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Committee on Legal Affairs and the Internal Market

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OPINION

of the Committee on Legal Affairs and the Internal Market

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a Council framework decision on the European Evidence Warrant for obtaining objects, documents and data for use in proceedings in criminal matters

(COM(2003) 688 – C5-0609/2003 – 2003/0270(CNS))

Draftsman: Giuseppe Gargani

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PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Giuseppe Gargani draftsman at its meeting of 1 December 2003.

It considered the draft opinion at its meetings of 27 January and 19 February 2004.

At the latter meeting it adopted, by 15 votes to 11, with no abstentions, an amendment calling on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs to reject the framework decision.

The following were present for the vote: Giuseppe Gargani (chairman and draftsman), Willi Rothley (vice-chairman), Ioannis Koukiadis (vice-chairman), Bill Miller (vice-chairman), Paolo Bartolozzi, Maria Berger, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, José María Gil-Robles Gil-Delgado, Malcolm Harbour, Lord Inglewood, Hans Karlsson (for Fiorella Ghilardotti), Carlos Lage (for Carlos Candal pursuant to Rule 153(2)), Kurt Lechner, Klaus-Heiner Lehne, Toine Manders, Arlene McCarthy, Manuel Medina Ortega, Angelika Niebler (for Bert Doorn), Anne-Marie Schaffner, Astrid Thors (for Diana Wallis), Marianne L.P. Thyssen, Ian Twinn (for Rainer Wieland), Joachim Wuermeling and Stefano Zappalà.

SHORT JUSTIFICATION

The Commission has submitted a proposal seeking to establish a European evidence warrant for use in criminal proceedings.

The framework decision before us is based on the principle of mutual recognition of judicial decisions which the Tampere European Council established as the cornerstone of all judicial cooperation in both civil and criminal matters.

The Commission's basic objective is to replace the existing judicial assistance arrangements, based on a system of letters rogatory governed by international conventions, with a mutual recognition system. Mutual recognition should, in particular, speed up procedures and clarify matters as regards both issue and execution. In addition, the safeguards and rights of defence afforded to interested parties will be enhanced.

The European warrant is a judicial order made out on a standard form and issued by an EU Member State for execution on the territory of other Member States.

The European warrant does not apply to all forms of evidence, but only to documents, objects and databases in respect of which the various national legal systems provide for measures such as production orders and search and seize orders. The warrant's scope also extends to police information and copies of criminal records. It does not include evidence taken from the body of a person (including DNA), evidence obtained in real-time (e.g. by intercepting communications and monitoring bank accounts), the taking of oral testimony or the commissioning of expert's reports.

The proposal for a framework decision aims to introduce a European warrant for the purpose of obtaining evidence in the sphere of criminal proceedings on the basis of the principle of mutual recognition of judicial decisions.

However, any initiative in this area should take account of the need to protect fundamental rights, rather than focusing purely on the prospect of cooperation between the Member States. This means that any further transfer of powers from the Member States to the European Union may occur only if citizens' rights are legally guaranteed.

While the execution of each European arrest warrant and evidence warrant is based not only on 'formal' compliance with the said framework decision but also on the necessary respect for the fundamental rights and legal principles enshrined in Article 6 TEU – which underpin the principle of mutual recognition – those rights and principles should be clearly set out in a tangible form in order for them to be effective.

Since the European Union's system as a whole does not provide effective legal protection of fundamental rights, we may state without fear of contradiction that the proposal for a decision is premature.

Moreover, the European Parliament does not have legislative powers in respect of criminal law or criminal procedural law, which form part of the proposal under review. It is only being consulted.

Approving this proposal for a framework decision would, therefore, openly contravene the fundamental principle of every democratic system, under which restrictions on freedoms may only be imposed by virtue of a legislative act approved by Parliament, which is the sole democratically representative organ. And any restriction must be imposed within limits which are clearly defined in the constitution¹.

It is not without reason that the most advanced constitutional legal thinking holds that the principle 'no powers without rights' is such an important rule of modern constitutionality that it may be placed alongside the historic principle 'no taxation without representation'.

In conclusion, the proposal should be rejected. A European Evidence Warrant may only be adopted once a European constitutional treaty has entered into force which provides effective protection of fundamental rights and provides for the European Parliament's legislative role.

AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to reject the proposal for a framework decision.

¹ For Italy, Articles 14 and 15 of the Constitution state:

Article 14

Personal domicile is inviolable.

No domicile may be inspected, searched, or seized save in cases and in the manner laid down by law in accordance with the safeguards set out to protect personal liberty.

Verifications and inspections for public health and safety, or for economic and fiscal purposes, are governed by special laws.

Article 15

Freedom and secrecy of correspondence and other forms of communication are inviolable.

Limitations on them may only be imposed by judicial decision stating the reasons and in accordance the safeguards laid down by the law.