



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 16 April 2003**

**8296/1/03  
REV 1**

**LIMITE**

**CATS 21  
USA 30**

**NOTE**

---

From : Article 36 Committee  
To : Coreper/Council

---

No. prev. doc. : 8295/03 CATS 20 USA 29 CONFIDENTIEL UE; 8296/03 CATS 21 USA 30

---

Subject : Procedure regarding the draft Agreements on judicial cooperation with the USA

---

At its meeting on 28 February 2003, the Council decided to suspend negotiations on the draft text of the Agreements on mutual legal assistance and on extradition with the USA, in order to enable delegations to examine the texts at national level. The Council agreed to come back to this issue at its meeting in May with a view to taking a final decision.

Since the Council meeting, the Presidency has, in accordance with the Council decision, carried out negotiations with the USA on the text of the draft Explanatory Notes that will have to be agreed after the signing of the Agreements. A meeting with the US delegation was held on 3 and 4 April 2003 for that purpose.

The text of the draft Explanatory Notes, together with some technical changes (underlined in the document) to the draft texts that have been made by the negotiators are found in doc 8295/03 CATS 20 USA 29 CONFIDENTIEL UE. Some delegations have laid down a parliamentary scrutiny reservation on these texts.

As the Presidency has indicated to delegations, it is envisaged that the Council would take two decisions in respect of these Agreements on the basis of Article 24 TEU: the first one authorising the Presidency to designate the person to sign the Agreements and the second one when the Council concludes the Agreements under Article 24 TEU. It is envisaged that the Member States which want to state pursuant to Article 24 TEU that they have to comply with the requirements of their own constitutional procedures would make such statement to the Council at the latest at the time of the adoption of the first decision.

It should be noted that the USA needs to examine the text of the Agreements as revised by the jurist/linguists in all languages.

At the meeting of the Article 36 Committee, broad agreement of delegations was reached on the proposed procedure outlined by the Presidency, although consultations were still carried out at national level in several Member States. Several delegations raised the issue of the confidentiality of the draft Agreements and asked that this issue be considered in the context of scrutiny at national level.

Furthermore, some delegations asked questions relating to the draft Explanatory Notes contained in the document and made comments in relation to the draft Council Decision in the Annex. The comments relating to the draft Decision are outlined in the attached text.

*The Article 36 Committee invites Coreper to suggest to the Council:*

- a) to reach a general approach at the meeting of the Council on 8 May 2003 on the text of the draft Decision of the Council in the Annex, with a view to adopting it at its next meeting in June, subject to the examination at national level having been finalised.

- b) to agree that the text of the draft Agreements as at present contained in doc 8295/03 CATS 20 USA 29 CONFIDENTIEL UE shall be attached to the draft Decision and published, once it has undergone jurist/linguist scrutiny and the jurist/linguist text has been agreed by Coreper and the USA.
  
  - c) to invite each delegation to inform the Council whether their Member State wishes to state that it has to comply with the requirements of its own constitutional procedure and, if so, to make such statement to the Council ultimately at the time of the adoption of the draft decision in the Annex.
-

**Draft Council Decision  
of**

**concerning the signature of the Agreements between the European Union and  
the United States of America on extradition and mutual legal assistance in  
criminal matters**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 24 and 38 thereof,

Whereas:

1. The Member States of the European Union co-operate in criminal matters with the United States of America on the basis of bilateral agreements, conventions, treaties, national law and arrangements.
2. The European Union is determined to improve this co-operation in order to be able to combat in particular transnational crime and terrorism in a more effective way.
3. The Council decided on 26 April 2002 to authorise the Presidency, assisted by the Commission, to enter into negotiations with the United States of America, and the Presidency negotiated two Agreements on international cooperation in criminal matters, one on mutual legal assistance and one on extradition, with the United States of America;
4. The Agreements should be signed on behalf of the European Union, subject to their subsequent conclusion. The European Union will, at the time of the signature make the declaration decided by the Council at its meeting on 28 February 2003;

5. The Agreements foresee in their Article 3 (2) that written instruments be exchanged between the USA and the Member States of the Union on the application of bilateral treaties. Article 3 (3) of the mutual legal assistance Agreement provides a similar obligation for those Member States that do not have a bilateral mutual legal assistance treaty with the United States. With a view to the drawing up of such written instruments the Member States should coordinate their action within the Council.

HAS DECIDED AS FOLLOWS:

## Article 1

1. The President of the Council is hereby authorised to designate the person (s) empowered to sign the Agreements on behalf of the European Union<sup>1</sup>, subject to their later conclusion.
2. The text of the Agreements and the accompanying Explanatory Notes, the latter recording an understanding between the European Union and the United States of America, are annexed to this Decision.

## Article 2

1. The Member States shall take the necessary steps with a view to the drawing up of written instruments between them and the USA as contemplated in Article 3 (2) of the extradition Agreement and Article 3 (2) and (3) of the mutual legal assistance Agreement.
2. The Member States shall coordinate their actions pursuant to paragraph 1 within the Council.

## Article 3

This Decision and its annexes shall be published in the Official Journal of the European Union.

Done at Brussels, on

For the Council,  
The President

---

<sup>1</sup> FIN suggest to insert here "and its Member States". This suggestion was opposed.