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REPORT

on 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 – C7-0268/2013 – 2013/0280(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: David Casa

(Simplified procedure – Rule 46(1) of its Rules of Procedure)

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 Council directive amending Directives 2006/112/EC and 2008/118/EC as regards the French outermost regions and Mayotte in particular (COM(2013)0577 – C7-0268/2013 – 2013/0280(CNS))

(Special legislative procedure – consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2013)0577),
 - having regard to Article 113 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0268/2013),
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to Rules 55, 46(1) and 37 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A7-0405/2013),
1. Approves the Commission proposal;
 2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 3. Asks the Council to consult Parliament again if it intends to substantially amend the text approved by Parliament;
 4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

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

¹ 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 Commission¹ 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.²

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 2012³. They are however included in the Council's own consolidated version of the text⁴.

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.⁵ 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

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

² 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).

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

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

⁵ See the letter of 16 October 2013 from Mr Lehne to Mr Groote.

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 TFEU¹. 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 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, unanimously², to communicate to you that the Commission and the Council have used the correct legal basis for this legislative proposal.

¹ 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.

² 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.

Yours sincerely,

Klaus-Heiner Lehne

PROCEDURE

Title	Amending Directives 2006/112/EC and 2008/118/EC as regards the French outermost regions and Mayotte in particular
References	COM(2013)0577 – C7-0268/2013 – 2013/0280(CNS)
Date of consulting Parliament	12.9.2013
Committee responsible Date announced in plenary	ECON 8.10.2013
Committee(s) asked for opinion(s) Date announced in plenary	REGI 8.10.2013
Not delivering opinions Date of decision	REGI 24.9.2013
Rapporteur(s) Date appointed	David Casa 10.9.2013
Simplified procedure - date of decision	10.9.2013
Legal basis disputed Date of JURI opinion	JURI 5.11.2013
Discussed in committee	18.11.2013
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Date tabled	25.11.2013