



EUROPEAN PARLIAMENT

2009 - 2014

*Committee on Legal Affairs
The Chair*

11.11.2013

Mrs Sharon Bowles
Chair
Committee on Economic and Monetary Affairs
BRUSSELS

Subject: Opinion on the legal basis of the proposal for a Council Directive amending Directives 2006/112/EC and 2008/118/EC as regards the French outermost regions and Mayotte in particular [COM(2013)0577]

Dear Madam Chair,

At the meeting on 14 October 2013, JURI adopted an opinion to the Committee on the Environment, Public Health and Food Safety on the legal basis on the proposal for a Directive of the European Parliament and the Council amending certain Directives in the fields of environment, agriculture, social policy and public health by reason of the change of status of Mayotte with regard to the Union [COM(2013)0418].

The conclusion of that opinion was that the Council had chosen an incorrect legal basis and JURI therefore decided to recommend to the President to initiate a case in the Court of Justice in order to ensure that the correct legal basis would be used for the proposal. In its recommendation JURI also reserved the right to follow this up with recommendations concerning related legislative acts concerning the status of Mayotte.

At its meeting 5 November 2013, JURI therefore adopted opinions on its own initiative in accordance with Rule 37(3) of the Rules of Procedure concerning the legal bases of three additional legislative proposals concerning Mayotte which are being treated in different committees, including the above proposal in the Committee on Economic and Monetary Affairs.

I - Background

Following a referendum in 2009, the then French overseas community Mayotte, located north of Madagascar in the Indian Ocean, became an overseas department of France as from 31 March 2011, and by letter of 26 October 2011¹, the President of France therefore asked the President of the European Council to initiate the procedure in accordance with Article 355(6) TFEU to adopt a decision amending the status of Mayotte under the EU Treaties from an overseas country or territory to an outermost region. The letter also referred to Declaration No 43 on Article 355(6) TFEU, which has the following wording:

The High Contracting Parties agree that the European Council, pursuant to Article 355(6), will take a decision leading to the modification of the status of Mayotte with regard to the Union in order to make this territory an outermost region within the meaning of Article 355(1) and Article 349, when the French authorities notify the European Council and the Commission that the evolution currently under way in the internal status of the island so allows.

After consulting the Commission² in accordance with Article 355(6) TFEU, the European Council therefore on 12 July 2012 unanimously adopted the above-mentioned Decision.

Article 1 of the Decision states that Mayotte, with effect from 2014, shall cease to be an overseas country or territory, to which the provisions of Part Four of the TFEU apply, and shall become an outermost region of the Union within the meaning of Article 349 TFEU. Article 2 has the follow wording:

Article 2

The TFEU shall be amended as follows:

- (1) in the first paragraph of Article 349, the word 'Mayotte' shall be inserted after the word 'Martinique';*
- (2) in Article 355(1), the word 'Mayotte' shall be inserted after the word 'Martinique';*
- (3) in Annex II, the sixth indent shall be deleted.*

This Decision has the same structure and was adopted using the same procedure as a European Council Decision adopted in 2010 on the change of status of the French Caribbean island of Saint-Barthélemy from outermost region to overseas country or territory.³

It should however be noted that neither of the amendments of the wording of the TFEU in accordance with these two European Council Decisions are reflected in the last consolidated version of the TFEU, which was published on 26 October 2012⁴. They are however included

¹ See Council document EUCO 114/11 of 15 November 2011.

² C(2012) 3506 final, available in Council document 11006/12.

³ European Council Decision 2010/718/EU of 29 October 2010 on amending the status with regard to the European Union of the island of Saint-Barthélemy (OJ L 325, 9.12.2010, p. 4).

⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:FULL:EN:PDF>.

in the Council's own consolidated version of the text¹.

On 14 October 2013, JURI adopted the above-mentioned opinion to the Committee on the Environment, Public Health and Food Safety which included the conclusion that the Council had chosen an incorrect legal basis.² JURI therefore decided to recommend to the President to initiate a case in the Court of Justice in order to ensure that the correct legal basis would be used for the proposal, and to recommend that Parliament should not take any action concerning European Council Decision 2012/419/EU amending the Treaty. In its recommendation JURI also reserved the right to follow this up with recommendations concerning related legislative acts concerning the status of Mayotte.

At its meeting on 5 November 2013, JURI therefore verified the legal basis of three additional legislative proposals, including the proposal below for which the Committee on Economic and Monetary Affairs is the lead committee.

II - The legal basis of the proposal to amend Directives 2006/112/EC and 2008/118/EC as regards the French outermost regions and Mayotte in particular

The proposal

The objective of the proposed Directive is to give Mayotte the same status as that which has long applied to the other French outermost regions Guadeloupe, French Guyana, Martinique and Réunion, namely to be excluded from the scope of the common system of value added tax under EU secondary law.

The proposed legal basis

The Commission is basing its proposal on Article 113 TFEU, according to which the Council shall adopt provisions for the harmonisation of indirect taxation, after consulting the Parliament. The Council did not modify the legal basis and has therefore consulted Parliament.

Analysis

Both of the legislative acts which are proposed to be amended were based on Article 113 TFEU. The Legal Service has recalled that the Court of Justice has held that the appropriate legal basis for indirect taxation measures is Article 113 TFEU³. Since the proposed act merely aims at extending the same status to Mayotte as the other outermost regions enjoy on the basis of existing secondary legislation, such a measure must be based on the same legal basis as that legislation. The legal basis proposed by the Commission is therefore correct.

III - Conclusion and recommendation

The correct legal basis for the proposal for a Council Directive amending Directives

¹ <http://register.consilium.europa.eu/pdf/en/08/st06/st06655-re07.en08.pdf>.

² See the letter of 16 October 2013 from Mr Lehne to Mr Groote.

³ See Case C-338/01, *Commission v Council*, [2004] ECR I-04829, paragraph 60, and Case 533/03, *Commission v Council*, [2006] ECR I-01025, paragraph 45.

2006/112/EC and 2008/118/EC as regards the French outermost regions and Mayotte in particular is Article 113 TFEU.

At its meeting of 5 November 2013 the Committee on Legal Affairs accordingly decided, unanimously¹, to communicate to you that the Commission and the Council have used the correct legal basis for this legislative proposal.

Yours sincerely,

Klaus-Heiner Lehne

¹ The following were present for the final vote: Baldassarre (Vice-Chair), Luigi Berlinguer, Sebastian Valentin Bodu (Vice-Chair), Françoise Castex (Vice-Chair), Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Klaus-Heiner Lehne (Chair), Eva Lichtenberger, Antonio Masip Hidalgo, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner (Vice-Chair), József Szájer, Rebecca Taylor, Alexandra Thein, Cecilia Wikström, Zbigniew Ziobro, Tadeusz Zwiefka.