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REPORT

on an Initiative of the Kingdom of Sweden with a view to the adoption of a Council Decision determining which provisions of the 1995 Convention on simplified extradition procedure between the Member States of the European Union and of the 1996 Convention relating to extradition between the Member States of the European Union constitute developments of the Schengen acquis in accordance with the Agreement concerning the Republic of Iceland's and the Kingdom of Norway's association with the implementation, application and development of the Schengen acquis
(9946/2001 – C5-0321/2001 – 2001/0820(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Luís Marinho

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 4 July 2001 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on an Initiative of the Kingdom of Sweden with a view to the adoption of a Council Decision determining which provisions of the 1995 Convention on simplified extradition procedure between the Member States of the European Union and of the 1996 Convention relating to extradition between the Member States of the European Union constitute developments of the Schengen acquis in accordance with the Agreement concerning the Republic of Iceland's and the Kingdom of Norway's association with the implementation, application and development of the Schengen acquis (9946/2001 – 2001/0820(CNS)).

At the sitting of 5 July 2001 the President of Parliament announced that she had referred this Initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0321/2001).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Luís Marinho rapporteur at its meeting of 3 September 2001.

It considered the Initiative of the Kingdom of Sweden and the draft report at its meetings of 12 September 2001, 9 October 2001 and 22 October 2001.

At the last meeting it adopted the draft legislative resolution by 36 votes to 2, with 2 abstentions.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans, vice-chairman; Bernd Posselt, vice-chairman; Luís Marinho, rapporteur; Niall Andrews, Alima Boumediene-Thiery, Marco Cappato, Michael Cashman, Charlotte Cederschiöld, Carmen Cerdeira Morterero (for Ozan Ceyhun), Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Francesco Fiori (for Enrico Ferri, pursuant to Rule 153(2)), Glyn Ford (for Gerhard Schmid), Pernille Frahm, Evelyne Gebhardt (for Martin Schulz), Daniel J. Hannan, Jorge Salvador Hernández Mollar, Anna Karamanou, Margot Keßler, Timothy Kirkhope, Eva Klamt, Baroness Sarah Ludford, Lucio Manisco (for Fodé Sylla), Juan Andrés Naranjo Escobar (for Hubert Pirker), Hartmut Nassauer, Arie M. Oostlander (for Mary Elizabeth Banotti), Elena Ornella Paciotti, Paolo Pastorelli, Martine Roure (for Sérgio Sousa Pinto), Agnes Schierhuber (for Marcello Dell'Utri, pursuant to Rule 153(2)), Patsy Sörensen, Anna Terrón i Cusí, Astrid Thors (for Bertel Haarder, pursuant to Rule 153(2)), Maurizio Turco (for Frank Vanhecke), Anne E.M. Van Lancker (for Adeline Hazan), Gianni Vattimo and Christian Ulrik von Boetticher.

The report was tabled on 24 October 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Initiative of the Kingdom of Sweden with a view to the adoption of a Council Decision determining which provisions of the 1995 Convention on simplified extradition procedure between the Member States of the European Union and of the 1996 Convention relating to extradition between the Member States of the European Union constitute developments of the Schengen acquis in accordance with the Agreement concerning the Republic of Iceland's and the Kingdom of Norway's association with the implementation, application and development of the Schengen acquis (9946/2001 – C5-0321/2001 – 2001/0820(CNS))

The proposal is amended as follows:

Text proposed by the Kingdom of Sweden¹

Amendments by Parliament

Amendment 1 Recital 1

For the purposes of achieving the objectives of the European Union, the Council ***drew up*** the Convention on simplified extradition procedure between the Member States of the European Union (hereinafter "the Simplified Extradition Convention") and the Convention relating to extradition between the Member States of the European Union (hereinafter "the Extradition Convention"). ***The Council recommended that the Member States adopt those Conventions in accordance with their respective constitutional rules.***

For the purposes of achieving the objectives of the European Union, the Council ***established*** the Convention on simplified extradition procedure between the Member States of the European Union (hereinafter "the Simplified Extradition Convention") and the Convention relating to extradition between the Member States of the European Union (hereinafter "the Extradition Convention").

Justification

The term which defines the Council's action with legal exactitude is 'establish Conventions', as laid down in Article 34(d) of the EU Treaty.

¹ OJ C 195, 11.7.2001, p. 13.

Amendment 2
Recital 2

In order to ensure a clear and unambiguous legal situation it is necessary to *clarify* the relationship between the provisions of the above Conventions and those of Chapter 4 of Title III of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders (hereinafter "the Schengen Convention"), which were incorporated into the framework of the European Union when the Treaty of Amsterdam entered into force on 1 May 1999.

In order to ensure a clear and unambiguous legal situation it is necessary to *determine* the relationship between the provisions of the above Conventions and those of Chapter 4 of Title III of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders (hereinafter "the Schengen Convention"), which were incorporated into the framework of the European Union when the Treaty of Amsterdam entered into force on 1 May 1999.

Justification

The term which should be used with reference to the relation between the two sets of provisions is 'determine', since this step will have legal consequences of the first importance, insofar as it will determine which provisions should be applied and which should not.

Amendment 3
Recital 2a (new)

The Republic of Iceland and the Kingdom of Norway must be associated with the implementation of the Schengen acquis and its further development, pursuant to Article 6 of the Schengen Protocol annexed to the Treaty of Amsterdam.

Justification

This decision is the result of the Council's fulfilling of the provisions contained in Article 6 of the Schengen Protocol which, as an annex to the Treaty of Amsterdam, forms an integral part thereof.

Amendment 4
Recital 4

Does not apply to English version

Amendment 5
Article 1

The provisions of the Simplified Extradition Convention *constitute* a development of the provisions of the Schengen acquis, and in particular of Article 66 of the Schengen Convention.

The Simplified Extradition Convention *constitutes* a development of the provisions of the Schengen acquis, and in particular of Article 66 of the Schengen Convention.

Justification

The wording of the provision should be as concise as possible, as laid down in general principle 4 of the Interinstitutional Agreement on the quality of the wording of Community legislation of 22 December 1998.

Amendment 6
Article 2

Articles 2, 6, 8, 9 and 13 of the Extradition Convention *and Article 1 thereof, to the extent that that Article is pertinent to those other Articles*, constitute a development of the provisions of the Schengen acquis, and in particular of Article 61, Article 62(1) and (2), and Articles 63 and 65 of the Schengen Convention.

Articles 2, 6, 8, 9 and 13 of the Extradition Convention constitute a development of the provisions of the Schengen acquis, and in particular of Article 61, Article 62(1) and (2), and Articles 63 and 65 of the Schengen Convention.

Justification

Pursuant to Court of Justice case law, the principle of legal security, which forms part of the Community legal system, demands that Community legislation be clear and precise, and its

scope perfectly clear to those whom it may affect. For that reason, the generic and indeterminate reference to Article 1 of the Extradition Convention should be excluded from the regulation.

Amendment 7
Article 3, paragraph 2

Before the Simplified Extradition Convention enters into force for Iceland or Norway, Iceland and Norway may, when notifying *the fulfilment of their constitutional requirements in accordance with Article 8(2) of the Association Agreement*, declare that those provisions shall apply to their relations with States which have made the same declaration. Such declarations shall take effect [ninety] days after the date of deposit thereof.

Before the Simplified Extradition Convention enters into force for Iceland or Norway, Iceland and Norway may, when notifying *the fact that they have met the requirements of their respective constitutional procedures*, declare that those provisions shall apply to their relations with States which have made the same declaration. Such declarations shall take effect [ninety] days after the date of deposit thereof.

Justification

See justification to Amendment 5.

Amendment 8
Article 3, paragraph 3

Does not apply to English version.

Amendment 9
Article 3, paragraph 4

Before *the provisions of the Extradition Convention referred to in paragraph 3* enter into force *for Iceland or Norway*, Iceland and Norway may, when notifying

Before the *Simplified Extradition Convention and Articles 2, 6, 8, 9 and 13 of the Extradition Convention* enter into force, Iceland and Norway may, when

the fulfilment of their constitutional requirements in accordance with Article 8(2) of the Association Agreement, declare that those provisions shall apply to their relations with States that have made the same declaration. Such declarations shall take effect [ninety] days after the date of deposit thereof.

notifying ***the fact that they have met the requirements of their respective constitutional procedures,*** declare that those provisions shall apply to their relations with States that have made the same declaration. Such declarations shall take effect [ninety] days after the date of deposit thereof.

Justification

The principle of legal security demands maximum possible clarity, precision and simplicity in the wording of Community legislation, so that it can be as transparent as possible and public opinion and the media can understand it.

Amendment 10
Article 4, paragraph 1

On the same date that the Simplified Extradition Convention enters into force in accordance with Article 16(2) thereof, Article 66 of the Schengen Convention shall cease to have effect. Nevertheless, that provision shall continue to apply to extradition requests submitted before that date, unless the Member States concerned are already applying the Simplified Extradition Convention between themselves pursuant to declarations made in accordance with Article 16(3) thereof.

Deleted

Justification

Since the Simplified Extradition Convention constitutes a development of Article 66 of the Schengen Convention, no more and no less, that article will cease to apply the day the Simplified Extradition Convention comes into force.

The same line of argument holds good for the situation of those Member States which have declared that they intend to apply the Simplified Extradition Convention amongst themselves, even when the latter will come into force ninety days after the date of the deposit of the

declaration of ratification, acceptance or adoption of the Convention on the part of the last Member State to do so.

Furthermore, it is doubtful whether as a legal instrument, a Decision can derogate provisions contained in a Convention.

Amendment 11
Article 4, paragraph 2

<i>On the same date that the Extradition Convention enters into force in accordance with Article 18(3) thereof, Article 61, Article 62(1) and (2) and Articles 63 and 65 of the Schengen Convention shall cease to have effect. Nevertheless, those provisions shall continue to apply to extradition requests submitted before that date, unless the Member States concerned are already applying the Extradition Convention between themselves pursuant to declarations made in accordance with Article 18(4) thereof.</i>	<i>Deleted</i>
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Justification

Mutatis mutandis, this amendment rests on the same reasoning as the previous amendment, applying them to the corresponding articles of both Conventions.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on an initiative of the Kingdom of Sweden with a view to the adoption of a Council Decision determining which provisions of the 1995 Convention on simplified extradition procedure between the Member States of the European Union and of the 1996 Convention relating to extradition between the Member States of the European Union constitute developments of the Schengen acquis in agreement with the Agreement concerning the Republic of Iceland and the Kingdom of Norway's association with the implementation, application and development of the Schengen acquis (9946/2001 – C5-0321/2001 – 2001/0820(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative by the Kingdom of Sweden (9946/2001)¹,
 - having regard to Article 34(2)(c) of the EU Treaty,
 - having been consulted by the Council, pursuant to Article 39(1) of the EU Treaty (C5-0321/2001),
 - having regard to Rules 106 and 67 of its Rules of Procedure.
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0371/2001),
1. Approves the initiative by the Kingdom of Sweden as amended;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 4. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 195, 11.7.2001, p. 13.

EXPLANATORY STATEMENT

I. INTRODUCTION

Since the fall of the Berlin Wall and the disappearance of the Iron Curtain, the nature of European integration has changed. European Union citizens, like those of the candidate and applicant countries, are no longer motivated by purely economic values, nor the fear of war, hunger or falling behind in the technology stakes.

The values which predominate today are different: deepening democracy, respect and defence for fundamental rights and freedoms, and the pre-eminent role of Law in social relations.

New prospects have joined the vision of establishing a Common Market, the aims of the Single Act and the entry into circulation of the euro: we have the common foreign and security policy, the Social Charter, the European employment policy and, ever more insistently, the freedom of movement of persons, the issue of how to organise the issue of citizens' freedom and security; and we have international cooperation in the fight against terrorism or, to call it by another name, 'Schengen'.

11 September 2001 saw the first act of hyperterrorism of the global information era.

European citizens need to be defended against new forms of terrorism:

- (a) the emergence of a religiously-inspired terrorism capable of eliminating all moral restraints on the use of violence;
- (b) the combination of highly vulnerable inter-linked societies and relatively easy access to methods of mass destruction.

In order to fight this kind of terrorism and prevent a repetition of the tragic events in New York and Washington, which represent a new kind of war, even though it is not between countries, it is absolutely essential that the European Union adopt a common policy in the penal and police spheres, which today sadly continue to be subject to mere intergovernmental cooperation, and therefore to the paralysing principle of unanimity.

The goal of freedom of movement of persons has, for over 17 years, been one of the driving forces of European integration, ever since it was officially proclaimed at the Fontainebleau Summit of 1984.

The political will to make freedom of movement a reality took concrete shape in the Cooperation Agreement signed by five of the Union's founding states (Luxembourg, Holland, Belgium, France and Germany) on 14 June 1985, in the idyllic Luxembourg village of Schengen, with view to gradually eliminating the presence of controls at their common borders.

The Schengen Convention implementing this Agreement was signed by the same Member States on 19 June and, and came into force on 26 March 1995. The five-year gaps between these various dates are eloquent testimony to the scale of the difficulties which had to be surmounted in order to make the Convention operational.

II. SCHENGEN COOPERATION AND THE ESTABLISHMENT OF AN INTERNAL AREA WITHOUT FRONTIERS

The development of Schengen cooperation has taken the form of purely pragmatic procedures fraught with difficulties, given how closely these matters impinge on the issue of national sovereignty. Schengen has, however, been a success, thanks to the fact that the ongoing establishment of the area of free movement of persons has been constantly accompanied by the progressive introduction of the compensatory measures required in order to guarantee an adequate level of security within that area.

That the success of Schengen cooperation has been positively triumphant is reflected in the way it has been successively extended and now covers 13 of the Member States (the exceptions being the UK and Ireland) and two non-Member countries, namely Iceland and Norway.

The 1986 Treaty establishing the Single European Act laid another of the bases for the establishment of an 'internal area without frontiers', a step taken at Community level, whose salient characteristic was the creation of a Single Market.

It was not until the Treaty of European Union was signed in Maastricht on 7 February 1992, and intergovernmental cooperation on justice and internal affairs was introduced, involving all 15 Member States (although the position of the UK, Ireland and Denmark comes under the 'variable' heading embodied in the protocols on their position annexed to the Treaty of Amsterdam), that the freedom of movement of persons became an issue which had to be dealt with by the Union's institutions in all its complexity and all its aspects.

It was not until 2 October 1997, when the changes introduced by the Amsterdam Treaty came into force, that there was any really significant progress within the EU's 'third pillar', with the setting up of an area of freedom, security and justice.

There have, therefore, been two separate processes which have developed independently and in parallel.

Schengen Cooperation was conceived of as a laboratory for experimentation, and basically consisted of police cooperation, with a view to eliminating controls at internal borders, but backed up by compensatory measures to combat illegal immigration and drug trafficking, and improve external border controls. In the field of cooperation between courts, Schengen has concentrated its efforts on ensuring that quests for extradition are rapidly dealt with by means of the Schengen Information System (SIS).

In contrast, police and court cooperation on penal matters within the Union has much more ambitious aspirations, e.g. to fight transnational organised crime, and bring about the approximation of legal and statutory provisions.

III. THE SCHENGEN *ACQUIS* AND ITS INTEGRATION INTO THE EU FRAMEWORK

The various forms of cooperation carried out within the Schengen framework, and 'third pillar cooperation' have seen very different results in their parallel treatment of matters such as visa policy, rules on crossing external borders, asylum and readmission policies, extradition, etc.. Under the third pillar, the result has been a body of legal instruments of varying degrees of bindingness, while within the Schengen framework, we find decisions of a practical and operative nature.

This means that the issue of freedom of movement and, in consequence, the elimination of controls at external borders, was a secret matter, the exclusive preserve of outstanding specialists on the problem.

For that reason, the Intergovernmental Conference in charge of revising the Treaties decided to integrate the 'Schengen *acquis*' within the EU framework, with the aim of simplifying the policies and making them more transparent, and achieving significant progress on the freedom of movement of persons and the security of persons and property.

Accordingly, Annex II to the Amsterdam Treaty deals with 'integrating the Schengen *acquis* into the framework of the European Union.

The annexe to this protocol states that the Schengen *acquis* comprises:

- (a) the agreement signed in Schengen on 14 June 1985 by the five founding countries;
- (b) the convention signed in Schengen on 19 June 1990 by the same countries implementing the Agreement;
- (c) the Accession Protocols and Agreements to the 1985 Agreement and the 1990 implementation convention signed with Italy (1990), Spain and Portugal (1991), Greece (1992), Austria (1995) and Denmark, Finland and Sweden (1996), with the related Final Acts and declarations;
- (d) the decisions and declarations adopted by the Executive Committee established by the 1990 implementation convention, as well as other acts adopted.

The Protocol itself states that the cooperation between certain Member States since 1990 is now to become 'closer cooperation' within the meaning of that term in the new Treaty and the Schengen *acquis* is integrated into the framework of the European Union.

There followed the arduous task of finding a legal basis in the various Articles both of the TEU (third pillar) and of the EEC Treaty (first pillar) for all of the various parts of the Schengen *acquis*, duly set out in the Council Decision of 20 May 1999 (OJ L 176 of 10.7.1999, p. 17).

IV. THE ASSOCIATION OF NORWAY AND ICELAND

In Copenhagen on 12 July 1957, Denmark, Sweden, Finland, Norway and Iceland set up the Nordic Passport Union, which remains in force, eliminating passport controls at the internal borders of the five Nordic countries and establishing freedom of movement.

This meant that in 1996, when Denmark, Sweden and Finland signed the agreement on Schengen cooperation, Sweden, for example, became an external frontier within the 'Schengen' set-up, incompatible with the undertakings incumbent on the Nordic Passport Union, which had allowed the elimination of internal frontier controls between Sweden and Norway, which left the latter obliged to carry out external frontier controls. Sweden does not wish this situation to change.

These reasons explain the need for Norway and Iceland to become part of the intergovernmental 'Schengen' cooperation arrangements.

An association between thirteen Schengen signatory Member States and the Republic of Iceland and the Kingdom of Norway was therefore signed on 19 December 1996 in Luxembourg.

Association status allows these countries to take part in the decision-making procedure, express their points of view and submit proposals, although they do not have a right of vote. They are also obliged to implement any decision adopted.

However, with the entry into force of the Amsterdam Treaty, cooperation between the EU Schengen signatory Member States now has to be carried out within the institutional and legal framework of the European Union.

Faced with this degree of integration, Norway and Iceland asked for the intergovernmental nature of their association status to be upheld in the negotiations on the new association agreement provided for in Article 6 of the Schengen Protocol discussed at length above.

The Council of the Union signed the new association agreement with Norway and Iceland on 18 May 1999 (OJ L 176, 10.7.1999, p. 36) and it came into force on 26 June 2000. A Mixed Committee comprising representatives of the Iceland and Norwegian governments and of the EU's Council and Commission has been set up.

V. THE INITIATIVE OF THE KINGDOM OF SWEDEN DETERMINING WHICH PROVISIONS OF THE 1995 CONVENTION ON SIMPLIFIED EXTRADITION PROCEDURE AND OF THE 1996 CONVENTION RELATING TO EXTRADITION CONSTITUTE DEVELOPMENTS OF THE SCHENGEN ACQUIS

The purpose of this initiative is basically twofold:

(a) on the one hand, to determine that all the provisions of the EU Convention of 10 March 1995 on a simplified extradition procedure, and Articles 2, 6, 8, 9 and 13 of the EU

Convention of 27 September 1996 relating to extradition between the Member States constitute developments of the Schengen *acquis*, and are therefore applicable to the Republic of Iceland and the Kingdom of Norway, in accordance with the Agreement on the Association of the EU with these countries.

(b) and on the other hand, to provide for the abrogation of Article 66 of the Convention implementing the Schengen Agreement once the Simplified Extradition Convention comes into force, and of Article 61, Article 62(1) and (2), Article 63 and Article 65 of the Convention implementing the Schengen Agreement once the Extradition Convention comes into force.

It should be borne in mind that neither of the Extradition Conventions, despite the length of time that has passed, has been ratified by all the Member States and is therefore in force for them all. Neither Belgium, nor France, nor Ireland, nor Italy, nor Luxembourg, nor the UK has ratified either of the two Conventions, and Sweden, which has ratified the Simplified Extradition Convention, has not ratified the Extradition Convention.

Unfortunately, the recent terrorist attacks in the United States meant that the very first measure adopted at the Council of Justice and Home Affairs Ministers of 20 September last was to mobilise to the fullest possible extent the mechanisms provided for in both Conventions, and in the short term, replace the extradition procedure within the Union with a simple procedure for handing over the perpetrators of terrorist acts and other crimes, something your rapporteur has repeatedly called for, and was provided envisaged in Tampere Summit conclusion 35.

I hold the overall content of the Swedish initiative in high esteem, but am aware that the recent appalling terrorist attacks have unleashed a whole series of political decisions which will very shortly render all the current legislation on extradition completely obsolete. The two Union Conventions on extradition are going to be swept away and replaced by the straightforward mutual recognition of court sentences and the simple transfer of persons guilty of committing crimes, a step which will create a single European area for extradition.

For this reason, almost all my amendments seek to improve the wording of the decision from a technical point of view; I stress that in my view, the two paragraphs of Article 4 (amendments 10 and 11) are both superfluous and, from a legal point of view, dubious, since I do not think that a Council decision is the appropriate legal instrument to derogate the content of a Convention.