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Recommendation for a

COUNCIL DECISION

amending the Council Decision of 23 November 1998 concerning exchange rate matters relating to the CFA franc and the Comorian franc (98/683/EC)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In 2019, France and the States of the West African Economic and Monetary Union (UEMOA) engaged in a discussion on the reform of their cooperation in exchange rate matters. Currently, their cooperation is based on a cooperation agreement of 4 December 1973 and a related guarantee agreement signed in 1973 and modified in 2005 and 2014. The purpose of this reform is to help modernise the UEMOA and to facilitate its progressive extension to other States of the Economic Community of West African States (CEDEAO).

The discussions between France and the States of the UEMOA regarding their existing cooperation have led to a common proposal for reforming the functioning of the UEMOA. The reform is premised on four axes. Firstly, a change to the name of the CFA franc in "ECO" somewhere in 2020. The second objective is to abolish the obligation for States of the UEMOA to centralise foreign reserves in an account of the French treasury; Thirdly, it concerns the withdrawal by France from decision-making bodies of UEMOA authorities. Fourthly, a parallel creation of a dialogue between the respective authorities and introduction of risk surveillance mechanisms takes place.

To make this reform concrete, France signed on 22 December 2019 a new cooperation agreement with its partners of the UEMOA, which is to replace the existing agreement of 4 December 1973 once it enters into force. This new agreement will be accompanied by a guarantee agreement to be concluded with the Central Bank of West African States (BCEAO). It is noted that the reform leaves the essential features of the existing cooperation in exchange rate matters between France and the States of the UEMOA unaffected. In particular, it concerns the maintenance of a convertibility between the euro and the CFA franc at a fixed parity supported by an unlimited and unconditional budget guarantee from France.

The existing and future cooperation agreement between France and the States of the UEMOA cannot be seen in isolation of Union law. Since the introduction of the euro, the Union has exclusive competence for monetary policy and exchange rate matters for Member States whose currency is the euro. France is a Member State whose currency is the euro since 1 January 1999. Pursuant to Article 2 TFEU, when the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts. The Member States are only able to do so themselves if so empowered by the Union. In accordance with Article 109(3) of the Treaty on the establishment of the European Community the Council authorised France in its Decision of 23 November 1998 (98/683/EC) to continue its present agreements concerning exchange rate matters with the UEMOA, the CEMAC and the Comores after the substitution of the euro for the French franc. While France was authorised to continue its existing agreements, it was not empowered to replace such agreements with new ones. This is even the case if the main object and legal regime governing the exchange rate cooperation between France and its partners of the UEMOA, CEMAC and the Comores would be similar, i.e. ensuring a convertibility between the currencies of those entities and the euro supported by a budget guarantee of the French State.

With a view to ensure compatibility with an exclusive competence under Union law and offer legal certainty, it is necessary to amend the Council's Decision of 23 November 1998. This will authorize France to conclude a new cooperation agreement, which replaces the existing agreement of 4 December 1973. It will also ensure that the French Republic can conclude new

agreements with other African partners replacing existing agreements. In addition, several other provisions of that Council Decision governing the information and approval regime should be updated to extend their application to any new agreements with the UEMOA or any other partners replacing the existing ones.

- **Consistency with other Union policies**

These agreements are unlikely to have any material effect on the conduct of the single monetary and exchange rate policy of the euro area. The guarantee of convertibility for the CFA franc and the Comorian franc is based on a budgetary commitment of the French Republic. While this entails a fiscal risk for France in case the UEMOA would activate the guarantee, it is considered as unlikely to have a material effect on France's fiscal position.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the adoption of this recommendation is Article 219(3) TFEU (ex-Article 109(3) of the Treaty establishing the European Community). The latter was used to adopt the Council's Decision of 23 November 1998 concerning exchange rate matters relating to the CFA franc and the Comorian franc (98/683/EC). Article 219(3) TFEU provides for the Council on a recommendation from the Commission, and after consultation of the ECB, to determine the arrangements for the negotiation and for the conclusion of agreements concerning foreign exchange rate matters with one or more third countries.

- **Subsidiarity (for non-exclusive competence)**

The principle of subsidiarity is not applicable since this matter pertains to the Union's exclusive competence for monetary and foreign exchange matters.

- **Proportionality**

The objective of the proposed recommendation for a Council Decision is to empower France to conclude a new cooperation agreement, which replaces the existing agreement of 4 December 1973 with the UEMOA. It also seeks to ensure that the French Republic can conclude new agreements with other African partners replacing existing agreements. In addition, several other provisions of that Council Decision governing the information and approval regime are updated to extend their application to any new agreements with the UEMOA or any other partners replacing the existing ones. To this end, the recommendation provides for targeted amendments ensuring such empowerment for France, which go not beyond what is necessary to achieve the aforementioned objective.

- **Choice of the instrument**

Where agreements concerning monetary or foreign exchange regime matters need to be negotiated, Article 219(3) TFEU prescribes the use of a recommendation from the Commission to the Council to determine the appropriate arrangements for the negotiation and conclusion of such agreements.

- **Detailed explanation of the specific provisions of the proposal**

The Commission's recommendation to the Council contains two articles.

The first article provides for the amendments to the title and to Articles 3, 4 and 5 of the Council's Decision of 23 November 1998.

The amendment to the title and Article 3 of that Decision reflect the potential evolution in the future of re-naming the CFA franc and Comorian franc. Hence, the references to CFA franc are replaced by the general term currency of the respective monetary unions. The same is done for the Comorian franc with a general reference to the currency of the Comores.

The amendments to Articles 4 and 5 of that Decision authorise France to replace its existing agreements with the UEMOA, CEMAC and the Comores with new agreements in foreign exchange rate matters and subjects any new agreements to the same rules regarding involvement of the competent Union bodies as the existing ones in order to ensure continuity of the applicable information and approval regime set by the Council in 1998.

The second article ensures that the decision addressed to France will be applicable as from the day that the Council's Decision is notified to the French Republic.

Recommendation for a

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, in particular Article 219(3) thereof,

Having regard to the recommendation from the European Commission,

Having regard to the opinion of the European Central Bank([1]),

Whereas:

(1) The Union has exclusive competence for monetary and exchange rate matters in the Member States whose currency is the euro. Where the Treaties confer on the Union an exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union.

(2) Pursuant to Article 219(3) of the Treaty, the Council is to determine the appropriate arrangements for the negotiation and conclusion of agreements concerning monetary or foreign exchange regime matters.

(3) Before the introduction of the euro, France had concluded several agreements with the UEMOA (Union économique et monétaire ouest-africaine), the CEMAC (Communauté économique et monétaire de l'Afrique Centrale) and the Comores, which were intended to guarantee the convertibility of the CFA and Comorian francs into the French franc at a fixed parity([2]). Upon the substitution of the euro for the French franc on 1 January 1999, the Council authorised France to continue such existing agreements ("present agreements") concerning exchange rate matters with the UEMOA, the CEMAC and the Comores pursuant to the framework laid down in the Decision of the Council of 23 November 1998 (98/683/EC) ("the Council Decision")([3]).

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1 […], OJ, C XX/XX, D.M.Y.

2 Convention de coopération monétaire du 23 novembre 1972 entre les États membres de la Banque des États de l'Afrique centrale (BEAC) et la République française, as amended; Convention de compte d'opérations du 13 mars 1973 entre le ministre de l'Économie et des Finances de la République Française et le Président du Conseil de l'administration de la Banque des États de l'Afrique Centrale, as amended; Accord de coopération du 4 décembre 1973 entre la République française et les Républiques membres de l'union monétaire ouest-africaine, as amended; Convention de compte d'opérations du 4 décembre 1973 entre le ministre de l'Économie et des Finances de la République Française et le Président du conseil des ministres de l'Union monétaire ouest-africaine, as amended; Accord de coopération monétaire du 23 novembre 1979 entre la République française et la République fédérale islamique des Comores, as amended; Convention de compte d'opérations du 23 novembre 1979 entre le ministre de l'Économie et des Finances de la République Française et le ministre des Finances, de l'Économie et du Plan de la République fédérale des Comores, as amended.

3 OJ L 320, 28.11.1998, p. 58–59.

(4) Pursuant to Articles 4 and 5 of Decision 98/683/EC, France may negotiate and conclude modifications to the existing agreements, which either maintain or change the nature or scope of the existing agreements.

(5) France and the States of the UEMOA are in the process of replacing their existing agreement of 4 December 1973 by a new cooperation agreement concerning exchange rate matters. That agreement was signed on 21 December 2019. It is accompanied by a new guarantee agreement to be concluded with the Central Bank of the States of the UEMOA. On 22 May 2020 the French Government put forward a bill to the National Assembly to ratify the new cooperation agreement.

(6) The replacement of existing agreements concerning exchange rate matters between France, the UEMOA, CEMAC and Comores, as France and the UEMOA currently intend to achieve, is not covered by Articles 4 and 5 of Decision 98/683/EC. This is the case even if the nature and scope of such new cooperation agreements remains unchanged, namely to ensure a convertiblity between the euro and the currencies of the UEMOA, CEMAC and the Comores at a fixed parity supported by a budgetary commitment from France.

(7) France should be empowered to replace the agreements in force with UEMOA, CEMAC and the Comores. In line with Council Decision 98/683/EC, the different existing procedures should continue to apply depending on whether the replacement affects or does not affect the nature or scope of these agreements. In both cases, it will be necessary to involve the competent Union bodies in accordance with the existing information sharing and approval regime, as the case may be, before replacing the agreements with subsequent agreements.

(8) Decision 98/683/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 98/683/EC is amended as follows:

(1) The title is replaced by ‘Council Decision of 23 November 1998 concerning exchange rate matters relating to the currencies of the UEMOA, the CEMAC and the Comores (98/683/EC)’;

(2) Article 3, 4 and 5 are replaced by the following:

‘*Article 3*

The competent French authorities shall keep the Commission, the European Central Bank and the Economic and Financial Committee informed on a regular basis about the implementation of the agreements. The French authorities shall inform the Economic and Financial Committee prior to changes of the parity between the euro and the currencies of the UEMOA, the CEMAC or the Comores.

Article 4

France may negotiate and conclude modifications to the present agreements, or replace them, to the extent that the nature or scope of the agreements are not

changed. It shall inform in advance the Commission, the European Central Bank and the Economic and Financial Committee of such changes.

Article 5

Any plans to change the nature or scope of these agreements, either through amendment or replacement, shall be submitted by France to the Commission, the European Central Bank and the Economic and Financial Committee. Such plans require the approval of the Council on the basis of a recommendation from the Commission and after consultation of the European Central Bank.'

Article 2

This Decision is addressed to the French Republic.

Done at Brussels,

For the Council
The President