

EXPLANATORY MEMORANDUM ON A EUROPEAN UNION DOCUMENT

Proposal for a Council Directive amending Directives 2006/112/EC and 2008/118/EC as regards the French outermost regions and Mayotte in particular

Submitted by the Foreign and Commonwealth Office on 19 September 2013.

SUBJECT MATTER

1. As set out in the FCO's Explanatory Memorandum of 9 July 2013, in 2011, Mayotte became an Overseas Department of France. Following a 2012 Council Decision, on 1 January 2014, Mayotte's status as regards the EU will change from Overseas Territory to Outermost Region of the EU, reflecting its progressively closer relationship with mainland France. Once the change of status comes into effect, EU law will apply to Mayotte. France is making preparations for this change. Earlier this year, the French authorities requested further time for Mayotte to ensure it complied with legislation in the fields of fisheries, animal health, the environment, agriculture, social policy, public health and parental leave.
2. Once designated as an Outermost Region of the EU, under Articles 349 and 355(1) of the Treaty on the Functioning of the European Union, Mayotte would be subject to EU legislation on VAT (Directive 2006/112/EC) and excise duties (Directive 2008/118/EC) unless specifically exempted. The current proposal would bring Mayotte's new status in line with the other French Outermost Regions (Guadeloupe, French Guyana, Martinique, Reunion and the French part of Saint Martin) by excluding it from these Directives.

SCRUTINY HISTORY

3. An Explanatory Memorandum on a 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 and a Proposal for a Council Decision amending Council Directive 2010/18/EU on parental leave because of the change in status of Mayotte was submitted for Parliamentary Scrutiny on 9 July 2013. The House of Commons European Scrutiny Committee cleared the documents as "not legally or politically important" on 17 July 2013 (ESC 35095 & 35123, 12th Report, Session 2013/14). The House of Lords Select Committee on the European Union cleared the documents on 16 July 2013 at the Chairman's sift.

4. An Explanatory Memorandum on a Commission Opinion under Article 355(6) of the Treaty on the Functioning of the European Union on a French Government initiative to amend the status of Mayotte with regard to the European Union and a Draft European Council Decision amending the status of Mayotte with regard to the European Union was submitted for Parliamentary Scrutiny on 22 June 2012. The House of Commons European Scrutiny Committee cleared the documents as “not legally or politically important” on 27 June 2012 (ESC 34033 & 34034, 6th Report, Session 2012/13). The House of Lords Select Committee on the European Union cleared the document on 3 July at the Chairman’s sift.

MINISTERIAL RESPONSIBILITY

5. The Secretary of State for Foreign and Commonwealth Affairs is the Minister with overall responsibility for UK policy on the EU’s Common Foreign and Security Policy. Given the subject matter, the Secretary of State for Her Majesty’s Treasury also has an interest.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

6. The Devolved Administrations have been consulted in the preparation of this Explanatory Memorandum.

POLICY IMPLICATIONS

7. Directive 2006/112/EC is the Principal VAT Directive which sets out the VAT legislation for the EU and how it should be implemented by the 28 Member States. Directive 2008/118/EC clarifies arrangements for excise duties affecting the consumption of energy products and electricity covered by Directive 2003/96/EC; alcohol and alcoholic beverages covered by Directives 92/83/EEC and 92/84/EEC; and manufactured tobacco covered by Directive 95/59/EC, Directive 92/79/EC and Directive 92/80/EC.
8. All French Outermost Regions are excluded from the scope of Directives 2006/112/EC and 2008/118/EC, as are the British Crown Dependencies, the Canary Islands and the Aland Islands. The current proposal would ensure that on assuming its status as an EU Outermost Region, Mayotte would continue to be exempt from these Directives. As Mayotte is currently exempt from Union legislation on VAT and excise duties, in reality there will be no change from the current situation.
9. The British Overseas Territories are ‘Associated’ with the EU through the Overseas Association Decision, which set out their eligibility to preferential trade with the EU and access to the European Development Fund. They are not part of the EU, and EU law applies to them only insofar as necessary to implement the association agreements. This means that Union legislation on VAT and excise duties does not apply.

SUBSIDIARITY

10. This proposal is connected to the change of Mayotte's status in relation to the EU. It is therefore necessary and appropriate for it to be carried out at EU level.

LEGAL AND PROCEDURAL ISSUES

11. Legal Basis: Article 113 of the Treaty on the Functioning of the European Union.
12. Voting Procedures: Unanimity in the Council.
13. Impact on UK Law: Mayotte becoming an outermost region of the EU means that as of 1 January 2014, the EU acquis will apply there.
14. Application to Gibraltar: Yes, to the extent that the EU acquis applies in Gibraltar.
15. Fundamental rights analysis: No fundamental rights issues apply

APPLICATION TO THE EUROPEAN ECONOMIC AREA

16. Yes, in that, once Mayotte becomes an outermost region of the EU, the EEA Agreement will apply to Mayotte.

REGULATORY IMPACT ASSESSMENT

17. Not applicable.

FINANCIAL IMPLICATIONS

18. The current proposals have no financial implications.

TIMETABLE

19. We expect this to be agreed at a Council this autumn.

OTHER OBSERVATIONS

20. Mayotte is constitutionally part of the Republic of France but is situated in the Indian Ocean between Madagascar and the east coast of Africa. It is geographically part of the Comoros Islands, but chose to remain part of France during a 1975 referendum. Its population was estimated at approximately 186,000 in 2007. Per capita GDP was estimated at €6,650 in 2009, 30% below the EU average.

A handwritten signature in black ink, appearing to read 'D. Lidington', written in a cursive style.

The Rt Hon David Lidington MP
Minister for Europe
Foreign and Commonwealth Office