

Newsletter on North Africa



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France and Algeria
entered in december 2007 into an agreement relating to the development of civil nuclear energy.

Editorial

Mediterranean Union: towards Barcelona III?

When the French President Nicolas Sarkozy takes over the presidency of the European Union on 1 July 2008, he will be keen to defend his Mediterranean Union project.

The project is less ambitious than at the outset and France had to accept a compromise with Germany on 3 March in Hanover. All Member States of the European Union can now participate and in return the co-presidency will be reserved for the States along the shores of the Mediterranean. The 27 Member States approved the broad outlines of this compromise on 13 March in Brussels. The challenge is to give a second chance to the Euro-Mediterranean partnership launched in Barcelona 13 years ago, which is at a standstill in spite of attempted follow-up action taken in 1995. It is consequently not the time for a free trading zone (the issue continues to be dealt with at bilateral level between the EU and countries in the area¹) but a series of projects: cleaning

up the Mediterranean, water access (processing, irrigation, etc.) "areas of excellence" in agriculture, etc.

In cooperation with the European Commission, the work currently involves providing this union with bodies and removing the vagueness surrounding its budget before the first summit, which is scheduled to be held in Paris on 13 July with the 12 Southern Mediterranean countries. The main obstacle may arise from the serious differences of opinion between some of them. ■

¹ The agreements with Algeria, Morocco and Tunisia respectively entered into force in 2005, 2000 and 1998 provide mainly for the progressive dismantling of customs rights.

إِنْ شَاءَ اللَّهُ

IN CHAA ALLAH

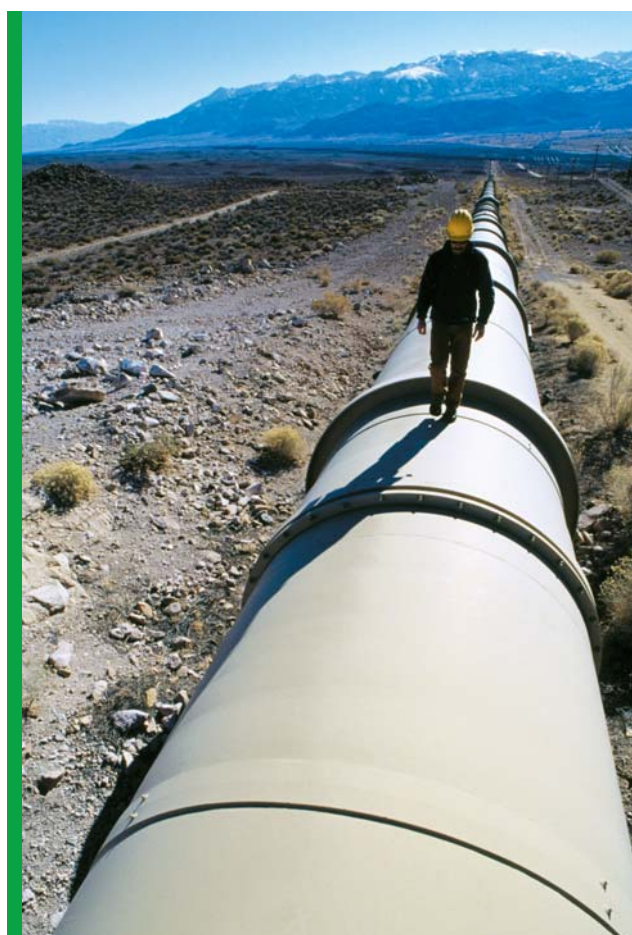
An expression that is frequently used in the hope that an event or wish for the future is fulfilled. Etymological translation: "If God wishes it".



Varied taxation depending on the project structure



The development of the hydrocarbon sector in Algeria use the cooperation of many highly qualified and increasingly specialized players...



In Algeria, the tax regime for oil service companies is different from the regime applying to oil companies.

1. Oil service companies incorporated under the laws of Algeria

These companies are automatically subject to the so-called actual profit tax rules, which mainly include:

- Corporate income tax calculated at the rate of 25% of the taxable profit;
- Business tax calculated at the rate of 2% on the taxable turnover (excluding VAT).

We highlight that these companies may benefit from the exemptions laid down by the Investment Code, in particular, with regard to corporate income tax and business tax during a fixed period.

- VAT calculated at the standard rate of 17%, unless an exemption is granted.

Oil companies are exempt from VAT on purchases of goods, works and services and customs duties on imports allocated directly to research and hydrocarbon production².

These exemptions are strictly limited to goods, works or services laid down by the decree. Oil service companies are not entitled to benefit from this VAT exemption on their purchases but may ask the tax authorities to grant an annual purchase quota exemption subject to certain conditions.

In practice, suppliers of oil service companies frequently refuse this VAT exemption, which constitutes a surcharge for them and, in the absence of penalties, oil service companies may only rely on their right to the exemption as part of negotiations.

Oil companies regularly use oil service companies for their exploration, research, prospecting and exploitation operations for oil fields and/or gas fields. They use, based on the logic of outsourcing, the specific resources and technologies developed by these oil service companies specializing in the exploration and prospecting stage (e.g., seismic studies, topographical notices, etc.) or in the exploitation stage (e.g., drilling and extraction works, installing pipelines, servicing shafts, etc.). In spite of the very close operational links between the oil companies and these companies, their tax treatment significantly differs: oil companies are governed by specific legal and tax rules (as defined by Act no. 05-07 of 28 April 2005 relating to hydrocarbons), whereas oil service companies are generally governed by ordinary law depending on the situations set forth below.

7TH ROUND

The National Agency for the Development of Hydrocarbon Resources (Agence nationale pour la valorisation des ressources en hydrocarbures or ALNAFT) launched a call for tenders for 15 oil and gas exploration blocks. Interested oil companies must be pre-qualified to participate in the seventh international call for tenders, which is the first to be governed by Act no. 05-07 relating to hydrocarbons. Since 2006, this Act requires the majority holding by the Algerian state-owned company in the oil operations and introduced a profit surtax.

2. Foreign oil service companies resident in a country that has not signed a tax treaty with Algeria

If these companies perform contracts for civil works (in particular, drilling, civil engineering works and equipment assembly works, which become fixtures) or have created a branch, they are subject to the tax mentioned above. The taxable profit includes the margin on supplies imported and services provided by the registered office. The deduction of management fees is limited by the Finance Act 2008 to 1% of turnover. In all other cases, oil service companies shall be subject to withholding tax, which covers inclusively corporate income tax, business tax and VAT.

This withholding tax amounts to 24% of the gross amount of the services (i.e., a factor of $24/(100-24) = 31.5\%$ of the net amount, after deduction of the withholding for corporate income tax).

3. Foreign oil service companies resident in a country that has signed a tax treaty with Algeria

a. in the event of existence of a permanent establishment

It is generally laid down by tax treaties entered into by Algeria that the profits of companies resident in the other State are only taxable in Algeria where they have a permanent establishment in Algeria, as defined by the tax treaty.

If such is the case, the permanent establishment will be taxable on its actual profit as mentioned above. It is generally accepted that services provided outside of Algeria by the oil service company's registered office and equipment imported into Algeria are not attributable to the permanent establishment and are consequently exempt from corporate income tax and business tax in accordance with the principle of taxation of only the profits linked to the permanent establishment, if:

- the relevant services and supplies are identified separately in the contract (in particular, by a separate price);
- invoices are issued by the registered office for the services and supplies performed by the permanent establishment located in Algeria.

b. in the event of no permanent establishment

There are two options for companies, which perform services provided or used in Algeria (with the exception of civil works) :

- the income collected by said company falls within the category of fees or equivalent remuneration within the meaning of the treaty and is consequently subject to the withholding tax provided for by the treaty;
- the same income does not fall within the category of royalties or equivalent remuneration, within the meaning of the treaty and in this case, according to the Algerian tax authorities, the corresponding income is subject to a 24% withholding tax. However, the application of this withholding tax may be avoided for income relating to services performed outside of Algeria, subject to the tax authorities' position. ■

KEY POINTS

➤ **Oil service companies** are not subject to the rules laid down by the act relating to hydrocarbons and are treated for tax purposes in accordance with ordinary rules.

➤ **The actual profit tax rules** (taxation of companies as opposed to taxation by means of withholding tax apply to companies or branches incorporated under the rules of Algeria, foreign companies carrying out property works in Algeria or having a permanent establishment based there within the meaning of a tax treaty.

➤ **Oil service companies cannot invoice VAT** to Sonatrach or oil companies on goods or services expressly listed by the act and directly allocated to research and production activities.

➤ **These oil service companies may be entitled to an annual purchase quota VAT exemption** for goods and services required for their services.

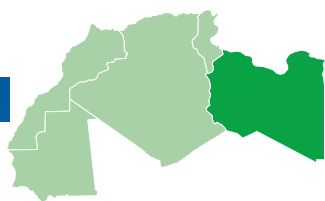
➤ **Oil service companies, which do not perform property works** and do not have a permanent establishment in Algeria, are subject to a 24% withholding tax, with the exception of those benefiting from a tax treaty, subject to the standard rate, or exempt on income paid for services performed outside of Algeria.

¹ Please refer to our previous article on page 4 of the Newsletter on North Africa of November 2007.

² The list of goods, works and services entitled to this exemption is laid down by the decree of 8 May 1990, which implemented Act No. 86-14 of 19 August 1986, repealed and replaced by Act No. 05-07 of 28 April 2005. However, the VAT exemptions granted by Act No. 86-14 were incorporated by Act No. 05-07, the provisions of the aforementioned decree continues to apply.

For additional information

The website of the Ministry of Energy and Mines (<http://www.mem-algeria.org>) presents the statutory and regulatory scope relating to hydrocarbon activities and the main national and foreign players in the sector.



Joint venture rules under the laws of Libya



Libyan law confirms the political intention to open up to foreign capital wishing to invest or operate in Libya.

The creation of a joint venture under the laws of Libya accordingly enables any foreign economic operator to invest (if the investment conditions do not fulfil the criteria laid down by Act no. 5/1997) or operate (in the scope of a public procurement contract or a private agreement relating to the provision of goods and/or services) in Libya.

Why a joint venture?

The formation of a joint venture under the laws of Libya is a statutory obligation for foreign companies operating in Libya. We highlight that prior to 14 November 2006, foreign companies could set up business and operate in Libya:

- Either by opening a branch incorporated under the laws of Libya, as authorised by the Decree issued by the Primature no. 13/2005 dated 9 January 2005;
- Or by associating with Libyan partners and creating a trading company incorporated under the laws of Libya (limited company (SA), limited liability company (SARL) or limited partnership with shares (société en commandite par actions) but provided that the Libyan partners held at least 51% of the share capital; as laid down by Act no. 65/1970 enacting certain measures relating to trading companies.

The adoption by the Primature of Decree no. 443/2006 dated 14 November 2006 requires the formation of a joint venture

incorporated under the laws of Libya (in partnership with specialized Libyan companies) when a foreign company operates in Libya in one of the following sectors:

- Construction and civil engineering,
- Electricity,
- Oil-producing services (with regard to maintenance, transport, facilities, oil drilling services and production of equipment required for oil drilling and exploration operations),
- Communications and telecommunications,
- Industry, agriculture and animal and sea resources.

However, it must be noted that:

- The provisions of Decree no. 443/2006 do not apply to investment projects governed by Act no. 5/1997 (please refer to North African Newsletter no. 1);
- Article 3 of Decree no. 443/2006 authorises the Primature to exclude certain specific projects entrusted to foreign operators from the establishment obligation in the scope of a joint venture incorporated under the laws of Libya.

The advantage of this exemption consequently enables the foreign operator (in particular, in the scope of a public procurement contract) to set up as a branch incorporated under the laws of Libya.

- Decree no. 443/2006 prohibits foreign companies from opening representative offices or liaison offices in Libya in accordance with related legislation (Decree issued by the Primature no. 8/1373 of 9 January 2005).

KEY POINTS

.....> Except in the event of a regulatory exemption, **a joint venture is mandatory for certain business sectors** laid down by Decree no. 443/2006.

.....> **A joint venture is not mandatory for investment projects** governed by Act no. 5/1997 relating to encouraging foreign investment.

.....> **A joint venture is a limited company** which may be formed by foreign operators and their Libyan partners.

.....> **65% at most**, of the share capital in the joint venture may be held by **foreign partners**.

.....> **The minimum capital is fixed at LYD 1 million.**

.....> **Classic bodies of a limited company.**

.....> **Possibility to appoint directors and a Chairman of the Board of Directors, who are foreign and non-residents.**

.....> **No tax benefits and tax treatment in accordance with ordinary law.**

ECONOMIC STATISTICS

..... 254 billion dollars

Libyan companies were approved by the competent authorities as commercial agents for foreign companies in Libya.

Please note that the system of commercial agency agreements establishes the principle of mandatory intermediation and intervention by duly authorised Libyan

commercial agents in the scope of marketing operations in Libya of products and/or services, manufactured or provided by foreign companies.

Information source: Website of the Ministry of the Economy, Trade and Investment (Ministère de l'Economie, du Commerce et de l'Investissement). <http://www.ect.gov.ly>

A joint venture is prohibited from operating in certain business sectors

A joint venture must be created to carry on any economic activity in one of the sectors referred to by Decree no. 443/2006. They may also be created to carry on any other economic activity, with the exception of the following activities:

- wholesale and retail trade and imports (Article 55 of the Decree no. 171/2006 referred to hereinbelow);
- food and catering supplies in the oil-producing sector (Decree no. 477/2006 of 9 December 2006 excludes foreign companies and joint ventures from performing this activity and reserves it for Libyan public or private companies.

Legal form of a joint venture

A joint venture is governed by the provisions of Decree no. 171/2006 of 3 July 2006 and by the general principles of Libyan commercial law.

A joint venture is a limited company, which may be created by one or more Libyan companies or one or more foreign companies; or between Libyan or foreign individuals; or between Libyan and foreign individuals and/or legal entities.

A joint venture has a legal personality as soon as it is registered with the Trade Registry.

Number of shareholders

At least, two legal entities; or one legal entity and at least four individuals; or even ten (foreign and Libyan) individuals.

Term of the joint venture

Libyan commercial law does not specify the term for the existence of a trading company. In practice, it is limited to 25 years, at most, which may be indefinitely renewed.

Shareholder structure

As an exemption from the principle laid down by the aforementioned Act no. 65/1970, Decree no. 171/2006 authorises the majority of the share capital to be held by foreign shareholders, who may hold at least 65% of the share capital in the joint venture.

Libyan shareholders must hold at least 35% of the share capital in the joint venture throughout the term of existence of the company.

Share capital

The minimum share capital of a joint venture is fixed at LYD 1 million (LYD 1= EUR 1.80).

The joint venture's bodies

The joint venture's bodies are the classic bodies of a limited company, i.e.:

– **General Meeting:** which is comprised of all shareholders of the joint venture and may be held as an ordinary general meeting or an extraordinary general meeting.

– **Board of Directors:** Collective management body of the joint venture, whose members may be non-resident foreigners (in proportion to the foreign holding).

They are appointed for a maximum period of three years, which may be renewed subject to a conflicting provision in the Memorandum and Articles of Association.

– **Chairman:** Legal representative of the company vis-à-vis third parties, who may be a non-resident foreigner.

– **Audit Committee:** It is a mandatory body responsible for auditing the management of the company, keeping accounting books and ensuring compliance of the company's accounts with relevant statutory requirements.

It is comprised of three or five principal members and two alternate members (who may be non-resident foreigners), who may be shareholders or otherwise, with recognised expertise in accounting, financial, technical or legal matters.

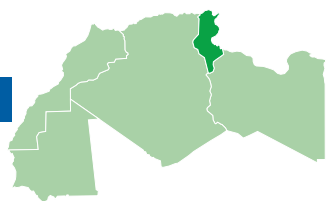
– **Statutory auditor:** The Audit Committee does not replace the statutory auditor. The appointment of a statutory auditor is mandatory for all limited companies incorporated under the laws of Libya, including joint ventures.

Tax rules

Joint ventures are subject to ordinary tax obligations applying to all Libyan capital companies and are not entitled to any benefits in this respect. ■

The recent changes to the JV rules under the laws of Libya encourage the creation of partnerships between Libyan companies and foreign operators.





Preferential rules which continue to apply...



The preferential rules for export companies are extended up until 2011 by the 2008 Finance Act.

According to the Decree-Act no. 61-14 of 30 August 1961, more commonly referred to as the “Tunisification” Decree-Act¹, only Tunisian companies within the meaning of the Decree-Law¹ may carry on a trading or industrial activities in Tunisia, which require foreign investors to form partnerships with Tunisian partners².

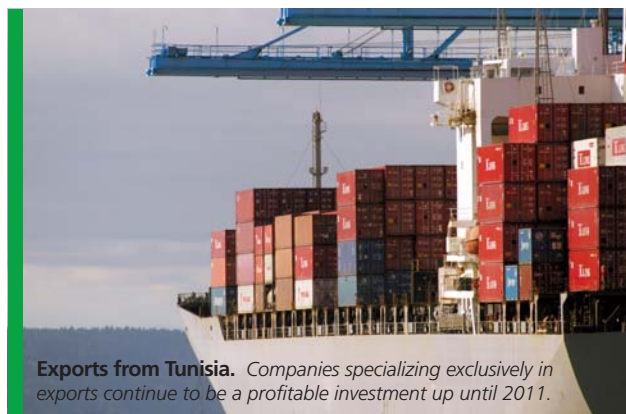
The business sectors falling within the scope of Article 1 of the Code on Investment Incentives will be exempt from the provisions of the “Tunisification” Decree-Act subject to:

- being explicitly listed by Decree no. 94-492 of 28 February 1994;
 - for some activities listed by the same Decree, the approval of the Executive Investment Commission where the holding of foreign investors exceeds 50% of the Tunisian company's share capital; or
 - for other activities also listed by the same Decree, prior permission by the relevant authorities as defined by the Decree, irrespective of the composition of the Tunisian company's share capital.
- The main authority is accordingly the Agency for the Promotion of Foreign Investment (Agence de Promotion de l'Investissement Extérieur or APIE), which operates a one-stop service in Tunisia enabling all formalities required for the formation of a company to be based at one location and carried out in record time.

The Code, which was mainly amended by the 2008 Finance Act, provides for rules for “companies specializing exclusively in exports”, which are extremely favourable but scheduled to be withdrawn. Only investments carried out before 1 January 2011 may benefit from these rules.

1. Eligible activities

These rules only apply to companies, which produce goods and provide services intended exclusively for export.



Exports from Tunisia. Companies specializing exclusively in exports continue to be a profitable investment up until 2011.

Sales made for other companies specializing exclusively in exports or with companies established in economic free zones are put in the same category as export sales.

However, the relevant companies may continue to benefit from the rules applying to companies specializing exclusively in exports if they carry out sales or provide services on the local market within the limit of 30% of their turnover generated by exports, subject to the Tunisian authorities' tax return procedures.

Sales on the local market carried out in accordance with the aforementioned conditions are treated as imports in Tunisia and give rise to the corresponding formalities and the payment of import taxes and duties.

2. Customs rules

Companies specializing exclusively in exports benefit from the customs rules applying to [economic] free zones.

They may consequently freely import and are completely exempt from import taxes and duties on the goods required for their production, subject to completing a customs form.

3. Tax rules

Companies specializing exclusively in exports are mainly exempt from customs duties, VAT, registration taxes, stamp duties and occupational training taxes.

ECONOMIC STATISTICS

18.3 TND 18.3 million (approximately EUR 10 million)

The flow of direct foreign investments relating to tourism and real estate in Tunisia in 2006.

Source: Investissements Etrangers 2006 (2006 Foreign Investment): <http://www.investintunisia.tn>.

2,955 TND 2,955 million (approximately EUR 1.653 billion)

The income generated by the tourism sector in 2007 in Tunisia, whereas this income amount to TND 1,900 million in 2002.

Source: Evolution des revenus touristiques (Increase in tourism income), <http://www.investintunisia.tn>. Ministère du Développement et de la Coopération Internationale (Ministry of International Development and Cooperation).

KEY POINTS

.....➤ As a result of the Agency for the Promotion of Foreign Investment's one-stop service, companies may be formed in record time.

.....➤ Foreign companies performing one of the activities listed by the Investment Code³ may freely form a subsidiary without a Tunisian partner.

.....➤ If the company specializing exclusively in exports generates more than 70% of its turnover outside of Tunisia, the Tunisian subsidiary may benefit from the rules applying to companies specializing exclusively in exports.

.....➤ Companies specializing exclusively in exports are entitled to a total exemption from VAT and registration taxes and exemption for ten years on profits generated by export activities.

.....➤ Companies specializing exclusively in exports may freely recruit up to four expatriate employees. Over this number, the local authorities' permissions is required. Only a 20% withholding at source is applied to salaries paid to these expatriates.

.....➤ A company specializing exclusively in exports held 66% at most by foreign shareholders is not subject to foreign exchange regulations in its financial relations with foreign companies and is only bound to repatriate its income to Tunisia up to the amount of the expenses incurred in Tunisia.

.....➤ Dividends paid by a companies specializing exclusively in exports to its shareholders are not taxable and may be freely transferred.¹

For additional information

The Agency for the Promotion of Foreign Investment's website (<http://www.investintunisia.tn>) provides useful information for investors in several languages and, in particular, presentations of business sectors, practical information and business opportunities.

The only significant taxes paid by companies specializing exclusively in exports are corporate income tax and personal income tax. Moreover, the Code provides preferential rules for these taxes.

a. Corporate income tax

In Tunisia, corporate income tax is calculated at the rate of 30% of the taxable profit.

Profits generated from export sales during the company's first ten years of business are exempt from corporate income tax. The corresponding profits are subsequently only liable for corporate income tax at the rate of 50% of the amount thereof.

As from 1 January 2011, these profits will be liable for corporate income tax at the rate of 10% for an indefinite term. Companies benefiting from these rules before 1 January 2011 will continue to be exempt for a period of ten years and shall subsequently be liable at the rate of 10%.

In order to benefit from these rules, investors must form a company, submit an investment certificate with the Agency for the Promotion of Foreign Investment and start the export activity before 31 December 2010.

In the event where the investor performs part of its activity on the local market, it must keep accounts in accordance with Tunisian accounting laws. In the absence of cost accounting, the exempt profit is determined on a pro rata basis of the turnover generated by exports in relation to the total turnover (excluding VAT).

In practice, the tax authorities are very vigilant regarding the calculation of the taxable profit and readjustments are frequent, which seems to increase the practice involving forming two separate structures (one carrying out export activities and the other operating on the local market) especially for service activities.

b. Taxation of employees

We note that it is very difficult for an employer established in Tunisia to obtain the permits required to employ expatriates.

Companies specializing exclusively in exports may employ up to four expatriates without obtaining administrative permission. Over this number, it must conduct a recruitment and "Tunisification" programme first approved by the relevant Ministry.

The salaries of expatriate employees of a company specializing exclusively in exports are only subject to a 20% withholding at source (and not the progressive tax scale).

c. Taxation of dividends

No taxation is collected in Tunisia on dividends distributed to foreign companies.

4. Foreign exchange regulations

Subscribing for capital in a new company does not require any particular permission where the relevant company falls in the scope of the Code on Investment Incentives.

Moreover, companies specializing exclusively in exports are deemed to be non-resident within the meaning of Tunisian foreign exchange regulations, when at least 66% of the share capital is held by non-residents and this holding was subscribed for by importing convertible currency. Dividends paid to these shareholders are freely transferable.

In this case, companies specializing exclusively in exports are only bound to repatriate to Tunisia income received outside Tunisia up to the amount of the expenses incurred in Tunisia. ■

¹ To have Tunisian nationality, a company's registered office must be based in Tunisia and a majority of Tunisian nationals must have a holding in its share capital and [sit on its] management bodies.

² Except where a foreign trader's permit is obtained, which is issued by the Tunisian Ministry of Economy following an application to the Central Bank of Tunisia.

Dialogue 5+5

Urgency of the North African construction

Dialogue 5+5 is a favoured forum for political exchanges between Europe and North Africa and held a meeting in Rabat in January 2008. All of the participants highlighted the need to speed up North African construction.

Are we going to witness the effective launch of the "Cooperation process in the Western Mediterranean" by the ten countries forming a part thereof (five European countries and five North African countries: Spain, Portugal, France, Italy, Malta, Morocco, Algeria, Tunisia, Libya and Mauritania)? Known more commonly as "Dialogue 5+5", this European-North African group for informal political exchanges experienced a long-lasting eclipse just after it was formed in 1990. The Rabat meeting in January 2008 was its sixth edition in 18 years of existence, whereas it was decided in principle to hold an annual edition when the group was formed. However, the shared problems on the two sides of the Mediterranean in terms of security, including terrorism and immigration as well as the challenges of globalisation and global warming have given it a new meaning since the beginning of the millennium and September 2001.

In the Moroccan capital, ten Foreign Affairs Ministers and representatives of the Arab Maghreb Union¹ and the European Union were present, showing the new interest in this privileged forum for discussion and debate on matters affecting cooperation between Europe and North Africa. The question can be raised whether this will be sufficient to form a true political decision-taking structure whereas other similar structures already exist, such as the Mediterranean Union, which remains a forum for exchanging ideas that are not always actually put into place.

Under the theme "consolidation of regional integration and promotion of increased cooperation", the sixth edition wanted to iden-

Dialogue 5+5
Encourage cooperation between the two shores of the Mediterranean.



tify and examine the various means of increasing the partnership between the ten members. However, to this end, it is necessary that the North African countries show increased cooperation between them. For this reason, the ministers have insisted on the "urgency" of the North African construction. Therefore, Taieb Fassi Fihri, the Moroccan minister and Joint Chairman of Dialogue stated that all of the delegations agreed unanimously to highlight the importance of North African cooperation and integration. He affirmed in this respect that the participants regretted the delay in the construction of the Arab Maghreb Union and highlighted the dangers of terrorism in the Sahel area to call for a boost for the Arab Maghreb Union based "on healthy and clear foundations". The Spanish minister, the other Joint Chairman of Dialogue, Miguel Angel Moratinos, fully agreed and emphasized the "need and urgency" to form this regional body: "We launched an appeal during this meeting to implement and increase North African integration". The next meeting of Dialogue 5+5 should be held in Barcelona before the end of the year. ■

¹ The Arab Maghreb Union, created by a treaty in 1989, groups together Algeria, Libya, Morocco, Mauritania and Tunisia with the aim of introducing a free exchange area, customs union and finally global economic union, but to date has not achieved any concrete results.

CONTACT PERSONS • In Paris: Frédéric Elbar, Partner, Tel.: +33 (0)1 47 38 43 51 – frederic.elbar@cms-bfl.com / Jean-Jacques Lecat, Partner, Tel.: +33 (0)1 47 38 56 82 – jean-jacques.lecat@cms-bfl.com • In Algiers, Samir Sayah, Associate, Tel.: +2 13 21 37 07 07 – samir.sayah@cms-bfl.com • In Casablanca, Wilfried Le Bihan, Lawyer, Tel.: +2 12 22 48 14 82 – wilfried.lebihan@cms-bfl.com

CMS Bureau Francis Lefebvre,
1-3, villa Emile Bergerat, 92522 Neuilly-sur-Seine Cedex, France
T +33 1 47 38 55 00 - F +33 1 47 38 55 55 - info@cms-bfl.com

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