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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)

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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**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 2 April 2003

8023/03

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COPEN 33

NOTE

From : General Secretariat

To : Delegations

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

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 replies received from the Belgian, Danish, Finnish, French, Irish, Italian, Swedish and United Kingdom Delegations to doc. 6300/03 COPEN 8.

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Questions to the JHA Counsellors

General remarks:

FIN The presidency has placed questions to delegations in light of the negotiations mandate given to the presidency concerning the negotiations with Iceland and Norway (doc. 10944/3/02 CATS 42 COPEN 41 REV 3 RESTREINT UE). The Finnish delegation would like to give the following answers to the questions presented in document 6300/03 COPEN 8:

Finland finds the co-operation with Norway and Iceland very important. The position of these states is already established as regards the provisions which constitute developments of the Schengen acquis. It would be reasonable to continue beyond these provisions in order to achieve a uniform set of rules which would cover, not only the EU, but also these states. Therefore Finland supports the idea that these states should fully join the instruments of co-operation in criminal matters. The co-operation between the Nordic states has traditionally been very effective and has taken place in climate of mutual trust and informality.

Additional information

As regards the exchange of judicial information between Nordic states it can be said that these issues do not grant a special position to the Nordic states. The act on international legal assistance in criminal matters (4/1994) which is applied in relations with all states has provisions which can also be applied in relations to Nordic states.

FR France believes that in general terms the mechanisms associating Iceland and Norway with the instruments of the European Union as well as negotiations currently under way with other third States, Switzerland in particular, should lead to a more general process of reflection on the EU's external policy in the JHA area and more specifically on the negotiation of instruments of judicial cooperation in criminal matters.

This reflection is all the more necessary in that extending the European arrest warrant mechanism to Iceland and Norway risks setting a precedent, not only in relation to other third States, but also in relation to those two States as regards the progressive development of mutual recognition instruments. It entails, moreover, assessment of the consequences of the increasing number of instruments with differing conditions governing their entry into force and of the complexity of the resulting legal system.

As things stand, the French authorities would make the following replies to the questions posed:

IRL The information supplied in response to this questionnaire is without prejudice to positions Ireland may adopt in the negotiations.

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- S. The EU should in all respects promote a strengthening of that part of the Schengen external borders that consists of Norway and Iceland. Otherwise those states may be loopholes out – and in – of the EU/Schengen area for criminals and maybe also safe havens for criminal activities. Thus, the joining of Iceland and Norway to certain provisions in the field of judicial cooperation is very much in the interest of the present EU Member States.

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- 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 ?

B.1. Belgium sees no objection to allowing Norway and Iceland to join in with application of the 1995 and 1996 Extradition Conventions and of the 2000 Mutual Legal Assistance Convention and its Protocol, although not the substantive conditions for surrender of a country's own nationals or waiving of the political offence exception.
A consultation mechanism could usefully be introduced.

DK.1. In regards to the extradition convention of 1996, the 2000 MLA Convention or its Protocol, Denmark has no special items that need to be addressed.

FIN.1. Finland does not see any problems regarding the accession of Iceland and Norway to those rules of extradition convention of 1996, the 2000 MLA convention or its protocol which do not constitute the developments of the Schengen aquis.

It is not clear what is meant by the consultation mechanism between the European Union and the Member States mentioned in paragraph 1. Finland does not see any particular need to institute such a mechanism. It is likely that problems which might appear in practice could be dealt with by using the current mechanisms of consultation and co-operation.

FR.1. Since the association of Iceland and Norway with the provisions of the instruments of judicial cooperation in criminal matters cited by the Presidency (Extradition Convention of 1996, Convention on Mutual Assistance in Criminal Matters of 29 May 2000 and Additional Protocol of 16 October 2001) does not concern the development of the Schengen aquis, it does not appear to give rise to any particular problems at this stage.

Care should however be taken that the draft convention not include provisions going further than those contained in the reference instruments. The provisions of the 1996 Extradition Convention, in particular, should be incorporated in a form that offers the same possibilities for reservations as appear in the Convention itself.

In addition, it seems inappropriate to incorporate the provisions of Article 10 of the Additional Protocol to the Mutual Assistance Convention of 16 October 2001, which simply establish a mechanism for forwarding refusals to the Council and for involvement of Eurojust in the event of refusals on certain grounds and which as things stand are not applicable as regards States which are not Members of the European Union.

Finally, the French delegation favours the setting up of a mechanism for close consultation of Member States in the framework within which the EU conducts these negotiations.

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IRL.1. 1996 Extradition Convention : Ireland adopted the 1996 Convention in June 2002, subject to a number of Declarations. Ireland is prepared to operate with Iceland and Norway those parts of the 1996 Convention not already deemed to be developments of Schengen, but subject, where appropriate, to the Declarations it made at the time of adoption.

MLA Convention and its Protocol : Ireland is prepared to operate those parts of the 2000 MLA Convention and its Protocol with Iceland and Norway but subject, where appropriate, to any declarations it may make at the time of ratification. It should be noted however that it is not possible to state with certainty at this stage if any constitutional issues arise until implementing legislation giving effect to the Convention and its Protocol have been finalised.

Consultation Mechanism : Ireland would like more information on what is intended.

I.1. Special attention should be given to the provisions governing the use of videoconferencing and joint investigation teams so as to enable Norway and Iceland to avail themselves of the institutions provided for in the 1996 Dublin Convention and the 2000 Mutual Legal Assistance Convention without any difficulty. An agreement should be concluded envisaging the possibility to extend the above mentioned institutions to both countries.

There could be a consultation mechanism for solving problems in respect of telephone interception, also from a technical point of view.

S.1. It should be taken for granted that Iceland and Norway can join the workings of the 1996 EU extradition convention as well as the 2000 MLA Convention and its Protocol.

UK.1. Firstly, the United Kingdom is content that both the 1996 European Union Convention on Extradition and the 2000 MLA Convention should be applied in full to Norway and Iceland. A consultation mechanism may be a good way of achieving this.

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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.

B.2. Belgium does not consider it appropriate for Norway and Iceland to join in with application of the Framework Decision on the European arrest warrant, since that Decision is based on mutual reliance between Member States and forms part of the establishment of the European Union's own judicial area.

FR.2. Regarding the association of Iceland and Norway with the European arrest warrant, the French delegation takes the view that the extent or scope of the notion of the "mechanism" of the European arrest warrant should be defined more precisely and that the provisions that may be incorporated in agreements between the European Union and third States should be more precisely identified.

The Framework Decision of 13 June 2002 includes both procedural provisions, in particular authorising direct transmission between judicial authorities and execution of the warrant within specified deadlines, and substantive provisions, concerning the conditions for issuing the European arrest warrant and the possible grounds for refusing it.

The careful wording of the mandate given to the Presidency requires that Member States define more clearly the provisions that should be incorporated in draft agreements to be concluded between the EU on the one hand and Iceland and Norway on the other.

At the moment, however, the French delegation believes that extending the substantive provisions on extradition of nationals, abolition of double criminality and "depoliticisation" cannot be envisaged, for the following reasons:

IRL.2. Generally, it should be noted that other constitutional issues may also arise in the case of requests for surrender from Iceland, Norway that would not arise in the case of EAWs from other EU Member States

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S.2. Sweden has almost a half century's experience in close cooperation in extradition-matters with Norway and Iceland. That includes extraditing nationals as well as the – almost – total abolishment of double criminality and a very limited political clause. There should be no problems for Sweden to cooperate with Iceland and Norway in those respects.

UK.2. Secondly, responses were sought as to whether Member States envisaged difficulties in applying certain provisions of the Framework Decision on the European Arrest Warrant vis-à-vis Norway and Iceland. The areas identified as most likely to cause concern were the surrender of own nationals, the abandonment of dual criminality and the abandonment of the political offence exception. The UK does not have any difficulty, constitutionally or otherwise, with the mechanism being applicable to Norway and Iceland in any of these areas.

The UK currently extradites its own nationals to foreign states. We would also be willing to extend the abandonment of dual criminality for the list of offences contained in Article 2 (2) of the European Arrest Warrant to Norway and Iceland. However, in order to apply the EAW to both countries UK parliamentary scrutiny may be required. The UK is also committed, through forthcoming legislation, to abandoning the political offence exception in line with United Nations Security Council Resolution 1373. This would apply to all states, not just Norway, Iceland and our EU partners.

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2.a. surrender of own nationals,

B (See B.2. above)

DK.2.a. As regards the surrender of own nationals to Norway and Iceland, Danish legislation at present already permits extradition of own nationals to Iceland and Norway.

FIN.2.a. Extradition of nationals is forbidden under paragraph 9.3 of the Finnish constitution. However there are exceptions to this main rule. Extradition of nationals from Finland to other Nordic states, which means also Norway and Iceland, has been possible for a long time. (The Nordic extradition act was enacted 1960 i.e. long before the extradition of nationals to member states of the European union for the purposes of prosecution was made possible by the implementation of the 1996 convention on extradition.) Therefore Finland has a positive position regarding the extradition of nationals to Norway and Iceland using the procedures of European arrest warrant.

FR.2.a. The rule of non-extradition of nationals is for France an abiding principle of extradition law, which was affirmed by the Law of 1927 and to which no convention has created exceptions to date (a reservation may be made on this point concerning the 1996 Extradition Convention, which includes a measure with this effect). Outside the EU, provisions that go further than existing convention instruments cannot be considered.

IRL.2.a. Ireland could agree to the surrender of its nationals but on a reciprocal basis only.

I.2.a. As far as the surrender of nationals is concerned, it is admitted on reciprocity terms.

S (see S.2. above)

UK (see UK.2. above)

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2.b. abandoning double criminality for the list of offences contained in Article 2(2) of the European Arrest Warrant,

B (See B.2. above)

DK.2.b. Denmark would not have problems in regards to abandoning the principle of dual criminality for the list of offences contained in the list in Article 2(2) of the European Arrest Warrant in relation to Norway and Iceland or in regards to abandoning the political offence exception in relation to Norway and Iceland.

FIN.2.b. Finland does not see any problems in abandoning double criminality for the list of offences contained in article 2(2) of the European arrest warrant as regards extradition to Norway and Iceland. Extradition from Finland to other Nordic states (which means also Norway and Iceland) takes place according to Nordic extradition act (270/1960). This act has no requirement of double criminality except as regards extradition of nationals. In these situations it is required that the act is punishable also under Finnish law by a maximum custodial sentence of at least 4 years. However, if the national has permanently stayed in the requesting Nordic state at least for 2 years the requirement of double criminality is not applied.

FR.2.b. For France the double criminality requirement is also an essential rule of extradition law, recalled by the Law of 10 March 1927 and by all applicable international conventions.

As matters stand abandonment of this requirement cannot be considered.

Furthermore, regarding the European arrest warrant, it should be emphasised that abolition of the possibility of requiring double criminality is restricted to acts which, under the law of the issuing State, fall within one of the 32 categories of offence established by the Framework Decision of 13 June 2002. This list to a great extent covers the offences which have been the subject of instruments harmonising criminal law within the EU. To abolish the double criminality requirement is thus the inseparable corollary of the commitment of Member States within a process of approximation of criminal law measures in which Iceland and Norway are not involved.

IRL.2.b. Dual criminality is a constitutional requirement for Ireland, except in intra - EU situations to which Article 2.2 of the Framework Decision on the European arrest warrant applies. From Ireland's point of view, therefore, any agreement with Iceland and Norway must respect the principle of dual criminality in all cases and for all offences.

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I.2.b. Italy could have problems with Iceland and Norway adopting the mechanism provided for in the Framework Decision on the European arrest warrant only in respect of dual criminality, i.e. in the case covered by Article 2 paragraph 4 of the Framework Decision. Under the Italian legal system, nobody can be deprived of his or her personal liberty without a provision issued by a judicial authority, against which an appeal is in any case possible, and only for an action which constitutes a criminal offence as prescribed by law.

S (See S.2. above)

UK (see UK.2. above)

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2.c. abandoning the political offence exception in relation to Norway and Iceland.

B (See B.2. above)

DK.2.c. (see DK.2.b. above)

FIN.2.c. Finland has no problems regarding the abolition of the political offence exception in relation to Norway and Iceland.

FR.2.c. According to the established case-law of the Council of State, France's right of refusal to extradite (or to surrender the requested person) when the offence is a political one constitutes a fundamental principle recognised by French law. This analysis has, furthermore, led the Government to undertake a constitutional review to authorise the transposition of the Framework Decision on the European arrest warrant. At present this analysis rules out any move towards abandoning the possibility of citing the political nature of the offence as grounds for refusing to extradite.

IRL.2.c. Irish extradition law recognises the political offence exception but the exception is available in very limited circumstances. Therefore, while it will not be possible to agree to the abolition / abandonment of the political offence exception in any agreement with Iceland and Norway, Ireland will be in a position to accept limitations on the circumstances in which it will apply.

I.2.c. With regard to the surrender for political offences, the restricted scope of application of this concept, which does not certainly include terrorism offences, does not raise any problem for the Italian legal system.

S (see S.2. above)

UK (see UK.2. above)

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- 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 ?**
- B.3.** Belgium could contemplate application of the "mechanism" of the Framework Decision, in whole or in part, with regard to Norway and Iceland, except for any aspects involving substantive conditions. Belgium takes "mechanism" to mean the procedural provisions referred to above.
- DK.3.** Denmark would be willing to extend the understanding of the "mechanish" beyond the transmission of the European Arrest Warrant under Article 9 of Framework Decision.
- FIN.3.** The position of Finland is that Norway and Iceland should fully join the instrument and its mechanisms. Because these states also apply the SIS, it is natural that these states also apply the procedures of extradition of the European arrest warrant. SIS will probably be the most important channel of communicating the arrest warrants. However as far as the framework decision has references to procedures and institutions which can be used solely by the member states it is natural that some practical solution must be found as regards the Norway and Iceland
- FR.3.** At this stage, subject to more detailed analysis, the French delegation has no objection to the incorporation of the Articles listed by the Presidency on the transmission of the arrest warrant (Article 9), transmission procedures (Article 10), procedures and time limits for the execution of the decision to surrender (Article 17) and time limits for surrender of the requested person (Article 23). However, the provisions of Article 10 concerning the role of the European Judicial Network should not be incorporated, since the EJN is a cooperation tool that belongs to the European Union.
- IRL.3.** Article 9 : Ireland draws attention to the fact that it will not be operating the SIS system until some date after the coming into operation of the Framework Decision on the EAW. Ireland awaits the outcome of discussions on proposals to adjust the SIS to meet the requirements of the EAW. However, Ireland notes that, for the reasons referred to at Q 2 (b) in relation to dual criminality (Art 2.2 of the Framework Decision), further account may have to be taken in those discussions to reflect the fact that, for Ireland, dual criminality will continue to be a requirement for all cases with Iceland and Norway.

Ireland will rely on secure fax and diplomatic channels until it is in a position to transmit EAWs (inwards and outwards) via the SIS.

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Article 10: Ireland has no difficulty in principle with the application of this Article to Iceland, Norway but may wish to clarify the implications of reliance on this Article for the EJN.

Article 17 : Ireland is prepared to consider the application of Article 17, paragraphs 1 - 6 inclusive, in any agreement with Iceland, Norway. However, Ireland reserves its position in relation to Article 17.7 (role for Eurojust).

Article 23 : Ireland is prepared to consider the application of Article 23 in any agreement with Iceland, Norway.

Subject to the replies given to Q.2 and to the statements made by Ireland at the time of adoption of the Framework Decision, Ireland is prepared to examine proposals involving the application of certain other Articles, or parts thereof, to any agreement with Iceland and Norway, for example, Articles 7, 25.

- I.3.** We believe that Norway and Iceland could adopt the mechanism envisaged by the Framework Decision of 21st June 2001 on the European arrest warrant both by the application of the provision under Article 9 and the extension provided for in Articles 10, 17 and 23. As to the application of Article 10, please note that, in line with our interpretation, we believe that this provision shall basically apply when the person concerned is detained in a member State. We agree that the mechanism worked out by Norway and Iceland also involves Article 10.
- S.3.** The added value of the European Arrest Warrant is the fast track procedure combined with a minimum of grounds for refusal, including the partial abolishment of double criminality. Any agreement between the EU and Iceland/Norway should build on that. If, however, a Member State has serious problems with – for instance – surrender of nationals to Norway or Iceland, the agreement could of course allow that Member State to make a reservation in that respect.
- UK.3.** Finally, the UK's position on the proposal that Norway and Iceland should join the mechanism of the Framework Decision is that the European Arrest Warrant should be applied as fully as possible to both Norway and Iceland, extending to all of its provisions.