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2014/0010 (CNS)

Proposal for a

COUNCIL DECISION

**amending Decision 2004/162/EC with regard to its implementation in Mayotte from
1 January 2014**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The provisions of the Treaty on the Functioning of the European Union (TFEU) which apply to the outermost regions of the EU, including the French overseas departments (DOMs), do not in principle allow any difference in the DOMs between the taxation of local products and the taxation of products from metropolitan France or the other Member States. Article 349 of the TFEU (former Article 299(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.

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 overseas departments of Guadeloupe, Guyana, Martinique and Réunion. 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 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 the 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 means that production costs, and therefore the cost price of goods produced locally, are increased, 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 DOMs. 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.

By Decision 2012/419/EU amending the status of Mayotte with regard to the European Union, the European Council decided that Mayotte would have the status of an outermost region within the meaning of Article 349 TFEU from 1 January 2014, rather than that of an overseas country or territory (OCT) within the meaning of Article 355(2) TFEU. To this end, Mayotte was added to the list of outermost regions in Article 349 TFEU by the above-mentioned European Council Decision. The entire Treaty and all Community tax legislation will therefore be applicable to Mayotte from the date of this change in status.

The proposal for a Council Directive of 7 August 2013¹ is intended to ensure that Mayotte is treated in the same way as the other French outermost regions with regard to VAT and excise duties, by excluding this overseas department from the territorial scope of the VAT and excise duty directives from 1 January 2014.

The French authorities informed the Commission of their intention to introduce the dock dues tax in Mayotte, under similar conditions to those for Guyana, and requested authorisation from the Commission to apply a differentiated tax system

¹ Proposal for a Council Directive amending Directives 2006/112/EC and 2008/118/EC as regards the French outermost regions and Mayotte in particular (COM(2013) 577 final).

according to whether or not products are produced locally. In their request of 24 May 2013, the French authorities therefore sent the Commission a list of around 100 products for which they were seeking authorisation to apply a differentiated tax system according to whether or not the products are produced locally. The French authorities were asked on several occasions to supply additional information and, for each of the products covered by the request, to provide proof of the existence of local production, the market share held by this local production, and the additional costs of this local production in comparison to the same products produced elsewhere.

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

The French authorities' request concerning Mayotte was a response to requests from the economic sectors concerned.

The Commission has not used an impact assessment.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed measures

The purpose of the proposal is to amend Council Decision 2004/162/EC in order to make it applicable to Mayotte. It also determines the lists of products in Mayotte for which France will be authorised to apply, within certain limits, exemptions or reductions in dock dues for particular products produced locally.

The proposal makes provision for authorising the application of a differentiated tax system for 59 products produced locally in Mayotte.

For all these products the French authorities were able to prove: firstly, the existence of local production; secondly, the existence of substantial imports (including from metropolitan France and other Member States) which could jeopardise the continuation of local production; and thirdly, the existence of additional costs relating to local production compared with 'imported' products, which compromise the competitiveness of locally produced products. The authorised tax differential must not exceed the proven additional costs.

There are 11 products proposed for inclusion in Part A of the Annex to Council Decision 2004/162/EC (authorised tax differential of 10 percentage points), 32 products for inclusion in Part B (authorised tax differential of 20 percentage points), and 16 products for Part C (authorised tax differential of 30 percentage points).

Details of the products concerned are given in recitals 5 to 7 of the proposal for a Council Decision.

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 the outermost regions.

The proposal therefore complies with the principle of subsidiarity.

Principle of proportionality

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

The purpose of the Proposal is to amend Decision 2004/162/EC in order to make it applicable to Mayotte. It concerns only products for which evidence of the additional costs incurred by 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. In this way, the tax burden on products imported into the French overseas department of Mayotte will 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 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.

Proposal for a

COUNCIL DECISION

amending Decision 2004/162/EC with regard to its implementation in Mayotte from 1 January 2014

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 Parliament²,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Decision 2004/162/EC³ authorises the French authorities 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. These exemptions or reductions constitute specific measures designed to offset the specific constraints facing the outermost regions 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. Mayotte's situation is the same as that of the other French outermost regions.
- (2) In accordance with Decision 2012/419/EU⁴, with effect from 1 January 2014 Mayotte will become an outermost region within the meaning of Article 349 of the Treaty. All provisions of the Treaty will thus be applicable to Mayotte from this date.
- (3) The French authorities have asked for Decision 2004/162/EC concerning dock dues to be applicable to Mayotte with effect from 1 January 2014, and have submitted a list of the products to which they wish to apply differentiated taxation according to whether or not the products are produced locally.
- (4) This Decision should authorise the French authorities to apply differentiated taxation to the products for which they have proven: firstly, that local production exists; secondly, that significant importation of goods (including from metropolitan France and other Member States) 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

² OJ C , , p. .

³ 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).

⁴ OJ L 204, 31.7.2012, p. 131.

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.

- (5) The products for which the French authorities have provided these three types of proof are listed in Parts A, B and C of the Annex to Council Decision 2004/162/EC. The products concerned that are listed in Part A of the Annex to the Decision (authorised tax differential of 10 percentage points) are pepper (products 0904 11 and 0904 12⁵), vanilla (0905), chocolate (1806), certain plastic products (3925 10 10, 3925 90 80, 3926 90 90 and 3926 90 97), bricks (6901 and 6902) and dental prostheses (9021 21 90).
- (6) The products concerned listed in Part B of the Annex (authorised tax differential of 20 percentage points) are fish (products 0301, 0302, 0303, 0304 and 0305), certain wood articles (4407, 4409, 4414, 4418, 4419, 4420 and 4421), certain paperboard and paper articles (4819 and 4821), certain products from the press and publishing sector (4902, 4909, 4910 and 4911), certain flat glass products (7003 and 7005), certain iron articles (7210, 7301, 7312, 7314, 9406 00 31 and 9406 00 38), certain aluminium articles (7606, 7610 10 and 8310), and certain seats (9401 69, 9401 90 30 and 9403 40).
- (7) The products concerned listed in Part C of the Annex (authorised tax differential of 30 percentage points) are milk and dairy products (0401, 0403 and 0406), certain meat-based processed products (1601 and 1602), certain bakery products (1901 and 1905), ice-creams (2105), mineral water and sodas (2201 and 2202), beer (2203), ylang-ylang (3301 29 11 and 3301 29 31), soaps and detergents (3401 and 3402) and foam mattresses (9404 29 90).
- (8) Decision 2004/162/EC should therefore be amended accordingly.
- (9) Given the urgency, an exception should be made to the eight-week period laid down by Article 4 of Protocol No 1 on the role of national parliaments in the European Union,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2004/162/EC is amended as follows:

1) the first subparagraph of Article 1(1) is replaced by the following:

'By way of derogation from Articles 28, 30 and 110 of the Treaty on the Functioning of the European Union, the French authorities shall be authorised, until 1 July 2014, to apply exemptions or reductions to the dock dues tax for the products listed in the Annex which are produced locally in the French overseas departments of Guadeloupe, Guyana, Martinique, Mayotte and Réunion.'

2) The Annex is amended as follows:

a) the following point 5 is added to Part A:

'5. Department of Mayotte

0904 11, 0904 12, 0905, 1806, 3925 10 00, 3925 90 80, 3926 90 90, 3926 90 97, 6901, 6902, 9021 21 90.'

⁵ According to the classification of the Common Customs Tariff nomenclature.

b) the following point 5 is added to Part B:

'5. Department of Mayotte

0301, 0302, 0303, 0304, 0305, 4407, 4409, 4414, 4418, 4419, 4420, 4421, 4819, 4821, 4902, 4909, 4910, 4911, 7003, 7005, 7210, 7301, 7312, 7314, 7606, 7610 10, 8310, 9401 69, 9401 90 30, 9403 40, 9406 00 31, 9406 00 38.'

c) the following point 5 is added to Part C:

'5. Department of Mayotte

0401, 0403, 0406, 1601, 1602, 1901, 1905, 2105, 2201, 2202, 2203, 3301 29 11, 3301 29 31, 3401, 3402, 9404 29 90.'

Article 2

This Decision shall apply with effect from 1 January 2014.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels,

*For the Council
The President*