COMMISSION

COMMISSION DECISION
of 22 December 1999
on the aid scheme which France is planning to implement in favour of the French port sector

(notified under document number C(1999) 5204)

(Only the French text is authentic)

(Text with EEA relevance)

(2000/410/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provision(s) cited above [1], and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter dated 25 May 1998, France notified the Commission of the aid scheme in favour of the French port sector. It furnished the Commission with supplementary information by letters dated 31 July 1998, 6 November 1998, 27 November 1998, 26 January 1999, 16 February 1999 and 20 April 1999.

(2) By letter dated 14 June 1999, the Commission informed France of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of this aid scheme.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. The Commission called on interested parties to submit their comments.

(4) The Commission has received comments from interested parties. It has transmitted them to France, which has had the opportunity to react. Its comments were received by letter dated 13 October 1999.

II. DETAILED DESCRIPTION OF THE AID

(5) The French port sector can at present be characterised by substantial public involvement in the financing and management particularly of the heavy port equipment, such as gantry cranes (hereinafter 'the equipment'), which is operated partly by personnel employed in the public sector. The aim of the proposed aid scheme is to render the provision of cargo handling services more efficient by completing the restructuring process started in 1992, through a reform whereby cargo handling companies will become fully responsible for the provision of these services in the ports concerned. The means to do so is by modernising and rationalising the organisation of these services, and to this end the notified scheme proposes a reduction of the tax base for the French 'taxe professionnelle' for the private cargo handling companies.

(6) As notified by France, the proposed tax reduction would affect 23 French ports (see Annex to the present Decision), where currently some 99 private cargo handling (stevedoring) companies operate. The vast majority of these companies are SMEs. The French authorities also expressed their wish that the proposed scheme would attract foreign investments from non-French companies that may be interested in establishing themselves in these ports. The equipment is currently owned and financed by the public (port) authorities that

[1] OJ C 233, 14.8.1999, p. 25.
[2] See footnote 1.

are not subject to the 'taxe professionnelle'. The equipment is usually rented to the private cargo handling companies that carry out the loading and unloading of cargo in the ports.

(7) The 'taxe professionnelle' is a local tax payable to and fixed by the local authorities (thus the level of the tax may vary between different regions). The tax base is calculated on the basis of three factors, (i) the rental value of property (immeubles), (ii) 16 % of the new purchase value for equipment (valeur d'achat à neuf), and (iii) 18 % of the gross salaries. The proposed scheme for cargo handling companies would only concern (ii), i.e. the purchase of equipment, in that this factor would be excluded from the taxation base for the private cargo handling companies. The proposed scheme envisages a tax reduction on the one hand for the transfer and replacement of existing equipment, and on the other hand, for the acquisition of additional, new equipment in the ports of Le Havre and Dunkerque.

(8) The proposed scheme takes place in the context of the reform started in 1992 whereby the dock workers, who used to be employed by the public sector, became employees of the private cargo handling companies. To this avail, a social plan had been elaborated at that time. Since the introduction of this reform, the number of dock workers in French ports has decreased by 50 %. According to the French authorities, the cargo handling companies have also contributed with over 1 000 million French francs (FRF) to the financing of 'social plans' for the dock workers, while approximately FRF 5 000 million still remains to be paid until year 2006. To complete this process concerning the workforce, the scheme currently under examination also entails the transfer of the responsibility for the remaining personnel, notably the crane-operators (grutiers) involved in cargo handling activities, from the public to the private companies. The objective is for the private cargo handling companies to take over full responsibility for the equipment and the human resources needed for cargo handling operations in French ports.

(9) According to the French authorities, the reduction of the burden of the 'taxe professionnelle' is an incentive to progressively transfer the ownership and management of the existing equipment from public to private, and to encourage investments in renewing this equipment. The transfer to individual cargo handling companies would be carried out against payment, covering at least the net book value (valeur net comptable), and through public tender procedures. The tax reduction is thus linked to the cargo handling companies' willingness to invest in the port equipment, which is at present primarily owned by the public.

(10) The proposed tax reduction is linked to the new purchase value for equipment. For the port equipment concerned, the investment volume to be made over the period 2000 to 2004, amounts to FRF 2,800 million, of which FRF 2,100 million is destined for the replacement of existing equipment by more performant equipment, and FRF 700 million for the acquisition of new, additional cargo-handling equipment in the ports of Le Havre and Dunkerque. The total amount of tax reduction to be granted through the scheme is set, following the submissions made by the French authorities in their letter of 20 July 1999, at FRF 368,35 million, and will be disbursed during the period 2000 to 2006. In reference to the investment value, the French authorities conclude that the aid intensity of the scheme, expressed as a percentage of the first, is 13,15 %.

III. COMMENTS FROM INTERESTED PARTIES

(11) By letter of 14 September 1999, the Government of the United Kingdom submitted its comments, which in essence expressed agreement to the Commission's decision to open the formal investigation procedure in this case. The concern of the United Kingdom relates to the proposed aid for the purchase of new, additional equipment in Le Havre and Dunkerque, as this would create excessive capacity that would distort competition with other European ports.

IV. COMMENTS FROM FRANCE

(12) The Commission had forwarded the comments of the Government of the United Kingdom to France by letter of 22 September 1999, and by letter of 13 October 1999, the French authorities replied thereupon.

V. ASSESSMENT OF THE AID SCHEME

1. Legal base

(13) Under Article 87(1) of the Treaty 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market'. As had been stated in the decision to initiate the procedure, the notified aid scheme is to be considered State aid under Article 87(1) of the Treaty, as the scheme is financed through State resources, is attributable to the State budget and is selective in its application.

(14) While the proposed scheme concerns a specific sector, the public support would only benefit those cargo handling companies that are located in the 23 selected ports and who take over the responsibility for the existing equipment and its renewal. This selectivity is not justified by 'the nature or general scheme of the system', and the French authorities have not provided any evidence that this would be the case. (See paragraphs 12 and 23 of Commission notice on the application of the State aid rules to measures relating to direct business taxation ([1])).

(15) Finally, in the cargo handling sector, companies compete with other cargo handling companies within the same port and in other ports for trade. Depending on the final destination of the cargo, there is often a choice between different ports for loading and unloading. In this particular case, as the cargo handling companies in the 23 ports concerned are in many cases actually or potentially competing for traffic with cargo handling undertakings in other French and Community ports, there may be an effect on trade between Member States.

(16) The French authorities also argued that the 'taxe professionnelle' exists only in France and that the aid is needed to compensate French cargo handling companies from the disadvantage of such a tax compared with their European counterparts. However, even if the scheme in question would bring the costs of the cargo handling companies concerned closer to those of its competitors in the other Member States, which has not been demonstrated, it does not change the fact that the financing has the character of aid.

2. **Compatibility**

(17) As to the compatibility of the State aid with the common market, aid is prohibited unless it can benefit from any of the specific exemptions laid down in the Treaty. In this particular case, the aid does not appear to be eligible for any of the exemptions laid down in Article 87(2) of the Treaty. Article 86 of the Treaty is not applicable either as cargo handling services cannot be considered as services of general economic interest. See the Judgement of the European Court of Justice in case C-179/90 Merci, convenzionali porto di Genova of 10 December 1991 ([2]). When examining Article 87(3) of the Treaty, the aid does not appear to be eligible under the exemptions under Article 87(3)(a) and (b). Nor does the proposed scheme aim to facilitate the development of certain economic areas as set out in subparagraph (c), but concerns rather a particular sector. However, the exemption under Article 87(3)(c) concerning 'aid to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest...' may be applicable in this case.

(18) As to the applicability of existing horizontal guidelines to the proposed aid scheme, the Commission has examined those that might be applied, i.e. the guidelines for regional ([3]) and restructuring ([4]) aid. The regional guidelines, however, would only cover cargo handling companies located in eligible regions and, moreover, these guidelines explicitly exclude aid for initial investment in mobile assets in the transport sector. The application of the restructuring guidelines is not an option either, since, within the understanding of these guidelines, the private cargo handling companies, as the beneficiaries of the aid, are not in financial difficulties. As a result, none of the above guidelines seem to cover as such the proposed aid scheme.

(19) Following the above analysis, the Commission has decided to examine the compatibility of the proposed aid scheme under Article 87(3)(c) of the EC Treaty.

(20) The proposed scheme entails a tax reduction for the transfer and replacement of existing equipment to modernise and rationalise cargo handling, as well as the acquisition of additional, new equipment in the ports of Le Havre and Dunkerque to extend the capacity. The Commission considers that a distinction should be made between these two types of investments, given their different purpose.

With regard to the existing equipment, the French authorities argue that the proposed aid scheme will facilitate the transfer of the ownership and management responsibilities of the equipment from public to private. The aid scheme envisages giving an impetus to modernise and rationalise the provision of cargo handling services which affects the overall performance of the

([1]) OJ C 384, 10.12.1998, p. 3.
([2]) Rec. 1991 I-, p. 5889.
([3]) OJ C 74, 10.3.1998, p. 4.
([4]) OJ C 283, 19.9.1997, p. 2.

ports. The emphasis on equipment is due to the fact that the aid is linked to investments in the equipment, which is one of the three factors determining the tax base. Further, the expected transfer of the existing equipment will be carried out in a transparent and non-discriminatory manner on the basis of public tender procedures, to which also competitors will be able to bid for the equipment. The price paid for the transfer of the existing equipment from the public to the private is, therefore, likely to reflect the market price.

(21) Such a transfer is in line with policy developments for the Community port sector, as explained in the Green Paper on sea ports and maritime infrastructure [1]. The trend has been to shift the provision of commercial cargo handling services from the public to private service providers notably to increase efficiency. To this end, reforms have taken place in a number of Member States to adjust the ports to the new requirements as a result of the technological development and intensified competition in the sector. The Commission has considered State aid to support such reforms and the restructuring of the port sector compatible with the common market in the past. This was the case for example in 1986 concerning aid granted to certain ports for the reduction of labour in the context of restructuring and privatisation of the cargo handling sector. Public authorities are still involved in carrying out cargo handling services in some Community ports as the cargo handling market has not yet been fully opened up to competition through Community legislation. The proposed scheme will help the private cargo handling companies to adapt to a market that is opening up to competition without, however, unnecessarily causing distortions, and to this end contribute to the economic development of the sector. In view of the above, the objective of the scheme can be considered to be in the Community interest.

(22) As to the necessity of the proposed scheme to gradually change the ownership and management responsibilities of the existing equipment, it can be argued that the market forces alone would not secure this objective. The private cargo handling companies are reluctant to take over the responsibility for the equipment mainly because they would become subject to the 'taxe professionnelle'. Noting that the existing equipment, which in many cases is rather old and out-of date, would need to be renewed through heavy investments, the Commission considers that the 'taxe professionnelle', being calculated on the basis of the new purchase value of the equipment, would be overly burdensome for the cargo handling companies. This is notably because these companies are mainly SMEs with limited financial resources, that moreover need to continue to provide funding for the 'social plans' of the dock workers.

(23) The transfer of the existing equipment and its subsequent replacement is part of a modernisation and rationalisation exercise and needs to be seen together as part of one coherent investment endeavour, as a mere transfer of mostly obsolete equipment alone would not be meaningful. In this context, it may be recalled that the cost of a gantry-crane, as notified by the French authorities, is around FRF 40 million and its amortisation period is on average 20 years. Together with the required straddle-carriers and spreaders whose utilisation and amortisation period is some 10 years, the total investment to be made by the companies amounts to some FRF 50 to 60 million per crane. The cargo handling business is capital-incentive with long-term investments, including interest payments, that needs to be spread out in time. A tax reduction, linked to such heavy investments seems justified in this particular case to encourage the cargo handling companies to invest, as the replacement of the existing equipment is not expected to take place simultaneously with the transfer, but within a near future, for example, depending on the financial situation of each company.

(24) It should also be noted that the economic impact of the aid is limited because the proposed tax reduction only affects one element out of three used for establishing the taxation basis. This factor amounts to 16 % of the new purchase value for equipment, whereas the private cargo handling companies would be fully subject to the tax calculated on the basis of the other two factors, i.e. the rental value of property and the gross salaries. As notified by the French authorities, the aid intensity expressed as a percentage of the investment value is limited to approximately 13 %. Furthermore, in view of the fact that crane-operators (grutiers) will become employees of the private cargo handling companies undertaking the investments, the amount of the tax to be paid on the basis of the salaries provided will in fact increase.

(25) However, it is necessary for the Commission to ensure that the aid does not have a noticeable adverse effect on trade and that it is proportionate to the aims that it is supposed to achieve. Following the initiation of the procedure explaining the Commission's doubts about the compatibility of the aid, the French authorities

[1] COM(97) 678 final of 10.12.1997, paragraphs 81 and 82.

amended the originally envisaged scheme and reduced the amount from FRF 623,6 million to FRF 368,35 million and the duration from 10 years to 7 years, i.e. almost by half. In practice, however, not all companies that will actually invest in the existing equipment will benefit from the aid during the entire duration of the scheme. Depending on the financial situation, each company will start making the investments at different times, and will only benefit from the aid from the time of the investment. The aid will also put the private cargo handling undertakings on a more equal footing with the public entities operating in the ports. The Commission considers that the aid will help the French port system to adapt to a market, which is increasingly opening up to competition, without unnecessarily distorting competition. Moreover, a mere transfer of existing equipment is not bound to affect the balance in supply and demand for the port services in question. The situation is rather that the private cargo handling companies will replace the public authorities as owner and manager of the existing equipment, including taking over the responsibility to make the necessary investments. The upgrading of the equipment following the transfer is necessary to ensure the continuous operation of the ports.

(26) Most of the cargo handling companies concerned are small enterprises with less than 50 employees and therefore, a parallel may be drawn here to the Guidelines for SMEs [1], which apply to different forms of aid granted to SMEs. The Commission has traditionally taken a favourable attitude towards aid granted to SMEs, provided that such aid does not affect trade to a disproportionate extent in relation to its contributions to the achievement of Community objectives. The aid scheme in question has the character of an incentive and is necessary in order to secure the socio-economic benefits and achieve the objectives which market forces alone would not secure, which are, moreover, desirable on grounds of Community interest. The aid will cease once the take-over of the existing equipment and the subsequent replacement of this equipment has been completed, and consequently bears resemblance to start-up aid. Such aid for the existing equipment and its replacement may be considered proportionate to the aim of transferring the financial responsibility from the public sector to the private cargo handling companies.

(27) In view of the above, the affect on trade is marginal in that the level and form of investment in replacing the existing equipment is not likely to be substantially different from investments that the public sector would have undertaken. This is supported by the fact that the economic impact of the tax reduction is limited, as explained under recital 24. At the same time, the proposed aid is important in order to increase productivity and efficiency in the French port sector through a better organisation of the work. To this end, the aid for the transfer of existing equipment and its replacement may be considered to be in line with the common transport policy and the policy on SMEs. Such aid is not expected to distort competition in a manner that will palpably alter the trading conditions between port undertakings to an extent contrary to the common interest. It should also be noted that no objections were made by third parties with regard to the aid for the transfer of existing equipment following the decision to open the procedure. The aid can, therefore, be considered to facilitate the development of certain economic activities and consequently compatible with the common market.

(28) The Commission considers, however, that this is not the case for the investments in new, additional equipment in the ports of Le Havre and Dunkerque for the extension of capacity in these ports. In the decision to initiate the formal investigation period, the Commission expressed doubts particularly with regard to the proposed aid for the purchase of new, additional equipment because of the possible build-up of additional cargo handling capacity, which may distort the demand and supply balance of the port services concerned. As explained under recitals 22 and 23, the aid should be limited, in terms of volume and duration, to what is absolutely necessary and be proportionate to the aim of transferring the financial responsibility from the public sector to the private cargo handling companies.

(29) Data as submitted by the French authorities confirmed information available through other independent sources, as to which utilisation ratios for the existing equipment in the two ports mentioned are considerably below those of their competitors. Moreover, the information submitted by the French authorities following the opening of the procedure, shows an increase in traffic in the ports of Le Havre and Dunkerque which is indeed significantly inferior to the one recorded for the

[1] OJ C 213, 23.7.1996, p. 4.

other competing ports in the North Sea range. It should also be noted that the growing container traffic renders the competition increasingly fierce between ports in the North Sea range where the largest European ports are located. To this end, aid granted specifically to extend capacity of cargo handling companies in any port in this range to the detriment of the others, would undoubtedly distort competition.

(30) Against this background it is emphasised, as already stated, that public support cannot be justified to respond to alleged changes in the supply and demand for the provision of commercial port services, which is up to the market forces alone. The proposed aid would put the cargo handling companies in the two ports concerned on a competitive footing which is more favourable than that of their French and Community competitors in other ports. According to the French authorities, the transfer of the ownership and management responsibility for the equipment would be based on open tender procedures, which would enable any interested firm to apply. Particularly with regard to the major ports of Le Havre and Dunkerque there may well be an interest among other firms in the Community to take over such responsibility. Further, the need to grant aid specifically to cargo handling companies in these two ports for the purchase of additional, new equipment in order to transfer the responsibility for the equipment from the public to the private has not been demonstrated by the French authorities. Such aid is likely to affect the balance in supply and demand due to build up of additional cargo handling capacity, thus distorting competition in a way that may affect trade flows between Member States to an extent contrary to the common interest.

(31) As mentioned under recital 11, the Government of the United Kingdom supported the doubts expressed by the Commission with regard to aid for the purchase of new, additional equipment in the ports of Le Havre and Dunkerque as this would seriously distort competition among the major ports in the North Sea range.

(32) In view of the foregoing, the Commission takes the view that the aid for new, additional equipment can not be considered compatible with the common market under Article 87(3)(c).

VI. **CONCLUSIONS**

(33) The assessment by the Commission led to the conclusion that aid for the transfer of existing equipment and its replacement, where necessary, facilitates the development of an economic activity and that trading conditions are not affected to an extent contrary to the common interest. Subject to certain conditions specified below, this aid is, therefore, considered compatible with the common market and eligible for the derogation under Article 87(3)(c) of the EC Treaty.

(34) However, the application of this decision has to be monitored by the Commission and will be a condition of the approval of the aid. As stated by the French authorities, the transfer of the existing equipment shall take place on the basis of open, transparent and non-discriminatory procedures (public tender), enabling any undertaking to participate. The aid shall not take the form of a permanent, automatic reduction of the 'taxe professionnelle', and shall be linked to the investments which will be made at different times during the aid scheme. Each cargo handling company will benefit from the aid only from the time of the investment. Aid may be granted only once per investment. However, the payment of these heavy investments is spread out during several years and the amortisation periods are long. Compared with these, the duration of the aid scheme may be considered limited. Aid may, therefore, be provided the fiscal year(s) when a private cargo handling company in any of the 23 ports concerned takes over an existing equipment and/or replaces this specific equipment and during the subsequent amortisation of this equipment until the expiry of the aid scheme in 2006. Aid for investments in new, additional equipment is not authorised.

(35) In view of the above, the French authorities shall during the applicability of the aid scheme provide the Commission with annual reports about the transfer of the existing equipment from the public to the private and its replacement, including information about the public tender procedure applied. This report shall notably provide details about the individual cargo handling companies that take over the existing equipment, the type and price of this equipment and the corresponding aid granted. Data is also needed about the investments made to replace the existing equipment and the amount of aid granted on the basis of such investments. The first report is to be submitted within one year from the adoption of this decision.

(36) The Commission does not consider aid for purchasing new, additional equipment in the ports of Le Havre and Dunkerque as necessary or proportional to achieve the objective of the scheme, i.e. the transfer of responsibility for the equipment from the public to the private sector. Such aid is moreover bound to affect supply and demand of cargo handling services and its damaging effect on competition and trade is likely to outweigh the positive effects.

(37) As to the amounts, the total investment value for the port equipment was estimated at FRF 2,800 million in the notification by the French government. According to the most accurate available data, the total amount of tax reduction envisaged is FRF 368,05 million. As a result, the aid intensity expressed as a percentage of the investment value, is 13,14 %. When applying this percentage to investments for replacement of existing equipment only, i.e. FRF 2,100 million, the amount of tax reduction that may be granted through the aid scheme is FRF 275,94 million (13,14 % × FRF 2,100 million), to be disbursed during the period 2000 to 2006,

HAS ADOPTED THIS DECISION:

Article 1

1. Aid for the transfer of existing equipment on the basis of open and non-discriminatory procedures and the replacement of this equipment which France is planning to implement in favour of private cargo handling companies in the 23 French ports specified in the Annex in an amount of FRF 275,94 million during the period 2000 to 2006 is compatible with the common market.

The aid is compatible provided it is linked to the investment(s) in that aid may only be granted for the fiscal year(s) when the investments in such equipment are made and during the subsequent amortisation of this equipment until the expiry of the scheme.

2. Aid for the purpose of purchasing new, additional equipment in favour of cargo handling companies in the ports of Le Havre and Dunkerque in an amount of FRF 91,98 million is incompatible with the common market.

As a result, this aid may not be put into effect.

Article 2

France shall inform the Commission, within two months following the notification of this Decision, of the measures taken to comply with it.

The French authorities shall provide the Commission with appropriate annual reports about the implementation of the aid scheme, notably the public tenders, the investments, the amount of aid granted and its intensity. The first report is to be submitted within one year from the notification of this decision.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 22 December 1999.

For the Commission

Loyola DE PALACIO

Vice-President

ANNEX

The 23 French ports covered by the decision

I. *Nord-Pas-de-Calais coastal area:*

1. Port of Calais
2. Port of Boulogne sur Mer
3. Port of Dunkirk

II. *Normandy coastal area:*

4. Autonomous port of Le Havre
5. Port of Dieppe
6. Port of Rouen
7. Port of Honfleur
8. Port of Fécamp
9. Port of Caen

III. *Channel coastal area:*

10. Port of Cherbourg
11. Port of Granville

IV. *Brittany coastal area:*

12. Port of Saint-Malo
13. Port of Brest
14. Port of Lorient

V. *Atlantic coastal area:*

15. Port of Nantes-Saint-Nazaire
16. Port of La Rochelle
17. Port of Bordeaux
18. Port of Bayonne

VI. *Mediterranean coastal area:*

19. Port of Port-Vendres
20. Port of Port La Nouvelle
21. Port of Sète
22. Port of Marseille
23. Port of Toulon