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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Delegations will find attached document COM(2021) 95 final.

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2021/0051 (CNS)

Proposal for a

COUNCIL DECISION

**concerning the dock dues scheme in the French outermost regions and amending
Decision No 940/2014/EU**

{SWD(2021) 44 final}

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 are however 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 such 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. It 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 2014¹ authorises France to apply, until 31 December 2020, exemptions or reductions to dock dues in respect of certain products for which local production exists, given that significant importation of goods could jeopardise the continuation of local production and additional costs increase the cost price of local production in comparison with products produced elsewhere. The Annex to that 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 costs of transport. It would thus be harder to maintain local production, which faces higher production costs on account of the specific permanent constraints affecting these regions.

On 1 March 2019 the French authorities asked the Commission to extend the dock dues scheme beyond 31 December 2020.

As the Council Decision was due to expire, the Commission had earlier launched an external study to assess the current arrangements and the potential impact of various possible options for the period after 2020. On the basis of that study, the Commission considers it justified to grant the requested extension, subject to some changes to the existing arrangements.

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).

In order to give the French authorities the opportunity to collect all the necessary information, work on which had been delayed on account of the COVID- 19 public health crisis, and to give the Commission time to present a balanced proposal taking account of the various interests at stake, Council Decision (EU) 2020/1793 of 16 November 2020² extended the application of Council Decision No 940/2014/EU by six months, to 30 June 2021 instead of 31 December 2020.

This proposal accordingly establishes the legal framework for dock dues applicable after 30 June 2021 by establishing new derogation arrangements for the period from 1 January 2022 to 31 December 2027, including a revision of the current provisions to make the scheme more flexible and transparent. In parallel, it extends Decision No 940/2014/EU for six months, until 31 December 2021, to give France time to transpose the new arrangements applicable between 1 January 2022 and 31 December 2027 into its national law.

The proposed changes to the existing arrangements are as follows:

- (a) The criteria for selecting products eligible for a tax differential are specified.

The products on the list have been selected on the grounds that additional production costs exist which increase the cost price of local production in comparison with products produced elsewhere and which make products produced locally less competitive.

Where:

- (1) local production has a market share of less than 5%,
- (2) or where its market share is greater than 90%,

additional justification has been requested as proof of all or some of the following circumstances:

- labour-intensive production;
- new or complementary production designed to diversify a company's product range;
- production that is strategic for local development (e.g. in areas relating to circular-economy sectors such as wood processing, or harnessing biodiversity or environmental protection);
- innovative or high-added-value production;
- production for which the disruption of supply from elsewhere could jeopardise the local economy or population, such as building materials or foodstuffs;
- production which can only exist if it is dominant on the market as a result of the small size of the markets in the outermost regions;

² Council Decision (EU) 2020/1793 of 16 November 2020 amending the period of application of Decision No 940/2014/EU concerning the dock dues in the French outermost regions (OJ L 402, 1.12.2020, p. 21–22).

- production of medical products and personal protective equipment required to tackle public health crises.
- (b) Two differential ceilings of 20% and 30% are introduced in place of the current three. Nevertheless, the authorised tax differential should not exceed the proven additional costs.
- (c) The threshold for liability for dock dues is raised to EUR 550 000. Under the proposed arrangements, operators whose annual turnover is below that threshold would not be subject to dock dues. However, they would not be able to deduct the amount of this tax borne upstream. The purpose is to exempt production by small enterprises, to reduce their administrative burden and to support their growth. This measure is justified by its limited budgetary³ and competition impact in view of the small number of economic operators involved⁴.
- (d) The mid-term report is replaced by a report by 30 September 2025, which should contain at least the information set out in Annex II to the Decision. This information will serve as a basis for work on renewing the scheme. This proposal is designed to reduce the burden of evaluating the scheme, which is unnecessarily frequent, and to make monitoring and evaluation activities more useful and effective.

Furthermore, as regards the assessment of the additional production costs which the tax differential is intended to offset, the French authorities have provided, for each four-digit heading of the customs nomenclature, an assessment of the additional production costs borne by local enterprises, which are primarily: supply costs, wages, higher energy costs, financial costs resulting from the holding of larger stocks, higher maintenance costs, underutilisation of production equipment, higher financial costs.

The Annex to the Decision contains the list of products to which the dock dues exemptions or reductions may be applied. The difference between the taxation of locally produced products and that of other products may not exceed 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 20 percentage points and part (b) those for which the difference 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 No 940/2014/EU. However, a complete overhaul of the lists has resulted in the removal of numerous products for which a tax differential was no longer justified. By contrast, some products not included in Decision No 940/2014/EU for which production has started or developed have been added. Lastly, some products have been kept on the lists but

³ The revenue from the taxation of enterprises with a turnover of between EUR 300 000 and EUR 550 000 is calculated at only EUR 1.22 million in 2019, that is close on 0.1% of the total revenue from dock dues (EUR 1.2 billion).

⁴ The number of enterprises concerned is 222.

the authorised tax differential has been modified upwards or downwards to take account of changes in the additional costs.

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

The 2017 Communication on a stronger and renewed strategic partnership with the EU's outermost regions⁵ stresses that the outermost regions continue to face serious difficulties, many of which are permanent. This 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 local production, thereby boosting employment in the French outermost regions. The proposal restores the competitiveness of local production by compensating for the disadvantages resulting from the geographical and economic situation. It supplements the Programme of Options Specifically Relating to Remoteness and Insularity (POSEI)⁶, which aims to support the primary sector and the production of raw materials, the European Maritime and Fisheries Fund (EMFF)⁷ and the European Regional Development Fund (ERDF)⁸, which includes a specific additional allocation to offset the additional costs of the outermost regions inherent in their permanent constraints.

Moreover, the required consistency with agricultural policy rules means 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.

- **Consistency with other Union policies**

The proposal is consistent with the 2015 Single Market Strategy⁹, 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 enterprises 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.

⁵ COM(2017) 623 final.

⁶ Regulation (EU) No 228/2013 of the European Parliament and of the Council of 13 March 2013.

⁷ Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund.

⁸ 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.

⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on 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 TFEU. It enables the Council to adopt specific provisions laying down the conditions of application of the Treaties to the outermost regions of the EU.

- **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, including the common policies, to the outermost regions, on account 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. 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. In this way, the tax burden on products imported into the French outermost regions does not exceed what is necessary to offset the lower competitiveness of products manufactured locally compared with imported products, and thus to achieve the objectives of the Treaty designed to ensure the proper and efficient functioning of the internal market.

- **Choice of instrument**

A Council decision is proposed to replace Council Decision [No 940/2014/EU](#).

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

- **Ex-post evaluations/fitness checks of existing legislation**

The scope of the dock dues scheme is tailored to the needs of the economic operators concerned. The scheme exists in order to support local products by closing the competitiveness gap between local products and products originating elsewhere arising from the existence of permanent constraints, which increase production costs and thus the cost price of locally produced products. The dock dues scheme offsets around half of the additional costs. The tax differentials applied over the period 2014-2020 have been found to be proportionate to the additional costs¹⁰.

¹⁰ A few isolated cases (representing 0.6% of eligible products) of overcompensation (less than three percentage points on average) due to the updated calculation of additional costs (in 2020) were found.

The findings of the analysis of the quantitative data in the external study indicate that, in the absence of the dock dues scheme, the performance of local production would have deteriorated significantly. They show that around 37% of the value of products benefiting from a tax differential (some EUR 850 million) was generated by the tax differential scheme, with a positive impact on employment (which has shown growth in sectors benefiting from the scheme since 2014, compared with a fall in sectors not benefiting from the scheme) and on the number of active enterprises, which has risen by around 1.7% over the same period (compared with an drop overall of 3%). By contrast, there is no evidence of an impact on investment and diversification in local production. The cost-benefit ratio of the dock dues scheme is positive overall, with additional local production generated by the tax differentials 2.5 times higher than the ‘cost’ of the measure.

The application of the dock dues scheme has not resulted in import substitution. In practice, the majority of local products benefiting from a tax differential have recorded a loss of market share over time, which confirms that the dock dues scheme is more of a measure to close the competitiveness gap for local production than an instrument for development.

As for the impact of the dock dues tax differentials on consumer prices and the cost of living in the French outermost regions, the external study found that it was low, as the additional tax levied on products benefiting from the tax differentials is not greater than 1.5% of final consumption in the outermost regions.

Lastly, the analysis of regional trade data shows that the dock dues tax differentials have little impact on the value of imports from CARIFORUM and eastern and southern African countries. Moreover, completely abolishing the dock dues scheme would have a very limited impact on imports of products from these countries (around EUR 2 million) but would have a very significant negative impact on local production (around EUR 300 million). This would mainly benefit EU and non-EU exporters outside CARIFORUM and eastern and southern Africa.

- **Stakeholder consultations**

In connection with this initiative, a comprehensive consultation of the principal political and economic players was carried out, by way of interviews (80) and visits to three regions (Réunion, Guadeloupe and Martinique), and a survey of enterprises (196) based in all five outermost regions concerned. The targeted (online) survey of economic operators was circulated primarily through the professional associations in the different territories and secondarily by way of direct invitations sent to 15 420 enterprises taken from lists provided by the chambers of commerce.

During the consultation, attention was drawn to the need to ensure appropriate coverage and a good balance between stakeholders. The aim was to involve all the public authorities concerned, at different levels (central and local) and in different policy areas (policy-making authorities, tax and customs authorities, statistical institutes, etc.). In addition, representatives of local productive sectors — i.e. the beneficiaries of the dock dues tax differentials — and the trade and services sectors directly or indirectly concerned by the tax differential arrangements were also consulted.

- **Impact assessment**

The impact assessment takes the form of a back-to-back exercise: an ex-post evaluation of the current scheme followed by a forward-looking analysis. The analysis of the potential impacts

of continuing and possibly changing the existing arrangements is set out in an analytical document, with the evaluation of the scheme annexed. It was drawn up on the basis of an external study and the information provided by France.

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**

The duration of the scheme is set at six years, until 31 December 2027. However, the results of applying the arrangements will have to be assessed before then.

Therefore, no later than 30 September 2025, France will submit a report on the application of the taxation scheme for the period 2019 to 2024¹¹. This report will include the following:

- data on the additional costs of production;
- any distortions of competition and repercussions for the internal market;
- information needed to assess the scheme against the criteria of effectiveness, efficiency, relevance, consistency with other EU policies and EU added value.

The report should also garner contributions from all stakeholders on the level and evolution of their additional production costs, compliance costs and any instances of market distortion.

To ensure that the information collected by the French authorities contains the data necessary for the Commission to take an informed decision on the validity and viability of the scheme in the future, the Commission has drawn up specific guidelines on the information required. This information can be found in Annex II to the proposal. As far as possible, these guidelines match other similar schemes in force in the outermost regions of the EU.

They will enable the Commission to determine whether the grounds for the dock dues differential mechanism still apply, whether the tax advantages granted to France remain proportionate and whether alternatives to the scheme, which take into account its international dimension, are possible.

When the French authorities submit the evaluation report, the Commission will assess the effects of the tax differentials and determine whether any changes are needed.

- **Detailed explanation of specific provisions of the proposal**

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

¹¹ The report should include data for 2019 so as to set a baseline and enable the Commission to examine the impact of the scheme for the period after 2021. The report should contain, as far as possible, the most recent data up to and including 2024.

Proposal for a

COUNCIL DECISION

**concerning the dock dues scheme in the French outermost regions and amending
Decision No 940/2014/EU**

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) The Treaty provisions which apply to the French outermost regions do not in principle authorise any difference between the taxation of local products and the taxation of products from metropolitan France or the other Member States. However, Article 349 of the Treaty provides for the possibility of introducing specific measures for outermost regions because of permanent constraints affecting their economic and social situation.
- (2) Specific measures should therefore be adopted, in particular to lay down the conditions for the application of the Treaty to the French outermost 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 competitive disadvantages faced by the French outermost regions are referred to in Article 349 of the Treaty: remoteness, insularity, small size, difficult topography and climate, and economic dependence on a few products. These permanent constraints create for the outermost regions raw-material and energy dependence, an obligation to build up larger stocks, a small local market combined with a low level of export activity, etc. The combination of these competitive disadvantages 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 outermost regions. This would make it harder to

¹ OJ C , , p. .

maintain local production. For this reason, specific measures need to be taken in order to strengthen local industry by making it more competitive.

- (3) With a view to restoring the competitiveness of goods produced locally, Council Decision No 940/2014/EU² authorises France to apply, until 30 June 2021, exemptions or reductions to dock dues in respect of certain products produced in the outermost regions of Martinique, Guadeloupe, French Guiana, Réunion and Mayotte for which local production exists, given that significant importation of goods could jeopardise the continuation of local production and additional costs increase the cost price of local production in comparison with products produced elsewhere. The Annex to that 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.
- (4) France has requested that a system similar to that contained in Decision No 940/2014/EC continue to apply as of 1 July 2021. The grounds it advances are that the competitive disadvantages referred to above continue to exist, while the tax scheme provided for in Decision No 940/2014/EU has made it possible to maintain and, in certain cases, develop local production, has not disrupted external trade and has not resulted in overcompensation for the additional costs borne by the enterprises.
- (5) In this connection, France has sent the Commission, for each of the five outermost regions concerned, a set of lists of products for which it intends to apply a tax differential of no more than 20 or 30 percentage points, depending on whether or not they are produced locally. The French outermost region of Saint Martin is not affected.
- (6) 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 lastly, 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.
- (7) In cases where local production has a market share of less than 5% or where the share of imports is less than 10%, additional evidence was requested as proof of all or some of the following circumstances: the existence of labour-intensive production, new or complementary production designed to diversify a company's product range, production that is strategic for local development (e.g. in sectors relating to the circular economy, harnessing biodiversity or environmental protection), innovative or high-added-value production, production for which the disruption of supply from elsewhere could jeopardise the local economy or population, production which can only exist if it is dominant on the market as a result of the small size of the markets in the outermost regions and production of medical products and personal protective equipment required to tackle public health crises. Applying these principles will allow

² 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).

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.

- (8) With a view to simplifying and reducing the obligations on small enterprises and supporting their growth, the tax exemptions or reductions will apply to operators with an annual turnover of EUR 550 000 or above. Operators whose annual turnover is below that threshold are not subject to dock dues but in turn may not deduct the amount of this tax borne upstream.
- (9) Similarly, coherence with Union 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 Council³. This rule 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.
- (10) The objectives of supporting the social and economic development of the French outermost regions, already provided for in Decision No 940/2014/EU, are confirmed by the requirements regarding the purpose of the tax. It is a legal obligation for the revenue from this tax to be incorporated into the tax resources of the French outermost regions and to be allocated to an economic and social development strategy involving the promotion of local activities.
- (11) It is necessary to amend Decision No 940/2014/EU in order to extend the period of application of the derogation authorised by it by six months until 31 December 2021. That period should enable France to transpose this Decision into its national law.
- (12) The duration of the scheme should be set at six years, until 31 December 2027. In order to enable the Commission to determine whether the grounds for the derogation still apply, France should submit an evaluation report to the Commission no later than 30 September 2025. The required structure and content of that report need to be established.
- (13) To avoid any legal uncertainty, this Decision should apply from 1 January 2022, while the extension of the period of application of the derogation authorised by Decision No 940/2014/EU should take effect on 1 July 2021.
- (14) This Decision is without prejudice to the possible application of Articles 107 and 108 of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

³ 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).

1. By way of derogation from Articles 28, 30 and 110 of the Treaty, France is authorised, until 31 December 2027, to apply exemptions or reductions to dock dues in respect of the products listed in Annex I which are produced locally in Guadeloupe, French Guiana, Martinique, Mayotte or Réunion, as outermost regions within the meaning of Article 349 of the Treaty. Those exemptions or reductions must be in keeping with the economic and social development strategy of the outermost regions concerned, taking account of the Union framework, and contribute to the promotion of local activities while not adversely affecting 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) 20 percentage points for the products listed in part (a) of Annex I;

(b) 30 percentage points for the products listed in part (b) of Annex I.

France shall undertake to ensure that the exemptions or reductions applied to the products listed in Annex I do not exceed either the proven additional costs or the percentage strictly necessary to maintain, promote and develop local economic activities.

3. France shall apply the tax exemptions or reductions referred to in paragraphs 1 and 2 to operators with an annual turnover of EUR 550 000 or above. Operators whose annual turnover is below that threshold shall not be subject to dock dues.

Article 2

The products referred to in Article 1(1) have been selected on the grounds that additional costs exist which increase the cost price of local production in comparison with products produced elsewhere and make products produced locally less competitive.

Where:

(a) local production has a market share of less than 5%,

(b) or where its market share is greater than 90%,

additional justification has been requested as proof of all or some of the following circumstances:

(1) labour-intensive production;

(2) new or complementary production designed to diversify a company's product range;

(3) production that is strategic for local development;

(4) innovative or high-added-value production;

(5) production for which the disruption of supply from elsewhere could jeopardise the local economy or population;

- (6) production which can only exist if it is dominant on the market as a result of the small size of the markets in the outermost regions;
- (7) production of medical products and personal protective equipment required to tackle public health crises.

Article 3

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 4

France shall submit an evaluation report to the Commission no later than 30 September 2025 to enable the Commission to determine whether the grounds for applying the tax arrangements referred to in Article 1 still apply. The evaluation report shall contain the information set out in Annex II.

Article 5

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

Article 6

This Decision shall apply from 1 January 2022, with the exception of Article 5, which shall apply from 1 July 2021.

Article 7

This Decision is addressed to the French Republic.

Done at Brussels,

For the Council
The President