



EUROPEAN  
COMMISSION

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2013/0446 (CNS)

Proposal for a

**COUNCIL DECISION**

**amending Decision 2009/831/EC as regards its period of application**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

The Treaty on the Functioning of the European Union (TFEU), which applies to the outermost regions of the EU, which include the autonomous region of Madeira and the autonomous region of the Azores, does not in principle allow any difference between the taxation of local products and the taxation of products from Portugal or other Member States. Article 349 of the TFEU provides, however, for the possibility of introducing specific measures for those regions because of the permanent handicaps which affect the economic and social conditions of the outermost regions.

Council Decision 2009/831/EC of 10 November 2009<sup>1</sup>, adopted on the basis of Article 299(2) of the EC Treaty, authorises Portugal, up to 31 December 2013, 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. 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/EC<sup>2</sup>, 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 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 said particular characteristics of Madeira and of the Azores as outermost regions.

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.

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<sup>1</sup> 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 197, 13.11.2009, p. 9)

<sup>2</sup> 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).

On 28 June 2013 the Commission has adopted new regional aid guidelines for the period 2014-2020. These Guidelines are part of a broader strategy to modernise state aid control, aiming at fostering growth in the Single Market by encouraging more effective aid measures and focusing the Commission's enforcement on cases with the biggest impact on competition.

Considering that these Guidelines will enter into force on 1 July 2014, it seems justified to extend the period of application of Decision 2009/831/EC, for six months, so that its expiry date coincides with the expiry date of the current Guidelines.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

As the present proposal only proposes to extend the application of the existing Council Decision for a limited period of time (six months), in the same conditions, an impact assessment does not appear necessary.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

### **Summary of the proposed measures**

To extend the period of application of Decision 2009/831/EC, that authorises Portugal to apply a reduced rate of excise duty on certain products that are produced and consumed locally in the autonomous region of Madeira and in the autonomous region of the Azores.

### **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:

Its purpose is to extend the period of application of Decision 2009/831/EC, for six months, so that its expiry date coincides with the date of entry into force of the Guidelines on regional State aid for 2014-2020.

### **Choice of instrument**

Proposed instrument: Council Decision

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

The text to be amended itself a Council Decision, adopted on the same legal basis (Article 349 TFEU, formerly Article 299(2) of the EC Treaty).

## **4. BUDGETARY IMPLICATION**

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

Proposal for a

**COUNCIL DECISION**

**amending Decision 2009/831/EC as regards its period of application**

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 Parliament<sup>3</sup>,

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 of the EC Treaty, authorises Portugal, up to 31 December 2013, 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. 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/EC, 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.
- (2) The application of a lower excise duty rate establishes differentiated taxation, benefiting the local production of some products. This constitutes state aid that requires the approval of the Commission.
- (3) The Commission confirms that the reduction of the rate of excise duty should continue to be authorised to offset the competitive disadvantage which distilled alcoholic beverages produced in Madeira and in the Azores face as a result of higher production and marketing costs.
- (4) On 28 June 2013 the Commission has adopted its Guidelines on regional State aid for 2014-2020<sup>4</sup>, setting out how Member States can grant aid to companies in order to support the development of disadvantaged regions in Europe between 2014 and 2020. These Guidelines, which will enter into force on 1 July 2014, form part of a broader strategy to modernise state aid control, aiming at fostering growth in the Single Market by encouraging more effective aid measures and focusing the Commission's enforcement on cases with the biggest impact on competition.

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<sup>3</sup> OJ C , , p. .

<sup>4</sup> C (2013) 3769, 28.6.2013.

- (5) It is justified to extend the period of application of Decision 2009/831/EC, for six months, so that its expiry date coincides with the date of entry into force of the Guidelines on regional State aid for 2014-2020.
- (6) It should be ensured that Portugal can apply the reductions in question as from the expiry of the analogous authorisation granted through Decision 2009/831/EC. The new authorisation requested should therefore be granted with effect from 1 January 2014,

HAS ADOPTED THIS DECISION:

*Article 1*

In Article 5 of Decision 2009/831/EC, the date "31 December 2013" is replaced by "30 June 2014".

*Article 2*

This Decision shall enter into force on the day of its adoption and shall be applicable from 1 January 2014.

*Article 3*

This Decision is addressed to the Portuguese Republic.

Done at Brussels,

*For the Council  
The President*