



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 7 March 2014
(OR. en)**

7443/14

**Interinstitutional File:
2014/0064 (CNS)**

**POSEIMA 4
REGIO 33**

COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 5 March 2014

To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

No. Cion doc.: COM(2014) 117 final

Subject: Proposal for a COUNCIL DECISION authorising Portugal to apply a
reduced rate of excise duty in the autonomous region of Madeira on locally
produced and consumed rum and liqueurs and in the autonomous region of
the Azores on locally produced and consumed liqueurs and eaux-de-vie

Delegations will find attached document COM(2014) 117 final.

Encl.: COM(2014) 117 final



EUROPEAN
COMMISSION

Brussels, 5.3.2014
COM(2014) 117 final

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Proposal for a

COUNCIL DECISION

authorising Portugal to apply a reduced rate of excise duty in the autonomous region of Madeira on locally produced and consumed rum and liqueurs and in the autonomous region of the Azores on locally produced and consumed liqueurs and eaux-de-vie

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Pursuant to Council Decision 2009/831/EC of 10 November 2009¹, adopted on the basis of Article 299(2) of the EC Treaty, Portugal was authorised to apply up to 31 December 2013 a reduced rate of excise duty in the autonomous region of Madeira on locally produced and consumed rum and liqueurs and in the autonomous region of the Azores on locally produced and consumed liqueurs and eaux-de-vie. Article 2 of that Decision confines the above derogation to specific products. Portugal can apply to those products a rate of excise duty lower than the full rate on alcohol laid down in Article 3 of Council Directive 92/84/EEC², and lower than the minimum rate of excise duty on alcohol set by this Directive but not more than 75% lower than the standard national excise duty on alcohol.

Decision 2009/831/EC sets out the reasons for adopting specific measures, which include the small size, fragmented nature and low mechanisation of agricultural holdings. Moreover, the transport to the islands of certain raw and packaging materials not produced locally leads to additional cost, as compared to the transport merely of the finished product. Transport and installation of equipment in those remote insular regions further increase the additional costs. Finally, the producers concerned also bear extra costs generally borne by the local economies, in particular increases labour and energy costs.

The 75% reduction does not go beyond what is necessary to counterbalance the levels of additional costs that are incurred by operators as a result of the particular characteristics of Madeira and of the Azores as outermost regions referred to in Article 349 TFEU.

Since the tax advantage is limited to what is necessary to offset additional costs and since the volumes at stake remain modest the measure does not undermine the integrity and coherence of the Community legal order. Moreover, the tax advantage is limited to consumption in the regions concerned.

The Portuguese authorities have requested the renewal of the authorisation to apply a reduced rate of excise duty in the autonomous region of Madeira on locally produced and consumed rum and liqueurs and in autonomous region of the Azores on locally produced and consumed liqueurs and eaux-de-vie until 31 December 2020. The renewal needs to be approved both by a Council Decision under Article 349 TFEU and by a Commission Decision on State Aid. The Council Decision under Article 349 TFEU is without prejudice to the Commission's Decision on the prolongation of this measure under State aid rules.

¹ Council Decision of 10 November 2009 authorising Portugal to apply a reduced rate of excise duty rate of excise duty in the autonomous region of Madeira on locally produced and consumed rum and liqueurs and in the autonomous region of the Azores on locally produced and consumed liqueurs and eaux-de-vie (OJ L 297, 13.11.2009, p. 9)

² Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages (OJ L 316, 31.10.1992, p.29).

2. PROPORTIONALITY OF THE DEROGATION

According to Article 110 TFEU no Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products. Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.

However, on the basis of Article 349 TFEU the Council may authorise Member States with outermost regions to derogate from the provisions of Article 110 TFEU so as to take account of the structural social and economic situation of these regions which is compounded by other factors that severely restrain their development. Such derogation may not undermine the integrity and the coherence of the Union legal order, including the internal market and common policies, such as common taxation policies based on Article 113 TFEU. Thus, such derogations must remain proportionate, i.e. they must not go further than necessary to address the adverse framework conditions hampering the economic development of these regions and it must not excessively distort competition in the single market. In consequence, any derogation from Article 110 TFEU should remain limited to fully or partially compensating the cost disadvantage from which producers in these regions suffer.

The reports submitted by Portugal according to Article 4 of Council decision 2009/831/EC include the calculation of the additional costs and excise duty reductions for the year 2011:

Madeira

- Liqueurs (bottle of 70 cl. 20° alc/vol)

Additional cost: 1.21 €

Excise duty reduction: 1.06 €

- Rum (bottle of 70 cl. 40° alc/vol)

Additional cost: 2.20 €

Excise duty reduction: 2.12 €

The Azores

- Liqueurs (bottle of 70 cl. 20° alc/vol)

Additional cost: 1.17 €

Excise duty reduction: 1.08 €

- Eaux-de-vie (bottle of 100 cl. 40° alc/vol)

Additional cost: 3.31 €

Excise duty reduction: 3.09 €

Source: Reports referred to in Article 4 of Council Decision 2009/831/EC

It should be mentioned that the calculation of the additional costs mentioned above did not include some factors that proved difficult to quantify. Nevertheless, it is possible to confirm that the 75% reduction in standard excise duties does not go beyond what is necessary to counterbalance the levels of additional costs that are incurred by operators as a result of the particular characteristics of Madeira and of the Azores as outermost regions.

The reports also include data on the market share of these products in the local markets between 2004 and 2010:

Madeira - Rum and Liqueurs combined (by volume of alcohol)							
Year	2004	2005	2006	2007	2008	2009	2010
Share of local production	15.86%	20.19%	23.03%	20.33%	26.91%	30.76%	33.89%

The Azores - Liqueurs (by volume of alcohol)							
Year	2004	2005	2006	2007	2008	2009	2010
Share of local production	56.43%	50.60%	49.70%	46.73%	39.19%	45.28%	48.57%

The Azores – Eaux-de-vie (by volume of alcohol)							
Year	2004	2005	2006	2007	2008	2009	2010
Share of local production	47.99%	41.62%	42.51%	33.53%	23.19%	34.28%	31.74%

Source : Own calculation using data from the reports referred to in Article 4 of Council Decision 2009/831/EC

The table confirms a downwards tendency in the share of the local production of liqueurs and eaux-de-vie in the Azores and the increase in Madeira for rum and liqueurs. However, for Madeira it should be taken into account the very low share of the local production in 2004.

The evolution of the market shares for local production confirms that the current reduced rate of excise duty is balanced and has not created any distortion of competition in the internal market.

The local industry employs 134 workers in Madeira and 90 workers in the Azores. In Madeira, the cultivation and processing of sugar cane and fruits provide work for around 1 000 family-owned agricultural holdings.

The granting of new authorisation for Portugal to apply a reduced rate of excise duty in the autonomous region of Madeira on locally produced and consumed rum and liqueurs and in the autonomous region of the Azores on locally produced and consumed liqueurs and eaux-de-vie is justified in order to avoid endangering the development of these outermost regions and does not distort competition in the internal market.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed measures

The proposed Decision authorises Portugal to apply from 1 July 2014 to 31 December 2020 a reduced rate of excise duty in the autonomous region of Madeira on locally produced and consumed rum and liqueurs and in the autonomous region of the Azores on locally produced and consumed liqueurs and eaux-de-vie which may be lower than the minimum rate of excise duty set by Directive 92/84/EEC but not more than 75% lower than the standard national excise duty on alcohol.

The Portuguese authorities will have to send a mid-term report to the Commission by 30 September 2017 in order to assess whether the reasons which justify the granting of the tax derogation still apply and whether the fiscal advantage granted by Portugal remains proportionate.

Legal basis

Article 349 TFEU.

Subsidiary Principle

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 subsidiary principle.

Proportionality Principle

The proposal complies with the proportionality principle for the following reasons:

The tax advantage is limited to what is necessary to offset additional costs.

Choice of instrument

Proposed instrument: Council Decision

Other instruments would not have been appropriate for the following reason:

Derogations granted under Article 349 TFEU are contained in Council Decisions.

4. BUDGETARY IMPLICATION

The proposal has no impact on the budget of the European Union.

Proposal for a

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authorising Portugal to apply a reduced rate of excise duty in the autonomous region of Madeira on locally produced and consumed rum and liqueurs and in the autonomous region of the Azores on locally produced and consumed liqueurs and eaux-de-vie

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 Parliament³,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Decision 2009/831/EC of 10 November 2009, adopted on the basis of Article 299(2) of the EC Treaty (now Article 349 TFEU), authorised Portugal to apply a reduced rate of excise duty in the autonomous region of Madeira on locally produced and consumed rum and liqueurs and in the autonomous region of the Azores on locally produced and consumed liqueurs and eaux-de-vie which may be lower than the minimum rate of excise duty set by Directive 92/84/EEC but not more than 75% lower than the standard national excise duty on alcohol.
- (2) On 30 July 2013, the Portuguese authorities asked the Commission to submit a proposal for a Council Decision extending Council Decision 2009/831/EC, under the same conditions until 31 December 2020. This request was modified on 19 November 2013, when Portugal requested an extension of Council Decision 2009/831/EC for 6 months until 30 June 2014 to coincide with the current regional aid guidelines that would be followed by a new extension covering the period 1 July 2014 – 31 December 2020.
- (3) The granting of the new authorisation is justified in order to avoid endangering the development of these outermost regions. Faced with difficulties in exporting outside the regions, the regional markets are the only possible outlets to sell those products.

³ OJ C , , p. .

- (4) In the autonomous regions of Azores and Madeira, raw materials of agricultural origin are more expensive than under normal conditions of production, due to the small size, fragmented nature and low mechanisation of agricultural holdings. In the case of Madeira, in addition, output from the processing of sugar cane is lower than in other outermost regions, owing to topography, climate, soil and artisanal production. The transport to the islands of certain raw and packaging materials not produced locally leads to additional cost, as compared to the transport merely of the finished product. In the case of the Azores, the insularity is twofold, since the islands are widely spread. Transport and installation of equipment in those remote and insular regions further increase the additional costs. The same applies to certain necessary travels and shipments to the mainland. Additional costs are also required for the storage of finished products as local consumption does not absorb output as it materialises, but stretches throughout the year. The small size of the regional market increases per unit costs in various ways, notably through the unfavourable relationship between fixed costs and output, both as regards equipment and costs necessary to meet environmental norms. Moreover, rum producers in Madeira have to treat waste from the processing of sugar cane, whereas producers in other regions can recycle these products. Finally, the producers concerned also bear extra costs generally borne by the local economies, in particular increased labour and energy costs.
- (5) The detailed calculations provided in the reports referred in article 4 of Decision 2009/831/EC confirm that the reduction of 75% of the rate of excise duty does not offset completely the competitive disadvantage which distilled alcoholic beverages produced in Madeira and Azores face as a result of higher production and marketing costs. Therefore, a reduction of the rate of excise duty should continue to be authorised at the level requested.
- (6) A careful examination of the situation confirms that it is necessary to grant Portugal's request in order to ensure that the alcohol industry is maintained in the outermost regions concerned.
- (7) Since the tax advantage does not go beyond what is necessary to offset additional costs and since the volumes at stake remain modest and the tax advantage limited to consumption in the regions concerned, the measure does not undermine the integrity and coherence of the Community legal order.
- (8) The submission of a mid-term report should be required, so that the Commission can assess whether the conditions justifying the granting of such derogation continue to be fulfilled.
- (9) This Decision is without prejudice to the possible application of Articles 107 and 108 TFEU,

HAS ADOPTED THIS DECISION:

Article 1

By derogation from Article 110 of the Treaty, Portugal is hereby authorised to apply a rate of excise duty lower than the full rate for alcohol set by Article 3 of Directive 92/84/EEC in the autonomous region of Madeira on locally produced and consumed rum and liqueurs and in the

autonomous region of the Azores on locally produced and consumed liqueurs and eaux-de-vie.

Article 2

The derogation referred in Article 1 shall be confined:

1. in Madeira

(a) to rum as defined in category 1 of Annex II of Regulation(EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks⁴, having the geographical indication 'Rum da Madeira' referred to in category 1 of Annex III of that Regulation,

(b) to liqueurs and 'crème de' as defined in categories 32 and 33 respectively of Annex II of Regulation (EC) No 110/2008 produced from regional fruit or plants;

2. in the Azores

(a) to liqueurs and 'crème de' as defined in categories 32 and 33 respectively of Annex II of Regulation (EC) No 110/2008 produced from regional fruit or raw materials,

(b) to eaux-de-vie made from wine or grape marc having the characteristics and qualities defined in categories 4 and 6 of Annex II of Regulation (EC) No 110/2008.

Article 3

The reduced rate of excise duty applicable to the productsreferred to in Article 1 may be lower than the minimum rate of excise duty on alcohol set by Directive 92/84/EEC, but may not be more than 75 % lower than the standard national excise duty on alcohol.

Article 4

By 30 September 2017 at the latest, Portugal shall send the Commission a report to enable it to assess whether the reasons which justified the granting of the reduced rate stillexist.

Article 5

The Decision shall apply from 1 July 2014 until 31 December 2020.

Article 6

This Decision is addressed to the Portuguese Republic.

⁴ OJ L 39, 13.2.2008, p. 16.

Done at Brussels,

*For the Council
The President*