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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION amending Council Decision No 189/2014/EU authorising France to apply a reduced rate of certain indirect taxes on 'traditional' rum produced in Guadeloupe, French Guiana, Martinique and Réunion

COUNCIL DECISION (EU) 2017/...

of ...

**amending Council Decision No 189/2014/EU
authorising France to apply a reduced rate
of certain indirect taxes on ‘traditional’ rum
produced in Guadeloupe, French Guiana,
Martinique and Réunion**

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,

¹ Opinion of ... (not yet published in the Official Journal).

Whereas:

- (1) Article 1 of Council Decision No 189/2014/EU¹ authorised France to extend to ‘traditional’ rum produced in Guadeloupe, French Guiana, Martinique and Réunion the application on the French mainland of a rate of excise duty for alcohol lower than the full rate set by Article 3 of Council Directive 92/84/EEC² and to apply a rate of the levy known in French as ‘*cotisation sur les boissons alcooliques*’ (‘VSS’) lower than the full rate applicable under French national legislation to such ‘traditional’ rum.
- (2) According to Article 3(1) of Decision No 189/2014/EU, the reduced rates of excise duty and of VSS applicable to ‘traditional’ rum shall be limited to an annual quota of 120 000 hectolitres of pure alcohol (‘hpa’).
- (3) On 22 September 2016, the French authorities asked the Commission to present a proposal for a technical adjustment to increase the annual quota from 120 000 to 144 000 hpa. The request was accompanied by a report containing all information justifying the requested adaptation. Producers of ‘traditional’ rum were unable to benefit from sufficient access to the French mainland market in 2016. The projected growth rates required a quota of 144 400 hpa and this volume was reached at the end of 2016. The annual quota of 120 000 hpa should therefore be increased to 144 000 hpa.

¹ Council Decision No 189/2014/EU of 20 February 2014 authorising France to apply a reduced rate of certain indirect taxes on ‘traditional’ rum produced in Guadeloupe, French Guiana, Martinique and Réunion and repealing Decision 2007/659/EC (OJ L 59, 28.2.2014, p. 1).

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).

- (4) The measures authorised by Council Decision No 189/2014/EU are to be analysed and a more in-depth review of the system as a whole is to take place. This analysis is to take into account France's report as referred to in Article 4 of Decision No 189/2014/EU.
- (5) The quota of 120 000 hlpa for 2016 was used before the end of 2016. Without a retroactive increase with effect from 1 January 2016, producers of 'traditional' rum will suffer significant – and likely irreparable – harm. Relations between producers of 'traditional' rum and their retailers in France are governed by annual contracts that include commitments on volumes delivered, purchase prices, and discounts and promotions. The expiry of the quota brought about a subsequent and unforeseen increase in taxation for quantities outside it, yet at the start of the year, when the contracts were signed, the producers of 'traditional' rum could not foresee either the likelihood that the quota would be exceeded or the extent to which it would be exceeded. Without a retroactive increase in the quota, producers of 'traditional' rum will suffer substantial losses for the quantities going beyond the quota. The retroactive increase in the quota with effect from 1 January 2016 should therefore be authorised.

- (6) The other parameters of Decision No 189/2014/EU remain unchanged, and an independent economic analysis carried out by the Commission that was finalised in July 2016 confirmed that French imports of ‘traditional’ rum from Guadeloupe, French Guiana, Martinique and Réunion represented only a small portion of total alcohol consumption in France. For this reason, a reduced rate is unlikely to create distortions of competition on the French rum market, let alone on the single market.
- (7) This Decision is without prejudice to the possible application of Articles 107 and 108 of the Treaty.
- (8) Decision No 189/2014/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision No 189/2014/EU is amended as follows:

(1) In Article 3, paragraph 1 is replaced by the following:

‘1. The reduced rates of excise duty and the reduced rates of VSS referred to in Article 1 that are applicable to the rum referred to in Article 2 shall be limited to:

- (a) an annual quota of 120 000 hectolitres of pure alcohol for the period from 1 January 2014 until 31 December 2015; and
- (b) an annual quota of 144 000 hectolitres of pure alcohol for the period from 1 January 2016 until 31 December 2020’.

(2) Article 5 is replaced by the following:

‘Article 5

This Decision shall apply from 1 January 2014 until 31 December 2020, except for:

- (a) Article 1, point (a) of Article 3(1) and Article 3(2), which shall apply from 1 January 2012; and
- (b) point (b) of Article 3(1), which shall apply from 1 January 2016.’

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at ...,

For the Council

The President
