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COVER NOTE

from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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to:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
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Subject:	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

Delegations will find attached Commission document C(2012) 3506 final.

Encl.: C(2012) 3506 final



EUROPEAN COMMISSION

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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
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The French Republic, in a letter from the President of the Republic dated 26 October 2011, referred to the European Council an initiative to amend the status of the island of Mayotte with regard to the European Union, pursuant to Article 355(6) of the TFEU. This territory is currently one of the overseas countries and territories referred to in Article 355(2) of the TFEU and is listed in Annex II of the Treaty. France's initiative is to give the island, as of 1 January 2014, the status of an outermost region, coming under the combined provisions of Articles 355(1) and 349 of the TFEU.

Article 355(6) of the TFEU provides as follows: *"The European Council may, on the initiative of the Member State concerned, adopt a decision amending the status, with regard to the Union, of a Danish, French or Netherlands country or territory referred to in paragraphs 1 and 2. The European Council shall act unanimously after consulting the Commission"*.

In line with this provision, on 9 December 2011 the European Council consulted the Commission on this initiative.

Commission comments

The Commission takes the view that the geographical location and the economic, social and structural situation of Mayotte meet the definition of an outermost region, within the meaning of Article 349 of the TFEU: in particular, its distance from the European continent, its insular nature and very small land area, as well as its economy characterised by a low degree of diversity. Consequently, it would be reasonable to include Mayotte in the list of outermost regions referred to in Articles 349 and 355(1) of the TFEU.

If the European Council were to amend Mayotte's status with regard to the European Union, EU law would apply there in full from the date on which the decision entered into force, without prejudice to any specific measures adopted in relation to that territory.

Under the terms of the initiative presented by the French Republic to the European Council, the national rules applicable to Mayotte will be, in principle, the same as those applicable to Metropolitan France, subject to any specific adaptations. Under the initiative, EU law will apply there accordingly once the European Council's decision enters into force.

However, under the terms of the initiative presented to the European Council, France considers that certain adaptations to the application of EU law or transitional periods may be necessary in certain areas. In this regard, it has identified the following (non-exhaustive) list of areas where this may be the case:

- Taxes, duties and charges;
- Labour law and employment law;

- Right of entry and residence for third country nationals, and right of asylum;
- Social protection;
- The environment;
- Agriculture;
- Fisheries.

The French authorities are in contact with the Commission concerning these areas, including for subjects not specified in the initiative and other areas such as public health and the internal market.

If the European Council decides to amend the status of Mayotte with regard to the Union, in accordance with the initiative submitted, the Commission will examine the requests for derogations and/or transitional periods presented to it by the French authorities. If necessary, it will make its own proposals. The financial implications of such a change of status must also be taken into account in the Union's financial framework for the period 2014-2020.

Conclusion

The Commission takes the view that the characteristics of Mayotte justify its inclusion as an outermost region within the meaning of Articles 349 and 355(1) of the TFEU. A decision of the European Council to amend the status of Mayotte with regard to the Union, in line with the initiative submitted by France, will entail the automatic application of EU law to that territory from the date when the decision enters into force, subject to any specific measures adopted with regard to the territory. If such a decision is adopted, the Commission will examine the requests for derogations and/or transitional periods presented to it and, if necessary, will make its own proposals. The financial implications of such a change of status must also be taken into account in the Union's financial framework for the period 2014-2020.