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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

RESTREINT UE



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 31 July 2003

**11054/2/03
REV 2**

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NOTE

from :	Presidency
to:	Coreper
Subject :	Negotiations with a view to concluding agreements between the European Union and Iceland and Norway on the application of certain provisions in the field of judicial co-operation in criminal matters on the basis of Articles 24 and 38 of the Treaty on European Union - Mutual legal assistance

The Council adopted on 10 July 2001 a Council authorisation for the Presidency to negotiate agreements with Norway and Iceland on judicial co-operation¹, which was amended by the Council at its meeting of 19 December 2002.²

Pursuant to this negotiation mandate the Presidency has met twice with a delegation from Norway and Iceland, on 7 April and 18 June 2003. As far as mutual legal assistance is concerned, the Presidency has proposed a draft agreement to Norway and Iceland. The purpose of this note is to inform delegations of the discussions that have taken place and to seek their opinion on the draft, which is reproduced in the annex.

¹ 9694/01 CATS 20 COPEN 25 RESTREINT + COR 1 + COR 2 (es) and 10287/2/01 CATS 24 COPEN 33 REV 2.

² 10944/3/03 CATS 42 COPEN 41 RESTREINT REV 3.

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Norway and Iceland could to a large extent agree to the draft agreement, which seeks to extend the non-Schengen-relevant articles of the 2000 EU Mutual Assistance Convention to Norway and Iceland.

From a drafting point of view, Norway and Iceland seemed, however, to have preferred another structure than the one that follows now from Article 1 of the draft agreement. As the listing of the applicable articles could be read as excluding the preamble of the 2000 Convention and its 2001 Protocol, the question was raised whether it would not be possible to copy the preamble or refer to the 2000 Convention as such, minus those articles that are not applicable. The Presidency will endeavour to find a solution to this request.

As to the content, three minor questions were raised. Following the discussions in the JHA Counsellors group on 14 July and in the Article 36 Committee on 25 July 2003, the following positions appeared with regard to these questions.

- 1) Territorial scope: Norway and Iceland queried whether Article 26 of the 2000 EU Mutual Assistance Convention and Article 12 of the 2001 EU Mutual Assistance Protocol could also be applied to them. The vast majority of delegations thought that Article 26 could be applied to Norway and Iceland¹. The extension to Gibraltar would, however, imply an agreement between the SP and UK authorities.
- 2) Article 10(2) of the 2001 EU Mutual Assistance Protocol: Norway thought that this article could also be applied to it, in view of the ongoing negotiations between Norway and Eurojust, inter alia on a Norwegian liaison magistrate at Eurojust. Iceland would need further internal consultation on this issue. The Presidency is of the opinion that, after such an agreement with Eurojust has been concluded, Article 10(2) could also be applied to Norway and Iceland and this seemed to pose no problems to the majority of delegations². In defence of this position, the Presidency would like to point out that:

¹ B, COM, D, DK, F, GR, IRL, L, NL, SI, SK, SP, UK.

² B, COM, DK, FIN, GR, L, NL, SI, SK, SW, UK.

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- a) the ongoing negotiations between Eurojust and Norway will have to be carried out within the framework of the objectives and missions of the Eurojust Decision (which explicitly allows for this type of agreement in its Article 27(3)).
- b) Article 3(2) of the Eurojust Decision already allows that "at the request of a Member State's competent authority, Eurojust may also assist investigations and prosecutions concerning only that Member State and a non-member State where an agreement establishing co-operation pursuant to Article 27(3) has been concluded with the said State (...)". The inclusion of Article 10(2) of the 2001 Protocol in the scope of the draft agreement with Norway would do little more than confirm this possibility in the specific context covered by that provision and allow the Norwegian authorities to refer a case to Eurojust. (Obviously the Eurojust Decision could grant such right only to the competent authorities of the Member States and not to those of Third Countries.)
- 3) Dispute settlement: whereas Norway was not opposed to a dispute settlement through a meeting of representatives of the governments of the Member States of the European Union and of Iceland and Norway (as described in Article 3 of the draft Agreement), it thought that COMIX should also be given a role. The Presidency expounded that COMIX was dealing with Schengen-relevant matters and that therefore it was not the appropriate body for an agreement that is concerned only with non-Schengen-relevant matters.

Norway proposed to insert a new paragraph in Article 3 of the draft agreement (the current text would then become Article 3(2)):

"Questions regarding the interpretation, application and development of this Agreement and the provisions referred to in Article 1 of this Agreement will upon request by any of the parties be discussed in the Mixed Committee set up by Agreement of 18 May 1999 concluded by the Council and Iceland and Norway on the latter's association with the application, implementation and development of the provisions of the Schengen *acquis*."

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The Presidency is of the opinion that this proposal should be rejected. [...] This opinion was supported by most delegations¹ and opposed by none.

In view of the Member States' positions on the points referred to above, the Presidency proposes that it endeavour to finalise the negotiations with Norway and Iceland accordingly.

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¹ B, COM, DK, F, IRL, NL, SP, SW.

DRAFT AGREEMENT

between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto

THE EUROPEAN UNION,
on the one hand,

and

THE REPUBLIC OF ICELAND
and
THE KINGDOM OF NORWAY
on the other hand,

Together hereinafter called the Contracting Parties,

Considering that in Article 2 paragraph 1 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and in Article 15 of the Protocol of 16 October 2001 thereto the provisions have been identified which constitute a development of the Schengen *acquis*, and which therefore have been accepted by Iceland and Norway by virtue of their obligations under the Agreement of 18 May 1999 concluded by the Council and Iceland and Norway on the latter's association with the application, implementation and development of the provisions of the Schengen *acquis*;

Considering that Iceland and Norway have expressed their wish to enter into an agreement enabling them to apply also the other provisions of the 2000 Mutual Assistance Convention and of the 2001 Protocol in their relations with the Member States of the European Union;

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Considering that the European Union also considers it necessary to have such an agreement in place;

HAVE AGREED AS FOLLOWS:

Article 1

1. Subject to the provisions of the present Agreement, the content of the following provisions of the Convention of 29 May 2000, established by the Council of the European Union in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union, hereinafter referred to as "the EU Mutual Assistance Convention", shall be applicable in the relations between the Republic of Iceland and the Kingdom of Norway and in the mutual relations between each of these States and the Member States of the European Union:

Articles 4, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 25 as well as Articles 1 and 24 to the extent that these Articles are relevant for any of those other Articles.

2. Subject to the provisions of the present Agreement, the content of the following provisions of the Protocol of 16 October 2001, established by the Council of the European Union in accordance with Article 34 of the Treaty on European Union, to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, hereinafter referred to as "the EU Mutual Assistance Protocol", shall be applicable in the relations between the Republic of Iceland and the Kingdom of Norway and in the mutual relations between each of these States and the Member States of the European Union:

Articles 1, 2, 3, 4, 5, 6, 7, 9 and 11.

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Article 2

1. In order to achieve the objective of the Contracting Parties to arrive at as uniform an application and interpretation as possible of the provisions referred to in Article 1, they shall keep under constant review the development of the case law of the Court of Justice of the European Communities, as well as the development of the case law of the competent courts of Iceland and Norway relating to such provisions. To this end a mechanism shall be set up to ensure regular mutual transmission of such case law.
2. Iceland and Norway shall be entitled to submit statements of case or written observations to the Court of Justice in cases where a question has been referred to it by a court or tribunal of a Member State for a preliminary ruling concerning the interpretation of any provisions referred to in Article 1.

Article 3

Any dispute between either Iceland or Norway and a Member State of the European Union regarding the interpretation or the application of this Agreement or of any of the provisions referred to in Article 1 of this Agreement may be referred by a Party to the dispute to a meeting of representatives of the governments of the Member States of the European Union and of Iceland and Norway, with a view to its settlement within six months.

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Article 4

1. The Contracting Parties shall notify each other of the completion of the procedures required to express their consent to be bound to this Agreement.
2. When giving their notification under paragraph 1 or, if so provided, at any time thereafter, the Republic of Iceland and the Kingdom of Norway may make any of the declarations foreseen in Articles 9(6), 10(9), 14(4), 18(7), 20(7) of the EU Mutual Assistance Convention and Article 9(2) of the EU Mutual Assistance Protocol.
3. As far as the relevant provisions of the EU Mutual Assistance Convention are concerned, this Agreement shall enter into force on the first day of the third month following the day on which the Secretary-General of the Council of the European Union has established that all formal requirements concerning the expression of the consent by or on behalf of the Parties to this Agreement have been fulfilled, or on the date on which the EU Mutual Assistance Convention enters into force in accordance with its Article 27(3), if such date would be the later one. As far as the relevant provisions of the EU Mutual Assistance Convention are concerned, the entry into force of this Agreement creates rights and obligations between Iceland and Norway and between Iceland, Norway and those EU Member States in respect of which the EU Mutual Assistance Convention has entered into force.
4. As far as the relevant provisions of the EU Mutual Assistance Protocol are concerned, this Agreement shall enter into force on the first day of the third month following the day on which the Secretary-General of the Council of the European Union has established that all formal requirements concerning the expression of the consent by or on behalf of the Parties to this Agreement have been fulfilled, or on the date on which the EU Mutual Assistance Protocol enters into force in accordance with its Article 13(3), if such date would be the later one. As far as the relevant provisions of the EU Mutual Assistance Protocol are concerned, the entry into force of this Agreement creates rights and obligations between Iceland and Norway and between Iceland, Norway and those EU Member States in respect of which the EU Mutual Assistance Protocol has entered into force.

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5. Subsequently, such rights and obligations shall come into being between Norway, Iceland and other EU Member States as from the dates on which the EU Mutual Assistance Convention and/or the EU Mutual Assistance Protocol enters into force for such other EU Member States.
6. This Agreement shall apply only to mutual assistance procedures initiated after the date on which it creates rights and obligations by virtue of paragraphs 3 and 4.

Article 5

Accession by new Member States of the European Union to the EU Mutual Assistance Convention and /or to the EU Mutual Assistance Protocol shall create rights and obligations under the present Agreement between those new Member States and Iceland and Norway.

Article 6

1. This Agreement may be terminated by the European Union, Iceland or Norway. In case of termination by either Iceland or Norway, this Agreement shall remain in force between the European Union and the State for which it has not been terminated.
2. Termination of this Agreement pursuant to paragraph 1 shall take effect six months after the deposit of the notification of termination. Procedures for complying with requests for mutual legal assistance still pending at that date shall be completed in conformity with the provisions of this Agreement.
3. This Agreement shall be terminated in case of termination of the Agreement of 18 May 1999 concluded by the Council of the European Union, the Republic of Iceland and the Kingdom of Norway on the latter's association with the application, implementation and development of the Schengen acquis.

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4. Termination of this Agreement pursuant to paragraph 3 shall take effect for the same Party or Parties and on the same date as the termination of the association Agreement referred to in paragraph 3.

Article 7

1. The Secretary General of the Council of the European Union shall act as the depository of this Agreement.
2. The depository shall make public information on any notification made concerning this Agreement.

Done at on in one single copy in the Icelandic, Norwegian, Danish, Dutch, German, English, French, Finnish, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each version being equally authentic.

FOR THE EUROPEAN UNION FOR THE REPUBLIC OF ICELAND FOR THE KINGDOM OF NORWAY
