



Council of the  
European Union

Brussels, 12 February 2021  
(OR. en)

5934/21  
ADD 2

LIMITE

JAI 106  
COPEN 58  
EUROJUST 17  
EJN 12

#### 'I/A' ITEM NOTE

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From:	Presidency
To:	Permanent Representatives Committee (Part 2)/Council
No. prev. doc.:	5685/21
No. Cion doc.:	13165/20 + ADD 1
Subject:	Draft Council Decision authorising the opening of negotiations for Agreements between the European Union and Algeria, Argentina, Armenia, Bosnia and Herzegovina, Brazil, Colombia, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia and Turkey on cooperation between the European Union Agency for Criminal Justice Cooperation (Eurojust) and the competent authorities for judicial cooperation in criminal matters of those third States
	- Adoption

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#### **Declaration by the Commission for the minutes of Coreper:**

The Commission considers it legally incorrect that a Council Decision authorising the opening of negotiations indicates a substantive legal basis (in this case Articles 16(2) and 85 TFUE).

The Decision authorising the opening of negotiations is premised solely on the existence of conferred powers of the Union and not on a determination of a specific competence. Its effect is limited to authorising the Commission or the High Representative, as the case may be, to use its prerogatives under the EU Treaties in order to start negotiations.

The scope of these negotiations is therefore determined by the scope of the powers of the Union. Besides, the freedom of the envisaged treaty partner of the Union as regards the determination of the scope of the negotiations cannot be limited by the Council Decision authorising the opening of the negotiations. Thus, the precise legal basis for the future agreement can only be determined after the content of the agreement is known. The Commission reserves all its rights in this regard.

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