



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 2 March 2009

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NOTE

From : Presidency
To : CATS

Subject : Draft Council Decision on the conclusion on behalf of the European Union of the Agreements between the European Union and the United States of America on extradition and mutual legal assistance in criminal matters

1. On 6 June 2003 the Council authorised the Presidency to sign the EU-US Agreements on extradition and mutual legal assistance. Twenty-three Member States availed themselves of the possibility of Article 24(5) TEU and indicated they would need to follow constitutional procedures before the Agreements could be binding upon them. At this moment, two Member States (BE, IT) still need to go through a constitutional procedure with regard to the EU-US Agreements, in accordance with the declaration they made under Article 24(5) TEU on 6 June 2003.
2. Under Article 3 of both Agreements, all Member States need to exchange "written instruments" with the United States in order to acknowledge the way in which the provisions of the EU-US Agreements are implemented at the bilateral level (one on mutual legal assistance and one on extradition). All Member States have in the meantime signed such bilateral instruments with the United States, but three Member States (BE, GR and IT) still need to finalise their constitutional procedures with regard to these bilateral instruments.

3. In 2008, the US Senate finalised its ratification procedure for the two EU-US Agreements and 54 bilateral instruments (two per Member State) and the 43rd President of the United States of America signed the instruments of ratification.
4. In order to allow to exchange the instruments of ratification with the United States of America, the Council must authorise the Presidency to conclude these two agreements. To that end, the Presidency is submitting the attached draft Council decision on conclusion of the Agreements between the European Union and the United States of America on extradition and mutual legal assistance in criminal matters.
5. *Subject to the imminent finalisation of the constitutional proceedings in the relevant Member States, the Member States are invited to agree on the text of the attached draft Council decision, so that it can be submitted to Coreper/Council for adoption.*

COUNCIL DECISION

of

**on the conclusion on behalf of the European Union
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) Following the authorisation given by the Council on 26 April 2002 to the Presidency, assisted by the Commission, to enter into negotiations with the United States of America, two Agreements on international cooperation in criminal matters, one on mutual legal assistance and one on extradition, have been negotiated with the United States of America;
- (2) In accordance with a Council Decision of 6 June 2003, the Agreements between the European Union and the United States of America on extradition and on mutual legal assistance in criminal matters have been signed on behalf of the European Union on 25 June 2003;
- (3) The Agreements should now be approved;

- (4) The Agreements provide 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. These written instruments have been exchanged between all Member States and the United States of America;
- (5) On 19 February 2009 the General Secretariat of the Council notified the United States of America of the designations pursuant to Articles 2(3) and 10(2) of the Agreement on extradition and pursuant to Articles 4(3) and 8(2)(b) of the Agreement on mutual legal assistance in criminal matters, as well as of limitations invoked under Article 4(4);

HAS DECIDED AS FOLLOWS:

Article 1

The Agreements between the European Union and the United States of America on extradition and on mutual legal assistance in criminal matters are hereby approved on behalf of the European Union,

The texts of the Agreements are attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person empowered, on behalf of the European Union, to deposit the instruments of approval provided for in Article 22 of the Agreement between the European Union and the United States of America on extradition and in Article 18 of the Agreement between the European Union and the United States of America on mutual legal assistance in criminal matters, in order to express the consent of the European Union to be bound.

Article 3

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council

The President