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REPORT

on the draft Council directive amending Council Directive 2010/18/EU
because of the change of status of Mayotte
(14220/2013 – C7-0355/2013– 2013/0189(NLE))

Committee on Employment and Social Affairs

Rapporteur: Pervenche Berès

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 draft Council directive amending Council Directive 2010/18/EU because of the change of status of Mayotte
(14220/2013 – C7-0355/2013 – 2013/0189(NLE))**

(Special legislative procedure – consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2013)0413) and the Council draft (14220/2013),
 - having regard to Article 349 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0355/2013),
 - having regard to Article 155(2) of the Treaty on the Functioning of the European Union, that is the legal basis chosen by the Commission for its proposal,
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to Rules 55 and 37 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs (A7-0414/2013),
1. Approves the Council draft as amended;
 2. Takes note that the Council consulted the European Parliament on the draft directive, although such consultation is not required under the legal basis proposed by the Commission;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to substantially amend its draft;
 5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive
Title

Council draft

Proposal for a COUNCIL **DIRECTIVE**
amending Council Directive 2010/18/EU
because of the change of status of Mayotte

Amendment

Proposal for a COUNCIL **DECISION**
amending Council Directive 2010/18/EU
because of the change of status of Mayotte

Justification

This amendment aims to revert to the wording of the Commission's proposal based on Article 155(2) of the TFEU.

Amendment 2

Draft directive
Citation 1

Council draft

Having regard to the Treaty on the
Functioning of the European Union, and in
particular Article 349 thereof,

Amendment

Having regard to the Treaty on the
Functioning of the European Union, and in
particular Article **155(2) and Article 349**
thereof,

Justification

This amendment promotes a double legislative base to this procedure aiming to keep the Parliament as co-legislator and having regards to the improvements proposed by the Council taking into account the special characteristics and constraints of Mayotte as an outermost region

Amendment 3

Draft directive
Citation 5

Council draft

***Acting in accordance with the special
legislative procedure,***

Amendment

deleted

Justification

This amendment aims to revert to the wording of the Commission's proposal based on Article 155(2) of the TFEU.

Amendment 4

Draft directive

Recital 1

Council draft

(1) By Decision 2012/419/EU¹, 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 will become an outermost region of the Union within the meaning of Articles 349 and 355(1) of the Treaty on the Functioning of the EU. Following this change in legal status of Mayotte, Union law will apply to Mayotte from 1 January 2014. Certain specific measures, justified by the particular structural social and economic situation of Mayotte as a new outermost region, *on the special conditions of application of Union law* should, however, be established.

¹ OJ L 204, 31.7.2012, p. 131.

Amendment

(1) By Decision 2012/419/EU¹, 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 will become an outermost region of the Union within the meaning of Articles 349 and 355(1) of the Treaty on the Functioning of the EU. Following this change in legal status of Mayotte, Union law will apply to Mayotte from 1 January 2014. Certain specific measures, justified by the particular structural social and economic situation of Mayotte as a new outermost region, should however, be established.

¹ OJ L 204, 31.7.2012, p. 131

Amendment 5

Draft directive

Solemn form

Council draft

HAS ADOPTED THIS ***DIRECTIVE***

Amendment

HAS ADOPTED THIS ***DECISION***

Justification

This amendment aims to revert to the wording of the Commission's proposal based on Article 155(2) of the TFEU.

Amendment 6

Draft directive

Article 1

Directive 2010/18/EU

Article 3 – paragraph 2 – subparagraph 2

Council draft

In Article 3(2) of Directive 2010¹/18/EU, the following subparagraph is added:

"By way of derogation from the first subparagraph, for Mayotte as an outermost region in the meaning of Article 349 TFEU, the additional period referred to therein shall be extended until 31 December 2018."

Amendment

In Article 3(2) of Directive 2010/18/EU, the following subparagraph is added:

'For the French outermost region of Mayotte, the additional period referred to in the first subparagraph shall be extended to 31 December 2018.'

Amendment 7

Draft directive

Article 2

Council draft

This **Directive** is addressed to the French Republic.

Amendment

This **Decision** is addressed to the French Republic.

Justification

This amendment aims to revert to the wording of the Commission's proposal based on Article 155(2) of the TFEU.

Amendment 8

Draft directive Article 3

Council draft

This **Directive** shall enter into force on 1 January 2014.

Amendment

This **Decision** shall enter into force on 1 January 2014.

Justification

This amendment aims to revert to the wording of the Commission's proposal based on Article 155(2) of the TFEU.

EXPLANATORY STATEMENT

The proposal

In response to a request from the French authorities to grant a deferred implementation date for Directive 2010/18/EU¹ concluded by social partners, which aims at implementing an agreement on parental leave at European level, the Commission proposes to grant such deferral in order to ensure the progressive achievement of equal treatment in the particular field of parental leave and so as not to destabilise the economic development of Mayotte.

The proposed legal bases

The Commission is basing its proposal on Article 155(2) of the Treaty of the Functioning of the European Union (TFEU), whereby the Council takes a decision on implementation of management and labour agreements on a proposal from the Commission, and the European Parliament shall be informed. The Council is on the contrary proposing to change the legal basis to Article 349 TFEU on specific measures for outermost regions, whereby the Council adopts these measures on a proposal from the Commission after consulting Parliament.

The Committee on Legal Affairs (JURI) of the European Parliament takes the position that the legal basis chosen by the Commission should be considered correct. Since the legal basis of the amended directive was Article 155(2) TFEU, the same legal basis should be used for the current proposal for an amending act.

Conclusion

The Rapporteur follows the opinion of the JURI committee on the legal basis, according to which the correct legal basis for the proposal for a *Council Decision amending Council Directive 2010/18/EU because of the change in status of Mayotte* is Article 155(2) TFEU. Therefore the Rapporteur proposes to approve the draft legislative proposal, with amendments aiming to bring the text in line with the legal basis on which the proposal of the Commission is based.

¹ Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ L 68, 18.3.2010, p. 13).

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

Mrs Pervenche Berès
Chair
Committee on Employment and Social Affairs
BRUSSELS

Subject: Opinion on the legal of the proposal for a Council Decision amending Council Directive 2010/18/EU because of the change in status of Mayotte [COM(2013)0413]

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 Employment and Social 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

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

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 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 following 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

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.

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 Employment and Social Affairs is the lead committee.

I - The legal basis of the proposal to amend Council Directive 2010/18/EU because of the change in status of Mayotte

The proposal

In response to a request from the French authorities to grant a deferred implementation date for Directive 2010/18/EU¹, which aims at implementing an agreement on parental leave between social partners at European level, the Commission proposes to grant such deferral in order to ensure the progressive achievement of equal treatment and so as not to destabilise the economic development of Mayotte.

The proposed legal bases

The Commission is basing its proposal on Article 155(2) of the Treaty of the Functioning of the European Union (TFEU), whereby the Council takes a decision on implementation of management and labour agreements on a proposal from the Commission, and the European Parliament shall be informed. The Council is however proposing to change the legal basis to Article 349 TFEU on specific measures for outermost regions, whereby the Council adopts these measures on a proposal from the Commission after consulting Parliament.

Analysis

The Legal Service takes the position that since according to case-law from the Court of Justice the choice of legal basis cannot be based solely by reference to the prerogatives of an institution, although Parliament would have a larger role to play under Article 349 TFEU, because there is a factual correspondence between the different proposal in the Mayotte package and all those files should be analysed along the same principles, the legal basis chosen by the Commission should be considered correct. Since the legal basis of the amended directive was Article 155(2) TFEU, the same legal basis should be used for the current proposal for an amending act.

III - Conclusion and recommendation

The correct legal basis for the proposal for a Council Decision amending Council Directive 2010/18/EU because of the change in status of Mayotte is Article 155(2) TFEU.

¹ Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ L 68, 18.3.2010, p. 13).

At its meeting of 5 November 2013 the Committee on Legal Affairs accordingly decided, unanimously¹, to take the position that the legal basis proposed by the Council, Article 349 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.

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.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	26.11.2013
Result of final vote	+: 30 -: 4 0: 0
Members present for the final vote	Heinz K. Becker, Phil Bennion, Pervenche Berès, Vilija Blinkevičiūtė, Alejandro Cercas, Derek Roland Clark, Minodora Cliveti, Emer Costello, Frédéric Daerden, Sari Essayah, Richard Falbr, Nadja Hirsch, Stephen Hughes, Ádám Kósa, Jean Lambert, Patrick Le Hyaric, Verónica Lope Fontagné, Olle Ludvigsson, Csaba Óry, Konstantinos Poupakis, Sylvana Rapti, Elisabeth Schroedter, Nicole Sinclair, Jutta Steinruck, Ruža Tomašić, Traian Ungureanu
Substitute(s) present for the final vote	Georges Bach, Jürgen Creutzmann, Liisa Jaakonsaari, Jelko Kacin, Anthea McIntyre, Birgit Sippel, Csaba Sógor
Substitute(s) under Rule 187(2) present for the final vote	Maurice Ponga