

20 December 2011

# Screening report

## Iceland

### Chapter 24 – Justice, freedom and security

**Date of screening meetings:**

Explanatory meeting: 14-15 April 2011

Bilateral meeting: 23-24 May 2011

## **I. Chapter content**

EU policies aim to maintain and further develop the Union as an area of freedom, security and justice. On issues such as external migration, asylum, border control, visas, judicial cooperation in criminal and civil matters, police cooperation, the fight against organised crime and terrorism, cooperation in the field of drugs and customs cooperation, the Member States need to be properly equipped to adequately implement the growing framework of common rules. Above all, this requires strong and well-integrated capacity within the law enforcement agencies and other relevant bodies to attain the necessary standards. A professional, reliable and efficient police organisation is of paramount importance. The Schengen *acquis* is an important part of the EU policies on justice, freedom and security.

Iceland is an associated member of the **Schengen Agreement** and has the required national legislation to implement this *acquis*. Iceland applies these provisions since March 2001.

## **II. Country alignment and implementation capacity**

This part summarises the information provided by Iceland and the discussion at the screening meetings.

Iceland stated that it implemented a range of provisions of the *acquis* falling under this chapter, notably the Schengen *acquis*. Iceland indicated that it could accept the *acquis* regarding justice, freedom and security. Iceland does not anticipate any difficulties in applying the full *acquis* by accession.

### **II.a. Migration**

Iceland stated that the concepts, rights, obligations and conditions of Icelandic legislation on migration were in many areas compatible with the EU *acquis*. Specific rules for family members of the EEA/EFTA citizens apply in accordance with the EU Directive 2004/38 on freedom of movement. Article 60 of the Icelandic Constitution provides for the possibility to appeal all administrative decisions to courts, including in this area.

As regards temporary residence permits, according to Article 11 of the Law on foreigners, a foreign national, in order to acquire this permit (among other conditions), has to give his consent to undergo a medical examination within two weeks of his arrival to Iceland. In the case of family reunification, persons depending on the sponsor may apply for a permanent residence permit after 4 years. There are specific legal provisions for students (Article 12 of the Law on foreigners). However, Iceland does not have specific legal provisions covering researchers. Iceland also has not incorporate provisions of the "blue card" Directive 2009/50. However, according to Icelandic legislation, a foreigner may be granted a residence permit based on the need for qualified professionals in specialised areas - "high qualified employment". Iceland stated that its legislation would also need to be aligned with the provisions of the Directive 2009/52 on minimum standards on sanctions and measures against employers of third-country nationals who stay in Iceland illegally.

According to Iceland, readmission agreements with third countries are compatible with the EU readmission agreements, as per joint declarations on Iceland and Norway attached to the EU agreements. Iceland does not see difficulties in implementing all EU readmission agreements by accession. However, Iceland considers that it would be a challenge to develop, test and implement databases in the migration field.

### **II.b. Asylum**

The EURODAC (2725/2000) and Dublin (343/2003) regulations have already been implemented in Iceland as a part of the Schengen *acquis* and are part of the Icelandic asylum procedure. Iceland stated that in a recent amendment to the Law on foreigners, subsidiary protection had been incorporated into the definition of a refugee or person eligible for international protection. According to the legislation, both refugees and persons granted the subsidiary protection enjoy equal rights:

- Residence permit for 4 years and travel documents;
- Access to education and work;
- Assistance provided from the welfare services;
- Right to family reunification.

As regards the appeal process, the Icelandic Directorate for Immigration takes the first instance decision, which can be appealed to the Ministry of Internal Affairs. According to the Constitution (Article 60), this administrative decision can be appealed to courts. Between 2003 and 2011, the Icelandic courts dealt with four such cases. In two of these, courts invalidated the first instance decision denying asylum. Thereafter, a new administrative process for these asylum cases was launched. In two other cases, courts upheld the first instance decision denying asylum.

### **II.c. Visa policy**

According to Iceland, its visa policy mirrors the EU approach as a result of its participation in Schengen. Iceland also stated that its visa facilitation agreements were in line with those of the EU. Iceland adopted the Regulation 1160/2010 implementing the new EU Visa Code. Technical preparations for the launch of the Visa Information System are also on track.

### **II.d. External borders and Schengen**

Iceland has been fully participating in Schengen since March 2001. The Icelandic implementation of the *acquis* as well as the practical operation in Iceland has been approved through the Schengen Evaluation of the Nordic countries carried out in 2005-2006.

### **II.e. Judicial cooperation in civil and criminal matters**

#### *Judicial cooperation in civil and commercial matters*

Iceland ratified and applies a range of international instruments relevant to the area of judicial cooperation in civil matters. Iceland stated that ratifications of the following instruments were underway:

- The Council of Europe Convention on adoption (2008);

The signing and ratification of the following instruments are under consideration:

- The Hague Convention of 1996 on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children;
- The Hague Convention of 2007 on the international recovery of child support and other forms of family maintenance and its Protocol on the law applicable to maintenance obligations.

According to Iceland, its legislation will not require amendments in order to implement the following regulations:

- The provisions of the Brussels I Regulation not included in the Lugano Convention, which do not conflict with Icelandic legislation, and thus will be directly applicable by accession;
- Regulation 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters;
- Regulation 1206/2001 on cooperation between courts of the Member States in the taking of evidence in civil and commercial matters.

Iceland stated that minor amendments to the national legislation might be advisable regarding the implementation of the following regulations:

- Regulation 593/2008 on the law applicable to contractual obligations (Rome I);
- Regulation 864/2007 on the law applicable to non-contractual obligations (Rome II);
- Regulation 1896/2006 creating a European order for payment procedure;
- Regulation 861/2007 establishing a European Small Claims Procedure.

Iceland expressed its concern that the Regulation 805/2004 creating a European enforcement order for uncontested claims would eliminate the possibility for Icelandic courts to refuse enforcement on the grounds of public policy, which is now possible under the Lugano Convention. In the context of emphasising the freedom of speech and press in Iceland, this causes concerns for Iceland in relation to libel or defamation cases.

As regards family law, Iceland stated that its legislation complied with international standards and contained provisions similar to the *acquis*. Regarding the visiting rights of parents, the district commissioner makes a decision in a dispute. This is an administrative decision, which may be appealed to a court.

On insolvency proceedings, Iceland stated that no provisions of its current legislation conflicted with the relevant EU regulations in this area. Iceland will be able to implement them by accession. In accordance with the Law on enforcement No 90/1989, an agreement following mediation before a court or other authority in Iceland is recognised and enforced. The same applies to agreements made before a foreign court, if Iceland has made such an obligation under public international law and that obligation is stipulated by law. However, as regards the Directive 2008/52 on certain aspects of mediation in civil and commercial matters, Icelandic law does not have specific provisions dealing with the enforcement of agreements reached by mediation. Therefore, according to Iceland, the Civil Procedural Code will have to be amended.

#### *Judicial cooperation in criminal matters*

In the area of the judicial cooperation in criminal matters, Iceland ratified and applies a range of international conventions. The main legislative basis for the judicial cooperation in criminal matters is the Law on the extradition of criminals and other assistance in criminal proceedings. The law implements Council of Europe conventions and protocols as well as relevant principles of the Schengen *acquis*.

Iceland stated that at the end of 2011 or in the beginning of 2012, the government planned to submit draft laws to the parliament on the:

- surrender procedure between the Member States of the European Union and Iceland and Norway (related to the European Arrest Warrant; currently under certain circumstances the European Arrest Warrant is recognised and enforced as a basis for detention);
- ratification of the Convention on simplified extradition procedure between the Member States of the European Union of 1995;
- ratification of the Convention relating to extradition between the Member States of the European Union of 1996.

According to Iceland, its legislation will have to be amended in order to comply with the following *acquis*:

- Directive 2010/64 on the right to interpretation and translation in criminal proceedings;
- Council Framework Decision 2005/214 on the application of the principle of mutual recognition of financial penalties;
- Council Framework Decision 2001/220 on the standing of victims in criminal proceedings;
- Directive 2004/80 relating to compensation to crime victims;
- Council Framework Decision 2003/577 on the execution in the European Union of orders freezing property or evidence;
- Convention 98/C 216/01 on driving disqualifications.

The Icelandic Criminal Code provides for the possibility of confiscation. Article 69 b (3-5) of the Code also provides for the need of a legal person to demonstrate that assets were acquired in a legal manner.

With regard to the practical judicial cooperation in criminal matters, Iceland has been actively participating in the European Judicial Network on criminal matters since 2004. Iceland has also been implementing an agreement with Eurojust since November 2005. Iceland pointed out that testing and implementation of databases related to criminal records (ECRIS) would be a challenge ahead of the accession.

## **II.f. Police co-operation and fight against organised crime**

### *Police cooperation*

The International Department of Icelandic police is responsible for international police cooperation. It covers the following main areas:

- Interpol National Central Bureau (NCB);
- Europol National Unit (ENU);
- Nordic Police and Customs Cooperation (PTN);
- Baltic Sea Task Force (BSTF);
- Sirene office.

Iceland has been implementing the operational agreement with Europol since 2001. In 2007, it established a liaison bureau to Europol. Iceland actively participates in international police cooperation, including several analytical work files of Europol. Iceland also actively uses the police cooperation in cases related to the collapse of Icelandic banks.

### *Fight against organised crime*

The Criminal Code and the Criminal Procedural Code are the basis of Icelandic legislation in the fight against organised crime. Drug trafficking is considered by Iceland to be the most serious aspect of organised crime in the country. Motorcycle gangs, human trafficking and organised groups of burglars and thieves are also elements of organised crime present in the country.

Iceland signed and ratified a range of international conventions and protocols in this area. The Ministry of the Interior is assessing whether legislative changes are necessary to implement the Prüm agreement. As extensive changes in databases are needed, Iceland stated that it expected to face technical challenges in preparing implementation of the Council Decision 2008/615 on stepping up cross-border cooperation, particularly in combating terrorism and cross-border crime. In order to ensure full compatibility of Icelandic legislation with the Council Framework Decision 2008/841 on the fight against organised crime, amendments will, according to Iceland, be necessary.

Trafficking in human beings is a criminal offence according to the Criminal Code Article 227a. In June 2011, a new law entered into force amending this Article and raising the punishment for trafficking to up to 12 years imprisonment. In the most serious cases, Article 226(2) (severe deprivation of liberty) will be applied together with Article 227. This would result in possible imprisonment for up to 16 years or life. In order to reduce demand, the purchase of sexual services was made illegal in April 2009 (Criminal Code Article 206(1-2)). As of 1 July 2010, striptease is also prohibited in Iceland. Clubs are also prohibited from making a profit from the nudity of their employees. Iceland has an action plan on human trafficking (since 2009). Police have special guidelines on identifying and interviewing possible victims of human trafficking. Both the police and the border control authority have received training and seminars on human trafficking, for example from Frontex and the OSCE.

The ratification process of the Council of Europe Convention against trafficking in human beings is in its final stages. Ratification is foreseen in early 2012. According to Iceland, its legislative provisions are largely compatible with Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims. In order to ensure full compatibility, some amendments are, according to Iceland, necessary. In practice, the Directorate of immigration provides individuals with the assistance of an interpreter, even if the legal provisions for such assistance are not in place. Iceland pointed out that this right needed to be strengthened in order to fully comply with Directive 2004/81 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

Regarding DNA analysis, Iceland has a national DNA profile database. Iceland uses international standards. Iceland is not a member of the DNA Working group of the European Network of Forensic Science Institutes. Iceland cooperates very closely with the Swedish National Laboratory of Forensic Science.

Iceland ratified the Council of Europe Convention on cybercrime. Upon ratification Iceland made a reservation as regards Article 9 on offences related to child pornography and does not apply Article 9(2)(b-c) of the Convention. Iceland noted that its courts had ruled that realistic images representing a minor fell under the scope of Article 210 of the Criminal Code on child pornography. Iceland pointed out that amendments to Article 210 of the Code regarding persons appearing to be minors would be submitted to the parliament in autumn 2011. According to Iceland, in all other aspects, Icelandic legislation is in line with the provisions of the Convention. Iceland also signed the optional protocol of the Convention and its ratification process is ongoing.

According to the Icelandic Criminal Code, sexual exploitation is a criminal offence. Iceland ratified the optional protocol to the Convention on the rights of the child, on the sale of children, child prostitution and child pornography. In order to ratify the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, amendments to its legislation are necessary. Iceland expects to ratify the Convention in 2012. According to Iceland, no legislative amendments are needed to implement the measures stipulated in the Council Decision 2000/375 to combat child pornography on the Internet. Iceland stated that its legislation was also largely compliant with the Council Framework Decision 2004/68 on combating the sexual exploitation of children and child pornography. Nevertheless, Iceland noted that to ensure full compatibility some amendments were necessary.

With regard to the Council Framework Decision 2005/222 on attacks against information systems, Iceland does not expect that there would be a need to make any amendments to its legislation. The same was said about the Directive 2006/24 on data retention, which was transposed by the telecommunication Law No 81/2003.

Iceland actively participates in international cooperation between Financial Intelligence Units (FIU). Iceland stated that they considered the capacity of their FIU sufficient both with regard to workflow and workload. Iceland stated that its capacity was under constant review and would be increased, if necessary.

## **II.g. Fight against terrorism**

Iceland has suffered no domestic terrorism incidents. However, it has international experience as regards prevention of terrorism. Furthermore, Iceland participates and supports a number of international initiatives contributing to the prevention of terrorism, e.g., the Global Initiative to Combat Nuclear Terrorism. Iceland ratified a range of international instruments in this area. Iceland did not ratify the following instruments:

- The Protocol amending the European Convention on the suppression of terrorism (2003);
- The Council of Europe Convention on the prevention of terrorism (2005);
- The Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism (2005).

UN Security Council resolutions are implemented by the international sanctions Law No 93/2008 and implementing regulations No 154/2009 and 122/2009. Articles 6, 100a, 100b and 100c of the Icelandic Criminal Code provide for substantive rules regarding terrorism. These provisions were inspired by the corresponding EU legislation. A number of other laws further support the legislative framework of Iceland in this area.

In order to fully comply with the *acquis* on counter-terrorism, Iceland considered that further changes, mainly to the Criminal Code and to the civil protection law No 82/2008, would be necessary. Developments on counter terrorism and implementation of the *acquis* by Member States in this area are followed closely by Iceland, due to the interest of Iceland to protect human rights and fundamental freedoms. With regard to the protection of critical infrastructure, the discussion is ongoing whether to include the Directive 2008/114 in the EEA Agreement.

## **II.h. Fight against drugs**

The main legal framework dealing with the fight against drugs is the Criminal Code, notably Article 173a, and the Law against dependence substances No 65 from 1974 (last amended in 2001). Iceland also had a national health plan aiming to reduce dependence and mortality from drugs use. The plan expired in 2010.

Iceland has ratified the following international conventions in this area:

- Single Convention on narcotic drugs (1961);
- Convention on psychotropic substances (1971);
- United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances (1988).

Iceland is actively involved in international efforts to counter drugs trafficking. In Iceland, each district chief of police is responsible for carrying out anti-drug policy and to launch investigations in the respective district. Two police regions have specialised drug investigation units. The police district of Sudurnes is also responsible for the Keflavik International Airport, which covers 95% of international passengers to/from Iceland. The drug unit of the Reykjavik Metropolitan Police acts as a national unit assisting the district police units across the country and has the main responsibility for international cooperation in this area.

## **II.i. Customs co-operation**

Iceland stated that it was ready to join relevant conventions (notably Naples II Convention) by the date of accession and expects that legislative amendments as well as investment into the customs IT infrastructure would be necessary.

## **II.j. Counterfeiting of the euro** (*see also screening report on chapter 32*)

The Icelandic Criminal Code includes provisions on forgery of money and other crimes related to currency. In Iceland, police are responsible for investigating cases of counterfeited currency. They also carry out forensic work, gather and distribute information on counterfeiting, cooperate with Interpol and Europol, work with the Central Bank of Iceland and other relevant institutions. Iceland stated that it fulfilled the criminal aspects as well as the requirement of a National Central Office contained in the 1929 international Convention on the suppression of counterfeiting. However, Iceland has still to ratify the convention itself.

### **III. Assessment of the degree of alignment and implementing capacity**

Iceland implements satisfactorily a range of provisions of the *acquis* falling under this chapter, notably the Schengen *acquis*. It also has sufficient administrative capacity to implement the *acquis* overall in this chapter. Iceland needs to ratify a number of international conventions and needs to set-up databases related to migration, Prüm, criminal records (ECRIS) and customs cooperation in time for accession. By the date of accession, Icelandic legislation needs to be amended in areas such as migration, asylum, judicial cooperation, police cooperation and the fight against organised crime in order to transpose fully the *acquis*.

#### **III.a. Migration**

In the area of migration, Icelandic legislation covers most of the issues addressed by the EU *acquis*. However, there are no provisions under the Law on foreigners that transpose the EU legislation on long-term residents (Directive 2003/109), and special provisions for researchers (Directive 2005/71).

Amendments to Icelandic legislation will also be necessary in the following areas:

- The EU *acquis* does not provide for the obligation of health check in order for a foreign national to obtain a temporary residence permit;
- Full alignment of Icelandic legislation with the following Directives: family reunification (2003/86), students (2004/114), as well as the Directive on minimum standards on sanctions and measures against employers of third-country nationals who stay illegally (2009/52);
- Full transposition of the EU Blue Card Directive (2009/50) is also necessary, as the provisions on the residence permit for highly qualified employment in the Icelandic legislation are not sufficient.

Once the legislation is amended in line with the EU *acquis*, Iceland has the capacity to implement it. Icelandic readmission agreements comply with existing EU readmission agreements. By accession, Iceland will have capacity to apply all EU readmission agreements.

In terms of international obligations, Iceland needs to ratify the UN Protocol against the smuggling of migrants (2000).

#### **III.b. Asylum**

Iceland's asylum legislation is not fully compatible with the *acquis*. As regards the Qualification Directive 2004/83, subsidiary protection is envisaged as part of the definition of refugees. From the list of rights granted to the beneficiaries of international protection, access to health care, accommodation and integration measures are missing. The notion of refugee status needs to be more clearly distinguished from that of subsidiary protection. The notions of persecution and protection are included in Icelandic legislation, but they are not fully aligned with the text of the Qualification Directive. The provisions on inadmissibility and withdrawing asylum status have to be further aligned with the Asylum Procedures Directive 2005/85. Detailed provisions on the right to be informed about the asylum procedure and on conducting interviews with asylum seekers are also not fully in line with the Asylum Procedures Directive.

### **III.c. Visa policy**

Iceland fully implements the EU visa policy *acquis*.

### **III.d. External borders and Schengen**

Since March 2001, Iceland has been fully participating in the Schengen zone in the framework of the agreement on the association of Iceland and Norway with the implementation, application and development of the Schengen *acquis*, which extended the cooperation previously put into place under the Nordic passport union. This association agreement constitutes the basis for Iceland's participation in the current Schengen Information System (SIS). Icelandic implementation of the *acquis* as well as the practical operation in Iceland was approved in the Schengen Evaluation of the Nordic countries carried out in 2005-2006. A new evaluation of Iceland is ongoing. The association agreement also constitutes the framework for Iceland's participation in SIS II, according to the terms of Council Regulation 1104/2008 and Council Decision 2008/839/JHA on migration from SIS 1+ to SIS II 1. In this context, Iceland will also participate in the establishment, operation and use of SIS II, according to the terms of the SIS II Regulation and Decision<sup>1</sup> once these instruments are applicable to the Member States.<sup>2</sup>

### **III.e. Judicial cooperation in civil and criminal matters**

In the area of cooperation in *civil and commercial matters*, Iceland has ratified and applies a range of international instruments. Several international conventions, notably the Council of Europe Convention on adoption (2008), the Child protection convention (1996) and the Child support convention (2007) and its protocol on applicable law need to be ratified.

Implementation of several regulations, notably on insolvency, evidence in civil and commercial matters, service of judicial and extrajudicial documents, and on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters will not require any changes to Icelandic legislation.

Implementation of the following *acquis* requires minor amendments to Iceland's legal framework:

- Regulation 593/2008 on the law applicable to contractual obligations (Rome I);
- Regulation 864/2007 on the law applicable to non-contractual obligations (Rome II);
- Regulation 1896/2006 creating a European order for payment procedure.

More substantial amendments are necessary as regards the Directive 52/2008 on certain aspects of mediation in civil and commercial matters.

Iceland expressed its concern that it would be deprived of the possibility to refuse recognition and enforcement of judgments from abroad under the Regulation 805/2004. According to the *acquis* the enforcement of a judgment from abroad can be sought either 1) under Regulation 44/2001 (Council Regulation on jurisdiction and the recognition and enforcement of

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<sup>1</sup> Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II).

<sup>2</sup> Once the necessary technical arrangements, notifications and decision making procedures referred to in Article 55 of the SIS II Regulation and Article 71 of the DIS II Decision have been completed by all parties concerned.

judgments in civil and commercial matters, "Brussels I Regulation"), which provides for a public policy as a refusal ground to recognition and enforcement or 2) under the Regulation 805/2004 creating a European enforcement order for *uncontested* claims, which does not provide for any public policy exception. Upon accession of Iceland to the EU, both Regulations will be applicable in Iceland. Under the Brussels I Regulation, Icelandic courts will be able to refuse the recognition and enforcement of judgment (e.g. issued in cases of defamation) on the basis of public policy exception under Article 34(1), which is to be invoked in exceptional cases. Additionally, it is important to note that that defamation cases should not fall under the European enforcement order in practice, since they are not uncontested claims to which the order applies. At the same time, the Commission is not aware of any application of public policy on defamation cases.

As regards family law, Icelandic legislation complies with international standards and the *acquis*. Regarding the visiting rights of parents, the district commissioner makes a decision in a dispute. This is an administrative decision, which may be appealed at a court. This is in line with the *acquis*.

On the insolvency proceedings, no provisions of current legislation conflict with the *acquis*. Iceland will be able to implement relevant regulations upon accession. However, as regards the Directive 52/2008 on certain aspects of mediation in civil and commercial matters, Icelandic law does not have provisions dealing with the enforcement of agreements reached through mediation. Therefore, the Civil Procedural Code will have to be amended.

Iceland has sufficient administrative capacity to be able to comply with and implement the *acquis* in this area in a short time.

Provisions of the Icelandic Regulation No 45/2008 are compatible with Directive 2003/8 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid. Domestic mechanisms are working well. Iceland will need to designate a competent authority responsible for legal aid in cross-border disputes.

Iceland actively participates in judicial cooperation in *criminal matters*, notably in the European Judicial Network in criminal matters since 2004. Iceland has also cooperated with Eurojust since 2005. Iceland uses cooperation in the scope of Eurojust actively, although a representative of Iceland is not posted to the agency.

In many areas, Icelandic legislation is in line with the *acquis*, notably with provisions related to Schengen. New legislation is under preparation to implement:

- The surrender procedure between the Member States of the European Union and Iceland and Norway (as per the agreement of 28 June 2006, currently under certain circumstances the European Arrest Warrant is recognised and enforced as a basis for detention);
- The Convention on simplified extradition procedure between the Member States of the European Union of 1995;
- The Convention relating to extradition between the Member States of the European Union of 1996;

Iceland still needs to ratify the 2001 second additional protocol of the Council of Europe Convention on mutual legal assistance in criminal matters, the 2005 Council of Europe

Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism, and the 1972 Convention on the transfer of proceedings in criminal matters. Minor legislative changes are required to comply with the Convention on driving disqualification.

Directive 2010/64 on the right to interpretation and translation in criminal proceedings provides for the right to translation of essential documents. This right is not currently guaranteed in Iceland. Also, Icelandic legislation does not provide for requests of compensation to crime victims submitted in countries other than Iceland and vice versa. Therefore, its legislation will need to be amended in order to comply with the Council Directive 2004/80.

The Icelandic law on international cooperation on enforcing criminal judgements requires dual criminality for enforcement. This is not in line with the Council Framework Decision 2005/214 on the application of the principle of mutual recognition to financial penalties. Icelandic legislation does not fully comply with the Council Framework Decision 2001/220 on the standing of victims in criminal proceedings.

As regards confiscation, the Icelandic Criminal Code in Article 69b (1-2) provides that (ordinary) confiscation can take place only for crimes "resulting in substantial gains" and that are punishable "with at least 6 years imprisonment." This provision strongly limits the use of confiscation procedures and is not compatible with the existing *acquis*. Article 2 of the Framework Decision 2005/212 obliges Member States to enable confiscation for all crimes punishable with at least 1 year imprisonment and does not require that such crimes result in substantial gains. Additionally, Iceland needs to amend its legislation to fully comply with the Council Framework Decision 2003/577 on the execution in the European Union of orders freezing property or evidence.

Regarding horizontal judicial cooperation in civil, commercial and criminal matters, Iceland is still not a member of several EU judicial networks. In preparing for its accession, the Ministry of Justice could usefully recommend for the appropriate judicial authorities to become observer members of the European Judicial Training Network, the European Network of Councils for the Judiciary, the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union, the Network of the Presidents of the Supreme Judicial Courts of the European Union, the Network of the General Prosecutors of the Supreme Judicial Courts of the European Union. Additionally, the participation of the Ministry of Justice in the Network for Legislative Cooperation between the Ministries of Justice of the European Union would be of benefit to Iceland when incorporating EU legislation into national law.

### **III.f. Police co-operation and fight against organised crime**

#### *Police cooperation*

Iceland is actively involved in the international police cooperation via Interpol, Europol or through Schengen arrangements. It has sufficient capacities to effectively and efficiently contribute to such cooperation.

With regard to the implementation of the Council Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, Iceland has notified the Commission about its level of implementation.

## *Fight against organised crime*

In the area of the fight against organised crime, Iceland has ratified and implements a number of international instruments. The following conventions and protocols need to be ratified:

- The Protocol to the 2001 cybercrime convention;
- The Protocol to the 2004 UN Convention against transnational organised crime on smuggling of immigrants;
- The Protocol to the 2004 UN Convention against transnational organised crime on trafficking in firearms;
- The 2005 Council of Europe Convention against trafficking in human beings;
- The 2005 Warsaw Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism;
- The 1996 child protection Convention;
- The 2007 child support Convention and its protocol on applicable law;
- The 2007 Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse.

Prior to exchanging personal data under the Prüm Agreement and the Council Decision 2008/615 on stepping up cross-border cooperation, particularly in combating terrorism and cross-border crime, Iceland needs to incorporate into its legislation the data protection provisions in chapter 6 of this Decision. Iceland needs to have in place appropriate national law to ensure the smooth exchange of information in accordance with the Decision. This refers for example to appropriate rules for to follow-up a "hit" of anonymous DNA or fingerprint profiles, to establishing the required national contact points or to rules to confer executive powers to a seconding Member State's officer in a joint operation. Iceland will also need to adapt its databases. Implementing the required changes to the databases ahead of the accession might be a challenge for Iceland.

In relation to the Council Framework Decision 2008/841 on the fight against organised crime, amendments will be necessary, notably regarding the concept of a criminal organisation and the rules on jurisdiction as regards offences for the benefit of a legal person established in a Member State.

Transposition of the obligations arising from the Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims will necessitate the following amendments:

- Article 227a of the Criminal Code needs to be amended as regards ensuring that exploitation of criminal activities falls under its scope and that offences committed by a public official are clearly seen as an aggravating factor;
- The rights of victims and witness protection need to be strengthened.

Icelandic legislation is largely in line with the Directive 2004/81 on residence permits issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Legal provisions on the right to have an interpreter are however necessary.

According to the Icelandic Criminal Code, sexual exploitation of children is a criminal offence. Icelandic legislation is aligned with the Council Decision 2000/375 to combat child

pornography on the Internet. However, in order to comply fully with the Council Framework Decision 2004/68 on combating the sexual exploitation of children and child pornography amendments are necessary. The Commission underlines the need to raise the punishments provided under the legislation for certain offences; to establish jurisdiction as regards offences committed for the benefit of a legal person established in a Member State; and to include aggravating factors as regards child prostitution.

Iceland complies with the provisions of the Council Framework Decision 2005/222 on attacks against information systems and the data retention Directive 2006/24.

There is good cooperation between the various bodies dealing with anti-money laundering in Iceland. Iceland also actively cooperates internationally with the Financial Intelligence Units. In terms of the capacities of the Icelandic Financial Intelligence Unit, the Commission is concerned whether one member of staff of this unit will be able to cope with the workload upon accession. At this stage, Iceland is able to fulfil its obligations in this area. The FIU is able to draw on additional resources from other departments as needed.

Iceland's preparedness in the field of the fight against money laundering should be read in connection with its performance in applying relevant aspects covered by the *acquis* under Chapter 4 – *Free movement of capital*.

### **III.g. Fight against terrorism**

Iceland's policy and legislative frameworks are broadly in line with the EU *acquis*. The provisions of the Criminal Code are largely in line with the Framework Decision 2002/475 on combating terrorism. However, further legislative amendments will be necessary to comply fully with the Decision, notably on the definition of terrorism, which, in the case of the Icelandic legislation, does not include certain terrorist offences, such as manufacturing and handling of weapons and explosives for terrorist purposes or offences relating to a terrorist group or linked to terrorist activities. Legislation also needs to be aligned with the Directive 114/2008 on the European critical infrastructure.

The following international instruments need to be ratified by Iceland:

- The Protocol amending the European convention on the suppression of terrorism (2003);
- The Council of Europe Convention on the prevention of terrorism (2005);
- The Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism (2005).

Iceland has adequate capacities to deal with this issue. It is active in international fora and law enforcement cooperation contributes to the fight against terrorism.

### **III.h. Fight against drugs**

Iceland has been active in the law enforcement cooperation in the fight against drugs. Its legislative framework is inline with EU standards and its capacities are sufficient to cope with this phenomenon. Iceland will need to ensure full participation in the activities of the European Monitoring Centre for Drugs and Drug Addiction by the date of accession. Iceland

is in the process of revising its pharmaceutical strategy expiring in 2012, which should also cover alternative medicines and illegal use of drugs.

### **III.i. Customs co-operation**

Iceland still needs to ratify the Naples II Convention on mutual assistance and co-operation between customs administrations. In this context, updates to its customs IT infrastructure could prove a challenge ahead of accession.

### **III.j. Counterfeiting of the euro**

Iceland has sufficient legal basis to penalise counterfeiting of money. Considering the comparatively low risk of counterfeiting due to the limited cash circulation, there is also an adequate level of police capacity. Prior to accession Iceland needs to ratify the 1929 Geneva Convention for the suppression of counterfeiting currency.