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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.



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 19 September 2003

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RESTREINT UE

**CATS 56
COPEN 86**

INFORMATION NOTE

from :	Presidency
to :	Article 36 Committee
No.prev.doc.:	10944/3/02 CATS 42 COPEN 41 REV 3 RESTREINT UE
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 Article 24 and 38 of the Treaty on European Union

The Presidency, the Commission and the Council Secretariat, met with Norway and Iceland in Reykjavik on 17 September 2003. The basis for the meeting was the mandate as contained in document 10944/3/02 CATS 42 COPEN 41 REV 3 RESTREINT UE and the discussions held in Coreper on 4 and 11 September 2003.

Mutual Legal Assistance

The Presidency presented the text contained in the Annex, while noting that this text will be subject to scrutiny by the EU. It informed Norway and Iceland that it could not agree to a consultation mechanism on the basis of COMIX procedures but that it was willing to examine practical solutions. As regards Eurojust, it explained the background to Article 2 bis.

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Norway and Iceland noted the Presidency's explanations, queried whether a review clause could be inserted, noted that they would suggest some new language to the preamble and informed the Presidency that it was studying the issue of territorial application in relation to Spitzbergen.

The negotiators agreed, ad referendum, that a declaration along the following lines could be annexed to the Agreement.

"The Contracting Parties agree that any consultation between them that takes place in relation to this Agreement should be organised in the most convenient way, taking into account the existing structures of cooperation."

Extradition/Surrender

The Presidency explained in general terms the discussions that took place in Coreper on 4 and 11 September 2003 and asked Norway and Iceland whether they would be willing to contemplate an agreement which would use extradition procedures, reserving a final say to the executive and which would contain an ordre public clause.

Norway and Iceland expressed surprise at this question and considered that the discussions seemed to backtrack from the letter of the President of Coreper on 16 October 2001 and the mandate given by the Council.

Iceland said that they were willing to explore a complete surrender procedure, subject to safeguards relating to own nationals and double criminality. Norway noted that, within the Schengen area, efficiency would best served with one single system applicable to all States and that it will be ready to sign up to the entire system of the European arrest warrant. They did not want to involve the government in surrender procedures. The issue is relevant to the operation of SIS. The Ministers will not wish to go down this road.

The Presidency noted that it would convey this information to the Member States.

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The negotiators thereafter carried out a technical examination of what the consequences would be for the setting up of an independent mechanism related to a surrender procedure. In the context of this technical examination, the following was noted :

- The Presidency considered that there should not be any reference to the European arrest warrant in a text , whereas Norway and Iceland considered it desirable.
- Norway and Iceland also requested a reference to the Association Agreement whereas the Presidency questioned whether this would be appropriate since a possible surrender agreement would not be Schengen relevant. A possible solution could be to make a reference to SIS.
- As regards possible exceptions concerning political offences, own nationals and double criminality (in the interest of Iceland and some Member States), both Iceland and Norway thought it desirable to have a system of declarations in the interests of legal clarity and transparency. If a system of optional grounds for refusal were to be chosen, it would be necessary to know in detail which Member States and new Member States would avail themselves of the opportunity to use this ground of refusal. Iceland mentioned in addition that such a system might raise political questions. A possible declaration by Iceland was also mentioned in this context . Iceland also suggested a possible declaration as regards the European Judicial Network to recognise that in practice cooperation is already ongoing with the EJM.
- The practical consequences as regards the SIS were also discussed in particular in the light of different mechanisms. This issue would have to be examined further .
- Article 1:3 of the Framework Decision on the European arrest warrant was also noted.
- Norway and Iceland noted that they would continue to use the uniform Nordic laws on surrender. In that context, Iceland surrenders its nationals to the other Nordic countries.
- Norway informed that they had this year 38 cases of extradition outside the Nordic Uniform law area. It would supply further detailed statistics.

The Presidency invites the Article 36 Committee to take note of this information and to make any comments it wishes to make.

In the annex the delegations will find attached the draft mutual legal assistance agreement, which was submitted to Norway and Iceland.

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(1-5), 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 2bis

If a request is refused the Kingdom of Norway or the Republic of Iceland may demand that the requested Member State reports problem encountered concerning the execution of a request for a possible practical solution to Eurojust.

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 depositary of this Agreement.
2. The depositary 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