COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 6.12.2007
COM(2007) 772 final

2007/0273 (CNS)

Proposal for a

COUNCIL DECISION

authorising Portugal to apply a reduced rate of excise duty on locally produced beer in the autonomous region of Madeira

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

By a request dated 30 May 2007 and referring to Article 299(2) of the Treaty, Portugal seeks a derogation from Article 90 of the Treaty in order to apply a rate of excise duty, lower than the national rate fixed in accordance with Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages[1] to beer produced in Madeira, in cases where the annual production of the brewery does not exceed 300 000 hectolitres. According to the request, production in excess of 200 000 hectolitres is supposed to benefit from the reduced only to the extent it is consumed locally.

Portugal has explained that the continued application of a reduced rate of duty to beer locally produced in Madeira by breweries whose annual production does not exceed 300 000 hectolitres is considered essential for the survival of the local brewing industry. It should be noted that provisions already exist in Article 4 of Council Directive 92/83/EEC which allow Member States to provide for the application of reduced rates of excise duty, which shall not be set more than 50 per cent below the standard national rate, on beer produced by independent small breweries, defined as breweries whose annual beer production does not exceed 200 000 hectolitres. Breweries located in Madeira already benefit from the full 50 per cent reduced rate under the corresponding national provisions. However, mainly as a result of increased tourism, one of the two breweries located in Madeira is closely approaching annual production of 200 000 hectolitre whereupon its entitlement to reduced rates under existing provisions will cease.

The main disadvantages faced by the breweries in question arise from their remoteness, fragmented terrain and tight local markets. However, these problems are compounded by the strong competition that they face from beers from other Member States owing to the additional costs that they have to meet as a result of their remoteness, namely maintaining high level of stocks, transport of raw and secondary materials, and packaging from mainland Portugal. Thus, even though these breweries will, upon reaching annual production of 200 000 hectolitres, cease to be "small" as defined in the said Article 4, they will nonetheless continue to be small compared to the large national and multi-national breweries with whom they compete.

By way of an illustration, notwithstanding competitive pressure, the retail selling price of a Madeira beer (at EUR 128 per hectolitre) is currently about 7.5 per cent higher than the retail selling price of beer brewed in mainland Portugal and sold on the market of Madeira (at EUR 119 per hectolitre), . Therefore, if those breweries lose the benefit of the tax reduction, the difference in the retail selling price would increase to at least 15 per cent (EUR 137 per hectolitre).

In order, therefore, to ensure the continued survival of these breweries it is essential that they be permitted to benefit from a reduced rate where the annual production of the brewery concerned exceeds 200 000 hectolitres but not 300 000 hectolitres. However, in order not to

[1] OJ L 316, 31.10.92, p. 29.

undermine the single market the entitlement to a reduced rate for production above 200 000 hectolitres will only apply to beer consumed locally in Madeira.

The reduced rate would be set at 50 per cent below the standard national rate. Beer imported into Madeira from breweries located in mainland Portugal and in other Member States whose production exceeds 200 000 hectolitres would not be entitled to the reduced rate. Portugal's request is based on Article 299(2) of the EC Treaty.

Weighing the importance of the legal certainty local economic operators require to develop their commercial activities against the need to set a time limit on tax derogations, the Commission proposes authorising this decision for a period of six years on the understanding that Portugal will submit a mid-term report to the Commission enabling it to assess whether the reasons that justified the granting of the reduced rate still exist.

- **General context**

The Community framework concerning excise duty on alcohol and alcoholic beverages is laid down in two Directives. Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages lays down common definitions of the products subject to the duty, specifies the method of calculating the duty and the criteria under which certain products may qualify for exemptions or reduced rates. Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages lays down minimum rates of duty for each product category.

In particular, Article 4 of Council Directive 92/83/EEC contains provisions which allow for the application of reduced rates of excise duty, which shall not be set more than 50 per cent below the standard national rate, on beer produced by independent small breweries, defined as breweries whose annual beer production does not exceed 200 000 hectolitres. The breweries located in Madeira already benefit from the full 50 per cent reduced rate under the corresponding national provisions. However, mainly as a result of increased tourism, one of the two breweries located in Madeira is closely approaching annual production of 200 000 hectolitre whereupon its entitlement to reduced rates under existing provisions will cease.

- **Existing provisions in the area of the proposal**

Pursuant to Article 299(2) of the EC Treaty, the Treaty applies to the French overseas departments, the Azores, Madeira and the Canary Islands (the outermost regions). However, taking account of the structural social and economic situation of the outermost regions, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which restrain their development, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, shall adopt specific measures aimed, in particular, at laying down the conditions of application of the EC Treaty to those regions, including common policies.

- **Consistency with the other policies and objectives of the Union**

The specific measures provided for in Article 299(2) of the EC Treaty must take account of the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the Community legal order, including the internal market and common policies. This requirement has been met by a particularly thorough examination of the Portuguese government's request. In particular, and in order not to undermine the single market, the entitlement to a reduced rate for production above 200 000 hectolitres will only apply to beer produced and consumed locally in Madeira.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

The Portuguese government's request was a response to requests from the economic operators concerned.

- **Collection and use of expertise**

No recourse to external expertise has been necessary.

- **Impact assessment**

The economic and social impact of the proposal only concerns Madeira and one of the two breweries currently operating there and can, therefore, be considered as minimal.

Notwithstanding competitive pressure, the retail selling price of a Madeira beer (at EUR 128 per hectolitre) is currently about 7.5 per cent higher than the retail selling price of beer brewed in mainland Portugal and sold on the market of Madeira (at EUR 119 per hectolitre), . Therefore, if those breweries lose the benefit of the tax reduction, the difference in the retail selling price would increase to at least 15 per cent (EUR 137 per hectolitre).

In order, therefore, to ensure the continued survival of these breweries it is essential that they be permitted to benefit from a reduced rate in case the annual production of the brewery concerned exceeds 200 000 hectolitres but not 300 000 hectolitres. However, in order not to undermine the single market the entitlement to a reduced rate for production above 200 000 hectolitres will only apply to beer consumed locally in Madeira.

The reduced rate would be set at 50 per cent below the standard national rate. Beer imported into Madeira from breweries located in mainland Portugal and in other Member States whose production exceeds 200 000 hectolitres would not be entitled to the reduced rate.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The proposed decision authorises Portugal to apply until 31 December 2013 a reduced rate of excise duty, which may fall below the minimum rate but shall not be set more than 50 per cent lower than the standard national excise duty rate for Portugal, to beer produced in the autonomous region of Madeira by independent breweries whose total annual production does not exceed 300 000 hectolitres; production in excess of 200 000 hectolitres will benefit from the reduced only to the extent it is consumed locally.

- **Legal basis**

Article 299(2) of the Treaty.

- **Subsidiarity principle**

Derogations from rules of the treaty in accordance with Article 299(2) thereof fall under exclusive Community competence. The subsidiarity principle does not therefore apply.

- **Proportionality principle**

The proposal complies with the proportionality principle. It does not go beyond what is necessary to offset the high costs associated with the production of beer produced in the autonomous region of Madeira.

- **Choice of instruments**

Article 299(2) of the Treaty provides for specific measures for the outermost regions to be adopted by decision of the Council.

4) BUDGETARY IMPLICATIONS

The proposal has no implication for the Community budget.

5) ADDITIONAL INFORMATION

- **Repeal of existing legislation**

Not applicable.

- **Correlation table**

Not applicable.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the second subparagraph of Article 299(2) thereof,

Having regard to the proposal from the Commission[2],

Having regard to the opinion of the European Parliament[3],

Whereas:

(1) By a request dated 30 May 2007 and referring to Article 299(2) of the Treaty, Portugal seeks a derogation from Article 90 of the Treaty in order to apply a rate of excise duty, lower than the national rate set in accordance with Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages[4] to beer produced in Madeira, in cases where the annual production of the brewery does not exceed 300 000 hectolitres. Production in excess of 200 000 hectolitres is supposed to benefit from the reduced only to the extent it is consumed locally.

(2) By way of justification for its request, Portugal has explained that the possibilities offered by Article 4 of Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages[5] are not sufficient to offset the disadvantages suffered by the breweries in Madeira on account of their remote location, fragmented terrain and tight local markets. Under that provision, breweries whose annual beer production does not exceed 200 000 hectolitres may benefit from reduced rates of excise duty, provided that those rates are not set at more than 50 per cent below the standard national rate. Portugal has made use of this provision, applying a 50 % reduction to breweries whose annual production does not exceed 200 000 hectolitres. However, should breweries located in Madeira reach production in excess of that threshold, this will not signify that they are in a sufficiently strong position to face up to competition from beers from mainland Portugal (or mainland Europe). Their share of the local market would continue to

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[2] OJ C […], […], p. […].
[3] OJ C , , p. .
[4] OJ L 316, 31.10.92, p. 29.
[5] OJ L 316, 31.10.92, p .21. Directive as amended by the 2003 Act of Accession.

diminish as a result of the strong competition that they would continue to face from foreign beers owing to the additional costs that they would have to meet as a result of their remoteness, namely maintaining high level of stocks, transport of raw and secondary materials, and packaging from mainland Portugal. Thus, even though such breweries would, upon reaching 200 000 hectolitres annual production, cease to be "small" as defined in the said Article 4, they would nonetheless continue to be small compared to the large national and multi-national breweries with whom they compete. It is, therefore, essential for continued survival of the local industry that a brewery should benefit from a reduced rate in case its annual production exceeds 200 000 hectolitres, without however going beyond 300 000 hectolitres.

(3) Portugal therefore requests that the entitlement to a reduced rate, which would be set at 50 per cent below the standard national rate, should be available to beer produced locally by independent brewers situated in Madeira whose annual production does not exceed 300 000 hectolitres. However, where annual production exceeds 200 000 hectolitres the entitlement to a reduced rate for quantities in excess of this figure will only apply to beer which is to be consumed locally in Madeira.

(4) A careful examination of the situation shows that it is essential, if a brewing industry is to be maintained in the outermost region of Madeira, to grant Portugal's request. It is clear that, in the circumstances of this case and subject to the relevant conditions, the effect of extending the tax reduction will be to place the brewing industry of Madeira on an equal footing with its competitors in mainland Portugal and other Member States. The tax advantages gained will do no more than offset the extra costs necessarily incurred as a result of the remoteness of the industry's location.

(5) In order not to undermine the single market, the entitlement to a reduced rate for production above 200 000 hectolitres will only apply to beer produced and consumed locally in Madeira.

(6) Although the requested derogation from Article 90 of the Treaty is necessary to ensure that the development of the outermost region of Madeira is not jeopardised, it is also necessary to set a time-limit on tax derogations. On the other hand, however, it is important to ensure that local economic operators have the requisite security to develop their commercial activities. It is appropriate, therefore, that the derogation be granted for a period of six years.

(7) Furthermore, the production of a mid-term report should be required, so that the Commission can assess whether the conditions justifying the granting of such a derogation continue to be fulfilled.

(8) The measures provided for in this Decision should be without prejudice to the application of Articles 87 and 88 of the Treaty.

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 90 of the Treaty, Portugal is authorised to apply a rate of excise duty lower than the national rate fixed in accordance with Directive 92/84/EEC in the case of beer produced in the autonomous region of Madeira by independent breweries situated in that region, whose total annual production does not exceed 300 000 hectolitres. Production in excess of 200 000 hectolitres annually may benefit from the reduced rate only to the extent it is consumed locally in Madeira.

The term 'independent brewery' shall mean a brewery which is legally and economically independent of any other brewery, which uses premises situated physically apart from those of any other brewery and does not operate under licence. However, where two or more breweries cooperate, and their combined annual production does not exceed 300 000 hectolitres, those breweries may be treated as a single independent brewery.

The reduced excise duty rate, which may fall below the minimum rate, shall not be set more than 50 per cent lower than the standard national excise duty rate for Portugal.

Article 2

By 31 December 2010 at the latest, Portugal shall send the Commission a report on the situation, to enable it to assess whether the reasons justifying the derogation provided for in Article 1 still exist.

Article 3

This decision shall apply until 31 December 2013.

Article 4

This Decision is addressed to the Portuguese Republic.

Done at Brussels,

For the Council
The President