



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 18 June 2003

10618/03

LIMITE

**CATS 37
USA 60**

NOTE

From : Presidency
To : Article 36 Committee

No. prev. doc. : 8296/2/03 CATS 21 USA 30 REV 2; 9153/03 CATS 28 USA 41 + COR 1(fr) +
COR 2(fr,it,nl,en,el,es,pt) + COR 3(sv) + COR 4(da) + COR 5

Subject : Co-ordination of the Member States' position regarding the Agreements on
judicial cooperation with the USA

At the Council meeting on 6 June 2003, the Council authorised the Presidency to sign the EU-US Agreements on mutual legal assistance and on extradition. That decision, set out in doc. 8296/2/03 REV 2 CATS 21 USA 30 stipulates in its Article 2 that:

- "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 Agreement on Extradition and Article 3 (2) and (3) of the Agreement on Mutual Legal Assistance.

2. The Member States shall co-ordinate their actions pursuant to paragraph 1 within the Council."

The Presidency considers that these "written instruments" should be agreed as soon as possible. For instance, under the US constitutional rules, the US President will have to submit the EU-US agreements on extradition and on mutual legal assistance to the US Senate for ratification. In addition, the US President will have to submit the written instrument to be negotiated with all Member States to the US Senate and, obviously, the Senate will deal with this at one time. This means that the United States cannot start the ratification process as long as these bilateral "written instruments" have not been negotiated. The situation may be similar in some of the Member States.

The idea has been mooted that two model "written instruments" should be drawn up, one for extradition and one for mutual legal assistance by EU and US representatives. This model could then be used in the context of the bilateral negotiations between the United States and each individual Member State. Although these negotiations are bilateral negotiations, the Presidency considers that, for understandable practical reasons, after an exchange of a written text, these negotiations could take place at one time, for example at the premises of the Council of the European Union in Brussels. The Presidency considers that such an approach could facilitate the process.

Moreover, representatives of the US mission suggested that they could come to a meeting of the Article 36 Committee in a Brussels to expound their views on the bilateral "instruments" and, more generally, on EU-US judicial cooperation.

In the light of the above, the Presidency suggests that:

- 1) The Article 36 Committee agrees that the Presidency liaises with the United States in an attempt to draw up two joint model "written instruments".*
- 2) The JHA Counsellors are instructed to examine the preliminary drafts of such model written instruments.*

- 3) *The Article 36 Committee should study these drafts at a meeting during the Italian Presidency.*
 - 4) *The Presidency will invite US representatives in the margins of a meeting of the Article 36 Committee.*
-