



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 7 September 2004**

---

**Interinstitutional File:  
2003/0270 (CNS)**

---

**12099/04**

**LIMITE**

**COPEN 102**

**NOTE**

---

from : Presidency

to : Coreper

---

No. prev. doc. : 11591/04 COPEN 93

No. Cion prop. : 15221/03 COPEN 119 (COM (2003) 688 final)

---

Subject : Proposal for a Council Framework Decision on the European Evidence Warrant (EEW) for obtaining objects, documents and data for use in proceedings in criminal matters  
– Relation to the Association Agreement with Iceland and Norway on the implementation, application and development of the Schengen acquis.

---

**I INTRODUCTION**

Coreper examined on 2 September 2004 to which extent the draft Framework Decision on the European Evidence Warrant should be regarded as falling within the scope of the Association Agreement with Norway and Iceland on the implementation, application and development of the Schengen acquis and should be dealt with in "Mixed Committee" procedure under that Agreement. Proceedings took place on the basis of the note from the former Irish Presidency in 10937/04 COPEN 81 + COR 1(en) and of the Legal Service opinion in 11415/04 JUR 328 COPEN 91.

A majority of delegations were of the opinion that the draft Framework Decision should not be dealt with through "Mixed Committee" procedure. This would be in line with option 1 set out on page 10 of JUR 328.

SE/LU/DK/FI/EE would have preferred to apply the "Mixed Committee" procedure to the whole of the proposal, but could go along with option 2 set out on page 10 of JUR 328. SI also favoured option 2. That option implied that certain provisions would be dealt with in "Mixed Committee" procedure, others not.

The Commission maintained its position and thought that the whole proposal should be dealt with through "Mixed Committee" procedure.

Some delegations (FR/DE/AT) warned against option 2, which in their view would be complicated to apply. These delegations pointed to the possibility of making a separate agreement between the EU and Iceland and Norway, and referred to the ongoing negotiations with a view to concluding an agreement between the EU and Iceland and Norway on the surrender procedure between the Member States of the EU and Iceland and Norway.

It was concluded that the Presidency would make a proposal with a view to a decision by Coreper on the issue at its next meeting.

## II PRESIDENCY PROPOSAL

The Presidency aims at reaching the best possible solution on the substance while respecting the legal framework, including in particular the Association Agreement with Iceland and Norway. The application of the "Mixed Committee" procedure to the whole proposal is not a legally correct option. The two options available are set out on page 10 of JUR 328. The first option implies that the whole proposal is dealt with outside "Mixed Committee" procedure. The second option implies that certain provisions are dealt with through "Mixed Committee" procedure, other provisions not. The Presidency thinks that the application of the second option would complicate the negotiations, and would not be a good basis for expedient negotiations. The Presidency shares the view expressed by certain delegations that a better way forward is to explore the possibilities for making a separate agreement on the basis of Articles 24 and 38 TEU with Iceland and Norway on mutual recognition of evidence warrants, drawing on the provisions of the future Framework Decision.

The Presidency proposes on that basis the following:

1. The draft Framework Decision is not dealt with in "Mixed Committee" procedure.
2. The Presidency informs Iceland and Norway in accordance with the attached draft letter.
3. Once progress has been made on the draft Framework Decision, the Council will be invited to consider at the appropriate moment the opening of negotiations with Iceland and Norway in order to make the content of the Framework Decision applicable between these two States and the EU States on the basis of Articles 24 and 38 TEU, provided that Iceland and Norway are interested therein.

*Coreper is invited to agree to the above proposal.*

Draft letter from the Chairman of Coreper to the Ambassador of the Mission of Norway to the European Union, with copy to the Ambassador of the Mission of Iceland to the European Union

Brussels, xx September 2004

Dear colleague,

In your letter of 12 May 2004, you have supported the view of the Commission that the draft Framework Decision on the European Evidence Warrant (EEW<sup>o</sup> for obtaining objects, documents and data for use in proceedings in criminal matters constitutes a development of the Schengen acquis and should be dealt with in "Mixed Committee" procedure under the provisions of the Association Agreement with Iceland and Norway on the implementation, application and development of the Schengen acquis. You have asked for confirmation that the draft will be dealt with in "Mixed Committee" procedure.

Coreper has examined the question carefully on 2 and 8 September 2004. Coreper did not agree that the draft Framework Decision falls under the Association Agreement with Iceland and Norway, and decided that the "Mixed Committee" procedure should not be applied in respect of that draft.

This decision is due to legal considerations. However, Coreper considered that the possibilities for making a separate agreement with Iceland and Norway on the basis of Articles 24 and 38 TEU, drawing on the provisions of the Framework Decision which will be adopted by the Council in the future, should be fully explored. Provided that Iceland and Norway are interested therein, the Council will, once progress has been made on the Framework Decision, be invited to consider at the appropriate moment the opening of negotiations with Iceland and Norway for that purpose.

Yours sincerely