EUROPEAN
COMMISSION

Brussels, 11.8.2020
COM(2020) 371 final

2020/0174 (CNS)

Proposal for a

COUNCIL DECISION

amending the period of application of Decision No 940/2014/EU concerning the dock dues in the French outermost regions

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives 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. However, Article 349 TFEU provides for the possibility of introducing specific measures for those regions because of permanent constraints affecting their economic and social situation. Such measures concern various policies, including taxation.

The dock dues tax is an indirect tax in force only in the French outermost regions of Martinique, Guadeloupe, French Guiana, Réunion and Mayotte. This tax applies to imports of products, irrespective of their origin, and to supplies of goods for consideration by persons engaged in production activities. In principle, it applies in the same way to locally produced products and to imported products.

However, Council Decision No 940/2014/EU of 17 December 2014[1] authorises France to apply, until 31 December 2020, exemptions or reductions to dock dues in respect of certain locally produced products. The Annex to the Decision contains the list of products to which the tax exemptions or reductions may be applied. The difference between the taxation of locally produced products and that 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 competitive disadvantages 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.

Following the expiry of the Council Decision, the Commission launched an external study to assess the current arrangements and the potential impact of various options for the period after 2020. On the basis of that study, the Commission considers it justified to grant the requested extension, with some modifications to the existing arrangements.

The Commission has therefore undertaken an analysis of the lists of the products to which the French authorities wish to apply differentiated taxation. This analysis is a lengthy process for both the French authorities and the Commission, requiring verification, for each product, of the reasons for differentiated taxation and its proportionality, so as to ensure that differentiated taxation does not undermine the integrity and the coherence of the Union legal order, including the internal market and common policies.

The crisis caused by the COVID-19 pandemic has seriously delayed the work carried out by the French authorities to collect all the necessary information. Consequently, this work has not yet been completed.

[1] Council Decision No 940/2014/EU of 17 December 2014 concerning the dock dues in the French outermost regions, OJ L 367, 23.12.2014, p. 1.

Failure to adopt any proposal before 1 January 2021 might create a legal vacuum as it would rule out application of any differentiated taxation in the French outermost regions after 1 January 2021, even in the case of products for which differentiated taxation would prove justified in the end.

An additional period of six months is therefore required to make it possible to complete the work under way and to give the French authorities the opportunity to collect all the necessary information and to allow the Commission time to present a balanced proposal that takes account of the various interests at stake.

- **Consistency with existing provisions in the policy area**

The 2017 Communication on a stronger and renewed strategic partnership with the EU's outermost regions[2] stresses that the outermost regions continue to face serious difficulties, many of which are permanent. The Communication presents the Commission's new approach to how to galvanise the development of the outermost regions by making the most of their assets and tapping into the opportunities provided by new vectors of growth and job creation.

Against that background, the objective of this proposal is to promote and maintain certain local production activities which are particularly at risk, thereby boosting employment in the French outermost regions. The proposal deepens the single market and makes these local outputs competitive again by compensating for the disadvantages resulting from their geographical and economic situation. It supplements the Programme of Options Specifically Relating to Remoteness and Insularity (POSEI)[3], which aims to support the primary sector and the production of raw materials, the European Maritime and Fisheries Fund (EMFF)[4] and the European Regional Development Fund (ERDF)[5], which includes an additional special allocation to offset the additional costs of the outermost regions inherent in their own constraints.

- **Consistency with other Union policies**

The proposal is consistent with the 2015 Single Market Strategy[6], in which the Commission seeks to establish a deeper and fairer Single Market that will benefit all stakeholders. One of the objectives of the proposed measure is to mitigate the additional costs faced by companies in the outermost regions, which impede their full participation in the Single Market. In view of the limited volume of production concerned in the French outermost regions, no negative impact on the proper functioning of the Single Market is expected.

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2 COM(2017)623 final.

3 Regulation (EU) No 228/2013 of the European Parliament and of the Council of 13 March 2013.

4 Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund.

5 Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund.

6 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Upgrading the Single Market: more opportunities for people and business' [COM(2015)550 final], p. 4.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis for this proposal is Article 349 of the TFEU, which enables the Council to adopt specific provisions laying down the conditions of application of the Treaties to the EU outermost regions.

• Subsidiarity (for non-exclusive competence)

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 constraints which affect the economic and social conditions of those regions. This also holds for authorising derogations to Article 110 TFEU. The proposal therefore complies with the principle of subsidiarity.

• Proportionality

This proposal complies with the principle of proportionality as set out in Article 5(4) of the Treaty on European Union. The purpose of this proposal is to extend the existing arrangements by six months to enable a comprehensive product-by-product analysis to be carried out of the request to authorise the application of differentiated taxation to offset the competitive disadvantages suffered by local production activities. No other extension will be authorised until this product-by-product analysis of the French authorities' request has been completed.

• Choice of instrument

A Council decision is proposed in order to amend Council Decision No 940/2014/EU.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

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

A derogation from the Better Regulation Guidelines has been granted due to the limited overall impact of the dock dues arrangements on the EU as a whole.

4. BUDGETARY IMPLICATIONS

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

5. OTHER ELEMENTS

• Implementation plans and monitoring, evaluation and reporting arrangements

A comprehensive review of Decision No 940/2014/EU is under way with a view to renewing the arrangements. An analytical document, to which an evaluation of the arrangements will be attached, will be drawn up on the basis of the external study and the information provided by France.

• Detailed explanation of certain provisions of the proposal

This part is not applicable in so far as the provisions of the proposal speak for themselves.

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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 Parliament[7],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Decision No 940/2014/EU of 17 December 2014[8] concerning the dock dues in the French outermost regions authorises the French authorities to apply exemptions or reductions to dock dues for products produced locally in the French outermost regions and listed in the Annex to the Decision. The maximum authorised tax differential is, depending on the products and the overseas department in question, 10, 20 or 30 percentage points. Decision No 940/2014/EU applies until 31 December 2020.

(2) France is of the view that the competitive disadvantages suffered by the French outermost regions persist, and has submitted a request to the Commission for a system of differentiated taxation similar to the current system to be maintained beyond 1 January 2021, until 31 December 2027.

(3) However, 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 differentiated taxation and its proportionality, so as to ensure that differentiated taxation does not undermine the integrity and the coherence of the Union legal order, including the internal market and common policies.

(4) The crisis caused by the COVID-19 pandemic has seriously delayed the work carried out by the French authorities to collect all the necessary information. Consequently, this work has not yet been completed.

(5) Failure to adopt a proposal before 1 January 2021 might create a legal vacuum as it would rule out application of any differentiated taxation in the French outermost regions after 1 January 2021.

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[7] OJ C of , p. .

[8] Council Decision No 940/2014/EU of 17 December 2014 concerning the dock dues in the French outermost regions, OJ L 367, 23.12.2014, p. 1.

(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 No 940/2014/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In Article 1(1) of Decision No 940/2014/EU the date '31 December 2020' is replaced by '30 June 2021'.

Article 2

This Decision shall apply from 1 January 2021.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels,

For the Council
The President