Council of the
European Union

Brussels, 13 June 2019
(OR. en)

10341/03
DCL 1

COPEN 57

DECLASSIFICATION

of document:	10341/03 RESTREINT UE/EU RESTRICTED
dated:	11 June 2003
new status:	Public
Subject:	EU - Norway/Iceland negotiations on extradition, mutual legal assistance and the European arrest warrant

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, 11 June 2003

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RESTREINT UE

COPEN 57

NOTE

From :	Presidency
To :	JHA Counsellors
No. prev. doc. :	6300/03 COPEN 8; 8023/03 COPEN 33 + ADD 1 + ADD 2 + ADD 3 RESTREINT UE
Subject :	EU - Norway/Iceland negotiations on extradition, mutual legal assistance and the European arrest warrant

I. General background

By Decision of 19 December 2002 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 constituting of the Schengen acquis by its Decision of 27 February 2003.

The Presidency asked delegations, by a questionnaire distributed to the JHA Counsellors on 26 March 2003, the following questions in relation to the agreement to be negotiated on the European arrest warrant:

"*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.

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?"

From the replies received (see doc. 8023/03 COPEN 33 RESTREINT + ADD 1, ADD 2 and ADD 3), it became clear that some Member States, would have difficulty to align the mechanism under the future agreement along the solutions found in the Framework Decision on the European arrest warrant with regard to point 2.a (4 Member States), 2.b (3 Member States), and 2.c (2 Member States) above.

It seems, however, that the "mechanism" concept refers to a system of mutual recognition, subject to certain arrangements considered necessary because of the absence of a same level of integration with Norway and Iceland.

II. Report from meeting between the Presidency, assisted by the Commission with Representatives from Norway and Iceland on 7 April, Brussels

On 7 April 2003 a first meeting took place in Brussels between the Presidency, assisted by the Commission, and representatives from Norway and Iceland. The purpose of this first meeting was to have a general discussion on the respective positions on the negotiation items.

Norway informed the Presidency that, on a yearly basis, it received about 60 extradition requests from Member States and sent about 40 extradition requests to Member States. As for Iceland, the number of incoming/outgoing requests from/to Member States is limited to a few cases per year.

Both Norway and Iceland affirmed their willingness to apply the non-Schengen relevant provisions of the 1996 Extradition Convention and the 2000 Mutual Assistance Convention and the 2001 Protocol thereto. The representatives would look into the issue of the declarations that have been made by Member States to these Conventions and check whether they would need to make declarations as well.

Regarding the question of the possible extension of the European arrest, Norway and Iceland were willing to enter into such a scheme, but had a number of reservations. Both countries indicated that they were not considering extraditing their nationals to Member States. As far as the condition of double criminality was concerned, Norway stated its willingness to abolish this condition vis-à-vis the EU Member States, but Iceland was not willing to take this step. Iceland indicated, however, that it might possibly reconsider its position and it was agreed to come back to this issue at the next negotiation session.
Both countries had no difficulty to abolish the political offence exception in their extradition/surrender relationships with EU Member States.

III. Approach to negotiations

Assumption

As a consequence, the Presidency, assisted by the Commission, proposes to work on the following assumptions:

1. Except where already indicated by Member States, the agreement should follow the Framework Decision on the European arrest warrant as closely as possible.

2. If and when the level of integration achieved within the EU cannot be seen to be met with Norway and Iceland and the regime of the European arrest warrant cannot be fully extended to those States, the agreement applying the mechanism of the European arrest warrant should at least correspond to the level of the 1995 and 1996 extradition Convention to the extent that they are made applicable in the relation between EU Member States, and Norway and Iceland, either by virtue of the 1999 Association Agreement, as they constitute a development of the Schengen acquis, or through the Agreement simultaneously being negotiated on the application of certain provisions of the 1996 convention.

3. A dispute settlement mechanism should be set up.

Relation with other instruments

To facilitate the interpretation and implementation of the Agreement, the aim should be as far as possible to achieve a consolidated text, which would replace the various instruments in place among Norway, Iceland, and EU Member States, unless these instruments allow the objectives of the Agreement to be extended or enlarged and help to simplify or facilitate further the procedures for surrender. A draft Agreement on the European arrest warrant is unlikely to correspond exactly to the Framework Decision. On the basis of the replies to the questionnaire, it appears that provisions concerning double criminality, political offence or surrender of nationals could be included. They may be "tailor-made", and different both from those existing in previous instruments and from those of the Framework Decision.

For instance, a smaller list of offences in relation to which dual criminality may be abolished could be conceivable, although perhaps not politically feasible. However a credible basis for discussion could be to start from what has already been decided upon by the Council, i.e. that at least the solution contained in the 1996 Convention be extended to Norway and Iceland.

There may be two ways of obtaining such result.

The *first solution* could be to integrate in the Agreement those provisions which would have been included in a separate Agreement on the application of the 1996 Convention between EU Member States and Norway, Iceland, and which Member State could not unanimously agree to be replaced by the more progressive solutions adopted in the Framework Decision on the European arrest warrant.

The mechanisms of the 1996 Convention with regard to those matters are not homogeneous. The corresponding provisions offer the possibility of declarations at the time of notification of the ratification to the SG of the Council (or to renew or modify a declaration every five years with regard to extradition of nationals). Several Member States have entered such reservation with regard to Article 3 of the 1996 Convention (conspiracy and association to commit offences). Six Member States have made a declaration regarding Article 5 of the 1996 Convention (political offences) and the vast majority of them have entered reservations on extradition of nationals, which moreover differ considerably.

The 1996 Convention will in principle not apply anymore as from 1 January 2004, in the relations between EU Member States by virtue of Article 31 of the Framework Decision on the European arrest warrant. However, it would continue to apply in their relations with third States if made applicable to them, as will be the case through the separate Agreement on the application of the 1996 Extradition Convention being negotiated with Norway and Iceland, unless the present Agreement would replace the other said Agreement. A means must be found to preserve the Member States declarations or their right to make declarations, in the present Agreement. Taking note of and confirming the existing declarations and reservations would not answer the question of renewed or amended declaration, nor would it address the situation of France and Italy, which have not yet ratified the 1996 Convention, or of new Member States, for which the 1996 Convention is part of the acquis, and whose possible declarations are not known at this stage.

It would not be possible for Member States to enter reservations to the present draft Agreement, since it is the EU, not its Member States, which is a contracting Party.
A possible solution could be inspired by Article 19 of the draft EU-US Agreement (doc. 9153/03 CATS 28 USA 41). There Member States may designate their Prosecutor General as the body in charge of the tasks described in several articles of the Agreement, or the competent authority to decide in case of an extradition request competing with a European arrest warrant, and it is for the EU to notify these designations to the US. Similarly here, Member States could be given the same opportunities for declarations as those given to Norway and Iceland, and the EU would notify these declarations to the other Contracting Parties.

A *second, alternative solution* could be to maintain the application of Article 3, 5 and 7 of the 1996 Convention, as extended to Norway and Iceland by the draft Agreement on the application of the 1996 Convention between EU Member States and Norway and Iceland.

The Presidency, however, deems that the former option presents the following advantages:

1. The Agreement would apply an autonomous "mutual recognition-type" mechanism: it would extend the substance of the Framework Decision, while containing necessary adaptations, without referring to a separate instrument implementing another "mechanism", i.e., the traditional extradition system.

2. Provisions imported from the 1996 Convention could be further modernised or updated, which is permitted under the mandate, while the authorisation to negotiate the application of the non-Schengen relevant provisions of the 1996 Convention, on the contrary, does not afford any flexibility. For instance, the Agreement could take into account developments after the adoption of the 1996 Convention, such as the Joint Action of 21 December 1998 on incrimination of participation in criminal organisations, or the Framework Decision of 13 June 2002 on fight against terrorism.

3. The Agreement is not conditioned by full ratification of the 1996 Convention (which might be problematic in view of the fact that two current Member States and all acceding states still need to ratify the 1996 Convention).

Questions

1. The Presidency therefore asks Member States to express their preference for either option above.

2. Do Member States agree to the idea of a provision whereby surrender of own nationals would be made possible between Norway/Iceland and those Member States that would notify the General Secretariat of the Council.

3. Do Member States agree to the idea of a provision whereby the condition of double criminality would be abolished between Norway/Iceland and those Member States that would notify the General Secretariat of the Council? If that is the case, should the abolition of double criminality then take place:
   a. along the lines of Article 2(2) of the European Arrest Warrant; or
   b. along the lines Articles 2(2) and 3 of the 1996 EU Extradition Convention

4. Do Member States agree to abolish the political offence between Norway and Iceland and the Member States?
   If that is not the case for all Member States, do Member States agree to the idea of a provision whereby the abolition of the political offence exception would be made possible between Norway/Iceland and those Member States that would notify the General Secretariat of the Council?
   If that is not possible, would Member States agree to the idea of a provision whereby that the political offence exception would be abolished between Norway/Iceland and those Member States that would notify the General Secretariat of the Council? Such abolition would then take place along the lines of Article 5 of the 1996 EU Extradition Convention?