



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 26 October 2006

**10959/2/06
REV 2**

LIMITE

**CATS 130
COPEN 70
USA 58**

NOTE

From : Presidency
To : Delegations

No. prev. doc. : 10409/03 CATS 35 USA 58; 9163/04 CATS 20 USA 38; 5848/06 CATS 21
COPEN 11 USA 5

Subject : Status of ratification of EU-US Agreements of 25 June 2003 on extradition and of
bilateral instruments

1. On 6 June 2003 the Council decided to authorise the Presidency to sign the EU-US Agreements on extradition and mutual legal assistance. Twelve Member States made use 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. After their accession to the European Union, all ten new Member States made a similar statement. Apart from the three Member States (AT, FR and GR) which did not make a declaration under Article 24(5) TEU, according to the information available to the Presidency (see table set out in the annex), eleven Member States (DK, EE, ES, HU, LT, LV, MT, SE, SI, SK, and UK) do no longer need to go through a constitutional procedure with regard to the EU-US Agreements. Once all Member States concerned will have completed their constitutional procedures, the Presidency will recommend the Council to conclude the agreements. A second decision by the Council will

thus be required in order to conclude the agreements on behalf of the EU and to authorise the Presidency to exchange instruments of ratification with the United States of America. It is only on the first day of the third month following the exchange of instruments of ratification with the United States of America that the EU-US agreements will enter into force (see Articles 22 and 18 of the Agreements).

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 25 Member States have in the meantime signed such bilateral instruments with the United States, but according to the information available to the Presidency (see table set out in the annex), a majority of Member States (all except AT, DK, EE, ES, FR, LV (for the MLA Protocol), LT, HU, SE, SI and SK) still needs to go through the constitutional procedures with regard to these bilateral instruments.
3. The United States needs to go through a ratification procedure as well. On 29 September 2006, the US President transmitted the two EU-US Agreements + the bilateral instruments per Member State for ratification to the US Senate. Article 22 of the EU-US Agreement on extradition and Article 17 of the EU-US Agreement on mutual assistance require that the instruments of ratification of the EU-US Agreements indicate that the "steps referred to in Article 3", that is the "acknowledgment" in bilateral instruments of the way in which the EU-US Agreements will be applied, have been completed. It appears that all bilateral instruments which have been negotiated between the Member States and the United States contain a provision which stipulate that the bilateral instruments will, after completion of the necessary internal procedures, only enter into force at the same time as the EU-US Agreements. This implies that all ratification procedures with regard to the bilateral instruments will need to have taken place as well before the exchange of ratification instruments for the EU-US Agreements can take place.

4. Based on the information received from Member States, the attached table gives an overview of the type of bilateral instruments that have been signed with the United States of America and of the state of play with regard both to the EU-US agreements and the bilateral instruments. As soon as Member States have finalised their constitutional procedures with regard to the EU-US agreements and/or the bilateral instruments, they are invited to indicate this to the General Secretariat, to the attention of Mr Guy Stessens (guy.stessens@consilium.europa.eu, + 32 2 281.67.11).
-

COUNTRY	Title of instrument	Type of annex	Nature of the constitutional procedures regarding the EU-US Agreements	When do you expect to have gone through your constitutional procedures for the EU-US Agreements	Constitutional procedure required for bilaterals	When do you expect to have gone through your constitutional procedures for the bilaterals
Belgium	Instrument	consolidated	ratification by parliament	end of 2006	ratification by parliament	end of 2006
Czech Republic	Supplementary Treaty	non-consolidated	probably none - but no official decision has been taken yet	probably none - but no official decision has been taken yet	Parliamentary approval + Ratification by President of bilateral	autumn 2006
Denmark	Instrument	consolidated	none	OK	none	na
Germany	Supplementary Treaty	non-consolidated	Article 59(2) Constitution requires approval of Bundestag by an Act of Parliament	no prediction possible	Article 59(2) Constitution requires approval of Bundestag by an Act of Parliament	end 2006
Estonia	Instrument on MLA New Extradition Treaty	consolidated	Ratification by Parliament	done	Ratification by Parliament	18 October 2006: ratification by Parliament
Greece	Protocols to existing treaties	non-consolidated	NA	NA	Ratification by Parliament	hearing March 2006
Spain	Instrument	consolidated	ratified	done	ratified	done
France	Instrument	non-consolidated	NA	NA	simplified approval procedure, which has been notified to the US in April 2006	done
Ireland	Instrument	consolidated	approval by Dáil Éireann (the Lower House of Parliament)	Criminal Justice (Mutual Assistance) Bill, 2005 currently before Parliament - afterwards approval/ratification: autumn 2006	approval by Dáil Éireann (the Lower House of Parliament)	Criminal Justice (Mutual Assistance) Bill, 2005 currently before Parliament - afterwards approval/ratification: autumn 2006
Italy	Instrument	consolidated	Ratification by Parliament	No previsions	Ratification by Parliament	No previsions

COUNTRY	Title of instrument	Type of annex	Nature of the constitutional procedures regarding the EU-US Agreements	When do you expect to have gone through your constitutional procedures for the EU-US Agreements	Constitutional procedure required for bilaterals	When do you expect to have gone through your constitutional procedures for the bilaterals
Cyprus	Instrument	consolidated	Approval by Parliament	Beginning of July at the best, or after the summer vacations, in October, at the latest.	Approval by Parliament	Beginning of July at the best, or after the summer vacations, in October, at the latest
Latvia	MLA Protocol New Extradition Treaty	non-consolidated	Approval by Parliament	done (26/10/2005)	Ratification by Parliament	MLA Protocol has been ratified Extradition Treaty: pending
Lithuania	Protocols	non-consolidated	Ratification by parliament	Expected: First half 2006	Ratification by parliament	Expected: First half 2006
Luxembourg	Instrument	non-consolidated	Approval by Parliament	Approval Bill still under elaboration at the Ministry of Justice	Approval by Parliament	end 2006
Hungary	Protocol	non-consolidated	Protocols needed to be approved (ratified) by the Parliament.	done (6 February 2006)	Protocols needed to be approved (ratified) by the Parliament.	done (6 February 2006)
Malta	Treaties	consolidated	none	NA	Only an executive decision	end 2006
Netherlands	Agreement comprising Instrument	consolidated	Approval by Parliament	no prediction possible	approval by Parliament	no prediction possible
Austria	Protocols	non-consolidated	none	NA	Vote by Second Chamber of the Austrian Parliament on the Protocols. After that the instruments of ratification has been signed by the President.	done
Poland	Agreement on the application of ...	consolidated	ratification by parliament	no prediction made	ratification by parliament	beginning 2007

COUNTRY	Title of instrument	Type of annex	Nature of the constitutional procedures regarding the EU-US Agreements	When do you expect to have gone through your constitutional procedures for the EU-US Agreements	Constitutional procedure required for bilaterals	When do you expect to have gone through your constitutional procedures for the bilaterals
Portugal	Instrument	non-consolidated	Consultation of the Parliament	"within some months"	Approval for ratification by the Parliament (article 161 i) Portuguese Constitution) and ratification by the President of the Republic (article 135 b) Portuguese Constitution).	"within some months"
Slovenia	Agreement comprising Instrument	consolidated	ratified	done	ratified	done
Slovakia	Instruments	consolidated (for extradition)	none	NA	ratification by parliament	done
Finland	Treaty on MLA and Protocol to Extradition Treaty	non-consolidated	Approval by the Parliament	Government Bill has been submitted the Finnish Parliament in summer 2005. The Constitutional Committee and the Legal Committee of the Parliament are expected to give their opinions about the Agreements before they can be formally approved by the Parliament.	Approval by the Parliament	Autumn 2006, at the latest.
Sweden	Instrument	consolidated	ratified	done	ratified	done
United Kingdom	Instrument	consolidated	none	NA	to be laid before Parliament/ratification	after the 2003 US-UK Extradition Treaty has been ratified