



Council of the
European Union

008537/EU XXVII.GP
Eingelangt am 15/01/20

Brussels, 15 January 2020
(OR. en)

5626/2/05
REV 2 DCL 1

CATS 7
COPEN 18

DECLASSIFICATION

of document: 5626/02/05 REV 2 RESTREINT UE/EU RESTRICTED

dated: 8 June 2005

new status: Public

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

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, 8 June 2005

**5626/2/05
REV 2**

RESTREINT UE

**CATS 7
COPEN 18**

NOTE

from :	Presidency
to :	Delegations

No. prev. doc. :	13417/1/03 REV 1 CATS 60 COPEN 95 RESTREINT UE
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

Following the last meeting on 1 December 2003 with Norway and Iceland in Brussels, the Presidency had circulated 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 Norway¹.

Following the comments on that draft (set out in doc. 5609/05 CATS 5 COPEN 15 RESTREINT UE), the Presidency had produced a slightly revised draft (5626/05 CATS 7 COPEN 18 RESTREINT UE), which was again commented by delegations at the meeting of the Co-operation in Criminal Matters Working Party (CCM) of 28 February 2005. The comments that were made at that meeting, were inserted in footnotes to the relevant articles of the draft agreement.

At the meeting of the JHA Counsellors of 27 May 2005, further comments were made, as a result of which the Presidency has again slightly revised the draft agreement.

¹ doc. 13417/1/03 CATS 60 COPEN 95 RESTREINT UE.

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DRAFT 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 EUROPEAN UNION,

on the one hand, and

THE REPUBLIC OF ICELAND

and

THE KINGDOM OF NORWAY,

on the other hand,

hereinafter referred to as "the Contracting Parties",

WISHING to improve judicial cooperation in criminal matters between the Member States of the European Union and Iceland and Norway, without prejudice to the rules protecting individual freedom,

CONSIDERING that current relationships among the Contracting Parties require close cooperation in the fight against crime,

EXPRESSING their mutual confidence in the structure and functioning of their legal systems and in the ability of all Contracting Parties to guarantee a fair trial,

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CONSIDERING that Iceland and Norway have expressed their wish to enter into an agreement enabling them to expedite arrangements for handing over suspects and convicts with the Member States of the European Union and to replace it by a surrender procedure with the Member States,

CONSIDERING that the European Union also considers it desirable to have such an agreement in place,

CONSIDERING that it is therefore appropriate to set up a system for such surrender procedure;

CONSIDERING that all Member States and the Kingdom of Norway and the Republic of Iceland are parties to a number of conventions in the field of extradition, including the European Convention on extradition of 13 December 1957 and the European Convention on the suppression of terrorism of 27 January 1977. The Nordic States have uniform extradition laws with a common concept of extradition;

[...]

CONSIDERING that the level of co-operation under the Convention of 10 March 1995 on simplified extradition procedure and of the Convention of 27 September 1996 relating to extradition or any other developments, must be maintained where it is not possible to increase it;

CONSIDERING that decisions on the execution of the arrest warrant as defined by this agreement must be subject to sufficient controls, which means that a judicial authority of the State where the requested person has been arrested will have to take the decision on his or her surrender;

CONSIDERING that the role of central authorities in the execution of an arrest warrant as defined by this agreement must be limited to practical and administrative assistance;

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CONSIDERING that this Agreement respects fundamental rights and in particular the European Convention on Human Rights and Fundamental Freedoms. Nothing in this Agreement may be interpreted as prohibiting refusal to surrender a person for whom an arrest warrant as defined by this agreement has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons. This Agreement does not prevent a State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media;

CONSIDERING that no person should be surrendered to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment;

CONSIDERING that since all States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data, the personal data processed in the context of the implementation of this Agreement should be protected in accordance with the principles of the said Convention;

HAVE AGREED AS FOLLOWS:

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Article 1¹

Object and Purpose

1. The Contracting Parties undertake to improve, in accordance with the provisions of this Agreement, the surrender of suspects and convicts between, on the one hand, the Member States and, on the other hand, the Kingdom of Norway and the Republic of Iceland, by taking account of, as minimum standards, the terms of the Convention of 27 September 1996 relating to extradition between the Member States of the European Union.
2. The Contracting Parties undertake, in accordance with the provisions of this Agreement, to base the extradition system between, on the one hand, the Member States and, on the other hand, the Kingdom of Norway and the Republic of Iceland on a mechanism of surrender pursuant to an arrest warrant in accordance with the terms of this Agreement.
3. This Agreement shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in the principles laid down in the European Convention on Human Rights, or, in case of execution by the judicial authority of a Member State, of the principles referred to in Article 6 of the Treaty on European Union².

Article 2

Definitions

1. "Contracting Parties" shall mean the European Union and the Kingdom of Norway and the Republic of Iceland.
2. "Member State" shall mean a Member State of the European Union.
3. "State" shall mean a Member State, the Kingdom of Norway or the Republic of Iceland.
4. "Third State" shall mean any other state than a State as defined in paragraph 3.

¹ Reservation by NL.

² See the footnote to the deleted Article 4(4).

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5. "Arrest warrant" shall mean a judicial decision issued by a State with a view to the arrest and surrender¹ by another State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

Article 3²

Scope [...]

1. An arrest warrant may be issued for acts punishable by the law of the issuing State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least six months. Surrender may be subject to the condition that the acts for which the arrest warrant has been issued constitute an offence under the law of the executing State, whatever the constituent elements or however it is described.

- 1bis. In no case shall a State refuse to execute an arrest warrant issued in relation to the behaviour of any person which contributes to the commission by a group of persons acting with a common purpose of one or more offences in the field of terrorism as in Articles 1 and 2 of the European Convention on the Suppression of Terrorism³, drug trafficking and other forms of organised crime or other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons, punishable by deprivation of liberty or a detention order of a maximum of at least 12 months, even where that person does not take part in the actual execution of the offence or offences concerned; such contribution shall be intentional and made having knowledge either of the purpose and the general criminal activity of the group or of the intention of the group to commit the offence or offences concerned⁴.

¹ NL: There can be no reference to a 'surrender' procedure in the entire draft agreement.

² Scrutiny reservation by SK.

³ ES has a reservation on the definition of terrorism, which, in its view, should be defined by reference to the EU Framework decision on Terrorism, rather than by referring to a Council of Europe instrument.

⁴ AT and FR agreed with this wording, which is taken from the 1996 EU Extradition Convention and is in accordance with the negotiation mandate given by the Council. IE stated that it had significant difficulty with aspects of that provision, in so far as it requires that contributions made in relation to certain offences in the "knowledge either of the purpose and general criminal activity" of a criminal group should be extraditable offences. This raises a fundamental difficulty in that it seems to require States to abandon dual criminality in relation

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2. The Contracting Parties may make a declaration to the effect that the condition of double criminality referred to in paragraph 1 shall not be applied under the conditions set out hereafter. The following offences, if they are punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing State, shall, under the terms of this Agreement and without verification of the double criminality of the act, give rise to surrender pursuant to an arrest warrant¹:

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,

to “contribution” to certain offences which are insufficiently defined. BE thought that the wording was too complex and did not see the need to have an exception to the list of 32 offences. NL entered a scrutiny reservation pending the negotiations on the proposal for a Framework Decision on organised crime.

¹ DE stated that, in accordance with the desire of the German Parliament (Bundestag), the offences should be defined in a more specific way. FR has a reservation on the inclusion of the list, which has been elaborated in the context of internal co-operation within the European Union. BE, FR and NL entered a reservation on the abolition of double criminality. It was suggested that double criminality be maintained and could be abolished through a declaration (i.e. the inverse solution of the one proposed at present).

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- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

[2bis.]

3. Where an arrest warrant has been issued by a State having made a declaration as referred to in paragraph 2, or by a State for which such a declaration has been made, any other State may, in the execution of the arrest warrant, apply reciprocity.

Article 4

Grounds for mandatory non-execution of the arrest warrant

The judicial authority of the State of execution (hereinafter "executing judicial authority") shall refuse to execute the arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing State, where that State had jurisdiction to prosecute the offence under its own criminal law;

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2. if the executing judicial authority is informed that the requested person has been finally judged by a State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing State;
3. if the person who is the subject of the arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.
4. (...)¹.

Article 5

Grounds for optional non-execution of the arrest warrant

The executing judicial authority may² refuse to execute the arrest warrant:

1. if, in one of the cases referred to in Articles 3(3) or 3(4), the act on which the arrest warrant is based does not constitute an offence under the law of the executing State; however, in relation to taxes or duties, customs and exchange, execution of the arrest warrant shall not be refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing State.
2. where the person who is the subject of the arrest warrant is being prosecuted in the executing State for the same act as that on which the arrest warrant is based;

¹ AT, ES, FR, HU and UK thought this paragraph should be deleted, although FR and UK thought there should be some reference to human rights. DE and GR likewise thought there should be a reference to human rights in the text of the draft agreement. NL thought the provision should be retained. Further to these comments, the Presidency has suggested to add a new paragraph to Article 1 of the draft Agreement. This is subject to a scrutiny reservation from BE.

² Several delegations (ES, FR, HU, NL, SK) raised the following problem. Due to the fact that an international agreement may be directly binding upon national courts, the agreement should allow to make optional grounds of refusal binding, e.g. through a declaration, as the choice whether to apply an optional ground of refusal may not be left to judges. NL proposed to resolve this by changing the wording from 'judicial authority' to 'competent authority'. AT supported this. ES and HU entered a scrutiny reservation on this proposal.

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3. where the judicial authorities of the executing State have decided either not to prosecute for the offence on which the arrest warrant is based or to halt proceedings, or where a final judgement has been passed upon the requested person in a State, in respect of the same acts, which prevents further proceedings;
4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing State and the acts fall within the jurisdiction of that State under its own criminal law;
5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;
6. if the arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;
7. where the arrest warrant relates to offences which:
 - (a) are regarded by the law of the executing State as having been committed in whole or in part in the territory of the executing State or in a place treated as such;or
 - (b) have been committed outside the territory of the issuing State and the law of the executing State does not allow prosecution for the same offences when committed outside its territory.

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Article 6

Political offence exception¹

1. Execution may not be refused on the ground that the offence may be regarded by the executing State as a political offence, as an offence connected with a political offence or an offence inspired by political motives.

2. The Contracting Parties may make, however, a declaration to the effect that they will apply paragraph 1 only in relation to:
 - (a) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism;

 - and

 - (b) offences of conspiracy or association - which correspond to the description of behaviour referred to in Article 3 (4) - to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism.

Such a declaration may be withdrawn or modified at all times.

3. Where an arrest warrant has been issued by a State having made a declaration as referred to in paragraph 2, or by a State for which such a declaration has been made, any other State may, in the execution of the arrest warrant, apply reciprocity.

¹ BE, FR, GR, IE and NL thought this ground of refusal should be retained. AT, ES and UK asked for its deletion. ES moreover had a problem with the reference to the Council of Europe instrument. NL also thought that this reference was out of place.

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Article 7

Nationality exception

1. Execution may not be refused on the ground that the person claimed is a national of the executing State.
2. The Contracting Parties may make a declaration for the purpose of defining, as far as they are concerned, the term of nationals within the meaning of this Agreement¹. However Iceland and Norway shall not invoke, in relation to Member States of the European Union which ensure equal treatment, such declarations as a ground for refusal of surrender of residents from States which are not a member of the Nordic Council.
3. The Contracting Parties may make a declaration to the effect that nationals will not be surrendered or that surrender will be authorised only under certain specified conditions.
4. Where an arrest warrant has been issued by a State having made a declaration as referred to in paragraph 3, or by a State for which such a declaration has been made, any other State may, in the execution of the arrest warrant, apply reciprocity.

Article 8

Guarantees to be given by the issuing State in particular cases

The execution of the arrest warrant by the executing judicial authority may be subject to the following conditions:

1. where the arrest warrant has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered *in absentia* and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered *in absentia*, surrender may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee the

¹ AT and CZ questioned this way of defining nationals. AT suggested to replace this by a reference to Article 6 of the Council of Europe Convention.

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person who is the subject of the arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing State and to be present at the judgement;

2. if the offence on the basis of which the arrest warrant has been issued is punishable by custodial life sentence or life-time detention order the execution of the said arrest warrant may be subject to the condition that the issuing State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing State, aiming at a non-execution of such penalty or measure¹;
3. where a person who is the subject of an arrest warrant for the purposes of prosecution is a national or resident of the executing State, surrender may be subject to the condition that the person, after being heard, is returned to the executing State in order to serve there the custodial sentence or detention order passed against him in the issuing State.

Article 9

Determination of the competent judicial authorities

1. The issuing judicial authority shall be the judicial authority of the issuing State which is competent to issue an arrest warrant by virtue of the law of that State.
2. The executing judicial authority shall be the judicial authority of the executing State which is competent to execute the arrest warrant by virtue of the law of that State.
3. Each Contracting Party shall inform each other of the competent judicial authorities.

¹ PT declared that this condition, which was acceptable, in the EU context of the European arrest warrant, could not be operated in the surrender relation with third countries, where case-to-case assurances are necessary. AT and NL thought this problem could be best dealt with through a declaration by PT to the draft agreement, rather in the text of the agreement itself.

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Article 10

Recourse to the central authority

1. The Contracting Parties may notify each other of the central authority for each State or, when the legal system of the relevant State so provides, of more than one central authority to assist the competent judicial authorities.
2. In doing so the Contracting Parties may indicate that, as a result of the organisation of the internal judicial system of the relevant States, the central authority(ies) are responsible for the administrative transmission and reception of arrest warrants as well as for all other official correspondence relating thereto. These indications shall be binding upon all the authorities of the issuing State.

Article 11

Content and form of the arrest warrant

1. The arrest warrant shall contain the following information set out in accordance with the form contained in Annex I to this Agreement:
 - (a) the identity and nationality of the requested person;
 - (b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
 - (c) evidence of an enforceable judgement, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 3;
 - (d) the nature and legal classification of the offence, particularly in respect of Article 3;
 - (e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;
 - (f) the penalty imposed, if there is a final judgement, or the prescribed scale of penalties for the offence under the law of the issuing State;
 - (g) if possible, other consequences of the offence.

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2. The arrest warrant must be translated into the official language or one of the official languages of the executing State. Any Contracting Party may, when this Agreement is concluded or at a later date, make a declaration to the effect that a translation in one or more other official languages of a State will be accepted.

CHAPTER 2 SURRENDER PROCEDURE¹

Article 12

Transmission of an arrest warrant²

1. When the location of the requested person is known, the issuing judicial authority may transmit the arrest warrant directly to the executing judicial authority.
2. The issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS).
Such an alert shall be effected in accordance with the provisions of Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders. An alert in the Schengen Information System shall be equivalent to an arrest warrant accompanied by the information set out in Article 11(1).
3. For a transitional period, until the SIS is capable of transmitting all the information described in Article 11, the alert shall be equivalent to an arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority.

¹ NL does not want to apply the surrender system.

² Scrutiny reservation by HU, which wants the central authority to transmit the European arrest warrant and thought there was a contradiction with Article 11.

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Article 13

Detailed procedures for transmitting an arrest warrant

1. If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, in order to obtain that information from the executing State.
2. If it is not possible to call on the services of the SIS, the issuing judicial authority may call on the International Criminal Police Organisation (Interpol) to transmit an arrest warrant.
3. The issuing judicial authority may forward the arrest warrant by any secure means capable of producing written records under conditions allowing the executing State to establish its authenticity.
4. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the States.
5. If the authority which receives an arrest warrant is not competent to act upon it, it shall automatically forward the arrest warrant to the competent authority in its State and shall inform the issuing judicial authority accordingly.

Article 14

Rights of a requested person

1. When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.
2. A requested person who is arrested for the purpose of the execution of an arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing State.

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Article 15

Keeping the person in detention

When a person is arrested on the basis of an arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing State¹. The person may be released provisionally at any time in conformity with the domestic law of the executing State, provided that the competent authority of the said State takes all the measures it deems necessary to prevent the person absconding.

Article 16

Consent to surrender

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the "speciality rule", referred to in Article 30(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing State.
2. Each State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.
3. The consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing State.

¹ IE reservation: the requirement in this Article that the measures be those "deemed to prevent the person absconding" seem to create a far heavier burden than would normally apply in respect of a judge granting bail.

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4. In principle, consent may not be revoked. Each State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules applicable under its domestic law. In this case, the period between the date of consent and that of its revocation shall not be taken into consideration in establishing the time limits laid down in Article 20. The Contracting Parties may make, at the time when this Agreement is concluded, a declaration indicating that they wish to have recourse to this possibility, specifying the procedures whereby revocation of consent shall be possible and any amendment to them.

Article 17

Hearing of the requested person

Where the arrested person does not consent to his or her surrender as referred to in Article 16, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing State.

Article 18

Surrender decision

1. The executing judicial authority shall decide, within the time limits and under the conditions defined in this Agreement, whether the person is to be surrendered.
2. If the executing judicial authority finds the information communicated by the issuing State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 4 to 6 and Article 11, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 20.
3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

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Article 19

Decision in the event of multiple requests¹

1. If two or more States have issued a European arrest warrant or an arrest warrant for the same person, the decision on which of the arrest warrants shall be executed shall be taken by the executing judicial authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.
2. The executing judicial authority of a Member State may seek the advice of Eurojust when making the choice referred to in paragraph 1. As regards Norway and Iceland, they may request that such advice shall be submitted to Eurojust by any Member State.
3. In the event of a conflict between an arrest warrant and a request for extradition presented by a third State, the decision on whether the arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing State with due consideration of all the circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.
4. This Article shall be without prejudice to States' obligations under the Statute of the International Criminal Court.

Article 20

Time limits and procedures for the decision to execute the arrest warrant²

1. An arrest warrant shall be dealt with and executed as a matter of urgency.

¹ Reservation by ES, which thinks that the EU should not grant the same formal status to an arrest warrant issued by NO or IS, as to a European arrest warrant issued by an EU Member State.

² Reservation by NL, which does not want to apply the same time limits as in the Framework Decision on the European arrest warrant.

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2. In cases where the requested person consents to his surrender, the final decision on the execution of the arrest warrant should be taken within a period of 10 days after consent has been given.
3. In other cases, the final decision on the execution of the arrest warrant should be taken within a period of 60 days after the arrest of the requested person.
4. Where in specific cases the arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing¹ judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.
5. As long as the executing judicial authority has not taken a final decision on the arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.
6. Reasons must be given for any refusal to execute an arrest warrant.

Article 21

Situation pending the decision

1. Where the arrest warrant has been issued for the purpose of conducting a criminal prosecution, the executing judicial authority must:
 - (a) either agree that the requested person should be heard according to Article 22;
 - (b) or agree to the temporary transfer of the requested person.
2. The conditions and the duration of the temporary transfer shall be determined by mutual agreement between the issuing and executing judicial authorities.

¹ IE asked that the term ‘competent’ be used instead of ‘executing’.

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3. In the case of temporary transfer, the person must be able to return to the executing State to attend hearings concerning him or her as part of the surrender procedure.

Article 22

Hearing the person pending the decision

1. The requested person shall be heard by a judicial authority, assisted by another person designated in accordance with the law of the State of the requesting court.
2. The requested person shall be heard in accordance with the law of the executing State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.
3. The competent executing judicial authority may assign another judicial authority of its State to take part in the hearing of the requested person in order to ensure the proper application of this Article and of the conditions laid down.

Article 23

Privileges and immunities

1. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing State, the time limits referred to in Article 20 shall not start running unless, and counting from the day when, the executing judicial authority is informed of the fact that the privilege or immunity has been waived.
2. The executing State shall ensure that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity.

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3. Where power to waive the privilege or immunity lies with an authority of the executing State, the executing judicial authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing judicial authority to request it to exercise that power.

Article 24

Competing international obligations

This Agreement shall not prejudice the obligations of the executing State where the requested person has been extradited to that State from a third State and where that person is protected by provisions of the arrangement under which he or she was extradited concerning speciality. The executing State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he or she can be surrendered to the State which issued the arrest warrant. The time limits referred to in Article 20 shall not start running until the day on which these speciality rules cease to apply.

Pending the decision of the State from which the requested person was extradited, the executing State will ensure that the material conditions necessary for effective surrender remain fulfilled.

Article 25

Notification of the decision

The executing judicial authority shall notify the issuing judicial authority immediately of the decision on the action to be taken on the arrest warrant.

Article 26

Time limits for surrender of the person

1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.

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2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the arrest warrant.
3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.
4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.
5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.

Article 27

Postponed or conditional surrender

1. The executing judicial authority may, after deciding to execute the arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the arrest warrant.
2. Instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested person to the issuing State under conditions to be determined by mutual agreement between the executing and the issuing judicial authorities. The agreement shall be made in writing and the conditions shall be binding on all the authorities in the issuing State.

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Article 28

Transit¹

1. Each State shall, except when it avails itself of the possibility of refusal when the transit of a national or a resident is requested for the purpose of the execution of a custodial sentence or detention order, permit the transit through its territory of a requested person who is being surrendered provided that it has been given information on:
 - (a) the identity and nationality of the person subject to the arrest warrant;
 - (b) the existence of an arrest warrant;
 - (c) the nature and legal classification of the offence;
 - (d) the description of the circumstances of the offence, including the date and place.

Where a person who is the subject of an arrest warrant for the purposes of prosecution is a national or resident of the State of transit, transit may be subject to the condition that the person, after being heard, is returned to the transit State to serve the custodial sentence or detention order passed against him in the issuing State.

2. Each Contracting Party shall designate an authority for each State responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests. The Contracting Parties shall notify each other of this designation.
3. The transit request and the information set out in paragraph 1 may be addressed to the authority designated pursuant to paragraph 2 by any means capable of producing a written record. The State of transit shall notify its decision by the same procedure.
4. This Agreement does not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing State shall provide the authority designated pursuant to paragraph 2 with the information provided for in paragraph 1.

¹ CZ and FR thought this provision should specify that the transit of a national will not be authorised if the State, in the case of the Member States through the European Union, has made a declaration to that effect pursuant to Article 7(3) of this agreement.

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5. Where a transit concerns a person who is to be extradited from a third State to a State this Article will apply mutatis mutandis. In particular the expression "arrest warrant" as defined by this Agreement shall be deemed to be replaced by "extradition request".

CHAPTER 3 EFFECTS OF THE SURRENDER

Article 29

Deduction of the period of detention served in the executing State

1. The issuing State shall deduct all periods of detention arising from the execution of an arrest warrant from the total period of detention to be served in the issuing State as a result of a custodial sentence or detention order being passed.
2. To that end, all information concerning the duration of the detention of the requested person on the basis of the arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 10 to the issuing judicial authority at the time of the surrender.

Article 30

Possible prosecution for other offences

1. Each Contracting Party may notify each other that, for relations of States with other States to which the same notification applies, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

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2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.
3. Paragraph 2 does not apply in the following cases:
 - (a) when the person having had an opportunity to leave the territory of the State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
 - (b) the offence is not punishable by a custodial sentence or detention order;
 - (c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
 - (d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;
 - (e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 16;
 - (f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;
 - (g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.
4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 11(1) and a translation as referred to in Article 11(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Agreement. Consent shall be refused on the grounds referred to in Article 4 and otherwise may be refused only on the grounds referred to in Articles 5, or 6(2) and 7(3). The decision shall be taken no later than 30 days after receipt of the request.

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For the situations mentioned in Article 8 the issuing State must give the guarantees provided for therein.

Article 31

Surrender or subsequent extradition

1. Each Contracting Party may notify each other that, for relations of States with other States to which the same notification applies, the consent for the surrender of a person to a State other than the executing State pursuant to an arrest warrant issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.
2. In any case, a person who has been surrendered to the issuing State pursuant to an arrest warrant may, without the consent of the executing State, be surrendered to a State other than the executing State pursuant to an arrest warrant issued for any offence committed prior to his or her surrender in the following cases:
 - (a) where the requested person, having had an opportunity to leave the territory of the State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;
 - (b) where the requested person consents to be surrendered to a State other than the executing State pursuant to an arrest warrant. Consent shall be given before the competent judicial authorities of the issuing State and shall be recorded in accordance with that State's national law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel;
 - (c) where the requested person is not subject to the speciality rule, in accordance with Article 30(3)(a), (e), (f) and (g).

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3. The executing judicial authority consents to the surrender to another State according to the following rules:
 - (a) the request for consent shall be submitted in accordance with Article 12, accompanied by the information mentioned in Article 11(1) and a translation as stated in Article 11(2);
 - (b) consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Agreement;
 - (c) the decision shall be taken no later than 30 days after receipt of the request;
 - (d) consent shall be refused on the grounds referred to in Article 4 and otherwise may be refused only on the grounds referred to in Articles 5 or 6(2) and 7(3).

For the situations referred to in Article 8, the issuing State must give the guarantees provided for therein.

4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to an arrest warrant shall not be extradited to a third State without the consent of the competent authority of the State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that State is bound, as well as with its domestic law.

Article 32

Handing over of property

1. At the request of the issuing judicial authority or on its own initiative, the executing judicial authority shall, in accordance with its national law, seize and hand over property which:
 - (a) may be required as evidence, or
 - (b) has been acquired by the requested person as a result of the offence.
2. The property referred to in paragraph 1 shall be handed over even if the arrest warrant cannot be carried out owing to the death or escape of the requested person.

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3. If the property referred to in paragraph 1 is liable to seizure or confiscation in the territory of the executing State, the latter may, if the property is needed in connection with pending criminal proceedings, temporarily retain it or hand it over to the issuing State, on condition that it is returned.
4. Any rights which the executing State or third parties may have acquired in the property referred to in paragraph 1 shall be preserved. Where such rights exist, the issuing State shall return the property without charge to the executing State as soon as the criminal proceedings have been terminated.

Article 33

Expenses

1. Expenses incurred in the territory of the executing State for the execution of an arrest warrant shall be borne by that State.
2. All other expenses shall be borne by the issuing State.

CHAPTER 4

GENERAL AND FINAL PROVISIONS¹

Article 34

Relation to other legal instruments

1. Without prejudice to their application in relations between States and third States, this Agreement shall, from its entry into force, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the States:

¹ CZ reservation. NL scrutiny reservation.

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- (a) the European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978, and the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned as amended by the 2003 Protocol once it will enter into force;
 - (b) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.
 - (c) Schengen-relevant provisions of the 1995 and 1996 EU Extradition Conventions to the extent that they are in force;
2. States may continue to apply bilateral or multilateral agreements or arrangements in force when this Agreement is concluded in so far as such agreements or arrangements allow the objectives of this Agreement to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of an arrest warrant.
3. States may conclude bilateral or multilateral agreements or arrangements after this Agreement has come into force in so far as such agreements or arrangements allow the prescriptions of this Agreement to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of an arrest warrant, in particular by fixing time limits shorter than those fixed in Article 20, by extending the list of offences laid down in Article 3(2), by further limiting the grounds for refusal set out in Articles 4 and 5, or by lowering the threshold provided for in Article 3(1) or (2).

The agreements and arrangements referred to in the second subparagraph may in no case affect relations with States which are not parties to them.

The Contracting Parties shall, within three months from the entry into force of this Agreement, notify each other of the existing agreements and arrangements referred to in the first subparagraph which they wish to continue applying.

The Contracting Parties shall also notify each other of any new agreement or arrangement as referred to in the second subparagraph, within three months of signing it.

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4. Where the conventions or agreements referred to in paragraph 1 apply to the territories of States or to territories for whose external relations a State is responsible to which this Agreement does not apply, these instruments shall continue to govern the relations existing between those territories and the other States.

Article 35

Transitional provision¹

Extradition requests received before the date of entry into force of this Agreement will continue to be governed by existing instruments relating to extradition.

Article 36

Territorial application²

Article 37

Dispute Settlement

Any dispute between either Iceland or Norway and a Member State of the European Union regarding the interpretation or the application 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.

¹ AT and FR asked that the same type of provision be used as in the Framework Decision on the European arrest warrant.

² NL scrutiny reservation linked to the status the Dutch Antilles and Aruba.

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Article 37bis

Case law

The Contracting Parties, in order to achieve the objective of arriving at as uniform an application¹ and interpretation as possible of the provisions of this Agreement, 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 these provisions and to those of similar surrender instruments. To this end a mechanism shall be set up to ensure regular mutual transmission of such case law.

Article 38

Notifications and declarations

1. The Contracting Parties shall notify each other of the completion of the procedures required to express their consent to be bound by this Agreement.
2. When giving their notification under paragraph 1 or, if so provided, at any time thereafter, the Contracting Parties shall make any of the declarations foreseen in Articles 9(3), 28(2) and 34(2) of this Agreement and may make any of the declarations foreseen in its Articles 3(4), 6(2), 7(2), 7(3), 10(1), 11(2), 16(4), 30(1) and 31(1) of this Agreement.
3. Where the European Union makes such declaration it shall indicate for which of its Member States the declaration applies.
4. 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 Contracting Parties to this Agreement have been fulfilled.
5. This Agreement shall apply only to surrender procedures initiated after the date on which it creates rights and obligations by virtue of paragraph 4.

¹ NL scrutiny reservation on the purpose of arriving at a uniform application.

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Article 39

Accession

Accession by new Member States to the European Union shall create rights and obligations under the present Agreement between those new Member States and Iceland and Norway.

Article 39bis

Common review

The Contracting Parties agree to carry out a common review of this Agreement no later than 5 years after its entry into force, and in particular of the declarations made under Articles 3(4), 6(2), 7(2)¹ and 7(3) of this Agreement. In case the declarations referred to in Article 7(3) are not renewed, they shall expire 5 years after the entry into force of this Agreement. The review shall in particular address the practical implementation, interpretation and development of the Agreement and may also include issues such as the consequences of further development of the European Union relating to the subject matter of this Agreement.

Article 40

Termination

1. This Agreement may be terminated by the Contracting Parties. In the event of termination by either Iceland or Norway, this Agreement shall remain in force between the European Union and the Contracting Party 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 surrender still pending at that date shall be completed in conformity with the provisions of this Agreement.

¹ AT asked that the reference to this article be deleted.

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Article 41

Depository

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, Czech, Danish, Dutch, German, English, Estonian, French, Finnish, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, 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 I

ARREST WARRANT ¹

(a) Information regarding the identity of the requested person:

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Residence and/or known address:

.....

Language(s) which the requested person understands (if known):
.....

Distinctive marks/description of the requested person:

.....

Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)

¹ This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.
This warrant must be written in, or translated into, one of the official languages of the executing State, when that State is known, or any other language accepted by that State.

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(b) Decision on which the warrant is based:

1. Arrest warrant or judicial decision having the same effect:

Type:

2. Enforceable judgement:

Reference:

(c) Indications on the length of the sentence:

1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s):

.....
.....

2. Length of the custodial sentence or detention order imposed:

.....

Remaining sentence to be served:

.....
.....

(d) Decision rendered in absentia and:

– The person concerned has been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia

or

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- The person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia but has the following legal guarantees after surrender (such guarantees can be given in advance)
- Specify the legal guarantees
-
-

(e) Offences:

This warrant relates to in total: offences.

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person

.....

.....

.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code:

.....

.....

.....

I. If applicable, tick one or more of the following offences punishable in the issuing State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the issuing State:

participation in a criminal organisation;

terrorism;

trafficking in human beings;

sexual exploitation of children and child pornography;

illicit trafficking in narcotic drugs and psychotropic substances;

illicit trafficking in weapons, munitions and explosives;

corruption;

fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities'

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- financial interests;
- 0 laundering of the proceeds of crime;
- 0 counterfeiting of currency, including the euro;
- 0 computer-related crime;
- 0 environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- 0 facilitation of unauthorised entry and residence;
- 0 murder, grievous bodily injury;
- 0 illicit trade in human organs and tissue;
- 0 kidnapping, illegal restraint and hostage-taking;
- 0 racism and xenophobia;
- 0 organised or armed robbery;
- 0 illicit trafficking in cultural goods, including antiques and works of art;
- 0 swindling;
- 0 racketeering and extortion;
- 0 counterfeiting and piracy of products;
- 0 forgery of administrative documents and trafficking therein;
- 0 forgery of means of payment;
- 0 illicit trafficking in hormonal substances and other growth promoters;
- 0 illicit trafficking in nuclear or radioactive materials;
- 0 trafficking in stolen vehicles;
- 0 rape;
- 0 arson;
- 0 crimes within the jurisdiction of the International Criminal Court;
- 0 unlawful seizure of aircraft/ships;
- 0 sabotage.

II. Full descriptions of offence(s) not covered by section I above:

.....
.....

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(f) Other circumstances relevant to the case (optional information):

(NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence)

.....
.....

(g) This warrant pertains also to the seizure and handing over of property which may be required as evidence:

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence:

Description of the property (and location) (if known):

.....
.....
.....

(h) The offence(s) on the basis of which this warrant has been issued is(are) punishable by/has(have) led to a custodial life sentence or lifetime detention order:

– the legal system of the issuing State allows for a review of the penalty or measure imposed – on request or at least after 20 years – aiming at a non-execution of such penalty or measure,

and/or

– the legal system of the issuing State allows for the application of measures of clemency to which the person is entitled under the law or practice of the issuing State, aiming at non-execution of such penalty or measure.

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(i) The judicial authority which issued the warrant:

Official name:

Name of its representative ¹:

Post held (title/grade):

File reference:

Address:

Tel. No.: (country code) (area/city code) (...)

Fax No. (country code) (area/city code) ()

E-mail

Contact details of the person to contact to make necessary practical arrangements for the
surrender:

Where a central authority has been made responsible for the transmission and administrative
reception of arrest warrants:

Name of the central authority:

Contact person, if applicable (title/grade and name):

Address:

Tel. No.: (country code) (area/city code) (...)

Fax No.: (country code) (area/city code) (...)

E-mail:

¹ In the different language versions a reference to the "holder" of the judicial authority will be included.

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Signature of the issuing judicial authority and/or its representative:

.....

Name:

Post held (title/grade):

Date:

Official stamp (if available)

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ANNEX II

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

The Contracting Parties agree to consult, as appropriate, when the Republic of Iceland or the Kingdom of Norway or one of the Member States of the European Union considers that there is occasion to do so, to enable the most effective use to be made of this Agreement, including with a view to preventing any dispute regarding the practical implementation and interpretation of this Agreement. This consultation shall be organised in the most convenient way, taking into account the existing structures of cooperation.

Declaration by the Republic of Iceland and the Kingdom of Norway

The Republic of Iceland and the Kingdom of Norway declare, in view of the provisions of the Agreement enabling direct contact between judicial authorities, that their competent judicial authorities wish, where appropriate, to make requisite enquiries through the contact points of the European Judicial Network, in order to establish which judicial authority of a Member State of the European Union has the territorial competence for initiating and executing requests for surrender.
