



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 13 June 2003 (16.06)
(OR. en,fr,it,pt,sv)**

10409/03

**CATS 35
USA 58**

OUTCOME OF PROCEEDINGS

of: Council meeting (Justice and Home Affairs)
on: Luxembourg, 6 June 2003
No. prev. doc. : 8296/2/03 CATS 21 USA 30 REV 2; 9153/03 CATS 28 USA 41 + COR 1(fr) +
COR 2(fr,it,nl,en,es,pt) + COR 3(sv)
Subject : Item 5 of the agenda:
Draft Council Decision concerning the signature of an Agreement between
EU - USA on mutual legal assistance and extradition

The President noted:

- 1) that the text of the draft Decision as contained in doc 8296/2/03 CATS 21 USA 30 REV 2 was adopted,
- 2) that this text would be published in the Official Journal after Coreper had finalised the text of the Annex concerning the territorial application together with the delegation of the United States of America,
- 3) that the following delegations had made statements under Article 24 (5) TEU: DK/NL/P/D/UK/IRL/S/I/FIN/B/E and L. The written statements handed in to the General Secretariat are contained in Annex 1,
- 4) that the statement made by the Portuguese delegation contained in Annex 2 would be rendered public,
- 5) the statement made by the Commission contained in Annex 3.

Statement by Denmark in accordance with Article 24 of TEU

"In accordance with Article 24 of the Treaty of the European Union, Denmark is not bound by the Agreements on extradition and mutual legal assistance in criminal matters between the European Union and the United States of America until the requirements of the Danish constitutional procedures are complied with."

Statement by Ireland

"With reference to Article 24(5) of the Treaty on European Union, Ireland declares that it will be required to observe certain constitutional procedures in advance of the Decision for the conclusion of the Agreements on Extradition and on Mutual Legal Assistance between the European Union and the United States of America."

Statement by the Italian delegation

"Under Article 24(5) of the Treaty on European Union, Italy states that it has to comply with its own constitutional requirements".

Statement by Portugal under Article 24(5) of the TEU

"Having regard to Article 24(5) of the Treaty on European Union, the Portuguese Republic states that it has to comply with the procedure laid down by its domestic constitutional rules and will therefore not be bound by this Agreement until that procedure has been completed."

Statement by Sweden

"The Agreements between the European Union and the United States of America on extradition and on mutual legal assistance in criminal matters (8295/1/03 CATS 20 USA 29 REV 1) will not be binding upon Sweden until the constitutional requirements entailed by Sweden's own constitutional procedures have been fulfilled."

Statement by the United Kingdom under Article 24(5) of TEU

"The United Kingdom welcomes the Agreements between the European Union and the United States of America on mutual legal assistance in criminal matters and extradition. Much of the legislation necessary to implement the agreements in the United Kingdom is already in force and, where it is not, Parliament's consideration of the draft legislation is, for the most part, at an advanced stage. The United Kingdom aims to complete its domestic requirements in the near future and looks forward to applying the Agreements at the earliest opportunity thereafter."

**STATEMENT BY PORTUGAL
CONCERNING ARTICLE 13 OF THE AGREEMENT ON EXTRADITION**

"In accordance with its constitutional law, Portugal will not avail itself of the option in Article 13 of the Agreement on extradition and will not grant extradition where the offence is punishable by the death penalty. Portugal may, however, make extradition subject to the condition that, under the domestic law of the requesting State, which is binding on its courts or authorities responsible for enforcement of sentence, it is not legally possible to find the death penalty imposable on the person whose extradition is sought or to enforce that penalty, if already imposed prior to the extradition request."

EN translation provided by the Portuguese delegation:

"According to its constitutional law, Portugal will not use the faculty provided for in Article 13 of the Extradition Agreement, and will not grant extradition where the offence is punishable with death penalty. Portugal, may, however, subject the extradition to the condition that, according with the law of the requesting State, binding to its courts and the authorities competent to enforce the penalties, it will not be legally possible to consider to apply death penalty to the case, or it will not be legally possible to enforce that penalty, where it has already been imposed prior to the extradition request."

Commission Statement on the occasion for the Council authorising its Presidency to sign the EU-USA Agreements on Extradition and mutual legal assistance in criminal matters, respectively

"The Commission welcomes the progress achieved on the EU-USA Agreements on mutual assistance in criminal matters and on extradition. This progress clearly shows the strength of transatlantic solidarity, notably in the fight against terrorism and other forms of serious crime. These agreements will facilitate the work of practitioners in the field of judicial co-operation in criminal matters and will improve the situation on a number of important human rights issues by comparison with most existing bilateral treaties, notably as regards capital punishment and limitations on use to protect personal and other data.

The Commission notes that these Agreements are the first Union agreements on the basis of Articles 24 and 38 which directly concern fundamental rights of individuals.

The Commission recalls in this context the urgent need to achieve within the framework of the Convention and the subsequent IGC a substantial improvement in judicial control in these fields, in order to ensure a judicial protection and an uniform interpretation, in particular where the fundamental rights of individuals are concerned."
