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EUROPEAN COMMISSION

Brussels, 17.12.2009
COM(2009)705 final

2009/0192 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The agreement is aimed at improving the surrender procedure for the purpose of prosecution or execution of sentence between, on the one hand, the Member States and, on the other hand, Norway and Iceland, by taking account of, as minimum standards, the terms of the Convention of 27 September 1996 relating to extradition between the Member States of the EU. In accordance with the provisions of the agreement, the contracting parties will ensure that the extradition system will be based on a mechanism of surrender pursuant to an arrest warrant. An arrest warrant may be issued for acts punishable by the law of the issuing state by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

Following the opening of negotiations with Iceland and Norway with a view to extending to these countries the provisions of the 1996 EU Convention on Extradition which are not linked to Schengen, the mission statement was updated in 2002 after it was agreed that extradition within the EU would be replaced by a surrender procedure under the European arrest warrant. Despite the decision not to link the European arrest warrant to Schengen, the Council agreed that it would be useful to apply the surrender procedure model to the Schengen countries, given their privileged partnership with the EU Member States.

The signing of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway was authorised by the Council in its Decision of 27 June 2006 based on Articles 24 and 38 of the Treaty on European Union.

The Agreement has not yet been concluded.

With the entry into force of the Lisbon Treaty on 1 December 2009, the procedures to be followed to that end by the European Union are governed by Article 218 of the Treaty on the Functioning of the European Union.

The Agreement was signed more than 3 years ago and therefore it should now be concluded as soon as possible.

Article 218(6)(a) of the Treaty on the Functioning of the European Union states that in the case of agreements covering fields to which the ordinary legislative procedure applies, the Council shall adopt a decision concluding the agreement, after obtaining the consent of the European Parliament.

The Commission therefore recommends to the Council, after obtaining the consent of the European Parliament, to adopt a decision concluding the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union and in particular Article 82(1)(d), read in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) By Council Decision of 10 July 2001 the Council authorised the Presidency of the Council, assisted by the Commission, to negotiate Agreements with Norway and Iceland on judicial cooperation in criminal matters on the basis of Articles 24 and 38 of the Treaty on European Union. This decision was amended by Council Decision of 19 December 2002. The Presidency, assisted by the Commission, negotiated an agreement on the surrender procedure between the Member States of the European Union and Iceland and Norway.
- (2) In accordance with Council Decision 2006/697/EC of 27 June 2006¹, the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway was signed on 28 June 2006, subject to its conclusion at a later date..
- (3) The Agreement has not yet been concluded. With the entry into force of the Lisbon Treaty on 1 December 2009, the procedures to be followed to that end by the European Union are governed by Article 218 of the Treaty on the Functioning of the European Union.
- (4) The Agreement should be concluded.
- (5) [In accordance with Article 3 of Protocol N° 21 on the Position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union,

¹ OJ L 292, 21.10.2006, p. 1

the United Kingdom and Ireland have notified their wish to take part in the adoption of this Decision.]

- (6) In accordance with Articles 1 and 2 of Protocol N° 22 on the Position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by the Agreement or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway, is hereby concluded.

The text of the Agreement to be concluded is attached to this Decision.

Article 2

The President of the Council is shall designate the person empowered to proceed, on behalf of the European Union, to the notification provided for in Article 38(1) of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

Pm: NOTIFICATIONS AND DECLARATIONS TO BE MADE AT THE TIME OF NOTIFICATION ACCORDING TO ARTICLE 38(2) and (3)

Article 3

This Decision shall enter into force on the day of its adoption. It shall be published in the *Official Journal of the European Union*.

The date of entry into force of the Agreement shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
[The President]