

**COUNCIL FRAMEWORK DECISION 2008/978/JHA****of 18 December 2008****on the European evidence warrant for the purpose of 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 Article 31 and Article 34(2)(b) thereof,

Having regard to the proposal of the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

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 cooperation 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 matters <sup>(2)</sup>. This Framework Decision is necessary to complete measures 5 and 6 of that programme, which deal with the mutual recognition of orders to obtain evidence.
- (3) Point 3.3.1 of the Hague Programme <sup>(3)</sup>, included in the Conclusions of the European Council of 4 and 5 November 2004, emphasises the importance of the completion of the comprehensive programme of measures to implement the principle of mutual recognition in criminal matters and highlights the introduction of the European evidence warrant (EEW) as a matter of priority.
- (4) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States <sup>(4)</sup> was the first concrete measure in the field of criminal law implementing the principle of mutual recognition.
- (5) Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property and evidence <sup>(5)</sup> 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 judicial cooperation in criminal matters with respect to evidence, and subsequent transfer of the evidence is left to mutual assistance procedures.
- (6) It is therefore necessary further to improve judicial co-operation by applying the principle of mutual recognition to a judicial decision, in the form of an EEW, for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters.
- (7) The EEW may be used to obtain any objects, documents and data for use in proceedings in criminal matters for which it may be issued. This may include for example objects, documents or data from a third party, from a search of premises including the private premises of the suspect, historical data on the use of any services including financial transactions, historical records of statements, interviews and hearings, and other records, including the results of special investigative techniques.
- (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. The EEW should therefore be issued only by judges, courts, investigating magistrates, public prosecutors and certain other judicial authorities as defined by Member States in accordance with this Framework Decision.
- (9) This Framework Decision is adopted under Article 31 of the Treaty and therefore concerns judicial cooperation within the context of that provision, aiming to assist the collection of evidence for proceedings as defined in Article 5 of this Framework Decision. Although authorities other than judges, courts, investigating magistrates and public prosecutors may have a role in the collection of such evidence in accordance with Article 2(c)(ii), this Framework Decision does not cover police, customs, border and administrative cooperation which are regulated by other provisions of the Treaties.

<sup>(1)</sup> OJ C 103 E, 29.4.2004, p. 452.

<sup>(2)</sup> OJ C 12, 15.1.2001, p. 10.

<sup>(3)</sup> OJ C 53, 3.3.2005, p. 1.

<sup>(4)</sup> OJ L 190, 18.7.2002, p. 1.

<sup>(5)</sup> OJ L 196, 2.8.2003, p. 45.

- (10) The definition of the term 'search or seizure' should not be invoked for the application of any other instrument applicable between Member States, in particular the Council of Europe Convention on Mutual Assistance in Criminal Matters of 20 April 1959, and the instruments which supplement it.
- (11) An EEW should be issued only where obtaining the objects, documents or data sought is necessary and proportionate for the purpose of the criminal or other proceedings concerned. In addition, an EEW should be issued only where the object, documents or data concerned could be obtained under the national law of the issuing State in a comparable case. The responsibility for ensuring compliance with these conditions should lie with the issuing authority. The grounds for non-recognition or non-execution should therefore not cover these matters.
- (12) The executing authority should use the least intrusive means to obtain the objects, documents or data sought.
- (13) The executing authority should be obliged to execute the EEW for electronic data not located in the executing State only to the extent possible under its law.
- (14) It should be possible, if the national law of the issuing State so provides in transposing Article 12, for the issuing authority to ask the executing authority to follow specified formalities and procedures in respect of legal or administrative processes which might assist in making the evidence sought admissible in the issuing State, for example the official stamping of a document, the presence of a representative from the issuing State, or the recording of times and dates to create a chain of evidence. Such formalities and procedures should not encompass coercive measures.
- (15) The execution of an EEW should, to the widest extent possible, and without prejudice to fundamental guarantees under national law, be carried out in accordance with the formalities and procedures expressly indicated by the issuing State.
- (16) To ensure the effectiveness of judicial cooperation in criminal matters, the possibility of refusing to recognise or execute the EEW, as well as the grounds for postponing its execution, should be limited. In particular, refusal to execute the EEW 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) should not be possible for certain categories of offences.
- (17) It should be possible to refuse an EEW where its recognition or execution in the executing State would involve breaching an immunity or privilege in that State. There is no common definition of what constitutes an immunity or privilege in the European Union and the precise definition of these terms is therefore left to national law, which may include protections which apply to medical and legal professions, but should not be interpreted in a way which would run counter to the obligation to abolish certain grounds for refusal in Article 7 of the 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 <sup>(1)</sup>.
- (18) It should be possible to refuse to recognise or execute an EEW to the extent that execution would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities. However, it is accepted that such ground for non-recognition or non-execution would be applied only where, and to the extent that, the objects, documents or data would not be used for those reasons as evidence in a similar domestic case.
- (19) The specific provisions in Article 13(3) in relation to Article 13(1)(f)(i) do not prejudice how and the extent to which the other grounds for refusal in Article 13(1) are implemented.
- (20) Time limits are necessary to ensure quick, effective and consistent cooperation on obtaining objects, documents or data for use in proceedings in criminal matters throughout the European Union.
- (21) Each Member State has in its law legal remedies available against the substantive reasons underlying decisions for obtaining evidence, including whether the decision is necessary and proportionate, although those remedies may differ between Member States and may apply at different stages of proceedings.
- (22) It is necessary to establish a mechanism to assess the effectiveness of this Framework Decision.

<sup>(1)</sup> OJ C 326, 21.11.2001, p. 1.

- (23) Since the objective of this Framework Decision, namely to replace the system of mutual assistance in criminal matters for obtaining objects, documents or data between Member States 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 set out in 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.
- (24) The personal data processed in the context of the implementation of this Framework Decision will be protected in accordance with the relevant instruments including 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 2000 <sup>(1)</sup>.
- (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.
- (26) Member States are encouraged to draw up, for themselves and in the interest of the European Union, tables which as far as possible show the correlation between the provisions of this Framework Decision and the national implementation measures and to communicate this to the Commission together with the text of the national law implementing this Framework Decision.
- (27) 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, notably Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to execute an EEW when there are reasons to believe, on the basis of objective elements, that the EEW has been issued for the purpose of prosecuting or punishing a person on account of his or her sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions, or that the person's position may be prejudiced for any of these reasons.
- (28) This Framework Decision does not prevent any Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.
- (29) This Framework Decision does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security in accordance with Article 33 of the Treaty,

HAS ADOPTED THIS FRAMEWORK DECISION:

#### TITLE I

### THE EUROPEAN EVIDENCE WARRANT (EEW)

#### Article 1

#### Definition of the EEW and obligation to execute it

1. The EEW shall be 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 5.
2. Member States shall execute any EEW on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.
3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty, and any obligations incumbent on judicial authorities in this respect shall remain unaffected.

#### Article 2

#### Definitions

For the purposes of this Framework Decision:

- (a) 'issuing State' shall mean the Member State in which the EEW has been issued;
- (b) 'executing State' shall mean the Member State in whose territory the objects, documents or data are located or, in the case of electronic data, directly accessible under the law of the executing State;
- (c) 'issuing authority' shall mean:
  - (i) a judge, a court, an investigating magistrate, a public prosecutor; or

<sup>(1)</sup> OJ C 197, 12.7.2000, p. 1.

- (ii) any other judicial authority as defined by the issuing State and, in the specific case, acting in its capacity as an investigating authority in criminal proceedings with competence to order the obtaining of evidence in cross-border cases in accordance with national law;
- (d) 'executing authority' shall mean an authority having competence under the national law which implements this Framework Decision to recognise or execute an EEW in accordance with this Framework Decision;
- (e) 'search or seizure' shall include any measures under criminal procedure as a result of which a legal or natural person is required, under legal compulsion, to provide or participate in providing objects, documents or data and which, if not complied with, may be enforceable without the consent of such a person or it may result in a sanction.
- (b) carry out bodily examinations or obtain bodily material or biometric data directly from the body of any person, including DNA samples or fingerprints;
- (c) obtain information in real time such as through the interception of communications, covert surveillance or monitoring of bank accounts;
- (d) conduct analysis of existing objects, documents or data; and
- (e) obtain communications data retained by providers of a publicly available electronic communications service or a public communications network.

### Article 3

#### Designation of competent authorities

1. Each Member State shall inform the General Secretariat of the Council which authority or authorities, under its national law, are competent pursuant to Article 2(c) and (d) when that Member State is the issuing State or the executing State.
2. Member States wishing to make use of the possibility to designate a central authority or authorities in accordance with Article 8(2) shall communicate to the General Secretariat of the Council information relating to the designated central authority(ies). These indications shall be binding upon the authorities of the issuing State.
3. The General Secretariat of the Council shall make the information received available to all Member States and the Commission.

### Article 4

#### Scope of the EEW

1. Without prejudice to paragraph 2 of this Article, the EEW may be issued under the conditions referred to in Article 7 with a view to obtaining in the executing State objects, documents or data needed in the issuing State for the purpose of proceedings referred to in Article 5. The EEW shall cover the objects, documents and data specified therein.
2. The EEW shall not be issued for the purpose of requiring the executing authority to:
  - (a) conduct interviews, take statements or initiate other types of hearings involving suspects, witnesses, experts or any other party;

3. Exchange of information on criminal convictions extracted from the criminal record shall be carried out in accordance with Council Decision 2005/876/JHA of 21 November 2005 on the exchange of information extracted from the criminal record <sup>(1)</sup> and other relevant instruments.

4. The EEW may be issued with a view to obtaining objects, documents or data falling within paragraph 2, where the objects, documents or data are already in the possession of the executing authority before the EEW is issued.

5. Notwithstanding paragraph 1, the EEW shall, if so indicated by the issuing authority, also cover any other object, document or data, which the executing authority discovers during the execution of the EEW and without further enquiries considers to be relevant to the proceedings for the purpose of which the EEW was issued.

6. Notwithstanding paragraph 2, the EEW may, if requested by the issuing authority, also cover taking statements from persons present during the execution of the EEW and directly related to the subject of the EEW. The relevant rules of the executing State applicable to national cases shall also be applicable in respect of the taking of such statements.

### Article 5

#### Type of proceedings for which the EEW may be issued

The EEW may be issued:

- (a) with respect to criminal proceedings brought by, or to be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State;

<sup>(1)</sup> OJ L 322, 9.12.2005, p. 33.

- (b) in 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;
- (c) in proceedings brought by judicial 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 further proceedings before a court having jurisdiction in particular in criminal matters; and
- (d) in connection with proceedings referred to in points (a), (b) and (c) which relate to offences or infringements for which a legal person may be held liable or punished in the issuing State.

#### Article 6

##### Content and form of the EEW

1. The EEW set out in the form provided for in the Annex shall be completed, signed, and its contents certified as accurate, by the issuing authority.
2. The EEW shall be written in, or 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 EEWs or a translation of an EEW in one or more other official languages of the institutions of the Union.

#### TITLE II

##### PROCEDURES AND SAFEGUARDS FOR THE ISSUING STATE

#### Article 7

##### Conditions for issuing the EEW

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

- (a) obtaining the objects, documents or data sought is necessary and proportionate for the purpose of proceedings referred to in Article 5;

- (b) the objects, documents or data can be obtained under the law of the issuing State in a comparable case if they were available on the territory of the issuing State, even though different procedural measures might be used.

These conditions shall be assessed only in the issuing State in each case.

#### Article 8

##### Transmission of the EEW

1. The EEW may be transmitted to the competent authority of a Member State in which the competent authority of the issuing State has reasonable grounds to believe that relevant objects, documents or data are located or, in the case of electronic data, directly accessible under the law of the executing State. It shall be transmitted without delay from the issuing authority to the executing authority by any means capable of producing a written record under conditions allowing the executing State to establish authenticity. All further official communications shall be made directly between the issuing authority and the executing authority.

2. Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent authorities. A Member State may, if necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of the EEW as well as for other official correspondence relating thereto.

3. If the issuing authority so wishes, transmission may be effected via the secure telecommunications system of the European Judicial Network.

4. If the executing authority is unknown, the issuing authority shall make all necessary inquiries, including via the European Judicial Network contact points, in order to obtain the information from the executing State.

5. When the authority in the executing State which receives the EEW has no jurisdiction to recognise it and to take the necessary measures for its execution, it shall, *ex officio*, transmit the EEW to the executing authority and so inform the issuing authority.

6. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the EEW shall be dealt with by direct contacts between the issuing and executing authorities involved, or, where appropriate, with the involvement of the central authorities of the Member States.

*Article 9***EEW related to an earlier EEW or a freezing order**

1. Where the issuing authority issues an EEW which supplements an earlier EEW or which is a follow-up to a freezing order transmitted under Framework Decision 2003/577/JHA, it shall indicate this fact in the EEW in accordance with the form provided for in the Annex.

2. Where, in accordance with the provisions in force, the issuing authority participates in the execution of the EEW in the executing State, it may without prejudice to declarations made under Article 3(2) address an EEW which supplements the earlier EEW directly to the competent executing authority while present in that State.

*Article 10***Conditions for 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 EEW may be issued;
- (b) other judicial and administrative proceedings directly related to the proceedings referred to under point (a);
- (c) preventing an immediate and serious threat to public security.

For any purpose other than those set out in points (a), (b) and (c), personal data obtained under this Framework Decision may be used only with the prior consent of the executing State, unless the issuing State has obtained the consent of the data subject.

2. 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.

3. This Article shall 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**

1. The executing authority shall recognise an EEW, transmitted in accordance with Article 8, without any further

formality being required and shall forthwith take the necessary measures for its execution in the same way as an authority of the executing State would obtain the objects, documents or data, unless that authority decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 13 or one of the grounds for postponement provided for in Article 16.

2. The executing State shall be responsible for choosing the measures which under its national law will ensure the provision of the objects, documents or data sought by an EEW and for deciding whether it is necessary to use coercive measures to provide that assistance. Any measures rendered necessary by the EEW shall be taken in accordance with the applicable procedural rules of the executing State.

3. Each Member State shall ensure:

- (i) that any measures which would be available in a similar domestic case in the executing State are also available for the purpose of the execution of the EEW;

and

- (ii) that measures, including search or seizure, are available for the purpose of the execution of the EEW where it is related to any of the offences as set out in Article 14(2).

4. If the issuing authority is not a judge, a court, an investigating magistrate or a public prosecutor and the EEW has not been validated by one of those authorities in the issuing State, the executing authority may, in the specific case, decide that no search or seizure may be carried out for the purpose of the execution of the EEW. Before so deciding, the executing authority shall consult the competent authority of the issuing State.

5. A Member State may, at the time of adoption of this Framework Decision, make a declaration or subsequent notification to the General Secretariat of the Council requiring such validation in all cases where the issuing authority is not a judge, a court, an investigating magistrate or a public prosecutor and where the measures necessary to execute the EEW would have to be ordered or supervised by a judge, a court, an investigating magistrate or a public prosecutor under the law of the executing State in a similar domestic case.

*Article 12***Formalities to be followed in the executing State**

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.

### Article 13

#### Grounds for non-recognition or non-execution

1. Recognition or execution of the EEW may be refused in the executing State:

- (a) if its execution would infringe the *ne bis in idem* principle;
- (b) if, in cases referred to in Article 14(3), the EEW relates to acts which would not constitute an offence under the law of the executing State;
- (c) if it is not possible to execute the EEW by any of the measures available to the executing authority in the specific case in accordance with Article 11(3);
- (d) if there is an immunity or privilege under the law of the executing State which makes it impossible to execute the EEW;
- (e) if, in one of the cases referred to in Article 11(4) or (5), the EEW has not been validated;
- (f) if the EEW relates to criminal offences which:
  - (i) under the law of the executing State are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory; or
  - (ii) were committed outside the territory of the issuing State, and the law of the executing State does not permit legal proceedings to be taken in respect of such offences where they are committed outside that State's territory;
- (g) if, in a specific case, its execution would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities; or
- (h) if the form provided for in the Annex is incomplete or manifestly incorrect and has not been completed or corrected within a reasonable deadline set by the executing authority.

2. The decision to refuse the execution or recognition of the EEW pursuant to paragraph 1 shall be taken by a judge, court,

investigating magistrate or public prosecutor in the executing State. Where the EEW has been issued by a judicial authority referred to in Article 2(c)(ii), and the EEW has not been validated by a judge, court, investigating magistrate or public prosecutor in the issuing State, the decision may also be taken by any other judicial authority competent under the law of the executing State if provided for under that law.

3. Any decision under paragraph 1(f)(i) in relation to offences committed partly within the territory of the executing State, or in a place equivalent to its territory, shall be taken by the competent authorities referred to in paragraph 2 in exceptional circumstances and on a case-by-case basis, having regard to the specific circumstances of the case, and in particular to whether a major or essential part of the conduct in question has taken place in the issuing State, whether the EEW relates to an act which is not a criminal offence under the law of the executing State and whether it would be necessary to carry out a search and seizure for the execution of the EEW.

4. Where a competent authority considers using the ground for refusal under paragraph 1(f)(i), it shall consult Eurojust before taking the decision.

Where a competent authority is not in agreement with Eurojust's opinion, Member States shall ensure that it give the reasons for its decision and that the Council be informed.

5. In cases referred to in paragraph 1(a), (g) and (h), before deciding not to recognise or not to execute an EEW, either totally or in part, the competent authority in the executing State shall consult the competent authority in the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary information without delay.

### Article 14

#### Double criminality

1. The recognition or execution of the EEW shall not be subject to verification of double criminality unless it is necessary to carry out a search or seizure.

2. If it is necessary to carry out a search or seizure for the execution of the EEW, the following offences, if they are punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of that State, shall not be subject to verification of double 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,
- 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 <sup>(1)</sup>,
- 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.

3. If the EEW is not related to any of the offences set out in paragraph 2 and its execution would require a search or seizure, recognition or execution of the EEW may be subject to the condition of double criminality.

In relation to offences in connection with taxes or duties, customs and exchange, recognition or execution may not be opposed on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

4. The condition of double criminality set out in paragraph 3 shall be further examined by the Council by 19 January 2014 in the light of any information transmitted to the Council.

5. The Council may decide, acting unanimously, after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty, to add other categories of offences to the list contained in paragraph 2.

#### Article 15

##### **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 EEW 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 shall be taken as soon as possible and, without prejudice to paragraph 4, no later than 30 days after the receipt of the EEW by the competent executing authority.

3. Unless either grounds for postponement under Article 16 exist or the executing authority has the objects, documents or data sought already in its possession, the executing authority shall take possession of the objects, documents or data without delay and, without prejudice to paragraph 4, no later than 60 days after the receipt of the EEW by the competent executing authority.

<sup>(1)</sup> OJ C 316, 27.11.1995, p. 49.



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.

5. Unless a legal remedy is pending in accordance with Article 18 or grounds for postponement under Article 16 exist, the executing State shall without undue delay transfer the objects, documents or data obtained under the EEW to the issuing State.

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.

#### Article 16

##### Grounds for postponement of recognition or execution

1. The recognition of the EEW may be postponed in the executing State where:

- (a) the form provided for in the Annex is incomplete or manifestly incorrect, until such time as the form has been completed or corrected; or
- (b) in one of the cases referred to in Article 11(4) or (5), the EEW has not been validated, until such time as the validation has been given.

2. The execution of the EEW may be postponed in the executing State where:

- (a) its execution might prejudice an ongoing criminal investigation or prosecution, until such time as the executing State deems reasonable; or
- (b) the objects, documents or data concerned are already being used in other proceedings until such time as they are no longer required for this purpose.

3. The decision to postpone recognition or execution of the EEW pursuant to paragraphs 1 or 2 shall be taken by a judge, court, investigating magistrate or public prosecutor in the executing State. Where the EEW has been issued by a judicial

authority referred to in Article 2(c)(ii), and the EEW has not been validated by a judge, court, investigating magistrate or public prosecutor in the issuing State, the decision may also be taken by any other judicial authority competent under the law of the executing State if provided for under that law.

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 EEW and inform the relevant competent authority in the issuing State thereof by any means capable of producing a written record.

#### Article 17

##### Obligation to inform

The executing authority shall inform the issuing authority:

1. immediately by any means:

- (a) if the executing authority, in the course of the execution of the EEW, considers without further enquiries that it may be appropriate to undertake investigative measures not initially foreseen, or which could not be specified when the EEW was issued, in order to enable the issuing authority to take further action in the specific case;
- (b) if the competent authority of the executing State establishes that the EEW was not executed in a manner consistent with the law of the executing State;
- (c) if the executing authority establishes that, in the specific case, it cannot comply with formalities and procedures expressly indicated by the issuing authority in accordance with Article 12.

Upon request by the issuing authority, the information shall be confirmed without delay by any means capable of producing a written record;

2. without delay by any means capable of producing a written record:

- (a) of the transmission of the EEW to the competent authority responsible for its execution, in accordance with Article 8(5);

- (b) of any decision taken in accordance with Article 15(2) to refuse recognition or execution of the EEW, together with the reasons for the decision;
- (c) of the postponement of the execution or recognition of the EEW, the underlying reasons and, if possible, the expected duration of the postponement;
- (d) of the impossibility to execute the EEW because the objects, documents or data have disappeared, been destroyed or cannot be found in the location indicated in the EEW or because the location of the objects, documents or data has not been indicated in a sufficiently precise manner, even after consultation with the competent authority of the issuing State.

#### Article 18

##### Legal remedies

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.
2. The substantive reasons for issuing the EEW, including whether the conditions established in Article 7 have been met, may be challenged only in an action brought before a court in the issuing State. The issuing State shall ensure the applicability of legal remedies which are available in a comparable domestic case.
3. Member States 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 actions mentioned in paragraphs 1 and 2, in particular by providing interested parties with relevant and adequate information.

6. The executing State may suspend the transfer of objects, documents and data pending the outcome of a legal remedy.

#### Article 19

##### Reimbursement

1. Without prejudice to Article 18(2), where the executing State under its law is responsible for injury caused to one of the parties mentioned in Article 18 by the execution of an EEW transmitted to it pursuant to Article 8, 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 due to the conduct of the executing State.
2. Paragraph 1 shall be without prejudice to the national law of the Member States on claims by natural or legal persons for compensation of damage.

#### TITLE IV

##### FINAL PROVISIONS

#### Article 20

##### Monitoring the effectiveness of this Framework Decision

1. A Member State which has experienced repeated problems which it had not been possible to solve by consultation on the part of another Member State in the execution of EEWs shall inform the Council in order to assist in its evaluation of the implementation of this Framework Decision at Member State level.
2. The Council shall conduct a review, in particular, of the practical application of the provisions of this Framework Decision by Member States.

#### Article 21

##### Relation to other legal instruments

1. Subject to paragraph 2 and without prejudice to the application of existing legal instruments in relations between Member States and third countries, this Framework Decision shall coexist with existing 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.
2. Without prejudice to paragraphs 3 and 4, issuing authorities shall rely on the EEW when all of the objects, documents or data required from the executing State fall within the scope of this Framework Decision.

3. Issuing authorities may use mutual legal assistance to obtain objects, documents or data falling within the scope of this Framework Decision if they form part of a wider request for assistance or if the issuing authority considers in the specific case that this would facilitate cooperation with the executing State.

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 paragraph 4 may in no case affect relations with Member States which are not parties to them.

6. Member States shall notify the Council and the Commission of any new agreement or arrangement referred to in paragraph 4, within three months of signing it.

#### Article 22

##### Transitional arrangements

Mutual assistance requests received before 19 January 2011 shall continue to be governed by existing instruments relating to mutual assistance in criminal matters.

#### Article 23

##### Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 19 January 2011.

2. By 19 January 2011, 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. Any Member State that intends to transpose the ground for refusal set out in Article 13(1)(f) into its national law shall notify the Secretary-General of the Council thereof upon adoption of this Framework Decision by making a declaration.

4. Germany may by a declaration reserve its right to make the execution of an EEW subject to verification of double criminality in cases referred to in Article 14(2) relating to terrorism,

computer-related crime, racism and xenophobia, sabotage, racketeering and extortion or swindling if it is necessary to carry out a search or seizure for the execution of the EEW, except where the issuing authority has declared that the offence concerned under the law of the issuing State falls within the scope of criteria indicated in the declaration.

Should Germany wish to make use of this paragraph, it shall notify a declaration to that effect to the Secretary-General of the Council upon the adoption of this Framework Decision. The declaration shall be published in the *Official Journal of the European Union*.

5. The Commission shall, by 19 January 2012, 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.

6. The General Secretariat of the Council shall notify Member States, the Commission and Eurojust of the declarations made pursuant to Articles 6 and 11 and to this Article.

#### Article 24

##### Review

1. Each Member State shall each year before 1 May inform the Council and the Commission of any difficulties encountered by it during the previous calendar year concerning the execution of EEWs in relation to Article 13(1).

2. At the beginning of every calendar year, Germany shall inform the Council and the Commission of the number of cases in which the ground for non-recognition or non-execution referred to in Article 23(4) was applied in the previous year.

3. No later than 19 January 2014, the Commission shall establish a report on the basis of the information received in accordance with paragraphs 1 and 2, accompanied by any initiatives it may deem appropriate. On the basis of the report the Council shall review this Framework Decision with a view to considering whether the following provisions should be repealed or modified:

— Article 13(1) and (3), and

— Article 23(4).

*Article 25***Entry into force**

This Framework Decision shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 18 December 2008.

*For the Council*  
*The President*  
M. BARNIER

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## ANNEX

**EUROPEAN EVIDENCE WARRANT (EEW) (1)**

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

**(A)**

Issuing State: .....

Executing State: .....

**(B)**

The judicial authority is satisfied that:

- (i)  obtaining the objects, documents or data sought by this EEW is necessary and proportionate for the purpose of the proceedings specified below;
- (ii)  it would be possible to obtain these objects, documents or data under the law of the issuing State in a comparable domestic case if they were available on the territory of the issuing State, even though different procedural measures might be used.

**(C) THE JUDICIAL AUTHORITY WHICH ISSUED THE EEW**

Official name:

.....

Name of its representative:

.....

Post held (title/grade):

.....

Tick the type of judicial authority which issued the warrant:

- (a) judge or court
- (b) investigating magistrate
- (c) public prosecutor
- (d) any other judicial authority as defined by the issuing State and, in the specific case, acting in their capacity as an investigating authority in criminal proceedings with competence to order the obtaining of evidence in cross-border cases in accordance with national law
- This EEW has been validated by a judge or court, investigating magistrate or a public prosecutor (see Sections D and O).

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 of the person(s) to contact if additional information on the execution of this EEW is necessary or to make necessary practical arrangements for the transfer of objects, documents or data (if applicable):

.....

(1) This EEW must be written in, or translated into, one of the official languages of the executing State or any other language accepted by that State.

**(D) THE JUDICIAL AUTHORITY VALIDATING THE EEW (WHERE APPLICABLE)**

If point (d) in Section C has been ticked and this EEW is validated, tick the type of judicial authority which has validated this EEW:

- (a) judge or court  
 (b) investigating magistrate  
 (c) public prosecutor

Official name of the validating authority:

.....

Name of its representative:

.....

Post held (title/grade):

.....

File reference:

.....

Address:

.....

.....

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

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

E-mail: .....

**(E) WHERE A CENTRAL AUTHORITY HAS BEEN MADE RESPONSIBLE FOR THE ADMINISTRATIVE TRANSMISSION AND RECEPTION OF EEWS AND, IF APPLICABLE, FOR OTHER OFFICIAL CORRESPONDENCE RELATING THERETO**

Name of the central authority: .....

.....

Contact person, if applicable (title/grade and name): .....

.....

Address: .....

.....

File reference: .....

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

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

E-mail: .....

**(F) THE AUTHORITY OR AUTHORITIES WHICH MAY BE CONTACTED (IN THE CASE WHERE SECTION D AND/OR E HAVE BEEN COMPLETED)**

- Authority under Section C  
 Can be contacted for questions concerning .....
- Authority under Section D  
 Can be contacted for questions concerning .....
- Authority under Section E  
 Can be contacted for questions concerning .....

**(G) RELATION TO POSSIBLE EARLIER EEW OR FREEZING ORDER**

If applicable, indicate if this EEW supplements an earlier EEW or is a follow-up to a freezing order and, if so, provide information relevant to identify the earlier EEW or freezing order (the date of issue of such EEW or order, the authority to which it was transmitted and, if available, the date of transmission of the EEW or order and reference numbers given by the issuing and executing authorities).

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

**(H) TYPE OF PROCEEDINGS FOR WHICH THE EEW WAS ISSUED**

Tick the type of proceedings for which the EEW was issued:

- (a) with respect to criminal proceedings brought by, or to be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State; or
- (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; or
- (c) proceedings brought by judicial 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 further proceedings before a court having jurisdiction in particular in criminal matters.

**(I) REASON FOR ISSUING THE EEW**

**1. Summary of facts and description of circumstances in which the offence(s) underlying the EEW has (have) been committed, including time and place, as known to the issuing authority:**

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

Nature and legal classification of the offence(s) resulting in the EEW and the applicable statutory provision/code:

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

**2. If applicable, tick one or more of the following offences punishable in the issuing State by a custodial sentence or a detention order of a maximum of at least three years as defined by the laws of the issuing State:**

- participation in a criminal organisation;
- terrorism <sup>(1)</sup>;
- 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 <sup>(1)</sup>;
- 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 <sup>(1)</sup>;
- organised or armed robbery;
- illicit trafficking in cultural goods, including antiques and works of art;
- swindling <sup>(1)</sup>;
- racketeering and extortion <sup>(1)</sup>;
- 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 <sup>(1)</sup>;

<sup>(1)</sup> Where the EEW is addressed to Germany, and according to the declaration made by Germany in accordance with Article 23(4) of the Council Framework Decision 2008/978/JHA of 18 December 2008 on the European Evidence Warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters, the issuing authority may additionally complete Box No 1 to confirm that the offence(s) fall(s) within the scope of criteria indicated by Germany for this type of offence.



**3. Full descriptions of the offence(s) not covered by point 2 for which the EEW was issued:**

.....

.....

.....

.....

.....

**(J) IDENTITY OF THE PERSONS CONCERNED**

Information regarding the identity of the (i) natural or (ii) legal person(s) against whom the proceedings are/may be taking place:

(i) In the case of natural person(s)

Name: .....

Forename(s): .....

Maiden name, if applicable: .....

Aliases, if applicable: .....

Sex: .....

Nationality: .....

Identity number or social security number (when possible): .....

Date of birth: .....

Place of birth: .....

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

.....

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

(ii) In the case of legal person(s)

Name: .....

Form of legal person: .....

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

.....

Registered seat (if available): .....

Registration number (if available): .....

Address of the legal person:

.....

**(K) OBJECTS, DOCUMENTS OR DATA SOUGHT BY THE EEW**

**1. Description of what is sought by the EEW (tick and complete the appropriate boxes):**

Objects (further details below):

.....

.....

.....

.....

Documents (further details below):

.....

.....

.....

.....

Data (further details below):

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

**2. Location of objects, documents or data (if not known, the last known location):** .....

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

**3. If other than the person referred to in Section J (i) or (ii), information regarding the identity of the (i) natural or (ii) legal person(s) believed to hold the objects, documents or data:**

(i) In the case of natural person(s):

Name: .....

Forename(s): .....

Maiden name, if applicable: .....

Aliases, if applicable: .....

Sex: .....

Nationality: .....

Identity number or social security number (when possible): .....

Date of birth: .....

Place of birth: .....

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

.....

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

.....

(ii) In the case of legal person(s):

Name: .....

Form of legal person: .....

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

.....

Registered seat (if available): .....

Registration number (if available): .....

Address of the legal person:

.....

Other address(es) where business is conducted:

.....

**(L) EXECUTION OF THE EEW**

**1. Deadlines for execution of the EEW are laid down in Council Framework Decision 2008/978/JHA <sup>(1)</sup>. However, if the request is particularly urgent, please indicate any earlier deadline and the reason for this by ticking the relevant box:**

Earlier deadline: ..... (dd/mm/yyyy)

Reasons:

procedural deadlines

other particularly urgent circumstances (please specify): .....

**2. Tick and complete, if applicable**

It is requested that the executing authority comply with the following formalities and procedures <sup>(2)</sup>

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

The EEW also covers any object, document or data which the executing authority discovers during the execution of this EEW and without further enquiries considers to be relevant to the proceedings for the purpose of which this EEW was issued.

It is requested that the executing authority take statements from persons present during the execution of this EEW and directly related to the subject of this EEW.

**(M) LEGAL REMEDIES**

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

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

**2. Court before which the action may be taken:**

.....  
 .....

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

.....  
 .....

**4. Time limit for submission of the action:**

.....  
 .....

**5. Authority in the issuing State which can supply further information on procedures for seeking legal remedies 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: .....

<sup>(1)</sup> OJ L 350, 30.12.2008, p. 72.

<sup>(2)</sup> It is assumed that the executing authority will comply with the formalities and procedures indicated by the issuing authority unless they are contrary to the fundamental principles of the law of the executing State. However, this does not create any obligation to take coercive measures.

**(N) FINAL PROVISIONS AND SIGNATURE**

**1. Optional information to be given only in relation to Germany:**

It is declared that the offence(s) concerned under the law of the issuing State fall(s) within the scope of criteria indicated by Germany in the declaration <sup>(1)</sup> made in accordance with Article 23(4) of Framework Decision 2008/978/JHA.

**2. Other information relevant to the case, if any:**

.....

.....

**3. 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):

.....

**4. Signature of the issuing authority and/or its representative certifying the content of the EEW as accurate:**

.....

Name: .....

Post held (title/grade): .....

Date: .....

Official stamp (if available):

**(O) IF SECTION (D) IS COMPLETED, SIGNATURE AND DETAILS OF THE VALIDATING AUTHORITY**

.....

Name: .....

Post held (title/grade):

.....

Date:

.....

Official stamp (if available):

<sup>(1)</sup> OJ L 350, 30.12.2008, p. 72.



## DECLARATION OF THE FEDERAL REPUBLIC OF GERMANY

Where the execution of a European Evidence Warrant under Council Framework Decision 2008/978/JHA of 18 December 2008 on the European Evidence Warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters <sup>(1)</sup> requires search or seizure, the Federal Republic of Germany reserves the right under Article 23(4) of that Framework Decision to make execution subject to verification of double criminality in the case of the offences relating to terrorism, computer-related crime, racism and xenophobia, sabotage, racketeering and extortion and swindling listed in Article 14(2) of that Framework Decision, unless the issuing authority has stated that the offence in question meets the following criteria under the law of the issuing State:

### **Terrorism:**

- An act which constitutes an offence within the meaning of and as defined in the International Convention for the Suppression of Acts of Nuclear Terrorism of 13 April 2005, the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999 or within the meaning of one of the treaties listed in the annex thereto, or
- an act to be criminalised under the Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism <sup>(2)</sup>, or
- an act to be prohibited under United Nations Security Council Resolution 1624 (2005) of 14 September 2005.

### **Computer-related crime:**

Offences as defined in the Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems <sup>(3)</sup>, or in Title 1 of Section I of the European Convention on Cybercrime of 23 November 2001.

### **Racism and xenophobia:**

Offences as defined in the Council Joint Action 96/443/JHA of 15 July 1996 concerning action to combat racism and xenophobia <sup>(4)</sup>.

### **Sabotage:**

Acts unlawfully and intentionally causing large-scale damage to a government facility, another public facility, a public transport system or other infrastructure which entails or is likely to entail considerable economic loss.

### **Racketeering and extortion:**

Demanding by threats, use of force or by any other form of intimidation goods, promises, revenues or the signing of any document containing or resulting in an obligation, alienation or discharge.

### **Swindling:**

Using false names or claiming a false position or using fraudulent means to abuse people's trust or good faith with the aim of appropriating something belonging to another person.

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<sup>(1)</sup> OJ L 350, 30.12.2008, p. 72.

<sup>(2)</sup> OJ L 164, 22.6.2002, p. 3.

<sup>(3)</sup> OJ L 69, 16.3.2005, p. 67.

<sup>(4)</sup> OJ L 185, 24.7.1996, p. 5.