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## DECLASSIFICATION

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Subject: Council Decision determining which provisions of the 1995 Convention on simplified extradition procedure between the Member States of the European Union and of the 1996 Convention relating to extradition between the Member States of the European Union constitute developments of the Schengen acquis in accordance with the Agreement concerning the Republic of Iceland's and the Kingdom of Norway's association with the implementation, application and development of the Schengen acquis

- Questions in light of the negotiation mandate given to the Presidency

(doc. 10944/3/02 CATS 42 COPEN 41 REV 3 RESTREINT UE)

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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, 3 April 2003**

**8023/03  
ADD 1**

**RESTREINT UE**

**COPEN 33**

## **ADDENDUM TO NOTE**

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From : General Secretariat

To : Delegations

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No. prev. 5853/02 COPEN 10 COMIX 71; 6300/03 COPEN 8; 8023/03 COPEN 33  
doc. :

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Delegations will find attached the reply received from the German delegation to doc. 6300/03 COPEN 8.

# RESTREINT UE

## Questions to the JHA Counsellors

### General remarks:

- D** The volume of proceedings for extradition from Germany to Norway and Germany to Iceland is relatively small. There are fewer than three cases a year. No difficulties or delays have been observed in extradition proceedings. There is no need either in theory or in practice to change the current, tried and tested legal bases laid by the Council of Europe.

Germany considers that the principle of mutual recognition which complements extradition rules within Member States of the European Union can be applied only among Member States of the European Union and not to relations with third countries. Application of that principle requires not only a shared political determination to harmonise legal systems but also full EU membership. Current extradition rules must therefore in principle be preserved.

- 1.** **Are there any special items that need to be considered when it comes to the extradition convention of 1996, the 2000 MLA Convention or its Protocol, or may it be taken for granted that Norway and Iceland could join the workings of these instruments without problems ?**  
**Could, in this context, a consultation mechanism be instituted between the European Union and the Member States ?**

- D.1.** At present, differences of opinion on individual questions of extradition law – if any, exceptionally, arise at all – are discussed between the competent Ministries of Justice concerned. There are also multiple opportunities for the individuals responsible to enter into contact, especially within the framework of the Council of Europe.

A consultation mechanism in addition to existing arrangements is not needed, would only place an unnecessary burden on the States concerned and would run counter to the subsidiarity principle.

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2. **According to the Presidency mandate, the Agreement with Norway and Iceland should "make the mechanism of the Framework Decision on the European Arrest Warrant and the surrender procedures between Member States applicable in the relations between Iceland and Norway and between each of those States and the Member States of the EU, without, however, necessarily incorporating all of its elements". Moreover, constitutional provisions of the Member States shall be respected. In the light of this mandate, could Member States inform the Presidency whether there are problems in relation to such an agreement in the following respects:**
- 2.a. **surrender of own nationals,**
  - 2.b. **abandoning double criminality for the list of offences contained in Article 2(2) of the European Arrest Warrant,**
  - 2.c. **abandoning the political offence exception in relation to Norway and Iceland.**
- D.2.a. The extradition of German nationals to Norway and Iceland is constitutionally prohibited pursuant to Article 16(2) of the German Basic Law. It is hardly likely that an amendment to that clause would be politically acceptable in Germany.
- D.2.b. Since the principle of mutual recognition does not apply, verification of double criminality cannot be abandoned.
- D.2.c. It appears necessary to continue to refuse extradition for political offences, even though there have been scarcely any cases to which this has applied in the past.
3. **How do Member States interpret that Norway and Iceland should join the "mechanism"? Is the mechanism limited to the transmission of a European Arrest Warrant under Article 9 of the Council Framework Decision or can it also be extended for instance to Articles 10, 17 and 23 or even beyond those provisions ?**
- D.3. There are no fundamental reservations with regard to:
- arrangements for the use of direct channels between competent judicial authorities;
  - regulations laying down the type of investigation by the competent judicial authority in the requested State, and
  - regulations setting time limits for processing extradition requests. However, the time limits laid down in the Council of Europe's existing regulations should be taken into account when setting time limits, and should not be changed unless necessary.