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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.

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THE EUROPEAN UNION**

Brussels, 31 July 2003

**11055/2/03
REV 2**

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NOTE

from : Presidency

to: Coreper

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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 - Extradition and surrender under the European arrest warrant

Background

The Council adopted on 10 July 2001 a Council authorisation for the Presidency to negotiate agreements with Norway and Iceland on judicial co-operation.¹, which was amended by the Council by its Decision of 19 December 2002².

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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By that decision the Council authorised the Presidency of the Council, assisted by the Commission, to open negotiations on the basis of Article 24 and 38 of the Treaty on European Union with the Republic of Iceland and the Kingdom of Norway with a view to the application of the mechanisms of the European arrest warrant in the relations between Iceland and Norway and between each of those States and Member States of the European Union, without however necessarily incorporating all of its elements, but providing for a mechanism for settling disputes.

By the same Decision, the Council authorised the Presidency of the Council, assisted by the Commission, to open negotiations on the basis of Articles 24 and 38 TEU on the application of the provisions of the Convention of 27 September 1996 relating to extradition between the Member States of the EU, which were not recognised as developments of the Schengen acquis.

Report of negotiations with Norway and Iceland

Pursuant to this negotiation mandate the Presidency has met twice with delegations from Norway and Iceland, on 7 April and 18 June 2003. The purpose of this note is to inform delegations of the discussions that took place during the latter meeting as far as extradition and surrender pursuant to the European arrest warrant is concerned and to seek their opinion on these discussions.

Norway explained that, following a political decision by its Minister of Justice, Norway was now prepared to enter into the European arrest warrant mechanism as a whole, including the abolition of the double criminality and the extradition of nationals. Of course, this would need to happen on a reciprocal basis. Whilst Iceland was also willing to enter into the European arrest warrant, it reiterated that it was not willing to abolish double criminality or to extradite its own nationals. Both Norway and Iceland clearly stated that they would prefer to enter into the European arrest warrant mechanism, which as from 1 January 2004 will replace the extradition conventions between the Member States (on 1 May 2004: 25 Member States), rather than becoming party to the 1996 Extradition Convention (which still needs to be ratified by two Member States and all acceding states).

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The Presidency explained to Norway and Iceland that, for two reasons, it was unlikely that the European arrest warrant mechanism could be extended *in globo* to Norway and Iceland. First, Iceland was clearly not willing to accept such a solution and, second, that would for some Member States be difficult to accept either for constitutional or political reasons.

In view of Norway and Iceland's strong preference for an extension of the European arrest warrant, two options of *partially* extending the European arrest warrant to Norway and Iceland were discussed.

A **first option** is to extend the Framework Decision, through a separate agreement between the European Union and Norway/Iceland, on the European arrest warrant to Norway and Iceland, except for those provisions that are not agreeable to all Member States and Norway and Iceland. These provisions of the European arrest warrant would then be replaced by separate, new provisions in the agreement between the European Union and Norway/Iceland. It was emphasised by the EU delegation that the content of these provisions should not go below the corresponding provisions of the 1996 EU Extradition Convention.

As to the articles of the Framework Decision that might need to be excluded from the scope of an EU-Norway/Iceland agreement on surrender, the following articles were mentioned:

- Article 1(3): to be replaced by a provision referring to the European Convention on Human Rights
- Article 2(2): to be replaced by a provision similar to that of Article 3 of the 1996 EU Extradition Convention
- Article 8(2): take account of Norway and Iceland's official languages
- Article 9(1-2): EJM
- Article 16(2) and 17(7): the outcome could be clarified in the negotiations between Eurojust and Norway
- Article 28: this provision would need to be adapted so as to take account of the non-subsequent extradition of nationals

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- Articles 31(1), 32 (2) and 33 (2) (with respect to the last provision, the question was also raised whether Norway would apply the EAW to Spitsbergen)

Apart from excluding/replacing some provisions of the Framework Decision on the European arrest warrant, it might also have to be supplemented on some points (e.g. adding grounds of non-execution to those already contained in Article 4 of the Framework Decision: surrender of nationals, political offence exception). The idea was mooted that the applicability of these new, added grounds of non-execution could be made dependent on declarations from those States that would wish to avail themselves of it (cf. the system of the 1996 EU Extradition Convention). Both Norway and Iceland would be able to support this way of working.

A **second option** of partially extending the European arrest warrant to Norway and Iceland would be to extend the 1996 EU Extradition Convention to Norway and Iceland and supplement it with some, that is mainly the procedural, provisions of the Framework Decision on the European arrest warrant. This would of course also imply that some of the provisions of the 1996 convention would not be extended to Norway and Iceland, as they would be covered by the European arrest warrant. As to the articles of the Framework Decision that could be inserted in an EU-Norway/Iceland agreement on extradition, the following articles were mentioned: Articles 8, 9, 10 (3-6), 11-15, 17-25. As such an agreement would still be based on the principle of extradition and not on that of surrender, it is clear that the wording of some of those articles might have to be adapted.

Both Norway and Iceland expressed a strong preference for the first option. This preference was not only linked to their principal choice in favour of the European arrest warrant over the 1996 EU Extradition Convention, but also by the technical-legal complexities of the second option.

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Positions of Member States

At the JHA Counsellors meeting of 14 July and the CATS meeting of 25 July 2003, the following positions appeared.

A vast majority of Member States expressed a preference for option 1¹. One Member State preferred option 2² as it thought that the Framework Decision on the European arrest warrant was based on mutual trust among the Member States and could therefore not be extended to third countries. One other Member State³ thought that neither option was to be preferred as both would in effect create a separate legal regime for Norway and Iceland, which was not justified by the limited number of extradition cases with these two countries.

It appeared that all Member States that supported the first option, agreed with the list of articles on page 3 of this note that should be excluded from the scope of the agreement that would extend the European Arrest Warrant to Norway and Iceland.

All Member States that supported the first option, were in favour of a system by which states (i.e. Member States, Norway and Iceland) could make declarations if they would not want to apply Article 2(2) of the Framework Decision and would want to apply new grounds of non-execution. SP, however, thought that no possibility of declarations could be foreseen for political offences. The Presidency would like to remind delegations that Norway and Iceland are not asking to introduce this ground of non-execution.

¹ AUT, COM, D, DK, F, FIN, GR, IRL, LUX, P, SI, SP, SW and UK.

² B. The Belgian delegation also indicated that it wanted to avail itself of the opportunity of making the same declaration as it has under the 1996 EU Extradition Convention, i.e. subject the extradition of nationals to the condition that they will be returned to Belgium to serve their sentence and no abolition of double criminality.

³ NL.

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The following Member States indicated that, under the first option, they would want to make a declaration in order:

- a) to exclude the list of offences of Article 2(2) and replace it by an attenuated system of double criminality: D, FR and IRL.
- b) to introduce a ground of non-execution for requests made with respect to nationals of the executing state: AUT, FR, GR, P (and possibly IRL).
- c) to introduce a ground of non-execution for requests made for political offences: D, FR (and possibly IRL¹).
- d) to introduce a ground of refusal in case of life imprisonment sentences: P.

In view of the positions of the Member States, the Presidency invites Coreper :

- 1) *to approve the Presidency's intention to negotiate, on behalf of the European Union, an agreement with Norway and Iceland, that would, via an Article 24/38 Agreement, extend the European arrest warrant to Norway/Iceland but allow for a limited number of possible declarations*
- 2) *to express itself on the type of declarations that could be allowed.*

¹ IRL in general indicated that it would need some more time to reflect on the question which declarations it would like to make.