Authorisation addressed to France to negotiate a bilateral agreement with Algeria on matters related to judicial cooperation concerning family law matters

2023/0027(CNS) - 08/02/2023 - Legislative proposal

PURPOSE: to authorise the negotiation of a bilateral agreement between France and Algeria on matters related to judicial cooperation concerning family law matters, which fall within the exclusive external competence of the EU.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: by letter dated 8 December 2016, France requested the Commission's authorisation to negotiate a bilateral agreement with Algeria on issues related to judicial cooperation in civil and commercial matters. The objective was to modernise and consolidate the three existing bilateral agreements of 1962, 1964 and 1980 currently in force.

While recognising the exceptional economic, cultural, historical, social and political ties between France and Algeria, the Commission remarked that, in its judicial cooperation with third States, the EU broadly relies on the existing multilateral framework, such as the one created by the Hague Conference on Private International Law (HCCH).

The Commission concluded that, against this backdrop, authorising a Member State to negotiate and conclude bilateral agreements with third countries in the area of civil justice falling outside the scope of Regulation (EC) No 662/2009 and Council Regulation (EC) No 664/2009 would be not in line with the EU policy in this field.

After a further exchange of letters, the issue was brought to the Commission’s attention again in November 2019 and was discussed in depth several times.

France explained that the provisions concerning recognition and enforcement of decisions, service of documents and taking of evidence are to be applied also to matters concerning family law, in particular divorce, separation and annulment of marriage, parental responsibility, child abduction, maintenance obligations, matrimonial property rights and registered partnerships. Of particular importance for France was the recognition of divorce by mutual consent.

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. 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.

Taking into account the new data provided by France, and the explanations given during several technical meetings which took place in the period 2019-2021, the Commission decided to reassess the situation.

The only option in line with the available legal framework and the EU policy in relation to judicial cooperation in civil matters, which is based on multilateralism and does not foresee the negotiation of an EU-Algeria agreement on this topic, is an authorisation to France to negotiate a bilateral agreement with Algeria.

The Commission concluded that an ad hoc authorisation under Article 2 TFEU to France could be considered. France may be authorised to negotiate (and at a later stage conclude) a bilateral agreement with Algeria in matters falling within the EU exclusive external competence, having considered the exceptional ties which link these two countries, provided that this would not constitute an obstacle to the development and the implementation of the Union's policies.

CONTENT: under the proposed decision, France would be empowered to **negotiate an agreement with Algeria on matters related to judicial cooperation concerning family law 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;

- 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, 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.

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.