

The Parliament contests the choice of legal basis operated by the Council as Article 349 TFEU cannot provide a legal basis for all the measures adopted, but only some of them consisting of derogations from the application of EU law to Mayotte. The contested regulation also implements measures which fall within the areas of the common fisheries policy and the protection of public health, without those measures being based on the structural social and economic situation specific to Mayotte.

In the opinion of the Parliament, the act in question should therefore have been adopted on the basis of Articles 43(2), 168 (4)(b) and 349 TFEU jointly, and not on the basis of Article 349 alone.

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<sup>(1)</sup> OJ 2013 L 354, p. 86

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**Action brought on 21 March — European Commission v Council of the European Union**

**(Case C-133/14)**

(2014/C 175/31)

*Language of the case: French*

**Parties**

*Applicant:* European Commission (represented by: R. Lyal, W. Mölls, and D. Martin, acting as Agents)

*Defendant:* Council of the European Union

**Form of order sought**

- Annul Council Directive 2013/64/EU of 17 December 2013 amending Council Directives 91/271/EEC and 1999/74/EC, and Directives 2000/60/EC, 2006/7/EC, 2006/25/EC and 2011/24/EU of the European Parliament and of the Council, following the amendment of the status of Mayotte with regard to the European Union <sup>(1)</sup>;
- Maintain the effects of Directive 2013/64/EU until such time as a new directive founded on an appropriate legal basis enters into effect;
- Order the Council of the European Union to pay the costs.

**Pleas in law and main arguments**

The Commission seeks the annulment of Directive 2013/64/EU, which the Council adopted on the legal basis of Article 349 TFEU.

The Commission alleges that the Council adopted that directive when it had proposed to base that act on a sectoral legal basis, namely Articles 43(2), 114, 153(2), 168 and 192(1) TFEU.

It considers that, in accordance with the purpose and aim of the contested directive, Article 349 TFEU cannot validly be used as a legal basis. Article 349 TFEU only applies when derogating from the principle of the application of primary law to the outermost regions, as established in Article 355(1) TFEU. However, the directive in question, if it is not to derogate from the Treaties, only adapts the secondary law in order to respond to the situation created by the change in status of Mayotte. That interpretation is supported not only by the wording of Article 349 TFEU, but also by the system of legal bases of the Treaty, and by the historical origins of that article.

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<sup>(1)</sup> OJ 2013 L 355, p. 8.