State.

Article 5

Content and form of the European Evidence Warrant

1. The European Evidence Warrant shall contain the information set out in Form A in the Annex. It must be signed, and its contents certified as accurate, by the issuing authority.
2. The European Evidence Warrant shall be translated by the issuing State into the official language or one of the official languages of the executing State.

Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

TITLE II – PROCEDURES AND SAFEGUARDS FOR THE ISSUING STATE

Article 6

Conditions for issuing the European Evidence Warrant

Each Member State shall take the necessary measures to ensure that the European Evidence Warrant is issued only when the issuing authority is satisfied that the following conditions have been met:

- (a) the objects, documents or data sought are necessary and proportionate for the purpose of proceedings in Article 4.
- (b) the objects, documents or data can be obtained under the law of the issuing State in similar circumstances if they were available on the territory of the issuing State, even though different procedural measures might be used.
- (c) the objects, documents or data are likely to be admissible in the proceedings for which they are sought.

Article 7
Transmission of the European Evidence Warrant

1. The European Evidence Warrant shall be transmitted by the issuing authority directly to the competent authority for execution by any means capable of producing a written record under conditions allowing the executing State to establish authenticity.
2. If the competent authority for execution is unknown, the issuing authority shall make all necessary inquiries, including via the contact points of the European Judicial Network, in order to obtain the information from the executing State.
3. When the authority in the executing State which receives the European Evidence Warrant has no jurisdiction to recognise it and to take the necessary measures for its execution, it shall, *ex officio*, transmit the European Evidence Warrant to the competent authority for execution and shall so inform the issuing authority.

Article 8
Central criminal records authority

1. Each Member State shall designate, in a declaration deposited with the General Secretariat of the Council, a central criminal records authority to which the European Evidence Warrant can be transmitted for the purpose of obtaining a copy of any official record in that Member State of a criminal conviction, and subsequent measures, with respect to a natural or legal person.
2. Each Member State shall ensure that its central criminal records authority has access to the information necessary to comply with paragraph 1.

Article 9
Warrant for additional evidence

1. Where the issuing authority requires objects, documents or data which are additional to an earlier European Evidence Warrant issued for the purpose of the same proceedings, and the content of the original warrant remains accurate, it shall not be required to issue a new European Evidence Warrant. In such circumstances, it shall issue a warrant for additional evidence containing the information set out in Form B in the Annex.
2. The executing State shall comply with any additional requirements under paragraph 1 in the same way as for the original European Evidence Warrant.
3. Where, in accordance with the provisions in force, the competent authority which has issued a European Evidence Warrant participates in the execution of the warrant in the executing State, it may address the warrant for additional evidence directly to the executing authority while present in that State.

Article 10
Conditions on the use of personal data

1. 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) for preventing an immediate and serious threat to public security.

For any purpose other than those set out in the first subparagraph personal data obtained under this Framework Decision can be used only with the prior consent of the executing State, unless the issuing State has obtained the consent of the data subject.

2. Personal data obtained under this Framework Decision shall remain confidential except in so far as it is necessary to disclose it for the purposes specified in paragraph 1 or for other reasons specified in national law.
3. In the circumstances of the particular case, the executing State may require the Member State to which the personal data have been transferred to give information on the use made of the data.
4. This Article does not apply to personal data obtained by a Member State under this Framework Decision and originating from that Member State.

TITLE III – PROCEDURES AND SAFEGUARDS FOR THE EXECUTING STATE

Article 11
Recognition and execution

Except as otherwise provided for in this Framework Decision, the executing authority shall recognise a European Evidence Warrant, transmitted in accordance with Article 7, without any further formality being required, and shall forthwith take the necessary measures for its execution in the same way as the objects, documents or data would be obtained by an authority of the executing State.

Article 12
Safeguards for execution

1. Each Member State shall take the necessary measures to ensure that the European Evidence Warrant is executed in accordance with the following minimum conditions:
 - (a) the executing authority shall use the least intrusive means necessary to obtain the objects, documents or data;

- (b) a natural person shall not be required to produce objects, documents or data which may result in self-incrimination; and
 - (c) the issuing authority shall be informed immediately if the executing authority discovers that the warrant was executed in a manner contrary to the law of the executing State.
2. Each Member State shall take the necessary measures to ensure that, where a search and seizure is considered necessary in order to obtain objects, documents or data, the following minimum safeguards shall apply:
- (a) a search of premises shall not start at night, unless this is exceptionally necessary due to the particular circumstances of the case;
 - (b) a person whose premises have been searched shall be entitled to receive written notification of the search. This shall state, as a minimum, the reason for the search, the objects, documents or data seized, and the legal remedies available; and
 - (c) in the absence of the person whose premises are being searched, the notification described in point (b) shall be provided to that person by leaving the notification on the premises or by other suitable means.

Article 13
Formalities to be followed in the executing State

The issuing authority may require that the executing authority:

- (a) uses coercive measures to execute the warrant where, in the opinion of the issuing authority, there is a significant risk that the objects, documents or data sought might be altered, moved or destroyed;
- (b) keeps the fact that an investigation is being carried out, and the substance of the investigation, confidential except to the extent necessary for the execution of the European Evidence Warrant;
- (c) allows a competent authority of the issuing State, or an interested party nominated by the issuing authority, to be present during the execution of the warrant and to have the same access as the executing authority to any object, document or data obtained as a result of the execution of the warrant;
- (d) keeps a record of who has handled the evidence from the execution of the warrant to the transfer of the evidence to the issuing State; or
- (e) complies with other specified formalities and procedures expressly indicated by the issuing authority, unless such formalities and procedures are contrary to the fundamental principles of law in the executing State.

Article 14
Obligation to inform

If the executing authority, in the course of the execution of the European Evidence Warrant, considers that it may be appropriate to undertake investigations not initially foreseen, which could not be specified when the warrant was issued, it shall immediately inform the issuing authority in order to enable it to take further action.

Article 15
Grounds for non-recognition or non-execution

1. A judge, investigating magistrate or prosecutor in the executing State shall oppose the recognition or execution of the European Evidence Warrant if this would infringe the *ne bis in idem* principle according to the Framework Decision 2003/.../JHA on the application of the principle of *ne bis in idem*⁷⁰.
2. A judge, investigating magistrate or prosecutor in the executing State may also oppose the recognition or execution of the European Evidence Warrant if:
 - (a) its execution would infringe the *ne bis in idem* principle with respect to proceedings in a third State; or
 - (b) there is an immunity or privilege under the law of the executing State which makes it impossible to execute the European Evidence Warrant.

Article 16
Dual criminality

1. The recognition or execution of the European Evidence Warrant shall not be subject to verification of dual criminality if either or both of the following conditions are met:
 - (a) it is not necessary to carry out a search of private premises for the execution of the warrant; or
 - (b) the offence is listed in paragraph 2.
2. The following offences, as they are defined by the law of the issuing State, shall not be subject to verification of dual criminality under any circumstances:
 - participation in a criminal organisation,
 - terrorism,
 - trafficking in human beings,
 - sexual exploitation of children and child pornography,
 - illicit trafficking in narcotic drugs and psychotropic substances,

⁷⁰ OJ L ...

- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,

- sabotage,
 - conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods,
 - smuggling of goods,
 - infringements of intellectual property rights,
 - threats and acts of violence against persons, including violence during sports events,
 - criminal damage,
 - theft,
 - offences established by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the Treaty establishing the European Community or under Title VI of the Treaty on European Union.
3. If neither of the conditions of paragraph 1 are met, recognition or execution of the European Evidence Warrant may be subject to the condition of dual criminality only to the extent provided for in the transitional arrangements laid down in Article 24(2) and (3).

Article 17

Deadlines for recognition, execution and transfer

1. Each Member State shall take the necessary measures to ensure compliance with the deadlines provided for in this Article. Where the issuing authority has indicated in the European Evidence Warrant that, due to procedural deadlines or other particularly urgent circumstances, a shorter deadline is necessary, the executing authority shall take as full account as possible of this requirement.
2. Any decision to refuse recognition or execution must be taken and notified as soon as possible to the relevant competent authority of the issuing State by any means capable of producing a written record. Such notification shall take place no later than 10 days after the receipt of the European Evidence Warrant by the competent executing authority.
3. Unless a ground for postponement is justified in accordance with Article 18, the executing authority shall execute the European Evidence Warrant:
 - (a) immediately where the objects, documents or data sought by the issuing authority are already under the control of the executing authority, or where a copy of an official record of criminal conviction is sought from a central criminal records authority;

or, in other circumstances,

 - (b) without delay and, wherever practicable, within 60 days of its receipt by the competent executing authority.

4. Unless a legal remedy is underway in accordance with Article 19, the executing State shall transfer the objects, documents or data obtained under the European Evidence Warrant to the issuing State:
 - (a) immediately where the objects, documents or data sought by the issuing authority are already under the control of the executing authority, or where a copy of an official record of criminal conviction is sought from a central criminal records authority;or, in other circumstances,
 - (b) without delay and, wherever practicable, within 30 days of its execution.
5. The executing authority may require that the objects, documents or data shall be returned to the executing State as soon as they are no longer required by the issuing State.
6. Subject to paragraphs 4 and 5, no further conditions shall be placed on the transfer of the objects, documents or data.
7. Reasons must be given for any refusal, failure or delay in executing the European Evidence Warrant and in the subsequent transfer of the objects, documents or data.
8. In case it is in practice impossible to execute the European Evidence Warrant for the reason that the objects, documents or data have disappeared, have been destroyed, cannot be found in the location indicated in the warrant or the location of the objects, documents or data has not been indicated in a sufficiently precise manner, even after consultation with the issuing State, the relevant competent authority of the issuing State shall be notified forthwith.
9. Where, in exceptional circumstances, a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay.

Article 18
Grounds for postponement of execution

1. The executing authority may postpone the execution of the European Evidence Warrant where:
 - (a) the form provided for in the Annex is incomplete;
 - (b) its execution might damage an ongoing criminal investigation, until such time as it deems reasonable; or
 - (c) the objects, documents or data concerned are already being used in other proceedings falling within the scope of Article 4, until such time as the evidence is no longer required for this purpose.

2. In the case of paragraph 1(a), the executing authority may:
 - (a) postpone execution until the form has been completed or corrected, or
 - (b) exempt the issuing authority from this requirement if it considers that the information provided is sufficient to execute the warrant fairly and lawfully.
3. A report on the postponement of the execution of the European Evidence Warrant, including the grounds for the postponement and, if possible, the expected duration of the postponement, shall be made forthwith to the relevant competent authority in the issuing State by any means capable of producing a written record.
4. As soon as the ground for postponement has ceased to exist, the executing authority shall forthwith take the necessary measures for the execution of the European Evidence Warrant and inform the relevant competent authority in the issuing State thereof by any means capable of producing a written record.

Article 19
Legal remedies for coercive measures

1. Member States shall put in place the necessary arrangements to ensure that any interested party, including bona fide third parties, have legal remedies against a European Evidence Warrant executed pursuant to Article 11 using coercive measures, in order to preserve their legitimate interests.
2. The action shall be brought before a court in the issuing State or in the executing State in accordance with the national law of each. However, the substantial reasons for issuing the European Evidence Warrant, including whether the criteria in Article 6 have been met, may be challenged only in an action brought before a court in the issuing State.
3. The issuing State shall ensure that any time limits for bringing an action mentioned in paragraphs 1 and 2 are applied in a way that guarantees the possibility of an effective legal remedy for interested parties.
4. If the action is brought in the executing State, the judicial authority of the issuing State shall be informed thereof and of the grounds of the action, so that it can submit the arguments that it deems necessary. It shall be informed of the outcome of the action.
5. The issuing and executing authorities shall take the necessary measures to facilitate the exercise of the right to bring an action mentioned in paragraph 1, in particular by providing relevant and adequate information to interested parties.
6. The executing State may suspend the transfer of objects, documents and data pending the outcome of a legal remedy. However, despite the existence of a legal remedy in the executing State, the issuing authority may require the executing State to transfer the objects, documents and data 60 days after the execution of the European Evidence Warrant. In such cases, if, as the outcome of the legal remedy in the executing State, the transfer of the objects, documents and data would not have been allowed, these shall immediately be returned to the executing State.

Article 20
Reimbursement

1. Without prejudice to Article 19(2), where the executing State under its law is responsible for injury caused to one of the parties mentioned in Article 19 by the execution of a European Evidence Warrant transmitted to it pursuant to Article 7, the issuing State shall reimburse to the executing State any sums paid in damages by virtue of that responsibility to the said party except if, and to the extent that, the injury or any part of it is exclusively due to the conduct of the executing State.
2. Paragraph 1 is without prejudice to the national law of the Member States on claims by natural or legal persons for compensation of damage.

TITLE IV – JURISDICTION OVER ELECTRONIC COMMUNICATIONS NETWORKS

Article 21
Jurisdiction for computer data held on an information system on the territory of another Member State

1. Each Member State shall take the necessary measures to ensure that it is able to execute a European Evidence Warrant, without further formality, when:
 - (a) the computer data sought is held on an information system on the territory of another Member State, but is lawfully accessible to a legal or natural person on the territory of the executing State by means of an electronic communications network; and
 - (b) the computer data relates to a service provided by that legal or natural person on the territory of the executing State to a legal or natural person on the territory of the same State.
2. Each Member State shall also take the necessary measures to ensure that, with respect to computer data on its territory, its national law permits another Member State to take action in accordance with paragraph 1.

TITLE V – FINAL PROVISIONS

Article 22
Monitoring the effectiveness of the Framework Decision

1. A Member State which has experienced repeated problems on the part of another Member State in the execution of European Evidence Warrants shall inform the Commission to assist its evaluation of the implementation of this Framework Decision at Member State level.
2. Each Member State shall take the necessary measures to ensure that it is able to provide, by 31 March each year, the following information in respect of the preceding calendar year:

- (a) the number of European Evidence Warrants issued by its own authorities to each Member State;
 - (b) the average number of days taken to receive the objects, documents and data specified in the warrant from each Member State; and
 - (c) the number of European Evidence Warrants issued by its own authorities to each Member State for which recognition was refused, or for which execution was not possible, and a summary of the reasons for this.
3. Each Member State shall take the necessary measures to ensure that its central criminal records authority is able to provide, by 31 March each year, the following information in respect of European Evidence Warrants it received in the preceding calendar year:
- (a) the number of European Evidence Warrants it received from each Member State;
 - (b) the average number of days taken to transmit a reply to an European Evidence Warrant;
 - (c) the number of refusals to execute a European Evidence Warrant, and a summary of the reasons for the refusals or failures to reply;
 - (d) the number of European Evidence Warrants to which a reply was not provided within 10 days, and a summary of the reasons for this.
4. Upon written request from the Commission, Member States shall provide to the Commission the information specified in paragraphs 2 and 3.

Article 23
Relation to other legal instruments

1. Without prejudice to their application in relations between Member States and third countries, this Framework Decision shall, from 1 January 2005, replace the corresponding provisions of the following legal instruments in relations between the Member States in so far as these instruments concern mutual assistance requests for evidence falling within the scope of this Framework Decision:
- (a) the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959⁷¹, and its additional protocols of 17 March 1978⁷² and 8 November 2001⁷³.
 - (b) the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990⁷⁴.

⁷¹ Council of Europe, European Treaty Series No 30.
⁷² Council of Europe, European Treaty Series No 99.
⁷³ Council of Europe, European Treaty Series No 182.
⁷⁴ Council of Europe, European Treaty Series No 141.

- (c) the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders (hereinafter referred to as the ‘Schengen Implementation Convention’).
 - (d) the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000⁷⁵ and its Protocol of 16 October 2001⁷⁶.
2. The following provisions are hereby repealed:
 - (a) Article 51 of the Schengen Implementation Convention.
 - (b) Article 2 of the Protocol of 16 October 2001 to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000.
 3. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision is adopted in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for obtaining evidence falling within the scope of this Framework Decision.
 4. Member States may conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for obtaining evidence falling within the scope of this Framework Decision.
 5. The agreements and arrangements referred to in paragraphs 3 and 4 may in no case affect relations with Member States which are not parties to them.
 6. Member States shall, within three months from the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements and arrangements referred to in paragraph 3 which they wish to continue applying.
 7. Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in paragraph 4, within three months of signing it.
 8. Where the conventions or agreements referred to in paragraph 1 apply to the territories of Member States or to the territories for whose external relations a Member State is responsible to which this Framework Decision does not apply, those instruments shall continue to govern the relations existing between those territories and the other Member States.

⁷⁵ OJ C 197, 12.7.2000, p. 1.

⁷⁶ OJ C 326, 21.11.2001, p. 1.

Article 24
Transitional arrangements

1. Mutual assistance requests received before 1 January 2005 will continue to be governed by existing instruments relating to mutual assistance in criminal matters. Requests received on or after that date for evidence falling within the scope of this Framework Decision will be governed by the rules adopted by Member States pursuant to this Framework Decision.
2. Member States that have under existing instruments relating to mutual assistance in criminal matters made execution of a request for search and seizure dependent on the condition of dual criminality may, if neither of the conditions of Article 16(1) are met and at the latest until five years after entry into force of this Framework Decision, allow a judge, investigating magistrate or prosecutor to oppose the recognition or execution of the European Evidence Warrant on the basis that the act on which it is based does not constitute an offence under the law of the executing State, whatever the constituent elements of the offence or however it is described.
3. In relation to offences in connection with taxes or duties, customs and exchange, recognition or execution may not be opposed in accordance with paragraph 2 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.

Article 25
Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 1 January 2005.
2. By the same date Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.
3. The Commission shall, by 30 June 2005, submit a report to the European Parliament and to the Council, 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.
4. The General Secretariat of the Council shall notify Member States, the Commission and Eurojust of the declarations made pursuant to Articles 5 and 8.

Article 26
Entry into force

This Framework Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, [...]

For the Council
The President
[...]

Annex

Form A

EUROPEAN EVIDENCE WARRANT⁷⁷

This warrant has been issued by a competent judicial authority. I request that the objects, documents and data specified below be obtained and transferred.

I am satisfied that:

- (i) the objects, documents and data sought by this warrant are necessary and proportionate for the purpose of the proceedings specified below;
- (ii) it would be possible to obtain these objects, documents and data under the law of the issuing State in similar circumstances if they were available on the territory of the issuing State, even though different procedural measures might be used; and
- (iii) the objects, documents and data sought by this warrant are likely to be admissible in the proceedings for which they are sought.

⁷⁷ This warrant must be written in, or translated into, one of the official languages of the executing State or any other language accepted by that State.

(A) THE JUDICIAL AUTHORITY WHICH ISSUED THE WARRANT

Official name:

.....

Name of its representative:

Post held (title/grade):

Tick the type of judicial authority which issued the warrant:

- judge
- investigating magistrate
- prosecutor

File reference:

Address:

.....

Tel. No: (country code) (area/city code) (...)

Fax No: (country code) (area/city code) (...)

E-mail:

Languages in which it is possible to communicate with the issuing authority:

Contact details (including languages in which it is possible to communicate with the person(s)) of the person(s) to contact if additional information on the execution of the warrant is necessary or to make necessary practical arrangements for the transfer of objects, documents and data. (if applicable):

.....

(B) REASON FOR ISSUING THE WARRANT

1. Description of the relevant grounds for issuing the European Evidence Warrant and a summary of the facts as known to the issuing judicial authority:

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2. Tick the type of proceedings for which the warrant is issued:

- criminal proceedings; or
- proceedings brought by administrative authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

3. If applicable, tick one or more of the following offences to which the proceedings identified above relate(s) as defined by the law of the issuing State:

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit trafficking in weapons, munitions and explosives;
- corruption;
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;

- laundering of the proceeds of crime;
- counterfeiting currency, including of the euro;
- computer-related crime;
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- facilitation of unauthorised entry and residence;
- murder, grievous bodily injury;
- illicit trade in human organs and tissue;
- kidnapping, illegal restraint and hostage-taking;
- racism and xenophobia;
- organised or armed robbery;
- illicit trafficking in cultural goods, including antiques and works of art;
- swindling;
- racketeering and extortion;
- counterfeiting and piracy of products;
- forgery of administrative documents and trafficking therein;
- forgery of means of payment;
- illicit trafficking in hormonal substances and other growth promoters;
- illicit trafficking in nuclear or radioactive materials;
- trafficking in stolen vehicles;
- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage;
- conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods;

- smuggling of goods;
- infringements of intellectual property rights;
- threats and acts of violence against persons, including during sports events;
- criminal damage;
- theft;
- offences established by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the Treaty establishing the European Community or under Title VI of the Treaty on European Union.

4. Full descriptions of the nature and legal classification of any offence(s) not covered by section 3 above for which the warrant was issued:

.....

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.....

(C) IDENTITY OF THE PERSONS CONCERNED

Information regarding the identity of the (i) natural or (ii) legal person(s) in respect of whom objects, documents or data are sought (as applicable):

(i) Natural persons

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Residence and/or known address, if not known state the last known address:

.....

Language(s) which the person understands (if known):

.....

(ii) Legal persons

Legal name:

Legal form of incorporation:

Shortened name, commonly used name or trading name, where applicable:

.....

Country of incorporation:

Register and number of incorporation:

Address of registered office:

.....

(D) OBJECTS, DOCUMENTS OR DATA SOUGHT BY THE WARRANT

1. Description of what is sought by the warrant (tick and complete as appropriate):

Objects:

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.....

Copy of criminal record required on person identified in section C.

Information in judicial or police records on person identified in section C (further details below):

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.....
.....

Other documents and data (further details below):

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.....
.....
.....

2. Is the material likely to be covered by any privileges or immunities (if so, provide further details):

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.....

3. Location of objects, documents or data (to the extent known or believed):

.....

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.....
4. Information regarding the identity of the (i) natural or (ii) legal person(s) believed to hold the objects, documents and data (where applicable):

(i) Natural persons:

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Residence and/or known address, if not known state the last known address:

.....

Language(s) which the person understands:

.....

(ii) Legal persons:

Legal name:

Legal form of incorporation:

Shortened name, commonly used name or trading name, where applicable:

.....

Country of incorporation:

Register and number of incorporation:

Address of registered office:

Other address(es) where business is conducted:

.....

(E) EXECUTION OF THE WARRANT

1. Deadlines for execution of the warrant are laid down in the Framework Decision. But, if the request is particularly urgent, please indicate any earlier deadline and the reason for this:

.....
.....

2. Tick and complete if any of the following are applicable:

it is necessary to use coercive measures to obtain the objects, documents and data to prevent their alteration, movement or destruction (justification and further details below)

.....
.....

it is necessary to keep the facts and substance of the investigation confidential (further details below)

.....
.....

a competent authority of the issuing State – or an interested party nominated by the issuing authority – is required to be present during the search (further details below)

.....
.....

a record is required of the handling of the evidence (further details below)

.....
.....

other formalities (which are not contrary to the fundamental principles of the law of the executing State) are required as explained below:

.....
.....

(F) LEGAL REMEDIES AGAINST COERCIVE MEASURES TAKEN PURSUANT TO THE WARRANT

1. Description of the legal remedies for interested parties, including bona fide third parties, available in the issuing State including necessary steps to take:

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.....

2. Court before which the action may be taken

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.....

3. Information as to those for whom the action is available

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.....

4. Time limit for submission of the action

.....
.....

5. Authority in the issuing State who can supply further information on procedures for submitting appeals in the issuing State and on whether legal assistance and interpretation and translation is available:

Name:

Contact person (if applicable):

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail:

(G) FINAL PROVISIONS AND SIGNATURE

1. Other circumstances relevant to the case (optional information):

.....
.....

2. Requested means of transfer of the objects, documents or data:

- by e-mail
- by fax
- in the original by post
- by other means (please specify):

.....

3. Signature of the issuing judicial authority and /or its representative certifying the content of the European Evidence Warrant as accurate:

.....

Name:

Post held (title/grade):

Date:

Official stamp (if available):

Form B

Warrant for additional evidence required by the issuing State with respect to an earlier European Evidence Warrant⁷⁸

This warrant for additional evidence is issued by a judicial authority with competence to issue a European Evidence Warrant. I attach a copy of the original European Evidence Warrant to which this warrant relates.

I request that the objects, documents or data specified below be obtained and transferred.

I am satisfied that:

- (i) the content of the original European Evidence Warrant to which this request relates is still accurate;
- (ii) the objects, documents or data sought by this additional warrant are necessary and proportionate for the purpose of the proceedings specified in the original warrant;
- (iii) it would be possible to obtain these objects, documents or data under the law of the issuing State in similar circumstances if they were available on the territory of the issuing State, even though different procedural measures might be used; and
- (iv) the objects, documents or data to which this additional warrant relates are likely to be admissible in the proceedings for which they is sought.

(A) DETAILS OF THE ORIGINAL EUROPEAN EVIDENCE WARRANT

Date issued:

File reference on original warrant:

References on any exchange of correspondence pursuant to the original warrant:

.....

⁷⁸ This form must be written in, or translated into, one of the official languages of the executing State or any other language accepted by that State.

(B) OBJECTS, DOCUMENTS OR DATA SOUGHT BY THE WARRANT

1. Description of what is sought by the warrant (tick and complete as appropriate):

Objects:

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.....

.....

.....

Copy of criminal record required on person identified in section C of the original warrant.

Information in judicial or police records on person identified in section C of the original warrant (further details below):

.....

.....

.....

.....

.....

.....

Other documents and data (further details below):

.....

.....

.....

.....

.....

.....

2. Is the material likely to be covered by any privileges or immunities (if so, provide further details):

.....
.....
.....
.....
3. Location of objects, documents or data (to the extent known or believed):

.....
.....
.....
.....
4. Information regarding the identity of the (i) natural or (ii) legal person(s) believed to hold the objects, documents and data (where applicable):

(i) Natural persons:

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Residence and/or known address, if not known state the last known address:

.....

Language(s) which the person understands:

.....

(ii) Legal persons:

Legal name:

Legal form of incorporation:

Shortened name, commonly used name or trading name, where applicable:

.....
Country of incorporation:
Register and number of incorporation:
Address of registered office:
Other address(es) where business is conducted:
.....

(C) EXECUTION OF THE WARRANT

1. Deadlines for execution of the warrant are laid down in the Framework Decision. But, if the request is particularly urgent, please indicate any earlier deadline and the reason for this:

.....
.....

2. Tick if any of the following are applicable:

it is necessary to use coercive measures to obtain the objects, documents or data to prevent their alteration, movement or destruction (justification and further details below)

.....
.....

it is necessary to keep the facts and substance of the investigation confidential (further details below)

.....
.....

a competent authority of the issuing State – or an interested party nominated by the issuing authority – is required to be present during the search (further details below)

.....
.....

a record is required of the handling of the evidence (further details below)

.....
.....

other formalities (which are not contrary to the fundamental principles of the law of the executing State) are required as explained below:

.....
.....

(D) FINAL PROVISIONS AND SIGNATURE

1. Other circumstances relevant to the case (optional information):

.....
.....

2. Requested means of transfer of the objects, documents or data:

- by e-mail
- by fax
- in the original by post
- by other means (please specify):

.....

3. Signature of the issuing judicial authority and /or its representative certifying the content of the Warrant for additional evidence as accurate:

.....

Name:

Post held (title/grade):

Date:

Official stamp (if available):