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EUROPEAN PARLIAMENT

2009 - 2014

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*Plenary sitting*

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**A7-0399/2013**

20.11.2013

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# **REPORT**

on the proposal for a directive of the European Parliament and of 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 – C7-0176/2013 – 2013/0192(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Matthias Groote

***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

***Amendments to a draft act***

**Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

**Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of 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 – C7-0176/2013 – 2013/0192(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0418),
  - having regard to Article 294(2), Article 43(2), Article 114, Article 153(2), Article 168 and Article 192(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0176/2013),
  - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
  - having regard to the Council letter of 10 October 2013<sup>1</sup>,
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rules 55 and 37 of its Rules of Procedure,
  - having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinion of the Committee on Regional Development (A7-0399/2013),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a directive Recital 1**

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<sup>1</sup> Item 4 of the Minutes of 21 October 2013 (P7\_PV-PROV(2013)10-21)

*Text proposed by the Commission*

(1) By Decision 2012/419/EU<sup>3</sup>, the European Council decided to amend the status of Mayotte with regard to the European Union with effect from 1 January 2014. Therefore, from that date Mayotte will cease to be an overseas territory and become an outermost region within the meaning of Articles 349 and 355(1) of the Treaty. Union law will apply to Mayotte as from *that date*. It is appropriate to provide for certain specific measures justified by the particular situation of Mayotte in a number of areas.

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<sup>3</sup> OJ L 204, 31.7.2012, p. 131.

*Amendment*

(1) By Decision 2012/419/EU<sup>3</sup>, the European Council decided to amend the status of Mayotte with regard to the European Union with effect from 1 January 2014. Therefore, from that date Mayotte will cease to be an overseas **country or territory *within the meaning of Article 198 TFEU*** and become an outermost region within the meaning of Articles 349 and 355(1) of that Treaty). ***Following this change in the legal status of Mayotte,*** Union law will apply to Mayotte as from ***1 January 2014***. It is appropriate to provide for certain specific measures justified by the particular ***structural social, environmental and economic*** situation of Mayotte ***and its new status as an outermost region,*** in a number of areas.

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<sup>3</sup> OJ L 204, 31.7.2012, p. 131.

## **Amendment 2**

### **Proposal for a directive** **Recital 4**

*Text proposed by the Commission*

(4) In the field of agriculture, as regards Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens<sup>5</sup> it is noted that, in Mayotte, laying hens are reared in unenriched cages. In view of the considerable investment and preparatory work required for replacing unenriched cages by enriched cages or alternative systems, it is necessary, in respect of laying hens in lay on 1 January 2014, to postpone the prohibition of using unenriched cages for a period of up to ***12 months*** from that date. Replacement of the cages during the

*Amendment*

(4) In the field of agriculture, as regards Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens<sup>5</sup> it is noted that, in Mayotte, laying hens are reared in unenriched cages. In view of the ***economic and social constraints obtaining in Mayotte and the*** considerable investment and preparatory work required for replacing unenriched cages by enriched cages or alternative systems, it is necessary, in respect of laying hens in lay on 1 January 2014, to postpone the prohibition of using unenriched cages for a

laying cycle of the hens should thereby be avoided. In order to prevent distortions of competition, eggs derived from establishments using unenriched cages should be marketed only on the local market of Mayotte. In order to facilitate the necessary controls, eggs produced in unenriched cages should bear a special mark.

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<sup>5</sup> OJ L 203, 3.8.1999, p. 53.

period of up to **four years** from that date. Replacement of the cages during the laying cycle of the hens should thereby be avoided. In order to prevent distortions of competition, eggs derived from establishments using unenriched cages should be marketed only on the local market of Mayotte. In order to facilitate the necessary controls, eggs produced in unenriched cages should bear a special mark.

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<sup>5</sup> OJ L 203, 3.8.1999, p. 53.

### Amendment 3

#### Proposal for a directive Recital 6

##### *Text proposed by the Commission*

(6) In respect of Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC, the current state of surface waters in Mayotte calls for considerable improvement in order to comply with the requirements of that Directive. The quality of bathing waters depends directly upon urban waste water treatment, and the provisions of Directive 2006/7/EC may only be complied with progressively once agglomerations that affect the quality of urban waste waters comply with the requirements of Directive 91/271/EEC. Therefore, specific time limits need to be adopted in order allow France to reach the Union standards as regards bathing water quality in Mayotte.

##### *Amendment*

(6) In respect of Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC, the current state of surface waters in Mayotte calls for considerable improvement in order to comply with the requirements of that Directive. The quality of bathing waters depends directly upon urban waste water treatment, and the provisions of Directive 2006/7/EC may only be complied with progressively once agglomerations that affect the quality of urban waste waters comply with the requirements of Directive 91/271/EEC. Therefore, specific time limits need to be adopted in order **to** allow France to reach the Union standards as regards bathing water quality in Mayotte **as a new outermost region and due to its special social, environmental and economic situation.**

## Amendment 4

### Proposal for a directive Recital 7

#### *Text proposed by the Commission*

(7) In the area of social policy, account should be taken of the difficulties to comply with Directive 2006/25/EC of the European Parliament and of the Council of 5 April 2006 on the minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (artificial optical radiation) in Mayotte as from 1 January 2014. There are no technical facilities available in Mayotte for the implementation of measures necessary to comply with that Directive in the field of artificial optical radiation. Therefore, it is *possible* to grant a derogation to France from certain provisions of that Directive until 31 December 2017, provided that those structures are not available in Mayotte and without prejudice to the general principles of protection and prevention in the area of health and safety of workers.

#### *Amendment*

(7) In the area of social policy, account should be taken of the difficulties to comply with Directive 2006/25/EC of the European Parliament and of the Council of 5 April 2006 on the minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (artificial optical radiation) in Mayotte as from 1 January 2014. There are no technical facilities available in Mayotte *due to its prevailing special social and economic situation* for the implementation of measures necessary to comply with that Directive in the field of artificial optical radiation. Therefore, it is *appropriate* to grant a derogation to France from certain provisions of that Directive until 31 December 2017, provided that those structures are not available in Mayotte and without prejudice to the general principles of protection and prevention in the area of health and safety of workers.

## Amendment 5

### Proposal for a directive Article 1 – point 1 Directive 91/271/EC Article 3 – paragraph 1a – indent 1

#### *Text proposed by the Commission*

– by 31 December 2020 at the latest for agglomerations of more than **10 000** p.e., which will cover at least 70% of the load generated in Mayotte;

#### *Amendment*

– by 31 December 2020 at the latest for agglomerations of more than **15 000** p.e., which will cover at least 70% of the load generated in Mayotte;



## Amendment 6

### Proposal for a directive

#### Article 1 – point 1

Directive 91/271/EEC

Article 3 – paragraph 1a – indent 2

*Text proposed by the Commission*

*Amendment*

- by 31 December 2027 at the latest for all agglomerations.'

- by 31 December 2027 at the latest for all agglomerations *of more than 2 000 p.e..*

## Amendment 7

### Proposal for a directive

#### Article 1 – point 2

Directive 91/271/EEC

Article 4 – paragraph 1a

*Text proposed by the Commission*

*Amendment*

(1a) By way of derogation from paragraph 1, in respect of Mayotte France shall ensure that urban waste water entering collecting systems are, before discharge, subject to secondary treatment or an equivalent treatment:

- by 31 December 2020 at the latest for agglomerations of more than 15 000 p.e. which, along with those agglomerations referred to in Article 5 (2a), will cover at least 70% of the load generated in Mayotte;

- by 31 December 2027 at the latest for all agglomerations. '

(1a) By way of derogation from paragraph 1, in respect of Mayotte France shall ensure that urban waste water entering collecting systems are, before discharge, subject to secondary treatment or an equivalent treatment:

- by 31 December 2020 at the latest for agglomerations of more than 15 000 p.e. which, along with those agglomerations referred to in Article 5 (2a), will cover at least 70% of the load generated in Mayotte;

- by 31 December 2027 at the latest for all agglomerations *of more than 2 000 p.e..* '

## Amendment 8

### Proposal for a directive

#### Article 1 – point 3 – point a

Directive 91/271/EC

Article 5 – paragraph 2a – indent 1

*Text proposed by the Commission*

– by 31 December 2020 at the latest for agglomerations of more than **10 000** p.e. which, along with those agglomerations referred to in Article 4(1a), will cover at least 70% of the load generated in Mayotte;

*Amendment*

– by 31 December 2020 at the latest for agglomerations of more than **15 000** p.e. which, along with those agglomerations referred to in Article 4(1a), will cover at least 70% of the load generated in Mayotte;

## Amendment 9

### Proposal for a directive

#### Article 1 – point 3 – point a

Directive 91/271/EC

Article 5 – paragraph 2a – indent 2

*Text proposed by the Commission*

– by 31 December 2027 at the latest for **all** agglomerations.

*Amendment*

– by 31 December 2027 at the latest for agglomerations **of more than 2 000 p.e.**

## Amendment 10

### Proposal for a directive

#### Article 1 – point 3 a (new)

Directive 91/271/EC

Article 7 – paragraph 1 a (new)

*Present text*

*Amendment*

***(3a) In Article 7, the following paragraph is added:***

***' By way of derogation from the first paragraph, the time limit set out therein shall, in respect of Mayotte, be 31 December 2027.'***

## Amendment 11

### Proposal for a directive

#### Article 2

Directive 1999/74/EC

Article 5 – paragraph 3 – subparagraph 1

#### *Text proposed by the Commission*

' 3. By way of derogation from paragraph 2, in Mayotte, laying hens ***in lay on 1 January 2014 and*** reared ***at that date*** in cages as referred to in this Chapter ***may continue to be reared in such cages*** until 31 December 2014."

#### *Amendment*

'3. By way of derogation from paragraph 2, in Mayotte, laying hens ***may continue to be*** reared in cages as referred to in this Chapter until 31 December ***2017.***"

## Amendment 12

### Proposal for a directive

#### Article 8

#### *Text proposed by the Commission*

This Directive shall enter into force on the ***twentieth*** day following that of its publication in the *Official Journal of the European Union*.

#### *Amendment*

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

***It shall apply from 1 January 2014.***

## EXPLANATORY STATEMENT

In 2011 the status of Mayotte has been changed within the French constitutional context from an overseas territory into an overseas department.

Following this and on request from France the European Council, based on Art. 355 (2 and 6), changed by way of Decision 2012/419/EU the status of this new overseas department with regard to the European Union into that of an outermost region in the sense of Art. 349 TFEU.

According to this decision the new status of Mayotte will enter into force as from 1 January 2014 which entails the full application of EU legislation.

However it proves to be impossible for France to ensure this full application of Union law right from the beginning and a number of transitional periods and arrangements are necessary, notably in the fields of wastewater treatment, the dimensions, water policy, the management of bathing water quality, the dimensions of cages for laying hens, the minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents and the patients' rights in cross border health care.

The rapporteur has verified the correct application of the legal basis for this Commission proposal and has consulted with the European Parliament's JURI committee.

The JURI Committee unanimously concluded that the Articles 43(2), 114, 153(2), 168 and 192(1) all requiring the Ordinary legislative procedure are the appropriate legal bases for this proposal.

The JURI opinion is added to this file but the rapporteur would like to emphasise the following paragraphs: "The legal basis proposed by the Commission relates directly to the different legal bases of the six concerned Directives and the aim and content of the proposal is to provide for the timetable and specific modalities for their implementation as regards Mayotte.

The proposal does therefore not provide any new rules on specific measures taking into account the specific social and economic situation of Mayotte. Therefore, even though the status of Mayotte has been amended by the European Council Decision to an outermost region, to which Article 349 TFEU applies, this proposal does not relate to measures under that legal basis.

Since there are different legal bases for the concerned Directives, and neither is secondary and indirect in relation to the other, the proposal will have to be founded on the various corresponding legal bases. Since they all call for the application of the ordinary legislative procedure, this will consequently have to be the procedure to be followed for the proposal."

The rapporteur agrees in principle with the transitional arrangements proposed by the Commission since he believes that a swift full application of Union law is the best way

forward for the environment and public health and wellbeing of animals on the island. However, in the case of laying hens and in order to find a workable, fair compromise between the investment of entrepreneurs and the animal wellbeing the rapporteur proposes to ban the use of new cages built according to the old standards but that old standard cages which are already in use, can be used until the end of 2017. The condition is that eggs from hens reared in old style cages shall not be exported and labelled accordingly.

A second set of amendments are related to the waste water collecting systems and the thresholds of the agglomerations above which such systems must be built. These amendments aim at bringing into line the provisions concerning Mayotte with the "acquis communautaire" which is currently in force for the rest of the EU.

## OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

Mr Matthias Grooten  
Chair  
Committee on the Environment, Public Health and Food Safety  
BRUSSELS

Subject: Opinion on the legal basis of the 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] (COM(2013)0418 – C7-0176/2013 – 2013/0192(COD))

By letter of 19 September 2013 you asked the Committee on Legal Affairs, pursuant to Rule 37 of the Rules of Procedure, to examine the legal basis for the above-mentioned proposal for a directive.

The legal basis proposed by the Commission is Articles 43(2), 114, 153(2), 168 and 192(1) of the Treaty on the Functioning of the European Union (TFEU).

In the wake of the change of status of Mayotte from a French overseas country or territory to an outermost region, by European Council Decision 2012/419/EU<sup>1</sup>, the Council of the European Union decided on 30 September 2013 to change the legal basis of the proposal to Article 349 TFEU.

In the letter, you therefore asked for an opinion on the correct legal basis, and also on whether the European Council Decision is legal and, if not, the possibilities for legal redress.

### **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 2011<sup>2</sup>, 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*

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<sup>1</sup> European Council Decision 2012/419/EU of 11 July 2012 amending the status of Mayotte with regard to the European Union (OJ L 204, 31.7.2012, p. 131).

<sup>2</sup> See Council document EUCO 114/11 of 15 November 2011.

*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 Commission<sup>1</sup> 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.<sup>2</sup>

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 2012<sup>3</sup>. They are however included in the Council's own consolidated version of the text<sup>4</sup>.

## **II - Relevant Treaty Articles**

The following Articles of the TFEU are presented as the legal basis in the Commission proposal (emphasis added):

***Article 43***

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<sup>1</sup> C(2012) 3506 final, available in Council document 11006/12.

<sup>2</sup> 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).

<sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:FULL:EN:PDF>.

<sup>4</sup> <http://register.consilium.europa.eu/pdf/en/08/st06/st06655-re07.en08.pdf>.

[...]

2. *The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall establish the common organisation of agricultural markets provided for in Article 40(1) and the other provisions necessary for the pursuit of the objectives of the common agricultural policy and the common fisheries policy.*

**Article 114**

1. *Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.*

[...]

**Article 153**

[...]

*The European Parliament and the Council shall act in accordance with the ordinary legislative procedure after consulting the Economic and Social Committee and the Committee of the Regions.*

[...]

**Article 168**

[...]

4. *By way of derogation from Article 2(5) and Article 6(a) and in accordance with Article 4(2)(k) the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall contribute to the achievement of the objectives referred to in this Article through adopting in order to meet common safety concerns:*

[...]

5. *The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, may also adopt incentive measures designed to protect and improve human health and in particular to combat the major cross-border health scourges, measures concerning monitoring, early warning of and combating serious cross-border threats to*



health, and measures which have as their direct objective the protection of public health regarding tobacco and the abuse of alcohol, excluding any harmonisation of the laws and regulations of the Member States.

[...]

#### **Article 192**

1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191.

[...]

The Council is proposing the following Article as the legal basis for the Directive (emphasis added):

#### **Article 349**

Taking account of the structural social and economic situation of Guadeloupe, French Guiana, Martinique, Réunion, Saint-Barthélemy, Saint-Martin, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, the Council, on a proposal from the Commission and after consulting the European Parliament, shall adopt specific measures aimed, in particular, at laying down the conditions of application of the Treaties to those regions, including common policies. Where the specific measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act on a proposal from the Commission and after consulting the European Parliament.

The measures referred to in the first paragraph concern in particular areas such as customs and trade policies, fiscal policy, free zones, agriculture and fisheries policies, conditions for supply of raw materials and essential consumer goods, State aids and conditions of access to structural funds and to horizontal Union programmes.

The Council shall adopt the measures referred to in the first paragraph taking into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the Union legal order, including the internal market and common policies.

### **III - The proposed legal bases**

Article 43 TFEU provides the legal basis for the common agricultural policy and the common

fisheries policy. The procedure is the ordinary legislative procedure.

Article 114 TFEU provides the legal basis for adopting the measures for the approximation of provisions in the Member States which have as their object the establishment and functioning of the internal market. The procedure is the ordinary legislative procedure.

Article 153 TFEU provides the legal basis for adopting measures to protect workers' health and safety and the social security and protection of workers. The procedure is the ordinary legislative procedure.

Article 168 TFEU provides the legal basis for adopting measures to protect public health. The procedure is the ordinary legislative procedure.

Article 192 TFEU provides the legal basis for action to be taken by the Union in order to achieve the objectives of the Union policy on the environment. The procedure is the ordinary legislative procedure.

Article 349 TFEU provides the legal basis for adopting specific measures aimed, in particular, at laying down the conditions of application of the Treaties to outermost region, including common policies, in order to take account of their specific social and economic situation. The Council adopts these measures on a proposal from the Commission after consulting Parliament.

#### **IV - Case-law on legal basis**

According to Article 13(2) of the Treaty on the European Union (TEU), each institution is to act within the limits of the powers conferred upon it by the Treaty, and in conformity with the procedures, conditions and objectives set out in them.<sup>1</sup>

It is settled case law of the Court of Justice that "the choice of legal basis for a Community measure must rest on objective factors amenable to judicial review, which include in particular the aim and content of the measure"<sup>2</sup>. The choice of an incorrect legal basis may therefore justify the annulment of the act in question.

Furthermore, where the proposal for an act simultaneously pursues a number of objectives or has several components that are indissociably linked, without one being secondary and indirect in relation to the other, the act will have to be founded on the various corresponding legal bases.<sup>3</sup>

#### **V. Aim and content of the proposed directive**

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<sup>1</sup> Case C-403/05 *Parliament v. Commission* [2007] E.C.R. I-9045, para. 49, and the case-law cited therein.

<sup>2</sup> Case C-45/86, *Commission v. Council* (Generalised Tariff Preferences) [1987] ECR 1439, para. 5; Case C-440/05 *Commission v. Council* [2007] E.C.R. I-9097; Case C-411/06 *Commission v. Parliament and Council* (8 September 2009) ([OJ C 267 of 07.11.2009, p.8](#)).

<sup>3</sup> See Case C-411/06, cited above, paras. 46-47.

In its above-mentioned opinion on the French initiative on the change of status of Mayotte, the Commission stated that it will examine the request for derogations and transitional periods presented by France and, if necessary, will make its own proposals.

The proposal presented by the Commission therefore provides for the timetable and specific modalities to be observed by France when implementing six existing directives in the fields of environment, agriculture, social policy and public health.

## **VI - Determination of the appropriate legal basis**

The question which needs to be answered in order to determine the correct legal basis for the proposed directive is whether its provisions are to be considered specific measures for the application of the Treaties to Mayotte, taking account of its structural social and economic situation.

The legal basis proposed by the Commission relates directly to the different legal bases of the six concerned Directives and the aim and content of the proposal is to provide for the timetable and specific modalities for their implementation as regards Mayotte.

The proposal does therefore not provide any new rules on specific measures taking into account the specific social and economic situation of Mayotte. Therefore, even though the status of Mayotte has been amended by the European Council Decision to an outermost region, to which Article 349 TFEU applies, this proposal does not relate to measures under that legal basis.

Since there are different legal bases for the concerned Directives, and neither is secondary and indirect in relation to the other, the proposal will have to be founded on the various corresponding legal bases. Since they all call for the application of the ordinary legislative procedure, this will consequently have to be the procedure to be followed for the proposal.

It should furthermore be noted that under Article 355(6) TFEU, the European Council may amend the status of an overseas country or territory as regards the application of the Treaties to that overseas country or territory, but the actual wording of the Treaties may only be amended by using the procedures in Article 48 TEU. The appropriateness of the European Council adopting decisions amending the wording of the Treaties can therefore be questioned, in particular taking into account Article 13(2) TFEU whereby each institution is to act within the limits of the powers conferred upon it by the Treaty.

## **VII - Conclusion and recommendations**

In light of the foregoing analysis Articles 43(2), 114, 153(2), 168 and 192(1) TFEU, as proposed by the Commission, constitute the proper legal basis for the proposal.

At its meeting of 14 October 2013 the Committee on Legal Affairs accordingly decided, unanimously<sup>1</sup>, to take the position that the legal basis proposed by the Council, Article 349

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<sup>1</sup> The following were present for the final vote: Sebastian Valentin Bodu (Vice-Chair), Françoise Castex (Vice-

TFEU, is incorrect, and that the legal basis proposed by the Commission is correct.

On this basis, the Committee on Legal Affairs therefore also decided to recommend to the President of the Parliament, in accordance with Rule 128 of the Rules of Procedure, to bring a case to the Court of Justice, once the decision of the Council to request Parliament's opinion has been published in the Official Journal, in order to safeguard Parliament's prerogatives in accordance with Article 13(2) TEU.

The Committee on Legal Affairs recommended that Parliament should not take any action concerning European Council Decision 2012/419/EU amending the Treaty.

Yours sincerely,

Klaus-Heiner Lehne

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Chair), Marielle Gallo, Jutta Haug (pursuant to Rule 187(2)), Klaus-Heiner Lehne (Chair), Eva Lichtenberger, Alajos Mészáros, Andrej Plenković (pursuant to Rule 193(3)) Bernhard Rapkay, Francesco Enrico Speroni, Dimitar Stoyanov, Rebecca Taylor, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka.

16.10.2013

## OPINION OF THE COMMITTEE ON REGIONAL DEVELOPMENT

for the Committee on the Environment, Public Health and Food Safety

on the proposal for a directive of the European Parliament and of 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 – C7-0176/2013 – 2013/0192(COD))

Rapporteur: Patrice Tirolien

### SHORT JUSTIFICATION

By Decision 2012/419/EU, the European Council amended the status of Mayotte with regard to the Union with effect from 1 January 2014. Therefore, from that date Mayotte will cease to be an overseas territory, becoming an outermost region within the meaning of Articles 349 and 355(1) TFEU, and Union law will, in principle, apply in full.

However, in recognition of what this change of status will entail for Mayotte, the Commission has submitted to Parliament and the Council proposals for a number of legislative derogations that will enable the EU *acquis* to be phased in over an appropriate period of time.

The proposal before us sets out a number of derogations relating to the organisation, funding and control of Mayotte's fisheries. It was drawn up in close cooperation with the French Government with a view to ensuring that the *acquis* is phased in as swiftly as the specific conditions in Mayotte – in particular the economic and social constraints obtaining in outermost regions, as referred to in Article 349 of the TFEU – allow.

Your rapporteur accordingly deplores the failure to include Article 349 TFEU among the legal bases for this proposal, given that the measures put forward and the justifications given for them are fully in keeping with that article's aims. Its inclusion is essential in order to secure the proposed measures' status as derogations.

A number of adjustments also need to be made with a view to ensuring that EU animal welfare, human health and environmental objectives are met and proper account is taken of their practical and financial implications and of the constraints common to the outermost regions. Your rapporteur is therefore proposing that, in view of the clear link between these provisions, the derogations relating to waste water treatment and water quality control should

be harmonised.

Your rapporteur also takes the view that the deadline for bringing existing laying hen cages up to standard should be extended to four years in view of the small number of people working in this sector, the economic and social constraints obtaining in Mayotte and the fact that the eggs may be sold on the local market alone. The common rules will apply from the outset to all new cages brought into service.

## AMENDMENTS

The Committee on Regional Development calls on the Committee on the Environment, Public Health and Food Safety, as the committee responsible, to incorporate the following amendments into its report:

### Amendment 1

#### Proposal for a directive

##### Citation 1

*Text proposed by the Commission*

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2), Article 114, Article 153(2), Article 168 **and** Article 192(1) thereof,

*Amendment*

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2), Article 114(2), Article 153(2), Article 168, Article 192(1) **and Article 349** thereof,

*Justification*

*Given that Article 349 of the TFEU provides for the possibility of adopting specific measures for outermost regions, it should be included among the legal bases for this directive.*

### Amendment 2

#### Proposal for a directive

##### Recital 1

*Text proposed by the Commission*

(1) By Decision 2012/419/EU<sup>3</sup>, the European Council decided to amend the status of Mayotte with regard to the European Union with effect from 1 January 2014. Therefore, from that date Mayotte

*Amendment*

(1) By Decision 2012/419/EU<sup>3</sup>, the European Council decided to amend the status of Mayotte with regard to the European Union with effect from 1 January 2014. Therefore, from that date Mayotte

will cease to be an overseas territory and become an outermost region within the meaning of Articles 349 and 355(1) of *the* Treaty. Union law will apply to Mayotte as from that date. It is appropriate to provide for certain specific measures justified by the particular situation of Mayotte in a number of areas.

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<sup>3</sup> OJ L 204, 31.7.2012, p. 131.

will cease to be an overseas *country or* territory *within the meaning of Article 198 of the Treaty on the Functioning of the European Union* and become an outermost region within the meaning of Articles 349 and 355(1) of *that* Treaty. Union law will apply to Mayotte as from that date. It is appropriate to provide for certain specific measures, justified by the particular situation of Mayotte *and its new status as an outermost region*, in a number of areas.

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<sup>3</sup> OJ L 204, 31.7.2012, p. 131.

### *Justification*

*To clarify Mayotte's previous status and highlight the fact that its new status as an outermost region makes it eligible for derogations from EU policies under Article 349 of the TFEU.*

## **Amendment 3**

### **Proposal for a directive**

#### **Recital 4**

##### *Text proposed by the Commission*

(4) In the field of agriculture, as regards Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens<sup>5</sup> it is noted that, in Mayotte, laying hens are reared in unenriched cages. In view of the considerable investment and preparatory work required for replacing unenriched cages by enriched cages or alternative systems, it is necessary, in respect of laying hens in lay on 1 January 2014, to postpone the prohibition of using unenriched cages for a period of up to **12 months** from that date. Replacement of the cages during the laying cycle of the hens should thereby be avoided. In order to prevent distortions of competition, eggs derived from establishments using unenriched cages should be marketed only on the local market of Mayotte. In order to facilitate the

##### *Amendment*

(4) In the field of agriculture, as regards Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens<sup>5</sup> it is noted that, in Mayotte, laying hens are reared in unenriched cages. In view of the ***economic and social constraints obtaining in Mayotte and the*** considerable investment and preparatory work required for replacing unenriched cages by enriched cages or alternative systems, it is necessary, in respect of laying hens in lay on 1 January 2014, to postpone the prohibition of using unenriched cages for a period of up to ***four years*** from that date. Replacement of the cages during the laying cycle of the hens should thereby be avoided. In order to prevent distortions of competition, eggs derived from establishments using unenriched cages

necessary controls, eggs produced in unenriched cages should bear a special mark.

should be marketed only on the local market of Mayotte. In order to facilitate the necessary controls, eggs produced in unenriched cages should bear a special mark.

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<sup>5</sup> OJ L 203, 3.8.1999, p. 53.

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<sup>5</sup> OJ L 203, 3.8.1999, p. 53.

#### **Amendment 4**

##### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 1**

Directive 91/271/EC

Article 3 – paragraph 1a – indent 1

*Text proposed by the Commission*

– by 31 December 2020 at the latest for agglomerations of more than **10 000** p.e., which will cover at least 70% of the load generated in Mayotte;

*Amendment*

– by 31 December 2020 at the latest for agglomerations of more than **15 000** p.e., which will cover at least 70% of the load generated in Mayotte;

#### **Amendment 5**

##### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 1**

Directive 91/271/EC

Article 3 – paragraph 1a – indent 2

*Text proposed by the Commission*

– by 31 December 2027 at the latest for **all agglomerations**.

*Amendment*

– by 31 December 2027 at the latest for **municipalities of more than 2000 p.e.**

#### **Amendment 6**

##### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 2**

Directive 91/271/EC

Article 4 – paragraph 1a – indent 2

*Text proposed by the Commission*

– by 31 December 2027 at the latest for **all**

*Amendment*

– by 31 December 2027 at the latest for



*agglomerations.*

*municipalities of more than 2.000 p.e..*

#### **Amendment 7**

##### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 3 – point a**

Directive 91/271/EC

Article 5 – paragraph 2a – indent 1

*Text proposed by the Commission*

– by 31 December 2020 at the latest for agglomerations of more than **10 000** p.e. which, along with those agglomerations referred to in Article 4(1a), will cover at least 70% of the load generated in Mayotte;

*Amendment*

– by 31 December 2020 at the latest for agglomerations of more than **15 000** p.e. which, along with those agglomerations referred to in Article 4(1a), will cover at least 70% of the load generated in Mayotte;

#### **Amendment 8**

##### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 3 – point a**

Directive 91/271/EC

Article 5 – paragraph 2a – indent 2

*Text proposed by the Commission*

– by 31 December 2027 at the latest for **all** agglomerations.

*Amendment*

– by 31 December 2027 at the latest for agglomerations **of more than 2000 p.e..**

#### **Amendment 9**

##### **Proposal for a directive**

##### **Article 2**

Directive 1999/74/EC

Article 5 – paragraph 3 – subparagraph 3a

*Text proposed by the Commission*

*Amendment*

***From 1 January 2014, no cages as referred to in this Chapter may be built or brought into service for the first time in Mayotte.'***

## PROCEDURE

<b>Title</b>	Amending 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
<b>References</b>	COM(2013)0418 – C7-0176/2013 – 2013/0192(COD)
<b>Committee responsible</b> Date announced in plenary	ENVI 1.7.2013
<b>Opinion by</b> Date announced in plenary	REGI 1.7.2013
<b>Rapporteur</b> Date appointed	Patrice Tirolien 11.7.2013
<b>Date adopted</b>	14.10.2013
<b>Result of final vote</b>	+: 25 –: 1 0: 4
<b>Members present for the final vote</b>	Luís Paulo Alves, Francesca Barracciu, Victor Boștinaru, Nikos Chrysogelos, Brice Hortefeux, Danuta Maria Hübner, María Irigoyen Pérez, Mojca Kleva Kekuš, Constanze Angela Krehl, Petru Constantin Luhan, Iosif Matula, Jan Olbrycht, Wojciech Michał Olejniczak, Georgios Stavrakakis, Nuno Teixeira, Lambert van Nistelrooij, Oldřich Vlasák, Kerstin Westphal, Hermann Winkler, Joachim Zeller
<b>Substitute(s) present for the final vote</b>	Cornelia Ernst, Catherine Grèze, Karin Kadenbach, Maurice Ponga, Elisabeth Schroedter, Richard Seeber, Patrice Tirolien, Giommaria Uggias, Derek Vaughan
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Edvard Kožušník

## PROCEDURE

<b>Title</b>	Amending 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		
<b>References</b>	COM(2013)0418 – C7-0176/2013 – 2013/0192(COD)		
<b>Date submitted to Parliament</b>	13.6.2013		
<b>Committee responsible</b> Date announced in plenary	ENVI 1.7.2013		
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	EMPL 1.7.2013	REGI 1.7.2013	AGRI 1.7.2013
<b>Not delivering opinions</b> Date of decision	EMPL 3.7.2013	AGRI 2.7.2013	
<b>Rapporteur(s)</b> Date appointed	Matthias Groote 11.7.2013		
<b>Legal basis disputed</b> Date of JURI opinion	JURI 14.10.2013		
<b>Discussed in committee</b>	24.10.2013	4.11.2013	
<b>Date adopted</b>	14.11.2013		
<b>Result of final vote</b>	+: -: 0:	20 0 0	
<b>Members present for the final vote</b>	Sophie Auconie, Franco Bonanini, Chris Davies, Edite Estrela, Jill Evans, Elisabetta Gardini, Françoise Grossetête, Cristina Gutiérrez-Cortines, Satu Hassi, Jolanta Emilia Hibner, Christa Klaß, Eija-Riitta Korhola, Linda McAvan, Vladko Todorov Panayotov, Pavel Poc, Frédérique Ries, Oreste Rossi, Glenis Willmott		
<b>Substitute(s) present for the final vote</b>	Kriton Arsenis, Margrete Auken, Vladimir Urutchev		
<b>Date tabled</b>	20.11.2013		