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NOTE

From:	Presidency
To:	Delegations
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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 - Presidency draft compromise proposal

Delegations will find attached the Presidency draft compromise proposal based on the discussions in the Working Party and Member States' written contributions. Additions in comparison to the Commission's proposal are marked in **bold underlined** and deletions are marked in ~~strikethrough~~.

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, **France has a specific interest in negotiating a bilateral agreement with Algeria, the draft of which was transmitted to the Commission.**

- (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.

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

- (8) ~~Most~~ **Certain** of the matters to be dealt with in the draft agreement between France and Algeria affect the **relevant** EU acquis **on civil and commercial matters**. 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 **they are granted under**~~empowered to do so by the Union in accordance with Article 2(1) of the Treaty on the Functioning of the European Union (TFEU)~~ **an empowerment by the Union legislator to do so**, in conjunction **accordance** with the substantive legal basis of **legislative procedure referred to in** Article 81(2) TFEU.
- (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 accordance with Articles 1, 2 and 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.**
- (12) **In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,**

HAVE ADOPTED THIS DECISION:

Article 1

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

- i. inform Algeria that the European Commission ~~shall~~ **may** 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;
- ii. encourage Algeria to consider accession to the core Conventions developed by the Hague Conference on Private International Law and start ~~an serious~~ analysis of the **most appropriate means to remove the obstacles** ~~reasons~~ which has prevented Algeria to do so for the time being;
- iii. 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;
- iv. 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)~~ **possibly with a system of a tacit renewal to be indicated in the decision of the European Parliament and of the Council on the conclusion of the agreement** ~~and may have to be reconsidered afterwards;~~

- v. insert a provision concerning a clause providing for full or partial denunciation of the agreement or direct replacement of the relevant provisions in 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 Algeria, on the other hand, or Algeria's accessions to the relevant Hague Conventions;
- vi. insert a provision to the effect that the decisions recognised in France under this agreement cannot subsequently circulate in other EU Member States under EU law;
- vii. -ensure that the provisions of the agreement negotiated with Algeria comply with concerning the right to refuse the service of documents are aligned with the relevant EU acquis and Hague Conventions provisions of Article 12(3) of the Service of Documents recast Regulation,¹ meaning the addressee may refuse service of documents either at the time of service or within two weeks of the time of service;
- viii. inform Algeria that, depending on the development of negotiations, other negotiating directives may be needed in due course.

¹ — 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), *OJL 405*, 2.12.2020, p. 40–78

Article 2

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.

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,

For the European Parliament
The President

For the Council
The President