



EUROPSKI PARLAMENT

2009 - 2014

Dokument s plenarne sjednice

A7-0414/2013

28.11.2013

IZVJEŠĆE

o nacrtu Direktive Vijeća o izmjeni Direktive Vijeća 2010/18/EU zbog promjene statusa prekomorske zemlje Mayotte (14220/2013 – C7-0355/2013 – 2013/0189(NLE))

Odbor za zapošljavanje i socijalna pitanja

Izvjestiteljica: Pervenche Berès

Oznake postupaka

- * Postupak savjetovanja
- *** Postupak suglasnosti
- ***I Redovni zakonodavni postupak (prvo čitanje)
- ***II Redovni zakonodavni postupak (drugo čitanje)
- ***III Redovni zakonodavni postupak (treće čitanje)

(Navedeni se postupak temelji na pravnoj osnovi predloženoj u nacrtu akta.)

Izmjene nacрта akta

Amandmani Parlamenta u obliku dvaju stupaca

Brisanja su označena *podebljanim kurzivom* u lijevom stupcu. Izmjene su označene *podebljanim kurzivom* u obama stupcima. Novi tekst označen je *podebljanim kurzivom* u desnom stupcu.

U prvom i drugom retku zaglavlja svakog amandmana naznačen je predmetni odlomak iz nacrtu akta koji se razmatra. Ako se amandman odnosi na postojeći akt koji se želi izmijeniti nacrtom akta, zaglavlje sadrži i treći redak u kojem se navodi postojeći akt te četvrti redak u kojem se navodi odredba akta na koju se izmjena odnosi.

Amandmani Parlamenta u obliku pročišćenog teksta

Novi dijelovi teksta označuju se *podebljanim kurzivom*. Brisani dijelovi teksta označuju se oznakom ■ ili su precrtani. Izmjene se naznačuju tako da se novi tekst označi *podebljanim kurzivom*, a da se zamijenjeni tekst izbriše ili precrta.

Iznimno, izmjene strogo tehničke prirode koje unesu nadležne službe prilikom izrade konačnog teksta ne označuju se.

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NACRT ZAKONODAVNE REZOLUCIJE EUROPSKOG PARLAMENTA

o nacrtu Direktive Vijeća o izmjeni Direktive Vijeća 2010/18/EU zbog promjene statusa prekomorske zemlje Mayotte
(14220/2013 – C7-0355/2013 – 2013/0189(CNS))

(Posebni zakonodavni postupak – savjetovanje)

Europski parlament,

- uzimajući u obzir prijedlog Komisije (COM(2013)0413) i nacrt Vijeća (14220/2013),
 - uzimajući u obzir članak 349. Ugovora o funkcioniranju Europske unije, na temelju kojeg se Vijeće savjetovalo s Parlamentom (C7-0355/2013),
 - uzimajući u obzir članak 155. stavak 2. Ugovora o funkcioniranju Europske unije koji čini pravnu osnovu koju je Komisija izabrala za svoj prijedlog,
 - uzimajući u obzir mišljenje Odbora za pravna pitanja o predloženoj pravnoj osnovi,
 - uzimajući u obzir članke 55. i 37. Poslovnika,
 - uzimajući u obzir izvješće Odbora za zapošljavanje i socijalna pitanja (A7-0414/2013),
1. prihvaća nacrt Vijeća s predloženim izmjenama;
 2. prima na znanje da se Vijeće o nacrtu direktive savjetovalo s Europskim parlamentom, iako takvo savjetovanje nije propisano pravnom osnovom koju je Komisija predložila;
 3. poziva Vijeće da ga obavijesti ako namjerava odstupiti od teksta koji je Parlament prihvatio;
 4. poziva Vijeće da se ponovno savjetuje s Parlamentom ako namjerava bitno izmijeniti svoj nacrt;
 5. nalaže svojem predsjedniku da stajalište Parlamenta proslijedi Vijeću, Komisiji i nacionalnim parlamentima.

Amandman 1

Prijedlog Direktive
Naslov

Nacrt Vijeća

Izmjena

Prijedlog **DIREKTIVE** VIJEĆA o izmjeni
Direktive Vijeća 2010/18/EU **radi izmjene**

Prijedlog **ODLUKE** VIJEĆA o izmjeni
Direktive Vijeća 2010/18/EU **zbog**

statusa prekomorske zemlje Mayotte

promjene statusa prekomorske zemlje
Mayotte

Justification

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

Amandman 2

**Nacrt Direktive
Pozivanje 1.**

Nacrt Vijeća

uzimajući u obzir Ugovor o funkcioniranju
Europske unije, a posebno njegov članak
349.,

Izmjena

uzimajući u obzir Ugovor o funkcioniranju
Europske unije, a posebno njegov članak
155. stavak 2. i članak 349.,

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

Amandman 3

**Nacrt Direktive
Pozivanje 5.**

Nacrt Vijeća

***u skladu s redovnim zakonodavnim
postupkom,***

Izmjena

Briše se.

Justification

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

Amandman 4

Nacrt Direktive Uvodna izjava 1.

Nacrt Vijeća

(1) Odlukom 2012/419/EU¹, Europsko vijeće izmijenilo je status prekomorske zemlje Mayotte u odnosu na Europsku uniju od 1. siječnja 2014. Stoga, od tog datuma Mayotte prestaje biti prekomorsko državno područje i postaje najudaljenija regija u smislu članka 349. i članka 355. stavka 1. Ugovora o funkcioniranju Europske unije (UFEU). Nakon ove promjene pravnog statusa Mayottea, pravo Unije primjenjuje se na Mayotte od 1. siječnja 2014. Međutim, određene posebne mjere, opravdane specifičnim strukturalnim socijalnim i **ekonomskim** stanjem Mayottea, kao nove najudaljenije regije, **o posebnim uvjetima primjene prava Unije, trebale bi biti ustanovljene.**

¹ SL L 204, 31.7.2012., str. 131.

Izmjena

(1) Odlukom 2012/419/EU¹ Europsko vijeće izmijenilo je status prekomorske zemlje Mayotte u odnosu na Europsku uniju od 1. siječnja 2014. Stoga, od tog datuma Mayotte prestaje biti prekomorsko državno područje i postaje najudaljenija regija u smislu članka 349. i članka 355. stavka 1. Ugovora o funkcioniranju Europske unije (UFEU). Nakon ove promjene pravnog statusa Mayottea, pravo Unije primjenjuje se na Mayotte od 1. siječnja 2014. Međutim, **trebalo bi ustanoviti** određene posebne mjere opravdane specifičnim strukturalnim socijalnim i **gospodarskim** stanjem Mayottea kao nove najudaljenije regije.

¹ SL L 204, 31.7.2012., str. 131.

Amandman 5

Nacrt Direktive Uvodna formulacija normativnog dijela

Nacrt Vijeća

DONIJELO JE OVU **DIREKTIVU**

Izmjena

DONIJELO JE OVU **ODLUKU**

Justification

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

Amandman 6

Nacrt Direktive

Članak 1.

Direktiva 2010/18/EU

Članak 3. – stavak 2. – podstavak 2.

Nacrt Vijeća

U članku 3. stavku 2. Odluke 2010/18/EU dodaje se sljedeći podstavak:

„Odstupajući od prvog podstavka, za prekomorsku zemlju Mayotte kao najudaljeniju regiju u smislu članka 349. UFEU-a , u njemu navedeno dodatno razdoblje produžuje se do 31. prosinca 2018. ”

Izmjena

U članku 3. stavku 2. Odluke 2010/18/EU dodaje se sljedeći podstavak:

„Za najudaljeniju francusku regiju Mayotte dodatno razdoblje navedeno u prvom podstavku produžuje se do 31. prosinca 2018.”

Amandman 7

Nacrt Direktive

Članak 2.

Nacrt Vijeća

Ova je **Direktiva** upućena Francuskoj Republici.

Izmjena

Ova je **Odluka** upućena Francuskoj Republici.

Justification

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

Amandman 8

Nacrt Direktive

Članak 3.

Nacrt Vijeća

Ova **Direktiva** stupa na snagu 1. siječnja 2014.

Izmjena

Ova **Odluka** stupa na snagu 1. siječnja 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.

REZULTAT KONAČNOG GLASOVANJA U ODBORU

Datum usvajanja	26.11.2013
Rezultat konačnog glasanja	+: 30 -: 4 0: 0
Zastupnici nazočni na konačnom glasanju	Heinz K. Becker, Phil Bennion, Pervenche Berès, Viliija 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
Zamjenici nazočni na konačnom glasanju	Georges Bach, Jürgen Creutzmann, Liisa Jaakonsaari, Jelko Kacin, Anthea McIntyre, Birgit Sippel, Csaba Sógor
Zamjenici nazočni na konačnom glasanju prema čl. 187. st. 2.	Maurice Ponga