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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION authorising Portugal to apply a reduced rate of excise duty on certain alcoholic products produced in the autonomous regions of Madeira and the Azores

Delegations will find attached document COM(2020) 240 final.

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2020/0118 (CNS)

Proposal for a

COUNCIL DECISION

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

{SWD(2020) 108 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Reasons for and objectives of the proposal

The proposal concerns a Council Decision to replace the current Council Decision No 376/2014/EU of 12 June 2014[1], adopted on the basis of Article 349 of the Treaty on the Functioning of the European Union (TFEU). This article allows for specific measures for the EU outermost regions to be taken as it acknowledges that permanent and combined constraints severely restrain their development and affect their economic and social situation. It permits such measures provided that they do not undermine the integrity and the coherence of the Union legal order, including the internal market and common policies. The current decision authorises Portugal to apply excise duty rates reduced by up to 75% of the standard Portuguese rates to rum and liqueurs produced and consumed in Madeira and liqueurs and eaux-de-vie produced and consumed in the Azores. The current decision expires on 31 December 2020.

The objective of this measure is to compensate the producers of the Portuguese outermost regions for their competitive disadvantage triggered by the Portuguese outermost regions' remoteness, insularity, small size, difficult topography and climate and economic dependence on a few products, which severely restrain their development. As a result of these characteristics, producers in the outermost regions face higher production costs than their counterparts in the mainland.

In view of the expiry date of the Decision, the European Commission launched an external study in order to assess the current regime as well as the potential impacts of possible options for the period after 2020, including the option on which the current proposal is built.

This proposal entails renewing the derogation until 2027, extending it to cover sales on the Azores of locally produced rum with the rate of reduction maintained at 75%, and also extending it to provide a 50% reduction in the rate of excise duty on sales on the Portuguese mainland of all products covered.

Consistency with existing policy provisions in the policy area

The 2017 Communication on a strategic Partnership with the EU's Outermost Regions[2] noted that the outermost regions continue to face serious challenges, many of which are permanent. This Communication presents the Commission's approach in terms of supporting these regions in building on their unique assets and outermost regions identifying new sectors of growth to enable growth and job creation.

In this context, the aim of this proposal is to support the Portuguese outermost regions in building on their assets in order to enable local growth and job creation in a specific sector - alcohol. This proposal supplements the Programme of Options Specifically Relating to

[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

[2] COM(2017) 623 final

Remoteness and Insularity (POSEI)[3] which is targeted at supporting the primary sector and the production of raw materials.

Consistency with other Union policies

The proposal is consistent with the 2015 Single Market Strategy[4], where the Commission sets out to deliver a deeper and fairer Single Market that will benefit all stakeholders. One of the objectives of the proposed measure is to mitigate the additional costs faced by companies in the outermost regions, which impedes their full participation in the Single Market. Due to the limited volumes of production involved, no negative impact on the smooth functioning of the Single Market is envisaged.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

Legal basis

The legal basis is Article 349 TFEU. This provision enables the Council to adopt specific provisions adjusting the application of the Treaties to the EU outermost regions.

Subsidiarity principle

Only the Council is authorised, on the basis of Article 349 TFEU, to adopt specific measures to adjust the application of the Treaties to the EU outermost regions, including the common policies, due to the permanent constraints which affect the economic and social situation of those regions. This also holds for authorising derogations to Article 110 TFEU. The proposal for a Council Decision therefore complies with the subsidiarity principle.

Proportionality principle

This proposal complies with the principles of proportionality as set out in Article 5(4) of the Treaty on European Union. The proposed amendments do not go beyond what is necessary to address the issues at stake and, in that way, to achieve the Treaty objectives of ensuring that the internal market functions properly and effectively.

In particular, the proposed extension of reduced rates to mainland Portugal, would enhance the competitiveness of producers in the Portuguese outermost regions with limited adverse effects in terms of foregone revenues and administrative burdens and would put them on an equal footing with producers of similar products on the Portuguese mainland.

Choice of instrument

A Council Decision is proposed to replace Council Decision No 376/2014/EU.

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[3] Regulation (EU) No 228/2013 of the European Parliament and of the Council of 13 March 2013

[4] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions upgrading the Single Market: more opportunities for people and business (COM (2015) 550 final), p.4.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

Ex-post evaluation of existing legislation

The external study found that producers of the outermost regions continue to face higher production costs than counterparts in the mainland, which are currently compensated by the excise reduction. Moreover the study identified the following two issues that emerged since the adoption of the current decision.

Firstly, the external study notes rum is now being produced in the Azores, but is not included in the current regime. However, the regime covers rum produced in Madeira, which leads to an uneven playing field amongst rum producers of the two outermost regions. Secondly, the study notes that further to the added rum production in the Azores, rum production in Madeira is increasing and due to the limited market in the outermost regions, not all rum can be sold locally. The additional costs of accessing the mainland Portuguese market act as a barrier for these producers and as a result rum is being stored at a cost.

Stakeholder consultations

As part of the external study supporting the analysis of the current regime, responses via questionnaires, interviews and discussions were received from the relevant services of the European Commission, the Portuguese authorities, the producers of the two outermost regions and the Portuguese distributors. Although special efforts were made by the external contractor no replies were received from the mainland producers or civil society.

Impact assessment

This initiative is prepared as a back-to-back exercise: an ex-post evaluation of the current regime closely followed by a forward-looking assessment. Such an assessment, of the potential impacts of continuing and possibly changing the existing regime, has been laid down in an analytical document, including an evaluation annex. This document is based on an external study and the information provided by the Member State.

4. BUDGETARY IMPLICATION

The proposal has no impact on the budget of the European Union, as revenue from excise duties goes entirely to the Member States.

5. OTHER ELEMENTS

Implementation plans and monitoring, evaluation and reporting arrangements

The monitoring of the implementation and functioning of the derogation will be the role of the Portuguese authorities and the Commission, as it has been to date.

Portugal will be asked to submit a monitoring report by 30 September 2025 for the period from 2019 to 2024. This monitoring report will include the following:

- information on additional costs involved in production

- economic distortions and market impacts
- information for the evaluation of the effectiveness, efficiency, coherence with other EU policies
- information on continued relevance and EU added value of the new legislation.

The reporting exercise should also seek to collect input from all relevant stakeholders as regards the level and evolution of their additional production costs, compliance costs and any instances of market distortions.

To make sure that the information collected by the Portuguese authorities contains the necessary data for the Commission to take an informed decision on the validity and viability of the scheme in the future, the Commission will draw up specific guidelines on the required information. Such guidelines will be, to the extent possible, common to other similar schemes to the EU's outermost regions, governed by similar legislation.

This will enable the Commission to assess whether the reasons justifying the derogation still exist, whether the fiscal advantage granted by Portugal is still proportionate and whether alternative measures to a tax derogation system are possible, taking into account their international dimension.

The structure and data required in the monitoring report are annexed to the proposal in Annex 1.

Detailed explanation of the specific provisions of the proposal

This part is not applicable as articles are self-explanatory.

2020/0118 (CNS)

Proposal for a

COUNCIL DECISION

authorising Portugal to apply a reduced rate of excise duty on certain alcoholic products produced in the autonomous regions of Madeira and 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[5],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Decision No 376/2014/EU[6] 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[7], 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.

(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

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5 OJ C XXX, XXX, p. XXX.

6 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).

7 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).

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. Also, output from processing of sugar cane 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 cost..

(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 the 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 Portuguese mainland market 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 to the Commission a monitoring report by 30 September 2025.

(10) This Decision is without prejudice to the possible application of Articles 107 and 108 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 laid down in 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 laid down in 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

In 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[8], 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[9], 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 as 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;

In the Azores the authorisation set out in Articles 1 and 2 shall be limited to the following products:

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8 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).

9 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).

(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 as 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 as 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 as 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 required 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 Brussels,

For the Council
The President