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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN COUNCIL

**Commission opinion pursuant to Article 355(6) of the Treaty on the Functioning of the
European Union**

**on the initiative of the French Government to amend the status of Saint-Barthélemy
with regard to the Union**

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The French Republic has informed the European Council of an initiative to have the status of the island of Saint-Barthélemy amended with regard to the Union, pursuant to Article 355(6) TFEU. This territory is currently subject to the combined provisions of Articles 355(1) and 349 TFEU. France's initiative is that, as of 1 January 2012, it should have the status of the overseas countries and territories (OCT) referred to in Article 355(2) of the TFEU and the fourth part of the same Treaty.

Article 355(6) of the TFEU provides that "*The European Council may, on the initiative of the Member State concerned, adopt a decision amending the status, with regard to the Union, of a Danish, French or Netherlands country or territory referred to in paragraphs 1 and 2. The European Council shall act unanimously after consulting the Commission*".

In line with this provision, on [date to be specified], the European Council consulted the Commission on this initiative.

The Commission examined France's initiative with regard to the impact of this change pursuant to the provisions of Article 355 TFEU. Pursuant to these provisions and from the entry into force of the change of status, European Union law will no longer apply to the territory of Saint-Barthélemy, with the exception of the fourth part of the TFEU.

In the light of this examination, the Commission takes the view that two areas require further comment in this opinion: currency and taxation.

Currency

The documents submitted by France to the European Council state that France wishes to see the euro continue to be used in Saint-Barthélemy. A currency agreement will have to be concluded between France and the European Union to this end, to ensure that Community law continues to be applied in areas essential to the functioning of Economic and Monetary Union (in particular, currency, financial, money-laundering and counterfeiting legislation), in line with agreements already existing or being negotiated.

In the explanatory document accompanying its initiative, France expressly stated that it "*will undertake the necessary commitments for the application, in Saint-Barthélemy, of the rules on combating counterfeiting, the circulation of illicit capital and money laundering and regarding administrative cooperation*".

The Commission has taken note of this undertaking and, at the appropriate time, will advise the Council to open negotiations for the conclusion of a currency agreement between the European Union and France, pursuant to Article 219(3) of the TFEU. This advice will include, in particular, a Commission negotiating brief for this matter. In line with the

convention for the preparation of currency agreements, the European Central Bank should be associated with the negotiations.

Tax system

In the interests of the smooth operation of the internal market, the Union adopted a European Policy on Promoting Good Governance in Tax Matters in Commission Communication COM(2009)201. One of the goals of this policy is to prevent international fraud and tax evasion, and it also contains a "Code of conduct for business taxation" to tackle harmful fiscal competition.¹

In the area of fiscal cooperation, the Union has adopted Council Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation², and Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments.³

The Commission takes the view that, following Saint-Barthélemy's change of status, the provisions of the agreement must ensure that the mechanisms in these two directives on fiscal assistance and cooperation and on the taxation of savings continue to apply to the territory in question.

France, in the explanatory document enclosed with its own initiative, expressly states that it will "take all measures judged necessary for the application, in Saint-Barthélemy, of the rules on fiscal transparency".

The Commission notes this undertaking and will, at the appropriate time, advise the Council to launch negotiations with a view to concluding the corresponding agreements, on the basis of Article 218 of the TFEU. This advice will include, in particular, a Commission negotiating brief for this matter.

The Commission would remind France of the undertaking relating to harmful fiscal competition it made, together with the other Member States, in the above-mentioned Code of Conduct. According to this text, the Member States undertake to promote the adoption of principles to eliminate harmful fiscal measures in territories other than those to which the Treaty applies. The Commission assumes that this undertaking, relating specifically to such territories, will also apply to Saint Barthélemy from the moment when the amendment of its status comes into force.

Other areas

For reasons of completeness, the Commission would like to point out that the change of status could also necessitate technical amendments in various fields of secondary legislation, in particular those relating to the relationship between the OCT and the European Union, regional policy, employment, agriculture, maritime and customs policy. These changes should be made in such a way as to take into account the change of status in line with the planned timetable (change of status on 1 January 2012).

¹ Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 1 December 1997 on a code of conduct for business taxation, OJ C 2, 6.1.1998, p. 2.

² OJ L 336, 27.12.1977, p. 15.

³ OJ L 157, 26.6.2003, p. 38.

Conclusion

The change of status of Saint-Barthélemy does not raise any particular difficulties with regard to EU law, although certain technical amendments to secondary legislation will be needed. In order to protect the Union's interests beyond the change of status, the Commission considers it important for agreements to be concluded between France and the European Union on:

- keeping the euro and the legislation on the smooth functioning of Economic and Monetary Union;
- good fiscal governance, specifically mutual fiscal assistance and cooperation in the area of business taxation.