Basic information

2003/2003(INI) INI - Own-initiative procedure	Procedure completed
EU/USA agreement on the judicial cooperation in criminal matters and extradition **Subject** 6.40.11 Relations with industrialised countries 7.30.20 Action to combat terrorism 7.40.04 Judicial cooperation in criminal matters **Geographical area** United States	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	HERNÁNDEZ MOLLAR Jorge Salvador (PPE-DE)	21/01/2003

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2477	2002-12-19
Justice and Home Affairs (JHA)	2489	2003-02-27
Justice and Home Affairs (JHA)	2504	2003-05-08
Justice and Home Affairs (JHA)	2514	2003-06-05

Key events

Date	Event	Reference	Summary
19/12/2002	Debate in Council		Summary
19/12/2002	Non-legislative basic document published	B5-0540/2002	
16/01/2003	Committee referral announced in Parliament		
27/02/2003	Debate in Council		Summary
08/05/2003	Debate in Council		Summary
20/05/2003	Vote in committee		Summary
20/05/2003	Committee report tabled for plenary	A5-0172/2003	
03/06/2003	Decision by Parliament	T5-0239/2003	Summary
03/06/2003	Results of vote in Parliament		

03/06/2003	Debate in Parliament		
03/06/2003	End of procedure in Parliament		
05/06/2003	Debate in Council		
18/03/2004	Final act published in Official Journal		

Technical information

Procedure reference	2003/2003(INI)
Procedure type	INI - Own-initiative procedure
Legal basis	Rules of Procedure EP 134o-p3
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/19095

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Non-legislative basic document		B5-0540/2002	19/12/2002	
Committee report tabled for plenary, single reading		A5-0172/2003	20/05/2003	
Text adopted by Parliament, single reading		T5-0239/2003 OJ C 068 18.03.2004, p. 0025-0140 E	03/06/2003	Summary

Council of the EU

Document type	Reference	Date	Summary
Document attached to the procedure	08295/1/2003	02/05/2003	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EU	Implementing legislative act	32003D0516 OJ L 181 19.07.2003, p. 0025-0026	06/06/2003	Summary
EU	Implementing legislative act	22003A0719(01) OJ L 181 19.07.2003, p. 0027-0033	25/06/2003	Summary
EU	Implementing legislative act	22003A0719(02) OJ L 181 19.07.2003, p. 0035-0042	25/06/2003	Summary

EU/USA agreement on the judicial cooperation in criminal matters and extradition

2003/2003(INI) - 03/06/2003 - Text adopted by Parliament, single reading

The European Parliament passed a resolution adopting the own-initiative report drafted by Jorge Salvador HERNANDEZ MOLLAR (EPP-ED, Spain) on the EU-US judicial cooperation agreement. (Please refer to the document dated 25/05/03). The resolution was adopted by 356 in favour, 63 against, and no abstentions Parliament stated that, since the agreements are the first agreements on extradition and judicial cooperation to be concluded between the EU as a whole and a third country, they must serve as a model for negotiations for any agreements to be concluded with other third countries. Given their scope and the fact that they affect the rights and freedoms of individual citizens, these agreements must be deemed by the Council to be 'basic choices' for the Union in terms of both foreign policy and judicial cooperation. Consequently, Parliament must be consulted pursuant to Articles 21, 34(2)(c) and 39(1) of the EU Treaty. Furthermore, simple information to Parliament during the ratification phase, which the Council referred to in the House, cannot be deemed satisfactory from either a political or a constitutional point of view. Parliament called on the Council as a matter of urgency to consult formally the European Parliament in the same way as the American authorities consult the US Congress. Parliament clearly stated that the judicial system of some US States does not offer the same level of guarantees that the ECHR and EU measures seek to provide for EU Member States. It is paradoxical to sign an agreement with the United States when several European Union citizens are still being held at the US military base at Guantßnamo Bay, quite unlawfully under both US and international law and without the slightest guarantee that they will receive a fair trial. The agreements should explicitly exclude every form of judicial cooperation with American exceptional and/or military courts and all discrimination should be abolished between European and American citizens which might arise from application of the Patriot Act and of the Homeland Security Act. Parliament also recommended that, with regard to the specific provisions of the draft agreement on extradition: -no request for extradition submitted by a third country should take precedence over a request for surrender from a Member State in the execution of a European arrest warrant; -Member States should ensure that, when faced with several competing extradition demands, they respect their obligations under the Rome Statute regarding surrender to the International Criminal Court; -EU applicant countries and associated states should align themselves with the EU common position on the International Criminal Court and on the processing of US requests for the signature of immunity agreements. Finally, Parliament expressed its concern about the procedure to be applied to data protection. There are no common principles on which to act with regard to the correct use of data, its integrity, and the rights of the data subject to rectification and erasure if the data are inaccurate. Since US legislation is not subject to verification for compliance with the principle of proportionality, a very detailed study should be made of the possible impact of US legislation, such as the Homeland Security Act, before the agreement is ratified. The agreements shouldprovide for data-protection guarantees that are at least equivalent to the provisions of the Council of Europe's Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data.

EU/USA agreement on the judicial cooperation in criminal matters and extradition

2003/2003(INI) - 08/05/2003

The Council took note of the position of Member States concerning the text of the Agreements between the European Union and the United States of America on extradition and on mutual legal assistance. The Presidency also informed delegations that the Justice and Home Affairs Council should take the decision authorising the Presidency to sign the draft Agreements at its next meeting on 5-6 June 2003, with a view to sign them in the context of the EU-US Summit which will be held on 25 June 2003 in Washington. It is recalled that, at its meeting on 28 February 2003, the Council decided to suspend negotiations on the draft text of the Agreements on mutual legal assistance and on extradition with the USA, in order to enable delegations to examine the texts at national level. Since the Council meeting, the Presidency has, in accordance with the Council decision, carried out negotiations with the USA on the text of the draft Explanatory Notes that will have to be agreed after the signing of the Agreements. A meeting with the US delegation was held on 3 and 4 April 2003 for that purpose. The agreement should supplement (not replace) bilateral agreements between the US and Member States of the EU, and should add value to such bilateral agreements and provide for the necessary guarantees for the protection of human rights and fundamental freedoms and respect the constitutional principles of the Member States.

EU/USA agreement on the judicial cooperation in criminal matters and extradition

2003/2003(INI) - 25/06/2003 - Implementing legislative act

Agreement between the European Union and the United States of America concerning extradition.

CONTENT: The Agreement seeks to enhance cooperation between the Union’s Member States and the US with the purpose of combating crime more effectively and thus to give their respective democratic societies and their common values greater protection.

This Agreement seeks to facilitate the extradition of individuals by specifying the type of offences for which extradition is to be carried out and laying down the technical conditions relating to extradition.

Among other things, the Agreement specifies:

- In case of sensitive information, the draft agreements allow to ask for consultations to determine the extent to which information, in a request, can be protected by the requested State.

- As far as competing requests are concerned, the agreements deal with the issue of a concurrence between an extradition request from the USA and one from another State, or when this other State is a Member State, a European Arrest Warrant.

The question of how to deal with concurrent requests for surrender from the International Criminal Court and extradition requests from the United States of America is therefore one which falls squarely within the exclusive competence of the Member States.

The Agreement, furthermore, contains a provision prohibiting any extradition to a country where the offence in question may be punished by the death penalty

EU/USA agreement on the judicial cooperation in criminal matters and extradition

2003/2003(INI) - 06/06/2003 - Implementing legislative act

PURPOSE: the conclusion of an agreement with the United States to strengthen judicial cooperation in mutual legal assistance and extradition.

LEGISLATIVE ACT: Council Decision 2003/516/EC concerning the signature of the Agreements between the European Union and the United States of America on extradition and mutual legal assistance in criminal matters.

CONTENT: In this Decision, the Council approves two agreements that aim to strengthen cooperation with the United States in the areas of mutual legal assistance and extradition.

The purpose of this cooperation is to be able to fight more effectively against transnational crime and terrorism in particular.

For details of the content of these agreements, please refer to the summaries of the two implementing acts of 25 June 2003.

EU/USA agreement on the judicial cooperation in criminal matters and extradition

2003/2003(INI) - 27/02/2003

The Council agreed that the presidency has conducted the negotiations efficiently, with an encouraging outcome. However, some delegations have expressed concerns on specific points. For the time being, the negotiation of the Agreement should be suspended, in order to allow time to examine all relevant aspects of the text, in order to take a final decision at the next meeting of the JHA Council. It possible, the Council could conclude the Agreement in May or June, after having involved the parliaments in the appropriate manner. This agreement will have two contracting parties : the EU and the USA. It is recalled that the EU, by virtue of articles 24 and 38 of the Treaty, can conclude agreements on extraditions and on mutual legal assistance. The agreement should supplement (not replace) bilateral agreements between the US and Member States of the European Union, and should add value to such bilateral agreements and provide for the necessary guarantees for the protection of human rights and fundamental freedoms and respect the constitutional principles of the member States. Some of the main subjects included in the draft agreement are the following : 1) Extradition : as regards the delays in handling of requests, the draft agreement alleviates legalisation and certifications requirements and simplifies documentation to be provided and improve channels of transmission, in particular in urgent cases concerning provisional arrest, and facilitates direct contacts between central authorities ; - Member States will not be able to continue to apply their grounds of refusal of their bilateral extradition treaties. Both parties respect the right to a fair trial by an impartial tribunal established pursuant to law ; - The draft agreement contains a provision that prohibits extradition if the death penalty will be imposed or executed ; - In case of sensitive information, the draft agreement allows to as for consultations to determine the extent to which information, in a request, can be protected by the requested State ; - As far as competing request, the agreement deals with the issue of a concurrence between an extradition request from the USA and one form another State, or when this other State is a Member State, a European Arrest Warrant. 2) the draft agreement improves co-operation in the area of investigations into financial elements of serious crime, including organised crime ; 3) it also contains practical cooperation by reducing delays in mutual assistance, and also allows for the creation of Joint Investigative teams and the possibilities of video-conferencing ; 4) member States will be able to continue to apply their grounds of refusal from the bilateral mutual legal assistance treaties or legal principles of domestic law ; - those Member States that at present do not have a mutual legal assistance treaty with the USA, may refer to their ordre public (security, sovereignty, or other essential interests of the requested State) in order o refuse communication information in certain cases ; - the agreement contains extensive provisions in relation the data protection and the provisions of the evidence and information. It is recalled that the need to coordinate action against the various forms of transnational crime and strengthen judicial cooperation has been raised a number of times in proceedings at the Council, particularly at the high-level meetings with the US and Canada. Furthermore, at its extraordinary meeting on 20 September 2001 immediately following the terrorist attacks in the US, the Council agreed on the necessity for the Union to speed up the process of creating an area of freedom, security and justice and to step up cooperation with its partners, especially in the US. More specifically, the Council agreed on the principle of proposing to the US that an agreement be negotiated between the EU and the US in the field of penal cooperation on terrorism.

EU/USA agreement on the judicial cooperation in criminal matters and extradition

2003/2003(INI) - 25/06/2003 - Implementing legislative act

Agreement between the European Union and the United States of America in the area of mutual legal assistance.

CONTENT: The Agreement seeks to enhance cooperation between the Union’s Member States and the US with the purpose of combating crime more effectively and thus to give their respective democratic societies and their common values greater protection.

The agreement improves co-operation in the area of investigations into financial elements of serious crime, including organised crime, terrorism and financial crime.

Those Member States that at present do not have a mutual legal assistance treaty with the USA, may refer to their public law and order (security, sovereignty, or other essential interests of the requested State) in order to refuse to communicate information in certain cases.

The agreement contains extensive provisions in relation to data protection and the provision of evidence and information.

The draft Agreement contains provisions enabling the use of joint investigative teams and the possibilities of videoconferencing between Member States and the United States. These provisions enable the Member States to use these possibilities, but do not oblige to use them.

EU/USA agreement on the judicial cooperation in criminal matters and extradition

2003/2003(INI) - 19/12/2002

Following a Presidency report on the negotiations which had been held with the USA on the draft Agreement on judicial cooperation on criminal matters and on extraditions, the Council instructed its relevant bodies to continue the examination of the draft Agreement with a view to reaching an agreement on the package at one of its forthcoming sessions. It is recalled that on 25 April 2002, the JHA Council approved a negotiation mandate to the Presidency and on 27 June 2002 COREPER established an Ad hoc Expert Group, which is to follow the negotiations and assist the Presidency during the negotiations. Several negotiation meetings between the USA and the EU have taken place until now on the EU/USA Agreement on judicial cooperation in criminal matters and on extradition and the negotiations are proceeding as planned. The preliminary discussion on all subjects covered by the negotiation mandate have been completed so far. The Council considers it essential to ensure that a agreement between the USA and the EU adds value to the existing cooperation between the USA and the Member States of the EU, which is based on bilateral agreements. This agreement will have two Contracting parties : the EU and the USA, which thus different from the contracting parties of the bilateral treaties on extradition and mutual legal assistance that exist between the Member States and the USA. This future EU-USA Agreement will therefore in no way modify these bilateral agreements, but it will supplement them. Some of the subjects contained in the negotiation mandate include the new forms of legal assistance, which modern technology has made possible, such as the exchange of information on bank accounts and video conferencing.