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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION empowering France to negotiate a bilateral agreement with Algeria concerning judicial cooperation in civil matters related to family law

COUNCIL DECISION (EU) 2023/...

of ...

**empowering France to negotiate a bilateral agreement with Algeria
concerning judicial cooperation in civil matters related to family law**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular
Article 81(3) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament¹,

Acting in accordance with a special legislative procedure,

¹ Opinion of ... [(OJ ...)/(not yet published in the Official Journal)].

Whereas:

- (1) By letter of 8 December 2016, France requested an empowerment from the Union to negotiate a bilateral agreement with Algeria concerning judicial cooperation in civil and commercial matters. The aim was to modernise and consolidate the three bilateral agreements of 1962, 1964 and 1980 that are in force.
- (2) France provided information to the Commission showing that, due to the exceptional economic, cultural, historical, social and political ties that it has with 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 large number of Algerian citizens residing on its territory and on the number of French citizens living in Algeria as well as on the specific importance of commercial exchanges between the two countries.
- (4) Relations between the Union 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 (the 'Euro-Mediterranean Agreement'), which entered into force in 2005.
The Euro-Mediterranean Agreement constitutes the legal framework governing relations between the parties in economic, commercial, political, social and cultural matters.

¹ OJ L 265, 10.10.2005, p. 2.

- (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 Union and Algeria provided for in the Euro-Mediterranean Agreement, and that such cooperation may include, where appropriate, the negotiation of agreements in those fields.
- (6) The Union's relationship with third countries with regard to judicial cooperation in civil and commercial matters relies on the legal framework developed by the Hague Conference on Private International Law (the 'HCCH'), in accordance with the principle of multilateralism. However, Algeria is not a member of the HCCH and has so far refused to accede to its core conventions.
- (7) Although Algeria is not a member of the HCCH and has not acceded to its core conventions, the draft agreement appears to be largely inspired by the system established by the Hague Conventions and by the Union legislation adopted on the same matters.
- (8) Certain matters to be dealt with in the draft agreement between France and Algeria affect the relevant Union *acquis* on family law matters. Consequently, the matters covered by such international commitments fall within the Union's exclusive external competence. Member States are able to negotiate, or enter into such commitments only if they are granted, under Article 2(1) of the Treaty on the Functioning of the European Union (TFEU), an empowerment by the Union legislator to do so, in accordance with the legislative procedure referred to in Article 81(3) TFEU.

- (9) As the Union has competence on the majority of the matters to be dealt with in the draft agreement between France and Algeria, France should regularly report to the Commission on the conduct of negotiations on the bilateral agreement. Both France and the Commission will keep the Council informed of developments on a regular basis.
- (10) There are no indications that the future agreement between France and Algeria would necessarily negatively affect the Union *acquis*. However, it is appropriate to provide for negotiating guidelines with the aim of minimising the risk of such negative effects.
- (11) In accordance with Articles 1 and 2 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 Treaty on European Union (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 TEU and to the TFEU, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

France is hereby empowered to negotiate a bilateral agreement with Algeria concerning judicial cooperation in civil matters related to family law, provided that the following negotiating guidelines are followed:

- (a) France informs Algeria that the Commission may participate in the negotiations as an observer, and that the Commission will be informed of any progress and results achieved during the various stages of the negotiations;
- (b) France encourages Algeria to consider acceding to the core conventions concerning family law matters developed by the Hague Conference on Private International Law (the 'Hague Conventions') and to start an analysis of the most appropriate means to remove the obstacles which have prevented Algeria from acceding to the Hague Conventions;
- (c) France informs Algeria that, following the conclusion of the negotiations, an empowerment from the Council is required before France is allowed to conclude the agreement;
- (d) France informs Algeria that the empowerment from the Council to conclude the agreement, following a proposal from the Commission, may provide that the agreement is to have a limited validity in time, with the possibility that a mechanism of tacit renewal be indicated in the Council decision on the conclusion of the agreement;

- (e) a provision is inserted in the agreement providing for a full or a partial denunciation of the agreement or a direct replacement of the relevant provisions 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 Algeria, on the other hand, or of Algeria's accession to the relevant Hague Conventions;
- (f) a provision is inserted in the agreement to the effect that any decision recognised in France under the agreement cannot subsequently circulate in other Member States under Union law;
- (g) the provisions of the agreement comply with the relevant Union *acquis* and the relevant Hague Conventions;
- (h) France informs Algeria that, depending on the development of negotiations, other negotiating guidelines may be needed in due course.

Article 2

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

Article 3

This Decision is addressed to the French Republic.

Done at ...,

For the Council

The President
