



EUROPEAN
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2014/0101 (CNS)

Proposal for a

COUNCIL DECISION

**amending the period of application of Council Decision 2004/162/EC concerning the
dock dues in the French overseas departments**

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 299(2) of the EC Treaty) provides, however, 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.

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 a list of the products to which tax exemptions and reductions may be applied. The difference between the taxation of locally manufactured products and that 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 the 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.

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 differential taxation and the proportionality of the tax, so as to ensure that such differential 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.

Failure to adopt any proposal before 1 July 2014 might create a legal vacuum as it would rule out the application of any differentiated taxation in the French outermost regions after 1 July 2014, even in the case of products for which differentiated taxation would prove justified in the end.

An additional period of six months is required to complete the work under way and to give the Commission time to present a balanced proposal that takes account of the various interests at stake.

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

The relevant directorates-general of the European Commission have been consulted on the text of this proposal.

The Commission has not used an impact assessment.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed measures

The proposal provides for a six-month extension of the validity of Council Decision 2004/162/EC of 10 February 2004 until 31 December 2014 instead of 1 July 2014.

Legal basis

Article 349 TFEU.

Principle of subsidiarity

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

The proposal therefore complies with the principle of subsidiarity.

Principle of proportionality

The proposal complies with the principle of proportionality for the reasons set out below.

The purpose of the proposal is to extend the existing system by six months to make it possible to complete the full analysis, product by product, of the request to authorise the application of differentiated taxation to offset the handicaps suffered by local products.

No other extension will be authorised until this product-by-product analysis of the French authorities' request has been completed.

Choice of instrument

Proposed instrument: Council decision.

Other instruments would not have been appropriate for the following reasons:

The text to be amended is itself a Council Decision, adopted on the same legal basis (Article 299(2) of the EC Treaty at the time).

4. BUDGETARY IMPACT

The proposal has no impact on the European Union budget.

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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 Parliament¹,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Decision 2004/162/EC² authorises France to apply exemptions or reductions to dock dues for products produced locally in the French overseas departments and listed in the Annex to the Decision. The difference between the taxation of locally manufactured products and that of other products may not exceed 10, 20 or 30 percentage points, depending on the product. These exemptions or reductions constitute specific measures designed to offset the specific constraints facing the outermost regions provided for in Article 349 of the Treaty which increase production costs for local companies and make it difficult for their products to compete with the same products imported from metropolitan France and other Member States or non-member countries. The exemptions from or reductions in the dues applicable to local products support the creation, maintenance and development of local production. Decision 2004/162/EC applies until 1 July 2014.
- (2) France believes that the handicaps suffered by the French outermost regions persist and has submitted a request to the Commission that a system of differentiated taxation similar to the current system be maintained after 1 July 2014 until 31 December 2020.
- (3) Analysing the lists of the products to which France wishes to apply differentiated taxation is a lengthy process requiring verification, for each product, of the reasons for differential taxation and its proportionality, 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.
- (4) This work has not yet been completed because of the large number of products involved and the quantity of information to be collected, in particular the quantification of the higher production costs that handicap local products and the structure of the product markets concerned.

¹ OJ C , , p. .

² Council Decision 2004/162/EC of 10 February 2004 concerning the dock dues in the French overseas departments and extending the period of validity of Decision 89/688/EEC (OJ L 52, 21.2.2004, p. 64).

- (5) Failure to adopt any proposal before 1 July 2014 might create a legal vacuum as it would rule out application of any differentiated taxation in the French outermost regions after 1 July 2014.
- (6) An additional period of six months is required to make it possible to complete the work under way and to give the Commission time to present a balanced proposal that takes account of the various interests at stake.
- (7) Decision 2004/162/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In Article 1(1) of Decision 2004/162/EC the date '1 July 2014' is replaced by '31 December 2014'.

Article 2

This Decision shall apply from 2 July 2014.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels,

*For the Council
The President*