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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	6255/23; 6253/23
Subject:	Proposal for a DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on an authorisation addressed to France to negotiate a bilateral agreement with Algeria on matters related to judicial cooperation in civil and commercial matters Proposal for a COUNCIL DECISION on an authorisation addressed to France to negotiate a bilateral agreement with Algeria on matters related to judicial cooperation concerning family law matters - Comments from BE, FR, IT

Delegations will find in Annex the BE, FR, IT delegations' comments and drafting suggestions on the above proposals.

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I. BELGIUM

The Belgian delegation wishes to share the following comment over the two Proposals regarding a bilateral agreement between France and Algeria (6253/23 and 6255/23).

During the last meeting of the Working Party on Civil Law Matters on 12th May, it was argued by the Commission that article 2, 1st paragraph of the TFEU cannot be the legal basis for these proposals because it does not constitute a procedural legal basis. We would appreciate some more explanation on this concept of “procedural legal basis,” as the jurisprudence does not seem to provide sufficient guidance.

II. FRANCE

Objet : Commentaires et propositions rédactionnelles des autorités françaises sur les propositions de décisions relatives à un accord bilatéral entre la France et l'Algérie – Note des autorités françaises

Réf. : Proposition de décision du Parlement européen et du Conseil relative à l'autorisation octroyée à la France de négocier un accord bilatéral avec l'Algérie sur des questions liées à la coopération judiciaire en matière de droit de la famille (COM(2023) 64 final) ; Proposition de décision du Parlement européen et du Conseil relative à l'autorisation octroyée à la France de négocier un accord bilatéral avec l'Algérie sur des questions liées à la coopération judiciaire en matière civile et commerciale (COM(2023) 65 final)

En réponse à l'invitation de la présidence suédoise aux délégations de transmettre des commentaires écrits et propositions rédactionnelles sur les propositions de décisions du Parlement européen et du Conseil relatives à un accord bilatéral entre la France et l'Algérie, les autorités françaises souhaitent faire valoir les éléments ci-dessous.

Article premier

Première directive de négociation relative à la participation de la Commission européenne aux négociations

Les autorités françaises souhaitent que la terminologie de l'article 7 des règlements n°664/2009 et 662/2009 soit reprise, à savoir « informer l'Algérie que la Commission européenne ~~participera~~ **pourra participer** aux négociations en qualité d'observateur et sera tenue informée des progrès réalisés et des résultats obtenus au cours des différentes étapes desdites négociations ».

Deuxième directive de négociation relative à l'adhésion de l'Algérie aux conventions de La Haye

Les autorités françaises rappellent qu'elles ont encouragé autant que possible le multilatéralisme et ont fait de nombreuses démarches pour inciter l'Algérie à adhérer aux principales conventions de la Conférence de La Haye. Néanmoins, l'Algérie a confirmé, par note verbale du 14 février 2021, qu'elle n'envisageait pas une telle adhésion dans un avenir proche. Les autorités françaises souhaitent que la tournure de la directive soit formulée de manière plus positive, à savoir : « encourager l'Algérie à envisager l'adhésion aux principales conventions élaborées par la Conférence de La Haye de droit international privé et à entamer ~~une analyse sérieuse des raisons~~ **une analyse des moyens les plus appropriés pour lever les obstacles** qui l'en ont empêchée jusqu'à présent; »

Troisième directive de négociation relative à l'autorisation du Conseil de l'UE pour conclure l'accord

Les autorités françaises n'ont pas de commentaires et propositions rédactionnelles sur cette directive de négociation.

Quatrième directive de négociation relative à la durée de validité de la convention

Les autorités françaises rappellent tout d'abord qu'elles partagent pleinement l'avis de la Commission en ce qu'il convient, autant que possible, d'inscrire la coopération civile et commerciale avec les États tiers dans un cadre multilatéral, en particulier celui offert par la Conférence de la Haye de droit international privé. Néanmoins, depuis 2016, les autorités françaises souhaitent obtenir l'autorisation de la Commission pour regrouper en un seul instrument des stipulations éparses contenues dans différents instruments datant des années soixante¹, tout en les modernisant et en alignant les mécanismes prévus sur les standards européens. Une convention d'une durée de validité limitée de seulement 5 ans, qui plus est sans mécanisme de reconduction tacite, pourrait avoir un impact sur la tenue des négociations avec l'Algérie.

¹ Protocole judiciaire du 28 août 1962, convention franco-algérienne relative à l'exequatur et à l'extradition du 27 août 1964 et échange de lettres du 18 septembre 1980.

Lors de la demande d'habilitation pour négocier, les autorités françaises ont indiqué à la Commission qu'elles prévoyaient d'intégrer une clause selon laquelle les dispositions de la convention n'auraient plus vocation à s'appliquer dans l'hypothèse où l'Algérie deviendrait Partie à une convention multilatérale à laquelle la France est déjà Partie et ayant le même champ d'application. Cette solution a déjà été retenue par la Commission dans sa décision du 30 janvier 2017 relative à l'autorisation de la Commission adressée au Royaume de Belgique en application des dispositions transitoires de l'article 12, paragraphe 2, du règlement n°664/2009². Cette décision ne prévoyait pas de durée limitée pour cette convention bilatérale belgo-marocaine relative à la reconnaissance et l'exécution des décisions en matière d'obligations alimentaires.

Afin d'encourager le multilatéralisme, les autorités françaises proposent que la convention contienne à la fois un mécanisme de **reconduction tacite à échéance régulière** et une clause de dénonciation ou de remplacement directe similaire à celle décrite dans les règlements 664/2009 et 662/2009 en cas d'accord UE-Algérie ou d'adhésion de l'Algérie aux Conventions de La Haye.

La direction de négociation pourrait être rédigée de cette façon : « informer l'Algérie que l'autorisation du Parlement européen et du Conseil de l'Union européenne de conclure l'accord, sur proposition de la Commission, peut disposer que l'accord est susceptible d'avoir une durée de validité limitée (~~par exemple cinq ans~~) **avec reconduction tacite et de devoir être réexaminé ultérieurement** ; »

Cinquième directive de négociation relative à la circulation des décisions algériennes exequaturées en France au sein des autres Etats membres

Sans s'opposer à cette directive, les autorités françaises suggèrent de la supprimer pour des raisons de clarification et pour éviter toute interprétation *a contrario* par rapport à de précédentes conventions bilatérales conclues avec d'autres Etats tiers ne contenant pas de clause similaire.

Sixième directive de négociation relative aux dispositions en matière de refus de signification ou notification des actes

² C(2017) 394 FINAL.

Les autorités françaises souhaitent que la solution de compromis qui s'est dégagée lors de la réunion du groupe de droit civil – affaires générales du 5 avril 2023, faisant référence de manière plus globale à l'acquis de l'Union, soit reprise dans la directive de négociation. Les autorités françaises veilleront à ce que les dispositions de l'accord soient alignées avec les règlements européens et souhaitent retenir cette nouvelle proposition rédactionnelle : « **veiller à ce que les dispositions de l'accord négocié avec l'Algérie soient conformes à l'acquis de l'Union** ; ». Elles rappellent qu'un contrôle pourra en tout état de cause être exercé lors de l'examen de la décision autorisant la France à conclure l'accord.

Septième directive de négociation relative à d'autres éventuelles directives de négociation

Les autorités françaises n'ont pas de commentaires ou de propositions rédactionnelles sur cette directive de négociation.

Article 2 et suivants

Les autorités françaises n'ont pas de commentaires ou de propositions rédactionnelles sur ces articles.

Courtesy translation

In response to the Swedish Presidency's invitation to delegations to submit written comments and drafting proposals on the proposals for decisions of the European Parliament and of the Council on a bilateral agreement between France and Algeria, the French authorities wish to make the following points.

Article 1

First negotiating guideline on the participation of the European Commission in the negotiations

The French authorities would like the wording of Article 7 of Regulations 664/2009 and 662/2009 to be taken over, namely: “inform Algeria that the European Commission ~~shall take part~~ **may participate** in the negotiations as an observer and will be informed of any progress and results achieved during the various stages of the negotiations;”

Second negotiating guideline on the accession of Algeria to the Hague Conventions

The French authorities recall that they have encouraged multilateralism as much as possible and have taken numerous steps to encourage Algeria to accede to the main Hague Conference Conventions. Nevertheless, Algeria confirmed, in a *note verbale* dated 14 February 2021, that it was not considering such accession in the near future. They would like the Directive to be worded more positively, namely: “encourage Algeria to consider accession to the core Conventions concerning family law matters developed by the Hague Conference on Private International Law and ~~start a serious analysis of the reasons~~ **initiate an analysis of the most appropriate means** which has prevented Algeria to do so for the time being;”

Third negotiating guideline on the authorisation of the EU Council to conclude the agreement

The French authorities have no comments or drafting proposals on this negotiating guideline.

Fourth negotiating guideline on the period of validity of the Convention

First of all, the French authorities point out that they fully share the Commission's view that civil and commercial cooperation with third countries should, as far as possible, take place in a multilateral framework, in particular that offered by the Hague Conference on Private International Law. Nevertheless, since 2016, the French authorities have been seeking authorisation from the Commission to bring together in one instrument the three already existing instruments of judicial cooperation between France and Algeria³, while modernising them and bringing the mechanisms provided for into line with European standards. A convention with a limited period of validity of only 5 years, all the more so without a tacit renewal mechanism, could have an impact on the conduct of negotiations with Algeria.

At the time of the request for authorisation to the Commission, the French authorities indicated that they planned to include a clause to the effect that the provisions of the Convention would no longer apply if Algeria were to become Party to a multilateral convention to which France is already Party and which has the same scope of application. This was also the solution adopted by the Commission in its decision of 30 January 2017 on the Commission's authorisation to the Kingdom of Belgium under the transitional provisions of Article 12(2) of Regulation No 664/2009. This decision did not provide for a limited duration for this Belgian-Moroccan bilateral convention on the recognition and enforcement of decisions in matters relating to maintenance obligations.

In order to encourage multilateralism, the French authorities propose that the agreement should contain a mechanism for tacit renewal at regular intervals and a direct denunciation or replacement clause similar to that described in Regulations 664/2009 and 662/2009 in the event of an EU-Algeria agreement or Algeria's accession to the Hague Conventions.

³ Concluded in 1962, 1964 and 1980.

The negotiating guideline could read: « inform Algeria that the authorisation from the Council of the European Union to conclude the agreement, following a proposal from the Commission, may provide that the agreement may have a limited validity in time (~~for instance, five years~~) **with tacit renewal** and ~~may have to be reconsidered afterwards;~~”

Fifth negotiating guideline on the circulation of Algerian judgments enforceable in France within other Member States

Without opposing this directive, the French authorities suggest deleting it for reasons of clarification. The aim is to avoid any *a contrario* interpretation in relation to previous bilateral conventions concluded with other third countries that do not contain a similar clause.

Sixth negotiating guideline on the provisions on refusal of service of documents

The French authorities would like the compromise solution that emerged at the meeting of the Civil Law - General Affairs Group on 5 April 2023, referring to the Union acquis, to be included in the negotiating directive. The French authorities will ensure that the provisions of the agreement are aligned with the European regulations and wish to retain this drafting proposal: "**to ensure that the provisions of the agreement negotiated with Algeria comply with the EU acquis;**". They point out that this control may be exercised when the decision authorizing France to conclude the agreement is examined.

Seventh negotiating guideline on other possible negotiating guidelines

The French authorities have no comments or drafting proposals on this negotiating directive.

Article 2 and following

The French authorities have no comments or drafting proposals on these articles.

III. ITALY

Introduction:

The two proposals for decisions authorising France to negotiate a bilateral agreement with Algeria relating to judicial cooperation in civil, commercial and family law matters, could be increased by further provisions in consideration of some critical issues arising from the reports to which the drafted texts are attached, i.e.:

- a) the condition that the negotiation of the agreements shall not constitute an obstacle to the Union's implementation;
- b) the fact that the authorisations have to be considered exceptional;
- c) the need the bilateral agreements are inspired by the principles of the EU *acquis*;
- d) the need to avoid, limit or eliminate any possible incompatibilities between the Union law and the bilateral agreements provisions.

For this purpose, the proposals could be increased with some provisions indicated in bold; the suggestions reflect certain provisions contained in the following legislative texts following those already included in the below listed documents and in the subsequent footnotes:

- the Regulation (EC) No 662/2009 of the European Parliament and of the Council of 13 July 2009 establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries on particular matters concerning the law applicable to contractual and non-contractual obligations;
- the Council Regulation (EC) No 664/2009 of 7 July 2009 establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries concerning jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, matters of parental responsibility and matters relating to maintenance obligations, and the law applicable to matters relating to maintenance obligations;
- the Regulation (EC) No 847/2004 of the European Parliament and of the Council of 29 April 2004 on the negotiation and implementation of air service agreements between Member States and third countries; Corrigendum to Regulation (EC) No 847/2004 of the European Parliament and of the Council of 29 April 2004 on the negotiation and implementation of air service agreements between Member States and third countries;

- The Decision (EU) 2020/854 of the European Parliament and of the Council of 18 June 2020 empowering Italy to negotiate and conclude an agreement with Switzerland authorising cabotage operations in the course of the provision of international road passenger transport services by coach and bus in the border regions between the two countries;
- The Decision (EU) 2020/853 of the European Parliament and of the Council of 18 June 2020 empowering Germany to amend its bilateral road transport agreement with Switzerland with a view to authorising cabotage operations in the course of the provision of international road passenger transport services by coach and bus in the border regions between the two countries;
- The Decision No 994/2012/EU of the European Parliament and of the Council of 25 October 2012 establishing an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy;
- The Vienna Convention on the Law of Treaties.

Proposal drafting suggestions:

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on an authorisation addressed to France to negotiate a bilateral agreement with Algeria
on matters related to judicial cooperation in civil and commercial matters

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular
Article 81(2) thereof,

Having regard to the proposal from the European Commission,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) By letter of 8 December 2016 France requested the Commission to be authorised to negotiate a bilateral agreement with Algeria in matters related to judicial cooperation in civil and commercial matters. The aim was to modernize and consolidate the three existing bilateral agreements of 1962, 1964 and 1980 currently into force.

(2) France provided information showing that it has a specific interest in negotiating a bilateral agreement with Algeria, due to the exceptional economic, cultural, historical, social and political ties between France and Algeria.

(3) In particular, France provided data on the high number of Algerian citizens residing on its territory and French citizens living in Algeria and on the specific importance of commercial exchanges between the two countries.

(4) Relations between the EU and Algeria are based on the Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part¹ which entered into force in 2005. This constitutes the legal framework governing relations between the parties in economic, commercial, political, social, and cultural matters.

(5) Article 85 of the Euro-Mediterranean Agreement stipulates that cooperation in the legal and judicial fields is essential and a necessary adjunct to the other forms of cooperation between the EU and Algeria and that such cooperation may include, where appropriate, the negotiation of agreements in these fields.

(6) The EU relationship with third countries in matters related to judicial cooperation in civil and commercial matters relies on the legal framework developed by The Hague Conference on Private International Law, in accordance with the principle of multilateralism. However, Algeria is not a Member of The Hague Conference on Private International Law and has so far refused to accede to its core conventions.

(7) Notwithstanding this, the draft agreement appears to be largely inspired by the system established by the Hague Conventions and by the EU legislation adopted on the same matters.

(8) Most of the matters to be dealt with in the draft agreement between France and Algeria affect the EU acquis. Consequently, the matters covered by such international commitments fall within the Union's exclusive external competence. Member States may negotiate, or enter into, such commitments only if empowered to do so by the Union in accordance with Article 2(1) of the Treaty on the Functioning of the European Union (TFEU) in conjunction with the substantive legal basis of Article 81(2) TFEU.

¹ Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part, OJ L 265, 10.10.2005, p. 1–228

(9) Due to the EU competence on most of the matters, France should regularly report to the Commission on the conduct of negotiations. Both France and the Commission will keep the Working Party on Civil Law Matters informed on developments on a regular basis.

(10) There are no indications that the future agreement would necessarily negatively affect the *acquis*. It is appropriate, however, to provide for directives of negotiation ensuring to minimize the risk of such negative effects.

(11) In order to ensure that the negotiated agreement does not constitute an obstacle to the implementation of the Union's external policy on judicial cooperation in civil and commercial matters, the agreement should provide either for its full or partial denunciation in the event of the conclusion of a subsequent agreement between the Union or the Union and its Member States, on the one hand, and the same third country, on the other hand, on the same subject matter, or for a direct replacement of the relevant provisions of the agreement by the provisions of such subsequent agreement².

(12) In order to safeguard the effectiveness and the integrity of the European Union's law, the provisions of the agreement should not have discriminatory effects against other citizens of the Union;

² The inserted text follows the recital n. 19 of the *Regulation (EC) No 662/2009 of the European Parliament and of the Council of 13 July 2009 establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries on particular matters concerning the law applicable to contractual and non-contractual obligations* and of the *Council Regulation (EC) No 664/2009 of 7 July 2009 establishing a procedure for the negotiation and conclusion of agreements between Member States and third countries concerning jurisdiction, recognition and enforcement of judgments and decisions in matrimonial matters, matters of parental responsibility and matters relating to maintenance obligations, and the law applicable to matters relating to maintenance obligations*.

According to the draft of Regulations (EC) n. 662/2009 and 664/2009, the inclusion of the clause providing either for the possibility of total or partial denunciation of the agreement, is one of the strict conditions to be respected in order to issue the relative authorisation to negotiate and conclude international agreements with third countries in their respective fields of application.

The total or partial denunciation of the treaty, entailing its extinction and releasing the parties from the obligation to keep applying it, would avoid incompatibilities and contrasts with the obligations that could possibly arise from a subsequent agreement signed between the same third country and the Union.

The inclusion of such a clause also recalls the art. 56 of the Vienna Convention on the law of the treaties, to which Algeria has acceded.

HAVE ADOPTED THIS DECISION:

Article 1

France is hereby empowered to negotiate an agreement with Algeria on matters related to judicial cooperation in civil matters, provided that the following negotiating guidelines are followed:

- inform Algeria that the European Commission shall take part in the negotiations as an observer and will be informed of any progress and results achieved during the various stages of the negotiations;
- encourage Algeria to consider accession to the core Conventions developed by the Hague Conference on Private International Law and start a serious analysis of the reasons which has prevented Algeria to do so for the time being;
- inform Algeria that, after the conclusion of negotiations, an authorisation from the European Parliament and the Council of the European Union is required before the Parties are allowed to conclude the agreement;
- inform Algeria that the authorisation from the European Parliament and the Council of the European Union to conclude the agreement, following a proposal from the Commission, may provide that the agreement may have a limited validity in time (for instance, five years) and may have to be reconsidered afterwards;
- ***ensure that Member State conducting negotiations takes account of Union law and broader Union interests³***;
- ***ensure that the agreement provisions do not constitute an obstacle to the implementation of the Union's external policy on the matters covered by the agreement***;
- ***ensure that the agreement provisions do not entail, for the concerned Member State, the adoption of discriminatory measures between Union citizens***;

³ The rule follows the “whereas” n. 8 of the Regulation (EC) No 847/2004 of the European Parliament and of the Council of 29 April 2004.

- insert a provision to the effect that the decisions recognised in France under this agreement cannot subsequently circulate in other EU Member States;
- ensure that the provisions concerning the right to refuse the service of documents are aligned with the provisions of Article 12(3) of the Service of Documents recast Regulation,⁴ meaning the addressee may refuse service of documents either at the time of service or within two weeks of the time of service;
- inform Algeria that, depending on the development of negotiations, other negotiating directives may be needed in due course.

- inform Algeria that this authorisation has to be considered exceptional and by no means considered as a precedent;

- insert a provision concerning a clause providing for either⁵:

(a) full or partial denunciation of the agreement in the event of the conclusion of a subsequent agreement between the Union or the Union and its Member States, on the one hand, and the same third country, on the other hand, on the same subject matter; or

(b) direct replacement of the relevant provisions of the agreement by the provisions of a subsequent agreement concluded between the Union or the Union and its Member States, on the one hand, and the same third country, on the other hand, on the same subject matter

⁴ Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast), OJ L 405, 2.12.2020, p. 40–78

⁵ **The rule is worded like Reg. (EC) 662/2009 and 664/2009 one. The two Regulations also indicate the way the “denunciation clause” should be worded.**

The negotiations shall be conducted in consultation with the Commission,

France shall regularly report to the Commission on the steps undertaken pursuant to this Decision and consult it on a regular basis.

Whenever so requested by the Commission, France shall report to it in writing on the conduct and the outcome of the negotiations.

As an observer, the Commission may provide the Member State concerned with advice on how to avoid incompatibility of the intergovernmental agreement or amendment under negotiation with Union law; for this purpose, the Commission shall provide the concerned Member State with its own opinion on the compatibility with Union law of the bilateral agreement provisions⁶.

⁶ The inserted text follows the recital of art. 5 par. 3 and art. 6 par. 1, par. 3 of the *Decision N. 994/2012/EU of the European Parliament and of the Council of 25 October 2012 establishing an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy, respectively entitled "Assistance from the Commission " and "Compatibility assessment"*.

The new paragraph describes more clearly the Commission "consultative" role and expands it; in this way, the Commission, providing its own opinion on the compatibility with the Union law of the bilateral agreement provisions already in the negotiation phase and not only after the agreement has been drafted, would allow the Union to verify in advance whether the provisions of the bilateral agreement conflict with the EU law; at the same time, the concerned Member State would be provided with useful indications to avoid in advance any law conflicts and any negative effects on the EU *acquis*.

Please note that art. 6 of the Decision No. 994/2012/EU also provides for the following compatibility assessment procedure timing: "2. *The Commission shall, within four weeks of the date of receipt of the draft agreement or amendment, including annexes thereto, inform the Member State concerned of any doubts it may have as to the compatibility of the draft intergovernmental agreement or amendment with Union law. In the absence of a response from the Commission within that period, the Commission shall be deemed not to have any doubts.* 3. *Where the Commission informs the Member State concerned pursuant to paragraph 2 that it has doubts, it shall inform the Member State concerned of its opinion on the compatibility with Union law of the draft agreement or amendment concerned within 10 weeks of the date of receipt referred to in paragraph 2 (the examination period). With the approval of the Member State concerned, the examination period may be extended. In the absence of an opinion from the Commission within the examination period, the Commission shall be deemed not to have raised any objections.* 4. *The time periods referred to in paragraphs 2 and 3 shall be shortened in agreement with the Commission if circumstances so warrant*" that could be taken into consideration if the suggested comment will have been accepted.

Article 3

This Decision shall enter into force on the day following that of its publication in the Official Journal of the European Union.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels,
