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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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**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 14 October 2003

13502/03

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**CATS 61
COPEN 97**

NOTE

From : Presidency

To : Article 36 Committee / COREPER / Council

No. prev. doc. : 12700/03 CATS 56 COPEN 86

Subject : Authorisation for signature regarding the draft Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the 2000 Convention on Mutual Assistance in Criminal Matters and the 2001 Protocol thereto

After the third negotiation round between the European Union and Norway and Iceland in Reykjavik on 17 September 2003, the Presidency and the delegations from Republic of Iceland and the Kingdom of Norway reached an agreement ad referendum on the draft Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the 2000 Convention on Mutual Assistance in Criminal Matters and the 2001 Protocol thereto.

At the meeting of the Article 36 Committee of 25-26 September 2003 in Rome, no further remarks were made on the draft agreement as set out in doc. 12700/03 CATS 56 COPEN 86. The text of the draft agreement is again set out in annex II to this note.

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In annex I, the Presidency therefore presents a draft Council Decision concerning the signature of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the 2000 Convention on Mutual Assistance in Criminal Matters and the 2001 Protocol thereto.

It is envisaged that the Council will take two decisions in respect of the draft Agreement on the basis of Article 24 TEU: the first one authorising the Presidency to designate the person to sign the Agreement and the second one when the Council concludes the Agreement under Article 24 TEU. Member States that want to state pursuant to Article 24 TEU that they have to comply with the requirements of their own constitutional procedures, would make such statement to the Council at the latest at the time of the adoption of the first decision.

It should be noted that the text of the Agreement still needs to be revised by the jurist/linguists in all languages.

The Article 36 Committee is invited to suggest to Coreper/Council:

- a) *to reach a general approach at the meeting of the Council on 6 November 2003 on the text of the draft Council Decision in Annex I, with a view to adopting it at its next meeting on 27-28 November 2003.*
- b) *to agree that the text of the draft Agreement as at present contained in Annex II shall be attached to the draft Council Decision and published, once it has undergone jurist/linguist scrutiny and the jurist/linguist text has been agreed by Coreper and the Kingdom of Norway and the Republic of Iceland.*
- c) *to invite each delegation to inform the Council whether their Member State wishes to state that it has to comply with the requirements of its own constitutional procedure and, if so, to make such statement to the Council ultimately at the time of the adoption of the draft Council Decision in the Annex.*

Draft Council Decision of

concerning the signature of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the 2000 Convention on Mutual Assistance in Criminal Matters and the 2001 Protocol thereto

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Articles 24 and 38 thereof,

Whereas:

1. On 29 May 2000 the Council established, in accordance with Article 34(2)(d) of the Treaty on European Union, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (hereinafter : the EU Mutual Assistance Convention);
2. Article 2(1) of that Convention determines its provisions which constitute a development of the Schengen acquis within the meaning of the Agreement, concluded by the Council and the Republic of Iceland and the Kingdom of Norway concerning the latter's' association with the application, implementation and development of the Schengen *acquis*;

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3. On 16 October 2001 the Council established, in accordance with Article 34(2)(d) of the Treaty on European Union, the Protocol of 16 October 2001 to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (hereinafter: the EU Mutual Assistance Protocol);
4. Article 15 of that Protocol determines that its Article 8 constitutes a development of the Schengen *acquis* within the meaning of the Agreement, concluded by the Council and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the application, implementation and development of the Schengen *acquis*;
5. Pursuant to terms of Article 8 of that Agreement, the Republic of Iceland and the Kingdom of Norway will become bound to the content of those provisions of the EU Mutual Assistance Convention in their mutual relations and in their relations with the Member States of the European Union;
6. Following the Council Decision of 19 December 2002 authorising the Presidency of the Council to open negotiations with a view to 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, assisted by the Commission, negotiated an agreement with the Republic of Iceland and the Kingdom of Norway, according to which the content of the other substantive provisions of the EU Mutual Assistance Convention and the EU Mutual Assistance Protocol will also become applicable to the Republic of Iceland and the Kingdom of Norway in their mutual relations and in their relations with the Member States of the European Union;
7. That agreement should be signed on behalf of the European Union, subject to its subsequent conclusion.

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HAS DECIDED AS FOLLOWS:

Article 1

1. The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the European Union, subject to its later conclusion.
2. The text of this Agreement is annexed to this Decision

Article 2

This Decision and its annex shall be published in the Official Journal of the European Union.

Done at Brussels,

For the Council
The President

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ANNEX II

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*;

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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;

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 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

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ANNEX TO THE DRAFT AGREEMENT

Declaration by the Contracting Parties to the Agreement of ??? between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway

"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 co-operation."

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