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## DECLASSIFICATION

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Subject: Negotiations with a view to concluding an agreement between the European Union and Iceland and Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway

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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



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THE EUROPEAN UNION

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## INFORMATION NOTE

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from : Presidency  
to : Article 36 Committee

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Subject: Negotiations with a view to concluding an agreement between the European Union and Iceland and Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway

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1. The Council adopted on 10 July 2001 a Council authorisation for the Presidency to negotiate agreements with Norway and Iceland on judicial co-operation<sup>1</sup>, which was amended by the Council on 19 December 2002.<sup>2</sup>
2. According to this authorisation " [t]his agreement should make those substantive provisions of the Extradition Convention, which are not covered by the Decision of the Council identifying the provisions of that Convention which constitute a development of the Schengen acquis, applicable in the relations between Iceland and Norway and between each of those States and the Member States of the European Union".

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<sup>1</sup> 9694/01 CATS 20 COPEN 25 RESTREINT + COR 1 + COR 2 (es) and 10287/2/01 CATS 24 COPEN 33 REV 2.

<sup>2</sup> 10944/3/03 CATS 42 COPEN 41 RESTREINT REV 3.

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3. The Council thus clearly stated that it thought it expedient that the European Union should negotiate an agreement with Norway and Iceland which would make the substantive provisions of the 1996 Extradition Convention applicable in the extradition relations with these two countries.

The authorisation does not allow for exceptions to be sought to the 1996 EU Extradition Convention.

4. In addition, the authorisation states that "[t]his agreement should make the mechanisms 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 European Union, without however necessarily incorporating all of its elements". The Council thereby judged it expedient that the European Union should negotiate an agreement which would make at least part of the Framework Decision on the European arrest warrant applicable in the extradition/surrender relations with Norway and Iceland.

5. Pursuant to this negotiating mandate the Presidency, assisted by the Commission, has met four times with a delegation from Norway and Iceland<sup>1</sup>. Following the last meeting a new version of the draft agreement 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 has been issued<sup>2</sup>, on which the Presidency invited delegations to comment.

6. It follows from the written comments received by the Presidency and from the exchange of views which took place at the meeting of the Working Party on Co-operation in Criminal Matters on 23 March 2004 that several delegations have continuing concerns about certain aspects of the current draft agreement between the European Union and Norway and Iceland. This note endeavours to summarise the main issues.

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<sup>1</sup> Meetings were held on 7 April, 18 June, 23 September and 1 December 2003.

<sup>2</sup> 13417/1/03 REV 1 CATS 60 COPEN 95 RESTREINT UE.

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## 7. Comments

The Presidency has received a number of comments on the draft agreement, many of which are of a technical or drafting nature. The Presidency hereafter sets out the most important comments.

- Several delegations have commented on Article 3, and in particular Article 3(4) of the draft agreement. Article 3 seeks to abolish the condition of double criminality for a list of 32 offences which also features in the Framework Decision on the European Arrest Warrant. Article 3(4) allows Member States and Norway and Iceland not to apply the list approach and to maintain the condition of double criminality. The wording of Article 3(4) is inspired by Article 3 of the 1996 EU Extradition Convention, which also obliges the States Parties to abolish double criminality in relation to a limited list of offences referred to in that provision. The difficulty that arises relates to the fact that while double criminality can be invoked for principal offences it may not be invoked for contributory offences. Germany, Ireland, Italy, Belgium and Greece have expressed concerns about any restriction on the use of the double criminality principle. Iceland is also not in favour of abolishing double criminality.
- Another issue is the political offence exception. At the request of some Member States (D+F+IRL) which have constitutional difficulties in abolishing this exception in extradition/surrender relations with non-EU countries, the previous Presidency had proposed to provide for this exception in the draft agreement, but at least one Member State (ES) has indicated that it has difficulties with the reintroduction of the political offence exception, the abolition of which was one of the main features of the Framework decision on the European arrest warrant.
- Again at the request of at least one Member States (D), the previous Presidency had proposed to make provision for non-execution on human rights grounds. A number of delegations expressed reservations about such a provision.

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- Life imprisonment: one delegation (PT) has deemed the guarantees which have to be provided under Article 8 of draft agreement insufficient.

8. The Presidency finds itself in a situation in which, on the one hand, it has to carry out a mandate which was given to it by the Council, which thought it expedient to negotiate an agreement with Norway and Iceland on the extension of the 1996 EU Extradition Convention, and on the incorporation of the mechanism of the European arrest warrant, and, on the other hand, there are a number of Member States who have serious difficulties with agreeing elements of the draft agreement.

9. The Presidency is of the view that, while many of the issues raised are of a technical nature, others involve issues of a more substantial policy nature. The Presidency is also aware of the concern expressed by several delegations about the sensitivity of national parliaments with regard to some of these issues. Some delegations, against that background, have also indicated that the first priority should be the implementation of the European arrest warrant.

10. The Presidency proposes that –

- (i) those Member States who have not provided comments previously on the text of the draft agreement do so as a matter of urgency,
- (ii) the Working Group on Co-operation in Criminal Matters should examine the issues raised at paragraph 7 above and any new issues that arise as a result of (i) with a view to accommodating as many of the concerns of the Member States as possible, and
- (iii) having regard to the mandate from the Council discussions with Norway and Iceland should be resumed when the work at (ii) has enabled a clear negotiating position to be established.