



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.8.2002
COM(2002) 473 final

2002/0209 (CNS)

Proposal for

COUNCIL DECISION

**amending Council Decision 89/688/EEC of 22 December 1989 concerning the dock dues
in the French overseas departments**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Article 2(3) of Council Decision 89/688/EEC of 22 December 1989 concerning the dock dues in the French overseas departments¹ states that partial or total exemptions from the charge may be authorised for local production activities for a period of not more than ten years from the date of introduction of the system. This period expires on 31 December 2002 as the system was introduced on 1 January 1993 under Law No 92-676 of 17 July 1992² transposing Council Decision 89/688/EEC of 22 December 1989 into French law.
2. Article 299(2) of the Treaty establishing the European Community which came into force on 1 May 1999 replaces Article 227(2) on which the 1989 Council Decision was based. This forms the legal framework for the European Union's outermost regions under which measures can be taken to offset their permanent handicaps. On 14 March 2000 the Commission adopted a report on measures to implement Article 299(2) of the EC Treaty for the outermost regions.³ The report states that Article 299(2) authorises special tax measures to help the outermost regions provided the requests submitted are justified by the disadvantages these regions suffer. Future tax measures for such regions have to be assessed on the basis of detailed requests from the Member States in question.
3. On 24 November 1999 the Commission also presented a report to the Council under Article 3 of Council Decision 89/688/EEC,⁴ in which it assesses the Community system of dock fees since its introduction. It concludes that the four French overseas departments are in a much more fragile economic and social situation compared with the rest of the European Union by virtue of being outermost regions. The Commission underlines the importance of dock dues and exemptions for local production. It concludes that dock dues provide local authorities with a way of helping threatened sectors survive in an unfavourable economic environment and with resources to support the economic and social development of each region, as an adjunct to Community policies, and to maintain a certain level of education and health. However, in the same report the Commission draws attention to the criteria laid down by the European Court of Justice for exemptions from dock dues which must be necessary, proportionate and precisely determined.
4. On 12 March 2002 France sent a detailed request to the European Commission to extend the system of dock dues for ten years.
5. Having examined this request the Commission considers that the exact nature of the exemptions which will apply when the current system comes to an end needs to be defined so that the Commission can assess whether they are proportionate and necessary, and determine whether the condition laid down by Article 299(2) of the EC Treaty is satisfied. This requires that measures adopted under this system must not undermine the integrity or coherence of the Community legal order including the internal market and common policies. Additional information must be provided by

¹ OJ L 399, 30.12.1989, p. 46.

² French Official Journal, 19.7.2002, p. 9697.

³ COM(2000) 147 final.

⁴ COM(1999) 621 final.

the French authorities and assessed by the Commission before a long-term system can be introduced.

6. However it is essential that continuity is maintained in the special tax arrangements in the overseas departments where there is still a huge structural deficit in structural development. The factors and phenomena exacerbating this situation and their combined effect have a serious impact on these departments' economic and social development. This lack of development is demonstrated by average GDP levels which are still less than 50% of the Community average and sustained rates of unemployment in a population which is largely very young which are among the highest in the European Union. These indicators confirm that the continuing existence of these handicaps recognised by Article 299(2) of the EC Treaty is still a serious obstacle to their development and justifies the maintenance of measures to help offset these handicaps.
7. Local production must be maintained and developed to offset these handicaps. The remoteness of these regions from their external suppliers and markets creates additional costs for local producers. The fragility of the economic fabric of these regions is also exacerbated by the very small size of their markets and businesses and the lack of diversification in production. Output is also less than the average output of other French departments owing to the lack of industrial equipment and labour skills. These departments' regional environment is another factor in the weakness of their business competitiveness owing to their geographical position in the developing regions. They are poor but are highly competitive in terms of production costs and relatively closed to imports.
8. Exemptions from dock dues are a means of supporting local production. They must therefore be continued, as underlined in the Commission's report of 14 March 2000, the European Parliament resolution of 25 October 2000⁵ and more recently by paragraph 59 of the conclusions of the Seville European Council on 22 and 23 June this year.
9. It is therefore concluded that the effects of Article 2(3) of Council Decision 89/688/EEC authorising exemptions from dock duties for local production activities in the French overseas departments should be temporarily extended from 1 January 2003 for a short period of one year. It should be noted that the provisions of this decision apply do not affect the application of Articles 87 and 88 of the EC Treaty.

Comments on the articles

Article 1

This extends for a short period of one year the period laid down by Council Decision 89/688/EEC during which exemptions from dock dues may be authorised for local producers in the French overseas territories.

⁵ OJ C 197, 12.7.2001, p.197.

Article 2

This provision sets the date from which the decision becomes applicable. This is 1 January 2003 to ensure continuity is maintained.

Article 3

This provision identifies the party to whom the decision is addressed.

Proposal for

COUNCIL DECISION

**amending Council Decision 89/688/EEC of 22 December 1989 concerning the dock dues
in the French overseas departments**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the second subparagraph of Article 299(2),

Having regard to the proposal from the Commission⁶,

Having regard to the opinion of the European Parliament⁷,

Whereas:

- (1) Article 2(3) of Council Decision 89/688/EEC of 22 December 1989 concerning the dock dues in the French overseas departments states that in the light of the special constraints on the French overseas departments partial or total exemptions from the charge may be authorised for local production activities for a period of not more than ten years from the date of introduction of the system of charges. This period expires on 31 December 2002 having been introduced on 1 January 1993 under the French Law of 17 July 1992.
- (2) Article 3 of the Decision requires the Commission to submit a report on the implementation of the arrangements in order to ascertain the impact of the measures taken and whether exemptions should be maintained. In the report it presented to the Council on 24 November 1999⁸, the Commission concludes that the four French overseas departments are in a much more fragile economic and social situation than the rest of the Community because of their outlying geographical position and underlines the importance of the dock dues and exemptions from this charge for local production for these regions' social and economic development.
- (3) According to the Commission report of 14 March 2000 on measures to implement Article 299(2) of the Treaty⁹, this Article which replaced Article 227 under the Amsterdam Treaty must be implemented in partnership with the Member States concerned on the basis of detailed requests from them.
- (4) On 12 March 2002 France sent a detailed request to the Commission to extend exemptions from dock dues for a period of ten years.

⁶ OJ C ..., ..., p. ...

⁷ OJ C ..., ..., p. ...

⁸ COM(1999) 621 final.

⁹ COM(2000) 147 final.

- (5) The Commission has examined this request and considers that further details of the content of the exemptions which will apply when the current arrangements come to an end are required. Additional information must be provided by the French authorities and evaluated by the Commission before long-term arrangements can be drawn up.
- (6) However it is essential to maintain continuity in the special tax arrangements for the overseas departments.
- (7) There is still a serious structural deficit in the French overseas departments' development. The factors and phenomena exacerbating this situation and their combined effect have a serious impact on these departments' economic and social development. This is demonstrated by average GDP levels which are still less than 50% of the Community average and sustained rates of unemployment in a population which is largely very young which are among the highest in the Community. These indicators confirm that the continuing existence of these handicaps recognised by Article 299(2) of the Treaty is a serious obstacle to their development and justifies maintenance of measures to help offset these handicaps.
- (8) Local production must be maintained and developed to offset these handicaps. The remoteness and isolation of these regions from external suppliers and markets increases costs for local producers. The weakness of the economy is also exacerbated by the very small size of markets and businesses and the lack of diversification in production. Output is less than the average output in other French departments because of the lack of industrial equipment and skilled labour. These departments' regional environment is another factor in the lack of business competitiveness owing to their geographical position in developing regions. They are poor but highly competitive in terms of production costs and relatively closed to imports.
- (9) Exemptions from dock dues are a way of supporting local production and must therefore be continued.
- (10) For the reasons set out above Decision 89/688/EEC should be extended for a short period.
- (11) Decision 89/688/EEC is therefore amended to this effect.
- (12) This Decision shall not affect the application of Articles 87 and 88 of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The expression "for a period of not more than ten years" in Article 2(3) of Decision 89/688/EEC is replaced by "for a period not exceeding eleven years".

Article 2

This Decision shall apply from 1 January 2003.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels,

*For the Council
President*

FINANCIAL STATEMENT		
		DATE: 2002
1.	BUDGET HEADING:	APPROPRIATIONS:
2.	TITLE OF MEASURE: Proposal for Council Decision amending Council Decision 89/688/EEC of 22 December 1989 concerning the dock dues in the French overseas departments	
3.	LEGAL BASIS: Article 299(2) of the EC Treaty	
4.	OBJECTIVES: To extend the period under which exemptions from dock dues are authorised	
5.	FINANCIAL IMPACT: No financial impact	