EUROPEAN PARLIAMENT

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Committee on Civil Liberties, Justice and Home Affairs

2003/0270(CNS)

25.9.2008

AMENDMENTS
38 - 53

Draft report
Gérard Deprez
(PE413.953v01-00)

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

Council draft
(COM(2003)0688 – C6-0293/2008 – 2003/0270(CNS))

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Amendment 38
Maria da Assunção Esteves

Council draft
Recital 25

Council draft	*Amendment*
(25) The EEW should coexist with existing mutual assistance procedures, but such coexistence should be considered transitional until, in accordance with the Hague Programme, the types of evidence-gathering excluded from the scope of this Framework Decision are also the subject of a mutual recognition instrument, the adoption of which would provide a complete mutual recognition regime to replace mutual assistance procedures.	(25) The EEW should coexist with existing mutual assistance procedures, but such coexistence should be considered transitional until, in accordance with the Hague Programme, the types of evidence-gathering excluded from the scope of this Framework Decision are also the subject of a mutual recognition instrument, the adoption of which would provide a complete mutual recognition regime to replace mutual assistance procedures. ***The European Commission should at the earliest opportunity present proposals aimed at completing the framework for recognition of criminal evidence, while also consolidating the legislation already adopted.*** ***The Commission is also invited to boost efforts to harmonise the system for obtaining evidence in the Member States. Harmonisation represents the best foundation for cooperation in criminal matters.***

Or. xm

Amendment 39
Maria da Assunção Esteves

Council draft
Article 4 – paragraph 6

Council draft	*Amendment*
6. Notwithstanding paragraph 2, the EEW may, if requested by the issuing authority, also cover taking statements from persons	***deleted***

present during the execution of the EEW and directly related to the subject of the EEW. The relevant rules of the executing State applicable to national cases shall also be applicable in respect of the taking of such statements.

Or. fr

Justification

There is no objective reason for this exception.

Amendment 40
Roselyne Lefrançois

Council draft
Article 10 – paragraph 3 a (new)

Council draft	*Amendment*
	3a. Anyone affected by an exchange of data carried out in accordance with the present framework decision may claim the right to data protection, including blocking, correction, deletion and access to information pertaining to them, as well as access to any means of redress to which they are entitled under the legislation of the issuing State or the executing State.

Or. fr

Amendment 41
Roselyne Lefrançois

Council draft
Article 12

Council draft	*Amendment*
The executing authority shall comply with the formalities and procedures expressly indicated by the issuing authority unless otherwise provided in this Framework Decision and provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing State. ***This Article shall not create an obligation to take coercive measures***.	The executing authority shall comply with the formalities and procedures expressly indicated by the issuing authority unless otherwise provided in this Framework Decision and provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing State.

Or. fr

Amendment 42
Roselyne Lefrançois

Council draft
Article 12 – subparagraph 1 a (new)

Council draft	*Amendment*
	The issuing authority may also require the executing authority to: ***(a) preserve the confidentiality of the investigation and its substance except to the extent necessary for the execution of the warrant;*** ***(b) allow a competent authority from the issuing State or an interested party designated by the issuing authority to be present at the execution of the warrant and to have access, under the same conditions as the executing authority, to any object, document or item of data obtained on that occasion;*** ***(c) deposit the names of the people through whose hands the evidence has passed between the execution of the warrant and its transfer to the issuing***

State.

Or. fr

Amendment 43
Maria da Assunção Esteves

Council draft
Article 12 – paragraph 1 a (new)

Council draft	*Amendment*
	The issuing State shall require that the executing State record the data relating to the procedure for obtaining evidence from the time when the warrant is executed until its transfer to the issuing State.

Or. pt

Amendment 44
Kathalijne Maria Buitenweg

Council draft
Article 13 – paragraph 1 – point h a) (new)

Council draft	*Amendment*
	(ha) if it conflicts with the public order of the executing Member State.

Or. en

Amendment 45
Roselyne Lefrançois

Council draft
Article 15 – paragraph 3

Council draft	*Amendment*
3. Unless ***either*** grounds for postponement under Article 16 ***exist*** or the executing authority has the objects, documents or	3. Unless ***one of the*** grounds for postponement under Article 16 ***justifies it*** or the executing authority has the objects,

data sought already in its possession, the executing authority shall take possession of the objects, documents or data ***without delay and, without prejudice to paragraph 4,*** no later than 60 days after the receipt of the EEW by the competent executing authority.	documents or data sought already in its possession, the executing authority shall take possession of the objects, documents or data ***as early as possible and*** no later than 60 days after the receipt of the ***European Evidence Warrant*** by the competent executing authority***, without prejudice to paragraph 4***.

Or. fr

Amendment 46
Roselyne Lefrançois

Council draft
Article 15 – paragraph 3 a (new)

Council draft	*Amendment*
	3a. In the absence of an action brought in accordance with Article 18 and unless one of the grounds for postponement referred to in Article 16 justifies it, the executing State shall transfer to the issuing State the objects, documents or data obtained by virtue of the European Evidence Warrant, immediately where the latter are already under the control of the executing authority or, where this is not the case, as early as possible and no later than 30 days following the date on which the executing authority takes possession of the evidence. When the objects, documents or data obtained are transferred, the executing authority shall state whether it requires them to be returned to the State of execution as soon as they cease to be needed by the issuing State.

Or. fr

Justification

It is also necessary to set a maximum deadline for the transfer of the objects, documents or data obtained under a European Evidence Warrant.

Also, it is more logical to put the various provisions relating to transfer together in one paragraph and to place this paragraph before the one relating to any inability to comply with the deadlines laid down.

Amendment 47
Roselyne Lefrançois

Council draft
Article 15 – paragraph 4

Council draft	*Amendment*
4. When it is not practicable ***in a specific case*** for the competent executing authority to meet the deadline set out ***in paragraphs 2 or 3 respectively***, it shall without delay inform the competent authority of the issuing State ***by any means***, giving the reasons for the delay and the estimated time needed for the action to be taken.	4. When it is not practicable ***under exceptional circumstances*** for the competent executing authority to meet the deadline set out ***in this Article***, it shall without delay inform ***Eurojust and*** the competent authority of the issuing State ***in writing***, giving the reasons for the delay and the estimated time needed for the action to be taken.

Or. fr

Justification

Failure to meet deadlines can only be justified by exceptional circumstances.
It is important that Eurojust also be warned and that there is a written record of the information transmitted.

Amendment 48
Roselyne Lefrançois

Council draft
Article 15 – paragraph 5

Council draft	*Amendment*
5. Unless a legal remedy is pending in accordance with Article 18 or grounds for postponement under Article 16 exist, the	***deleted***

executing State shall without undue delay transfer the objects, documents or data obtained under the EEW to the issuing State.

Or. fr

Justification

This paragraph is covered and supplemented by the Lefrançois amendment that aims to add a new paragraph 3a to this Article.
Please refer therefore to the justification for this amendment.

Amendment 49
Roselyne Lefrançois

Council draft
Article 15 – paragraph 6

Council draft	*Amendment*
6. When transferring the objects, documents or data obtained, the executing authority shall indicate whether it requires them to be returned to the executing State as soon as they are no longer required by the issuing State.	***deleted***

Or. fr

Justification

This paragraph is incorporated verbatim by the Lefrançois amendment that aims to add a new paragraph 3a to this Article.
Please refer therefore to the justification for this amendment.

Amendment 50
Roselyne Lefrançois

Council draft
Article 17 a (new)

Council draft	*Amendment*
	Article 17a
	Subsequent use of evidence
	The use of the evidence acquired pursuant to this Framework Decision shall in no way prejudice the rights of the defence in subsequent criminal proceedings.
	These rights shall be fully respected, in particular as regards the admissibility of the evidence, the obligation to disclose that evidence to the defence and the ability of the defence to challenge that evidence.

Or. fr

Amendment 51
Maria da Assunção Esteves

Council draft
Article 18 - paragraph 1

Council draft	*Amendment*
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 the recognition and execution of an EEW pursuant to Article 11, in order to preserve their legitimate interests. Member States may limit the legal remedies provided for in this paragraph to cases in which the EEW is executed using coercive measures. The action shall be brought before a court in the executing State in accordance with the law of that State.	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 the recognition and execution of an EEW pursuant to Article 11, in order to preserve their legitimate interests. Member States may limit the legal remedies provided for in this paragraph to cases in which the EEW is executed using coercive measures. ***In this context, the person concerned may in turn request further evidence, which may itself be the subject of an EEW.*** The action shall be brought before a court in the

executing State in accordance with the law of that State.

Or. pt

Amendment 52
Maria da Assunção Esteves

Council draft
Article 23 – paragraph 1

Council draft	*Amendment*
1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by ... *.	1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by ...* ***and they shall do everything they can to agree on a Framework Decision on procedural safeguards for defendants, including in relation to the collection and admissibility of evidence, before that date.*** ***The Framework Decision on procedural safeguards shall even be a condition for the entry into force of this Framework Decision.***

Or. fr

Amendment 53
Kathalijne Maria Buitenweg

Council draft
Article 25 a (new)

Council draft	*Amendment*
	Article 25a ***The Council is invited to adopt as soon as possible the draft framework decision on procedural rights in criminal proceedings taking into consideration the opinion of the European Parliament;***

Or. en