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**NOTE**

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from: General Secretariat of the Council  
to: Delegations  
Subject: Mayotte's status with regard to the European Union

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Delegations will find attached a letter from the President of the French Republic to the President of the European Council on Mayotte's status with regard to the European Union.

Paris, 26 October 2011

***Mr Herman VAN ROMPUY***  
***President of the European Council***

Sir,

I have the honour to ask you to include on the agenda for a forthcoming European Council meeting a request from the French Government, on the basis of Article 355(6) of the Treaty on the Functioning of the European Union, to modify the status with regard to the European Union of Mayotte which is currently an overseas country and territory associated with the European Union, to make it an outermost region of the European Union within the meaning of Article 349 of that Treaty.

The grounds for this request are enclosed herewith.

The purpose of this initiative is to give Mayotte, which has been an overseas department within the French Republic since 31 March 2011, a status with regard to the European Union that is better suited to its institutional development within the French Republic.

The change in Mayotte's status to an outermost region of the European Union could take effect from 1 January 2014.

(Complimentary close).

Nicolas SARKOZY  
*President of the Republic*

**REQUEST BY FRANCE FOR A MODIFICATION  
OF THE STATUS OF MAYOTTE  
WITH REGARD TO THE EUROPEAN UNION**

Article 355(6) of the Treaty on the Functioning of the European Union (TFEU), as it emerges from the Treaty of Lisbon, 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.*"

Declaration No 43, annexed to the Final Act of the Intergovernmental Conference which approved the Treaty of Lisbon, states: "*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.*"

On the basis of these provisions and given the change in Mayotte's status under national law, the French Republic has the honour to ask the European Council, pursuant to the provisions of Article 355(6) TFEU and Declaration No 43 annexed to the Final Act of the Intergovernmental Conference which approved the Treaty of Lisbon, to modify the status of Mayotte, which is currently an overseas country and territory (OCT) whose association with the European Union is provided for in Part Four of the Treaty, to that of outermost region (OR) of the European Union as defined in Article 349 TFEU.

On the basis of Article 349 TFEU, the French Republic would like Mayotte, as an OR, to be able to benefit from temporary derogations and adjustments to EU law. For instance, a number of planned adjustments are listed below (see point 11.2.2.1).

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## **I. MAYOTTE'S STATUS WITHIN THE FRENCH REPUBLIC**

### **I.1. Mayotte: situation, history and characteristics**

Mayotte is in the Indian Ocean between Madagascar and the east coast of Africa. It is 1 700 km from Réunion (itself an outermost region of the European Union), 300 km from Madagascar, 70 km from Anjouan and more than 8 000 km from mainland France.

It is situated in a 1 000 km<sup>2</sup> lagoon and has a total surface area of 374 km<sup>2</sup>. The main islands Grande-Terre and Petite-Terre have surface areas of 363 and 11 km<sup>2</sup> respectively.

Mayotte is geographically part of the Comoros archipelago, which also comprises the islands Grande Comore, Anjouan and Mohéli.

Mayotte became a French protectorate in 1841 and the other islands in the Comoros archipelago did so in 1886.

In 1974, France offered the whole of the archipelago a referendum on independence. Whilst the result in the three other Comoros islands was 95 % in favour of independence, the result in Mayotte was 65 % against. The Federal Republic of Comoros was established on 6 July 1975. In a referendum in 1976, Mayotte confirmed with a 99 % vote in favour its desire to remain French and to retain its status as a French overseas territory.

The population was estimated at 186 452 inhabitants in 2007, with 511 inhabitants per square kilometre, and increases by an average of 3.1 % a year. Some 65 % of the population is under 25 years of age.

The gross domestic product was estimated at EUR 3 960 per inhabitant in 2001. It was estimated at EUR 6 650 per inhabitant in 2009. It is therefore 30 % below the European Union average.

The active population numbers 43 200 of those aged 15 and over. In 2009 the harmonised unemployment rate as defined by the ILO was 17.6 % of that population.

The proportion of the overall population with higher educational qualifications was 8.5 % in 2007.

The estimated school drop-out rate is 21.8 %, based on the 2007 census data and the number of working people in the 18-to-24 age bracket without qualifications.

The Mahoran economy is characterised by the predominance of the tertiary sector, which accounts for just over 2/3 of jobs and wealth created. In 2005, value added breakdown was as follows: 26 % in trade, 20 % in business services and real-estate activities, 16 % in building, 16 % in industry, 8 % in financial activities and 0.4 % in agriculture. Approximately 15 % of total employment is still accounted for by traditional industries (agricultural food production, crafts and small-scale commerce), comprising subsistence activities and often multiple job holding. More than 21 % of Mahoran companies have fewer than 10 employees.

## **1.2. Mayotte's constitutional and administrative status within the French Republic**

1.2.1. - **Constitutionally**, Mayotte is an integral part of the French Republic. It could only cease to belong to it with the agreement of its population and through a revision of the French Constitution. Its inhabitants have French nationality and citizenship and enjoy all the rights and freedoms that that entails – whether enshrined in the Constitution, in international commitments (notably the European Convention for the Protection of Human Rights and Fundamental Freedoms and its additional protocols) or in law – under the same conditions as other French nationals. They have the right to vote in presidential elections, national referendums and European Parliament elections; the island is represented in the French parliament.

1.2.2. - **At institutional level**, Mayotte – which had been a "collectivité départementale" since 2001 – became the 101st French department and the 5th French overseas department, governed by Article 73 of the Constitution (Organic Law No 2009-969 of 3 August 2009 on the institutional development of New Caledonia and the departmentalisation of Mayotte) on 31 March 2011. The Mahoran electorate voted 95.2 % in favour of this institutional change in a referendum on 29 March 2009.

Mayotte is also an overseas region governed by the same article of the Constitution and is a single authority: a single assembly exercises the powers conferred on departments and regions.

National laws and regulations are automatically fully applicable, subject to the adaptations permitted under Article 73 of the Constitution, which provides that: "In the overseas departments and regions, statutes and regulations are automatically applicable. They may be adapted in the light of the specific characteristics and constraints of those collectivities."

**1.2.3. Mayotte's change in status to a department entails the principle of legislative identity with mainland France, subject to adjustments made necessary by the island's special features and constraints:**

Even before Mayotte became a department, Organic Law No 2007-223 of 21 February 2007 had already significantly extended the principle of legislative identity and, up to 31 March 2011, only six areas still came under the legislative speciality regime:

- 1° *Taxes, duties and charges* (pending the entry into force in Mayotte of the general tax code and other tax provisions applicable in departments, which is due to come into effect no later than 31 December 2013, in accordance with Part III of Article LO 6161-23);

- 2° *Real estate ownership and rights in rem in immovable property;*
- 3° *Social protection and measures;*
- 4° *Law on labour, employment and vocational training;*
- 5° *Entry and stay of foreign nationals and the right to asylum;*
- 6° *Communal finances* (pending the entry into force in Mayotte of the general tax code and other tax provisions applicable in departments, to come into effect no later than 31 December 2013, in accordance with Part III of Article LO 6161-23.

## **II. BACKGROUND AND SCOPE OF THE CHANGE IN MAYOTTE'S STATUS WITH REGARD TO THE EUROPEAN UNION**

### **II.1. The change in Mayotte's status marks the completion of a process which has now prompted the French authorities to request its recognition as an OR:**

The status of French overseas territories is subject to the consent of their electorate. The principle is guaranteed by the Constitution and enables such territories, as their electorate chooses, to opt either for the status of overseas department and region, governed by national ordinary law, with any adjustments dictated by specific features and constraints, in accordance with Article 73 of the Constitution, or the status of an overseas collectivity governed by Article 74, with varying degrees of autonomy.

For more than fifty years, Mayotte has chosen to draw progressively nearer to mainland France: overseas territory in 1946, rejection of independence in 1976, "collectivité départementale" in 2001, overseas department in 2011. This process has now prompted the French authorities to request that Mayotte be recognised as an outermost region of the European Union.

Mayotte, which currently has the status of an overseas country and territory associated with the European Union, expressed its wish to acquire the status of a European Union outermost region (OR), initially on 24 November 2005 and subsequently on 5 July 2007 (decision taken unanimously by the Mayotte General Council). The French authorities explained the institutional procedure and the effects of the statutory change to the Mahoran population in the "Pact for the departmentalisation of Mayotte" sent to all voters prior to the referendum on departmentalisation on 29 March 2009. Some 95.2 % of the votes cast were in favour of the proposal.

Mayotte possesses all the features of an outermost region, referred to in Article 349 of the TFEU: insularity, remoteness, small size, difficult climate and a specific social and economic situation.

## **11.2.- At European level, respect for the European Union acquis is guaranteed by the departmentalisation process**

**11.2.1- Departmentalisation entails the principle of legislative identity with mainland France and the application of ordinary law**, subject to adjustments made necessary by the island's special features and constraints (see 1.2.3 above):

Applicable national ordinary law complies with the European Union acquis. Accordingly, adoption of national ordinary law will ensure adoption of that acquis.

In an opinion delivered on 20 May 2010, the Council of State set out the conditions for application of the principle of legislative identity:

- Application of texts of ordinary law in force prior to the change to the legislative identity regime requires a specific reference and, where appropriate, adaptations;
- Application of totally new texts, adopted after the change to the legislative identity regime, does not require any specific reference;

Application of new texts amending texts in force prior to the change to the legislative identity regime follows the provisions of the texts in force;

The applicable texts may provide for adaptations depending on the specific subject and constraints.

As from 1 April 2011, new texts are automatically applicable to Mayotte.

To speed up the alignment with national ordinary law of the "stock of legislation" applicable to Mayotte, Law No 2010-1487 of 7 December 2010 makes a number of adjustments to legislation and gives the Government, through Parliament, a very broad remit to extend and adapt national ordinary law by means of orders with time-limits of between 12 and 18 months (Article 30), i.e. by the end of June 2012 at the latest.

In certain areas, the orders may provide for transitional periods or a progressive application of the ordinary law.

### **11.2.2.- The adoption of the Union acquis is broadly on track**

In all areas covered by the legislative identity regime pursuant to the Law of 21 February 2007, the law applicable in Mayotte is national ordinary law. Some requests might however be made to have specified periods for bringing about compliance with the Union acquis, particularly in the environment, agriculture and fisheries areas, in accordance with the adaptations permitted by Article 73 of the Constitution.

In the areas covered by the legislative speciality regime on 31 March 2011, the date of transition to the status of Department, the French authorities undertook a review, in each area, of the existing legislation and the required adjustment measures that could be adopted by means of orders. Four of the six areas that have until recently come under the legislative speciality regime could require adjustment measures, of varying magnitude, to align them with EU law: taxes, duties and charges; law on labour, employment and vocational training; social protection; entry and stay of foreign nationals and the right to asylum.

Lastly, subject to the necessary adjustments and unless otherwise specified, Union acts, including international agreements concluded by the Union alone, will in principle apply in Mayotte from 1 January 2014. The same applies to trade agreements signed before 1 January 2014. Having become an outermost region (OR), Mayotte will benefit from all the measures supporting ORs in these agreements, including transitional periods and safeguard clauses.

#### **11.2.2.1.- Adjustments with regard to the application of Union law or transitional periods will, however, be necessary in certain areas.**

These areas include:

## **A - Taxes, duties and charges:**

Article 11 of Law No 2010-1487 of 7 December 2010 confirms the deadline of 1 January 2014 for the application of ordinary law in Mayotte.

In respect of customs matters, the State has begun the progressive alignment of the law applicable in Mayotte with that in force in mainland France. The customs code applicable in Mayotte incorporates the provisions of the Community Customs Code in the areas concerning value, origin, nomenclature, declaration formalities and economic arrangements.

On tax matters, the incorporation of the Union legal acquis will come into effect on 1 January 2014, particularly as regards mutual assistance and cooperation between Member States in combating tax avoidance, eliminating double taxation between associated companies and establishing a common system of taxation applicable to mergers, divisions, transfers of assets and partial exchanges of shares for companies established in different Member States.

However, some adjustments to national law, which are in line with EU law and already in force in the other French overseas departments, are envisaged:

France plans to adapt the legislation applicable in Mayotte on customs revenues, which affect import flows and will decrease with the change of status. Provided they are retained for the other overseas regions, the intention is to apply the dock dues tax arrangements to Mayotte from 1 January 2014.

As regards value added tax (VAT), there is no legal obstacle to the application of a special regime (as in Guiana) or a lighter regime (as in the three other overseas regions), as Council Directive 2006/112/EC of 28 November 2006 does not apply to ORs.

Lastly, Mayotte will be treated in the same way as the other overseas regions with regard to the application of tax incentive measures which require EU approval and are liable to be regarded as State aid.

## **B - Law on labour, employment and vocational training:**

For the most part, the alignment to EU law has been or is being completed.

The scheduled adoption of several orders in the first half of 2012 should allow much of the Union acquis to be incorporated. However, application periods might be requested for certain measures that require impact studies to be carried out in consultation with local partners, particularly in the area of occupational health and safety.

The rules on redundancy for economic reasons should come into force from 2012. Protection of employees in the event of the insolvency of their employer is receiving special attention and is being negotiated with the social partners. The rules on working time, rest days and holidays do not appear to require major adjustments to the law currently in force. The work on adapting legislation and regulations is, in any event, included in the timetable for the transition to the status of outermost region on 1 January 2014.

The French authorities will send the Commission all texts concerning the law on labour, employment and vocational training as and when they are adopted and enter into force.

## **C - Law on entry and stay of foreign nationals and the right to asylum:**

Mayotte faces very strong migratory pressure and mass illegal immigration is a major source of social destabilisation. The French Code on the entry and stay of aliens and the right to asylum (CESEDA) is not applicable to Mayotte, which is covered by special provisions in this area.

As regards the stay of foreign nationals, only the provisions concerning long-term residents need to be adjusted to achieve full transposition of the EU directive. Subject to a time limit for application, the French authorities plan to extend ordinary law to cover Mayotte with regard to mobility from one Member State to another, including mobility of students, researchers and highly skilled workers.

With regard to expulsion for serious reasons of public order, France plans to harmonise the law applicable to Mayotte with ordinary law.

As regards the expulsion of illegal aliens and asylum matters, the strong migratory pressure and geographical situation of Mayotte, which is an entry point to the territory of the European Union, justify keeping the special features of the applicable law. As regards the expulsion of illegal aliens, a derogation or, at least, a time limit for application and a subsequent review of the matter in the light of developments in the migration situation, might be requested. The same applies to the rules concerning the social rights of asylum seekers.

As far as detention with a view to expulsion is concerned, the standards on conditions for reception and ensuring the quality of life of detained persons should be aligned with ordinary law when the new administrative detention centre is opened in 2014.

Lastly, with regard to the provisions on fraud, the Sanctions Directive has not been transposed into the law applicable in Mayotte. A time limit for application is likely to be necessary.

## **D - Social security**

The special chapter on social security that covers the matters described in point 1.2.3 (above) will require a progressive adjustment of the regime currently in force in Mayotte.

In the long term, that regime will be comparable to the obligatory ones in mainland France.

In the interim period, and given the changes that will be made to Mahoran social protection through the process of progressive alignment with ordinary law, it seems necessary to stagger the entry into force of the existing EU rules for coordinating social security systems (in particular Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 and its Implementing Regulation, Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009) as well as the Union acquis, which has a direct or indirect impact on social security systems.

### **11.2.2.2- Certain areas covered by the legislative identity regime might also require a transitional period**

## **A - Environment**

**In respect of environmental matters, a transitional period might be needed in certain areas:**

The Environmental Code has been applicable to Mayotte since 1 January 2008. Only the provisions on public enquiries and impact studies are not in line with ordinary law. That alignment is expected to take place before 2014. In the main areas, European rules will be applicable from 2014.

The measures transposing the Framework Directive on Waste into Mayotte's law were adopted by Order No 2010-1579 of 17 December 2010 (Official Journal of the French Republic No 0293 of 18 December 2010). Mayotte already has a departmental programme for the elimination of household and similar waste, adopted in October 2010, which includes the various levels for action to deal with waste. The programme provides for the closure of five unauthorised waste disposal sites and the establishment of an organisation for handling recyclable waste, centred on the creation of recycling facilities and the new storage plant in Dzoumogné. A special action and support plan for local authorities and waste operators should be proposed soon, aimed at developing separate collections and assessing the various types of hazardous and non-hazardous waste produced in the archipelago.

The two industrial plants liable to come within the scope of the IED and the Seveso Directive (a power plant and an oil storage depot) have already been classified for the purposes of environmental protection and are therefore already subject to those directives' provisions.

With regard to bathing water, Decree 2011-1239 of 4 October 2011 on the quality of bathing water has brought the law applied in Mayotte into line with EU law. Lastly, a number of air quality monitoring networks will be set up to measure air quality, though this is not in fact a problem.

The French authorities intend to request a transitional period for applying the Directive on urban waste-water treatment owing to the extra time needed to comply with the standards and build waste-water treatment plants.

## **B - Agriculture**

**On agriculture**, some derogations or transitional periods for applying the requirements of EU law might be needed in order to set up facilities that comply with the rules on abattoirs, animal welfare, identification of ruminants and abattoir wastes. Application of EU rules from 1 January 2014 would require substantial investment that would be difficult for the operators to bear over such a short period. This would hamper the marketing of local production sectors that are growing fast (beef and eggs).

## **C - Fisheries**

**On fisheries**, some adaptations and transitional periods might be requested, particularly in the following areas:

- management and monitoring of the fishing fleet with a view to clearly evaluating the requirements for upgrading Mayotte's fleet and permitting the establishment of effective arrangements for checking the vessels concerned;
- development of fishing capacity, with a view to increasing it, particularly in the coastal sector, based on the model used for other French ORs, given the importance of fisheries for Mayotte's economic development;
- registration of commercial vessels;

- possible restriction of access to Mayotte's waters for the purpose of managing biological resources, in view of the contribution made by the biological resources of the sea to preserving Mayotte's local economy and, taking into account existing regulations, provision might be made for non-discriminatory adjustments of access to some of Mayotte's waters by vessels flying the flag of other EU Member States, with a view to enhancing support for the various fishing practices in Mayotte's exclusive economic zone;
- and organisation of markets, to ensure the incorporation of applicable EU rules on the organisation of markets, in particular those on consumer information.

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