



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 23 May 2002

**6438/1/02
REV 1 EXT 1**

**CATS 5
USA 4**

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Subject : Request for a negotiation mandate for the Presidency on judicial cooperation in criminal matters on the basis of Articles 38 and 24 TEU

Delegations will find attached the declassified section of the above-mentioned document.



ANNEX

**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 26 February 2002

6438/1/02

REV 1 EXT 1

**CATS 5
USA 4**

NOTE

from : Presidency
to : Coreper

Subject : Request for a negotiation mandate for the Presidency on judicial cooperation in
 criminal matters on the basis of Articles 38 and 24 TEU

A. INTRODUCTION

At its extraordinary meeting on 20 September 2001 the Council agreed on the necessity for the Union to speed up the process of creating an area of freedom, security and justice and to step up cooperation with its partners, especially the United States. More specifically, the Council adopted the following conclusion (see 12156/01 JAI 99):

- "7. The Council agrees on the principle of proposing to the United States that an agreement be negotiated between the European Union and the United States, on the basis of Article 38 of the TEU, in the field of penal cooperation on terrorism."

[...]

In the Plan of Action, adopted by the European Council at its extraordinary meeting on 21 September, it is provided that the European Union will cooperate with the United States in bringing to justice and punishing the perpetrators, sponsors and accomplices of the barbaric terrorist attacks.

In the declaration by the heads of State or government of the EU and the President of the Commission, adopted at the European Council at Gent, it is provided that:

"in the same context, the European Council has also examined the concrete proposals for cooperation which the US authorities made following the meeting on 27 September 2001 between the President of the European Council and the President of the United States. Technical examination of those proposals has already been initiated and they are already the subject of discussions between the US authorities and the Troika operational in Washington. Most of those proposals are already covered by the European Union's action plan. The Union is moreover prepared to engage with the United States in reciprocal initiatives such as:

– facilitation of mutual judicial assistance between the competent authorities of the United States and of the Member States, as well as extradition in connection with terrorism in accordance with the constitutional rules of the Member States."

[...]

On the basis of an initiative of the Belgian Presidency, a high-level Troika from Ministries of Interior and Justice, the Commission and the General Secretariat visited Washington DC on 18 October 2001. At that visit, it was agreed that the Presidency would undertake informal, exploratory talks with the US side to assess the feasibility of entering into an agreement with the US, either on extradition or on mutual assistance or both, and that such discussions would take place in Brussels.

This issue was included in the CATS Troika meeting with the United States, which took place in Madrid on 8 February 2002.

[...]

On the basis of the discussions with the US side, which have been conducted with the assistance of the future Presidency, the Commission and the General Secretariat, the Presidency submits the following request for a negotiation mandate under Articles 24 and 38 TEU.

B. RESULTS OF DISCUSSIONS WITH THE US SIDE

[...]

C. BACKGROUND

The terrorist attacks in the United States on 11 September 2001 highlighted the vital need for closer international cooperation in criminal matters to fight the various forms of organised crime, particularly terrorism, more effectively.

The need for States to grant one another the widest possible mutual legal assistance has been raised on several occasions. Article 18 of the United Nations Convention against Transnational Organised Crime, signed in Palermo in December 2000, regulates very important aspects of international judicial cooperation in proceedings relating to the offences covered by that Convention, which the European Community and the Member States as well as the United States have signed.

The G 7/8 countries have made several joint declarations undertaking to step up the fight against transnational crime and organised crime.

The Convention on Mutual Assistance on Criminal Matters between the Member States of the European Union was signed on 29 May 2000, followed by a Protocol on 16 October 2001.

In terms of bilateral relations, it should be noted that 11 of the Member States of the European Union have already signed and/or ratified a Mutual Legal Assistance Agreement with the United States. These States are: Austria (signed in 1995, entry into force 1998), Belgium (1988/2000), France (1998/2001), Greece (1999/2001), Spain (1990/1993), Italy (1982/1985), Ireland (2001), Luxembourg (1997/2001), Sweden (2001), the Netherlands (1981/1983) and the United Kingdom (1994/1996). Germany is close to completing discussions on such an agreement. All the Member States have extradition arrangements. Some have concluded supplementary agreements, but in general the agreements date back a relatively long way. The situation is as follows: Austria (1998), Belgium (1987), Denmark (1972), Greece (1931), Finland (1976), France (1909, suppl. 1970; 1996: in force 2002), Germany (1978, suppl. agreement 1993), Ireland (1983), Italy (1983), Luxembourg (1996; in force 2002), Netherlands (1980), Portugal (1908), Spain (1970, suppl 1975, 1988 and 1996), Sweden (1961, suppl. 1983), United Kingdom (1972, suppl. 1985).

The need to coordinate action against the various forms of transnational crime and strengthen judicial cooperation has been raised a number of times in proceedings at the Council, particularly at the high-level meetings with the United States and Canada ¹.

Conclusion No 60 of the Tampere European Council states that "full use must be made of the new possibilities offered by the Treaty of Amsterdam for external action and in particular of Common Strategies as well as Community agreements and agreements based on Article 38 TEU".

Paragraph 17 of the 1998 Vienna Action Plan affirms a need "for improving and speeding up judicial cooperation in criminal matters both among Member States and with third countries, specially in view of intensified police cooperation. However effective it may be, judicial cooperation in criminal matters is hard pressed today to deal with phenomena such as organised crime, unless there is facilitation of procedures and where necessary approximation of legislation". Lastly, paragraph 22 of the Action Plan states that "[...] In those subjects which remain in Title VI of TEU, the Union can also make use of the possibility for the Council to conclude international agreements in matters relating to Title VI of the Treaty, as well as for the Presidency, assisted by the Secretary General of the Council and in full association with the Commission, to represent the Union in these areas".

¹ See, for example, 13270/00 JAI 134 CDN 15 of 22 November 2000: "High level meeting between European Union and Canada on Justice and Home Affairs matters (9 November 2000)" and 6061/01 COPEN 5 of 22 February 2001: "Preparation of a forthcoming meeting between experts on cooperation in criminal matters of the EU and of the USA and Canada – Data protection and restrictions on use in the field of mutual assistance in criminal matters in external relations".

D. LEGAL BASIS

Article 38 TEU makes it possible to conclude agreements as referred to in Article 24 TEU on matters which come under Title VI "Police and judicial cooperation in criminal matters".

Article 24 TEU states that "when it is necessary to conclude an agreement with one or more States or international organisations in implementation of this Title, the Council, acting unanimously, may authorise the Presidency, assisted by the Commission as appropriate, to open negotiations to that effect. Such agreements shall be concluded by the Council acting unanimously on a recommendation from the Presidency. No agreement shall be binding on a Member State whose representative in the Council states that it has to comply with the requirements of its own constitutional procedure; the other members of the Council may agree that the agreement shall apply provisionally to them. The provisions of this Article shall also apply to matters falling under Title VI".

[...]

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