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Proposal for a

**COUNCIL DECISION**

**concerning the dock dues in the French outermost regions**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

The Treaty on the Functioning of the European Union (TFEU) applies to the outermost regions of the Union. The French outermost regions, however, are excluded from the territorial scope of the VAT and excise duty directives.

The TFEU, in particular Article 110, does not in principle authorise any difference in the French outermost regions between the taxation of local products and the taxation of products from metropolitan France, the other Member States or non-member countries. Article 349 of the TFEU (former Article 229(2) of the EC Treaty), however, provides for the possibility of introducing specific measures for those regions because of the permanent handicaps which affect the economic and social conditions of the outermost regions. Such measures concern various policies, including taxation.

The 'dock dues' tax is an indirect tax applied to deliveries and exports of goods in the French outermost regions. In principle, it is applied in the same way to products produced locally and those that are not (products of metropolitan France, other Member States or non-member countries).

However, Council Decision 2004/162/EC of 10 February 2004 (as amended by Council Decisions 2008/439/EC of 9 June 2008 and 448/2011/EU of 19 July 2011), adopted on the basis of Article 299(2) of the EC Treaty, authorised France, until 1 July 2014, to apply exemptions or reductions to the dock dues tax for certain products produced in the French outermost regions (excluding Saint Martin). The Annex to that Decision contains the list of products to which tax exemptions and reductions may be applied. The difference between the taxation of locally manufactured products and the taxation of other products may not exceed 10, 20 or 30 percentage points, depending on the product.

The purpose of these tax differentials is to offset the handicaps affecting the outermost regions, which increase production costs and therefore the cost price of products produced locally. Without specific measures, local products would be less competitive than those produced elsewhere, even taking into account the cost of transporting such goods. This would make it harder to maintain local production with higher production costs.

Council Decision 2014/162/EU of 11 March 2014 extended the application of Council Decision 2004/162/EC to Mayotte from 1 January 2014, the date on which Mayotte became an outermost region, and listed the products to which differentiated dock dues may be applied and the applicable limits.

Lastly, to enable the Commission to finalise examination of the French request, Council Decision 378/2014/EU of 12 June 2014 extended the period of application of Council Decision 2004/162/EC by 6 months until 31 December 2014 instead of 1 July 2014.

The purpose of this proposal is to establish the legal framework for the dock dues from 1 January 2015 to 31 December 2020. It extends Decision 2004/162/EC by a further six months to give France time to transpose the provisions of the new Council Decision into its national law, and establishes the new legal framework applicable between 1 July 2015 and 31 December 2020.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

Council Decision 2004/162/EC of 10 February 2004 (as amended by Council Decisions 2008/439/EC of 9 June 2008, 448/2011/EU of 19 July 2011, 2014/162/EU of 11 March 2014 and 378/2014/EU of 12 June 2014), authorises France, until 31 December 2014, to apply exemptions or reductions to the ‘dock dues’ tax for certain products produced in the French outermost regions (excluding Saint Martin). The Annex to the Decision contains a list of the products to which tax exemptions and reductions may be applied. The difference between the taxation of locally manufactured products and the taxation of other products may not exceed 10, 20 or 30 percentage points, depending on the product.

Decision 2004/162/EC sets out the reasons for adopting specific measures: remoteness, raw-material and energy dependence, the obligation to build up larger stocks, the small size of the local market combined with a low level of export activity, etc. The combination of these handicaps increases production costs and therefore the cost price of goods produced locally, so that without specific measures they would be less competitive than those produced elsewhere, even taking into account the cost of transporting such goods to the French overseas departments. This would make it harder to maintain local production. The specific measures contained in Decision 2004/162/EC were thus designed to strengthen local industry by making it more competitive.

The French authorities believe that the handicaps suffered by the French outermost regions persist and between 25 January and 7 June 2013 they sent several letters to the European Commission requesting that a system of differentiated taxation similar to the current system be maintained after 1 July 2014 until 31 December 2020. The French authorities point out that these handicaps are permanent, that the taxation arrangements established by Council Decision 2004/162/EC has made it possible to maintain and in some cases develop local production, and that these arrangements have not constituted an advantage for the beneficiary companies since, overall, imports of products subject to differentiated taxation have continued to increase.

Analysing the lists of the products to which the French authorities wish to apply differentiated taxation is a lengthy process requiring verification, for each product, of the reasons for differentiated taxation and the proportionality of the tax, so as to ensure that such differentiated taxation does not undermine the integrity and the coherence of the Union legal order, including the internal market and common policies.

This work has not been completed because of the large number of products involved (several hundred) and the quantity of information to be collected on the structure of the relevant product markets: existence of local production, existence of substantial ‘imports’ (including those from metropolitan France and other Member States) that might jeopardise the continuation of local production, the absence of any monopoly or quasi-monopoly in local production, justification of the higher production costs that handicap local products as compared with ‘imported’ products, and checks to ensure that a differentiated tax would not be incompatible with other policies of the Union.

Thus, the absence of local production subject to dock dues makes inclusion in the list of products that may be subject to differentiated taxation unnecessary. As regards the definition of products that are produced locally, in general the combined customs nomenclature headings adopted are as precise as possible. However, in some cases, for the products in the current lists of products to which differentiated taxation may be applied, four-digit customs nomenclature headings have been adopted where it was not possible to obtain more precise

headings of more than four digits. In this case, the four-digit customs headings adopted may marginally cover products for which there is no local production.

Concerning the evaluation of the higher production costs that the differential taxation is designed to offset, the French authorities have supplied, for each product or each group of products in cases where several products have similar production costs, an evaluation of the higher production costs borne by local enterprises. These comprise supply costs, salaries, higher energy cost, financial cost resulting from larger stocks, higher maintenance costs, under-utilisation of production equipment, and higher financial costs, depending on the case in question. The checks made found that the additional costs calculated were not lower than the taxation differential requested by the French authorities.

The proposal for a Council Decision provides, like Council Decision 2004/162/EC, for authorising France, until 31 December 2020, to apply exemptions or reductions to the dock dues for certain products produced in the French outermost regions (excluding Saint Martin). The Annex to the Decision contains a list of the products to which tax exemptions and reductions may be applied. The difference between the taxation of locally manufactured products and the taxation of other products may not exceed 10, 20 or 30 percentage points, depending on the product. Part A of the Annex lists the products for which the difference in taxation may not exceed 10 percentage points, Part B those for which it may not exceed 20 percentage points and Part C those for which it may not exceed 30 percentage points.

Most of the products listed in the Annex are the same as those in the Annex to Council Decision 2004/162/EC. However, following a full review of the lists, a number of products for which there was no local production or no longer any local production were withdrawn. Conversely, products that were not listed in Decision 2004/162/EC but for which new production has started up, or for which production has been developed, were added to the lists of products. Lastly, certain products have been kept on the lists but the authorised taxation differential for these products has been increased (e.g. moved from Part A to Part B of the Annex) or decreased (e.g. moved from Part C to Part B) to take account of modifications in the additional costs. Under the current arrangements, small local producers with an annual turnover of less than EUR 550 000 may be exempted from payment of dock dues. France has stated that it wishes to lower this exemption threshold to EUR 300 000. However, to accompany this lowering of the threshold of the dock dues tax, France also wished to simplify the exemption conditions for enterprises with an annual turnover of less than EUR 300 000. Under the proposed arrangements, operators whose annual turnover is under that threshold would not be subject to dock dues. However, they would not be able to deduct the amount of this tax borne upstream. This system is therefore similar to the special VAT system for small enterprises laid down in Articles 282 *et seq.* of VAT Directive 2006/112/EC of 28 November 2006. Such a system therefore appears to be acceptable. In the case in point, France would apply the tax exemptions or reductions referred to in Article 1 of the proposal to all operators with an annual turnover of at least EUR 300 000.

Coherence with the rules of agricultural policy has meant ruling out the application of a tax differential for all the food products which benefit from aid under Chapter III of Regulation (EU) No 228/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in the outermost regions of the Union, and in particular the specific supply arrangements. This measure prevents the effect of the financial aid to agriculture granted under the specific supply arrangements from being cancelled out or reduced by higher taxation of the subsidised products by means of the dock dues. To this end, the French authorities have agreed to the withdrawal of all the products for which application

of the specific supply arrangements will be requested for 2015 from the lists of products that may be subject to differentiated taxation.

The objectives of supporting the social and economic development of the French overseas departments, already provided for in Decision 2004/162/EEC, are confirmed by the requirements regarding the purpose of the tax. It is a legal obligation that the revenues from this tax are to be incorporated into the resources of the French overseas departments' economic and tax regime and allocated to an economic and social development strategy involving aid for promoting local activities.

The proposal envisages extending the period of application of Decision 2004/162/EC for a further six months to 30 June 2015. This measure will give France the necessary time to transpose the provisions of the new Council Decision into its national law.

The new arrangement will apply for five years and six months. It will nevertheless be necessary to evaluate its results. The French authorities must therefore present a report to the Commission by 31 December 2017 on the application of the tax arrangements introduced, in order to assess the impact of the measures taken and their contribution to promoting or maintaining local economic activities, in the light of the handicaps affecting the outermost regions, and ascertain whether the tax benefits granted by France to products produced locally are still necessary and proportional. On the basis of this report, the Commission will submit a report to the Council and, if necessary, a proposal for adapting the provisions of this Decision in the light of any findings made.

To avoid any kind of legal vacuum, this decision will apply from 1 July 2015.

The Council Decision is without prejudice to the possible application of Articles 107 and 108 of the TFEU,

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **Summary of the proposed measures**

To authorise France to apply exemptions or reductions to the 'dock dues' tax for certain products produced locally in the French outermost regions of Guadeloupe, French Guiana, Martinique, Mayotte and Réunion.

#### **Legal basis**

Article 349 TFEU.

#### **Principle of subsidiarity**

Only the Council is authorised, on the basis of Article 349 TFEU, to adopt specific measures in favour of the outermost regions to adjust the application of the Treaties to those regions, including the common policies, because of the permanent handicaps which affect the economic and social conditions of these outermost regions.

The proposal therefore complies with the principle of subsidiarity.

#### **Principle of proportionality**

The proposal complies with the proportionality principle for the following reasons.

It concerns only products for which evidence of the additional costs affecting locally produced products has been provided.

Similarly, the maximum differential proposed for each product covered by this proposal is limited to what is necessary in view of the additional costs affecting the local production

concerned in each case. Thus, the tax burden on products imported into the French outermost regions does not exceed what is necessary to offset the lower competitiveness of products produced locally.

#### **Choice of instrument**

Proposed instrument: Council decision.

Other instruments would not have been appropriate for the following reason:  
the derogations granted under Article 349 TFEU take the form of Council decisions.

#### **4. BUDGETARY IMPACT**

The proposal has no impact on the budget of the Union.

Proposal for a

## **COUNCIL DECISION**

### **concerning the dock dues in the French outermost regions**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 349 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament<sup>1</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) In principle, the provisions of the Treaty, which apply to the outermost regions of the Union, of which the French overseas departments (DOM) form part, do not authorise any difference in taxation between local products and those from metropolitan France or the other Member States. However, Article 349 of the treaty envisages the possibility of introducing special measures for those regions because of the existence of permanent handicaps affecting the economic and social situation of the outermost regions.
- (2) Specific measures should therefore be adopted in order to establish the conditions for applying the Treaty to those regions. These measures must take account of the special characteristics and constraints of these regions, without undermining the integrity and coherence of the Union's legal order, including the internal market and common policies. The handicaps suffered by the Union's outermost regions are referred to in Article 349 of the Treaty: remoteness, raw-material and energy dependence, the obligation to build up larger stocks, the small size of the local market combined with a low level of export activity, etc. The combination of these handicaps increases production costs and therefore the cost price of goods produced locally, so that without specific measures they would be less competitive than those produced elsewhere, even taking into account the cost of transporting such goods to the French overseas departments. This would make it harder to maintain local production. For this reason, specific measures need to be taken in order to strengthen local industry by making it more competitive. Until 31 December 2014, Council Decision 2004/162/EC authorises France, in order to restore the competitiveness of products produced locally, to apply exemptions or reductions to the dock dues for certain products produced in the outermost regions of Guadeloupe, French Guiana, Martinique, Réunion and, from 1 January 2014, Mayotte. The Annex to the Decision contains the list of products to which the tax exemptions or reductions may be applied. The difference between the

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<sup>1</sup> OJ C , , p. .

taxation of products produced locally and that of other products may not exceed 10, 20 or 30 percentage points, depending on the product.

- (3) France has requested that a system similar to that contained in Decision 2004/162/EC be maintained until 1 January 2015. France points out that the handicaps listed above are permanent, that the taxation arrangements established by Decision 2004/162/EC has made it possible to maintain and in some cases develop local production, and that these arrangements have not constituted an advantage for the beneficiary companies since, overall, imports of products subject to differentiated taxation have continued to increase.
- (4) In this connection, for each of the outermost regions concerned (Guadeloupe, French Guiana, Martinique, Mayotte and Réunion), France has sent the Commission five series of lists of products for which they propose applying differentiated taxation of 10, 20 or 30 percentage points, depending on whether or not the products are produced locally. The French outermost region of Saint Martin is not affected.
- (5) This Decision implements the provisions of Article 349 of the Treaty and authorises France to apply differentiated taxation to the products for which it has been proven: firstly, that local production exists; secondly, that significant importation of goods (including from metropolitan France and other Member States) exists which could jeopardise the continuation of local production; and thirdly, that additional costs exist which increase the cost price of local production in comparison with products produced elsewhere, compromising the competitiveness of products produced locally. The authorised tax differential should not exceed the proven additional costs. Applying these principles will allow the provisions of Article 349 of the Treaty to be implemented without going beyond what is necessary and without creating an unjustified advantage for local production so as not to undermine the integrity and the coherence of the Union's legal order, including safeguarding undistorted competition in the internal market and State aid policies.
- (6) In order to simplify the obligations of small enterprises, tax exemptions or reductions will affect all operators with an annual turnover of at least EUR 300 000. Operators whose annual turnover is under that threshold are not subject to dock dues; however, to balance this, they cannot deduct the amount of this tax borne upstream.
- (7) Similarly, coherence with Community law means ruling out the application of a tax differential for food products benefiting from aid under Chapter III of Regulation (EU) No 228/2013 of the European Parliament and of the Council<sup>2</sup>. This provision prevents the effect of the financial aid to agriculture granted under the specific supply arrangements from being cancelled out or reduced by higher taxation of subsidised products by means of dock dues.
- (8) The objectives of supporting the social and economic development of the French overseas departments, already provided for in Decision 2004/162/EC, are confirmed by the requirements regarding the purpose of the tax. It is a legal obligation that the revenues from this tax are to be incorporated into the resources of the French overseas departments' economic and tax regime and allocated to an economic and social development strategy involving aid for promoting local activities.

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<sup>2</sup> Regulation (EU) No 228/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in the outermost regions of the Union and repealing Council Regulation (EC) No 247/2006 (OJ L 78, 20.3.2013, p. 23).



- (9) It is necessary to extend the period of application of Decision 2004/162/EC by a further six months to 30 June 2015. This period will enable France to transpose this Decision into its national law.
- (10) The arrangements are to apply for five years and six months, until 31 December 2020, when the current guidelines on regional State aid will also cease to apply. However, the results of applying these arrangements will first have to be assessed. France will therefore present, by 31 December 2017, a report on the application of the taxation arrangements introduced, in order to check the impact of the measures taken and their contribution to the maintenance, promotion and development of local economic activities, in the light of the handicaps affecting the outermost regions. The report will check that the tax benefits granted by France to products produced locally do not go beyond what is strictly necessary and that these benefits are still necessary and proportional. It must also contain an analysis of the impact of the arrangements introduced on prices in the French outermost regions. On the basis of this report, the Commission will submit a report to the Council and, if necessary, a proposal for adapting the provisions of this Decision in the light of the findings.
- (11) In order to avoid any kind of legal vacuum, it is necessary for this Decision to apply from 1 July 2015.
- (12) This Decision is without prejudice to the possible application of Articles 107 and 108 of the Treaty,

HAS ADOPTED THIS DECISION:

*Article 1*

1. By way of derogation from Articles 28, 30 and 110 of the Treaty, France is authorised, until 31 December 2020, to apply exemptions or reductions to dock dues in respect of the products listed in the Annex which are produced locally in Guadeloupe, French Guiana, Martinique, Mayotte and Réunion, as outermost regions within the meaning of Article 349 of the Treaty.  
  
These exemptions or reductions must be in keeping with the economic and social development strategy of the outermost regions concerned, taking account of its Community framework, and contribute to promoting local activities while not being such as to adversely affect the conditions of trade to an extent contrary to the common interest.
2. With reference to the rate of taxation applied to similar products not originating in the outermost regions concerned, the application of the total exemptions or of the reductions referred to in paragraph 1 may not result in differences of more than:
  - (a) 10 percentage points for the products listed in part A of the Annex;
  - (b) 20 percentage points for the products listed in part B of the Annex;
  - (c) 30 percentage points for the products listed in part C of the Annex.France shall undertake to ensure that the exemptions or reductions applied to the products listed in the Annex do not exceed the percentage strictly necessary to maintain, promote and develop local activities.
3. France shall apply the tax exemptions or reductions referred to in the previous two paragraphs to operators with an annual turnover of at least EUR 300 000. Operators whose annual turnover is below that threshold shall not be subject to dock dues.

#### *Article 2*

The French authorities shall apply the same taxation arrangements as those applied to products produced locally to products that have benefited from the specific supply arrangements under Chapter III of Regulation (EU) No 228/2013.

#### *Article 3*

France shall immediately notify the Commission of the taxation arrangements referred to in Article 1.

France shall submit to the Commission, by 31 December 2017, a report on the application of the tax arrangements referred to in Article 1, indicating the impact of the measures taken and their contribution to the maintenance, promotion and development of local economic activities, in the light of the handicaps affecting the outermost regions.

On the basis of this report, the Commission shall submit a report and, if necessary, a proposal to the Council.

#### *Article 4*

In Article 1(1) of Decision 2004/162/EC, as amended by Decision No 378/2014/EU of 12 June 2014, the date '31 December 2014' is replaced by the date '30 June 2015'.

#### *Article 5*

Articles 1 to 3 shall apply from 1 July 2015.

Article 4 shall apply from 1 January 2015.

#### *Article 6*

This Decision is addressed to the French Republic.

Done at Brussels,

*For the Council*  
*The President*