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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL DECISION authorising Portugal to apply a reduced rate of excise duty on certain alcoholic products produced in the autonomous regions of Madeira and of the Azores

COUNCIL DECISION (EU) 2020/…

of …

authorising Portugal to apply a reduced rate of excise duty on certain alcoholic products produced in the autonomous regions of Madeira and of the Azores

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[1],

Acting in accordance with a special legislative procedure,

[1] Opinion of 15 September 2020 (not yet published in the Official Journal).

Whereas:

(1) Council Decision No 376/2014/EU[1] 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 Council Directive 92/84/EEC[2], but not more than 75 % lower than the standard national excise duty on alcohol.

(2) In February 2019, the Portuguese authorities asked the Commission to submit a proposal for a Council Decision extending the time limit of the authorisation set out in Decision No 376/2014/EU, under the same conditions, as well as extending the geographical scope to mainland Portugal with a more limited reduction, for another seven-year period, from 1 January 2021 until 31 December 2027.

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1 Council Decision No 376/2014/EU of 12 June 2014 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 (OJ L 182, 21.6.2014, 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).

(3) The producers in the autonomous regions of Madeira and of the Azores face difficulties in accessing markets outside those regions, and the regional and local markets are the only possible outlets to sell certain alcoholic products. Those producers face additional costs because the 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 addition, output from processing of sugarcane is lower than in other outermost regions, due to the topography, climate, soil and artisanal production. Moreover, the transport to the islands of certain raw and packaging materials which are not produced locally leads to additional costs.

(4) In the case of the Azores, the insularity is twofold since it is a group of islands which are widely spread. Transport in those remote and insular regions further increases 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 all output, especially in the case of rum production. The small size of the regional market increases per unit costs, notably through the unfavourable relationship between fixed costs and output. Finally, the producers concerned also bear extra costs generally borne by the local economies, in particular increased labour and energy costs.

(5) Rum production has increased as a result of increased sugarcane production. While some rum is aged or used as a base for liqueurs, the unsold quantities of rum are stored at a cost which further adds to the additional costs for producers. As a result of the additional costs, producers in the autonomous regions of Madeira and of the Azores are unable to compete with producers from outside those regions due to a higher price of the final product and therefore they cannot access other markets. Access to the market in mainland Portugal with reduced rates of excise duty would address this issue.

(6) In order to avoid severely restraining development of the autonomous regions of Madeira and of the Azores and to retain the alcohol industry and the jobs it provides in those regions, it is necessary to renew and widen the scope of the authorisation set out in Decision No 376/2014/EU.

(7) Decision No 376/2014/EU applies until 31 December 2020. For reasons of clarity, it is necessary to adopt a new Decision authorising Portugal to apply a reduced rate of excise duty in the autonomous regions of Madeira and of the Azores.

(8) 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 is limited to consumption in the autonomous regions of Madeira and of the Azores and mainland Portugal, the measure does not undermine the integrity and coherence of the Union legal order.

(9) In order to allow the Commission to assess whether the conditions justifying the authorisation continue to be fulfilled, Portugal should submit a monitoring report to the Commission by 30 September 2025.

(10) This Decision is without prejudice to the possible application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU),

HAS ADOPTED THIS DECISION:

Article 1

By way of derogation from Article 110 TFEU, Portugal is hereby authorised to apply a rate of excise duty lower than the full rate on alcohol set in accordance with 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 rum, liqueurs and eaux-de-vie.

Article 2

By way of derogation from Article 110 TFEU, Portugal is hereby authorised to apply a rate of excise duty lower than the full rate on alcohol set in accordance with Article 3 of Directive 92/84/EEC on rum and liqueurs produced in the autonomous region of Madeira when consumed on mainland Portugal and on rum, liqueurs and eaux-de-vie produced in the autonomous region of the Azores when consumed on mainland Portugal.

Article 3

1. In the autonomous region of Madeira the authorisation set out in Articles 1 and 2 shall be limited to the following products:

   (a) until 24 May 2021, to rum as defined in point 1 of Annex II to Regulation (EC) No 110/2008 of the European Parliament and of the Council[1], having the geographical indication 'Rum da Madeira' referred to in point 1 of Annex III to that Regulation, and from 25 May 2021, to rum as defined in point 1 of Annex I to Regulation (EU) 2019/787 of the European Parliament and of the Council[2], having the geographical indication 'Rum da Madeira';

   (b) until 24 May 2021, to liqueurs and 'crème de' as defined in points 32 and 33 respectively of Annex II to Regulation (EC) No 110/2008, produced from regional fruit or plants, and from 25 May 2021, to liqueurs and 'crème de' as defined in points 33 and 34 respectively of Annex I to Regulation (EU) 2019/787, produced from regional fruit or plants.

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[1] 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 drinks and repealing Council Regulation (EEC) No 1576/89 (OJ L 39, 13.2.2008, p. 16).

[2] Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 (OJ L 130, 17.5.2019, p. 1).

2. In the autonomous region of the Azores, the authorisation set out in Articles 1 and 2 shall be limited to the following products:

(a) until 24 May 2021, to rum as defined in point 1 of Annex II to Regulation (EC) No 110/2008, produced from regional sugarcane, and from 25 May 2021, to rum as defined in point 1 of Annex I to Regulation (EU) 2019/787, produced from regional sugarcane;

(b) until 24 May 2021, to liqueurs and ‘crème de’ as defined in points 32 and 33 respectively of Annex II to Regulation (EC) No 110/2008, produced from regional fruit or raw materials, and from 25 May 2021, to liqueurs and ‘crème de’ as defined in points 33 and 34 respectively of Annex I to Regulation (EU) 2019/787, produced from regional fruit or raw materials;

(c) until 24 May 2021, to eaux-de-vie made from wine or grape marc having the characteristics and qualities as defined in points 4 and 6 of Annex II to Regulation (EC) No 110/2008, and from 25 May 2021, to eaux-de-vie made from wine or grape marc having the characteristics and qualities as defined in points 4 and 6 of Annex I to Regulation (EU) 2019/787.

Article 4

The reduced rate of excise duty applicable to the products referred to in Article 1 of this Decision 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 5

The reduced rate of excise duty applicable to the products referred to in Article 2 of this Decision may be lower than the minimum rate of excise duty on alcohol set by Directive 92/84/EEC, but may not be more than 50 % lower than the standard national excise duty on alcohol.

Article 6

By 30 September 2025 at the latest, Portugal shall submit a monitoring report to the Commission to enable it to assess whether the conditions justifying the authorisation set out in Articles 1 and 2 continue to be fulfilled. The monitoring report shall contain the information set out in the Annex.

Article 7

This Decision shall apply from 1 January 2021 until 31 December 2027.

Article 8

This Decision is addressed to the Portuguese Republic.

Done at …,

For the Council
The President

ANNEX

Information to be included in the monitoring report referred to in Article 6

1. Estimated additional costs. Information shall be provided for each product benefiting from the reduced rate of excise duty. The Portuguese authorities shall complete Table 1 with at least the following information, where such information is available. The information provided in Table 1 shall be sufficient for determining whether there is additional cost, which increases the cost of products produced locally in comparison to products produced elsewhere.

Table 1.

	MADEIRA (euros)	AZORES (euros)	Notes[3]
Sugarcane price (per 100 kg)			
Passion fruit price (per 100 kg)			
Lime fruit price (per 100 kg)			
Alcohol price (per hlpa[1] - excluding taxes)			
Freight cost (per kg)			
Other costs[2]			

Notes to Table 1:

(1) Hectolitres of pure alcohol.
(2) Provide information on water, energy and waste-related costs, costs in case of multiple establishments and other relevant costs.
(3) Provide information on all the specifications and clarifications underpinning the calculation methods.

2. Other subsidies. The Portuguese authorities shall complete Table 2 for each region listing all other aid and support measures addressing the additional operating costs of economic operators linked to the outermost status of the autonomous regions of Madeira and of the Azores.

Table 2.

Aid / support measure[(1)]	Period[(2)]	Target sector[(3)]	Budget amount in EUR[(4)]	Annual expenditure, in EUR (2019-2024)[(5)]	Share of the budget attributable to additional costs compensation[(6)]	Estimated number of beneficiary firms[(7)]	Notes[(8)]
[list]							

Notes to Table 2:

(1) Provide the denomination and the type of measure.
(2) Provide information on years covered by the measure.
(3) Provide information only for sector-oriented measures.
(4) Provide information on the overall budget of the measure and the sources of funding.
(5) Provide information on actual expenditure year by year in the monitoring period (2019-2024), where available.
(6) Provide approximate estimation, as a percentage of the overall budget.
(7) Provide approximate estimation, where feasible.
(8) Provide any comments and clarifications.

3. Impact on public budget. The Portuguese authorities shall complete Table 3 providing the estimated total amount (in EUR) of tax not collected because of the tax differentials applied.

Table 3.

	2019	2020	2021	2022	2023	2024
Foregone tax revenue						

4. Impact on overall economic performance. The Portuguese authorities shall complete Table 4 for each region providing any data demonstrating the impact of the reduced excise duties on the socio-economic development of those regions. The indicators required in Table 4 refer to the performance of the supported sector compared to the general performance in the economy of Madeira and in the economy of the Azores. If some of the indicators are not available, alternative reporting data shall be included on the impact on overall economic performance allowing analysis of the socio-economic impact.

Table 4.

Year[(1)]	2019	2020	2021	2022	2023	2024	Notes[(3)]
Regional gross value added							
In the supported sector[(2)]							
Overall regional employment							
In the supported sector[(2)]							
Number of active producers							
In the supported sector[(2)]							
Price level index – mainland Portugal							
Price level index of the region							
Number of tourists of the region							

Notes to Table 4:

(1) The information might not be available for all the years listed.
(2) Provide information on producers of rum, liqueurs and eaux-de-vie.
(3) Provide comments and clarifications as deemed relevant.

5. Specifications of the regime. The Portuguese authorities shall complete Table 5 for each product and for each of the autonomous regions of Madeira and of the Azores.

Table 5.

Quantity (in hlpa[1])	2019	2020	2021	2022	2023	2024
Liqueurs production						
Eaux de vie production						
Rum production						
Liqueurs dispatched to mainland Portugal						
Liqueurs dispatched to other Member States						
Liqueurs exported to third countries						
Eaux de vie dispatched to mainland Portugal						
Eaux de vie dispatched to other Member States						
Eaux de vie exported to third countries						
Rum dispatched to mainland Portugal						
Rum dispatched to other Member States						
Rum exported to third countries						

Note to Table 5:

(1) Hectolitres of pure alcohol.

6. Irregularities. The Portuguese authorities shall provide information on any investigations on administrative irregularities, in particular, on evasion from taxes or smuggling, in the context of the application of the authorisation. They shall also provide detailed information, including at least information on the nature of the case, value and time period.

7. Complaints. The Portuguese authorities shall provide information on whether the local, regional, or national authorities have received any complaints concerning the application of the authorisation, either by beneficiaries or by non-beneficiaries.
