



EUROPEAN COMMISSION

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COM(2011) 443 final

2011/0192 (CNS)

Proposal for a

COUNCIL DECISION

amending Decision 2002/546/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 Canary Islands, does not in principle allow any difference between the taxation of local products and the taxation of products from Spain or other Member States. Article 349 of the TFEU (formerly Article 299(2) of the EC Treaty) 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 2002/546/EC of 20 June 2002¹, adopted on the basis of Article 299(2) of the EC Treaty, authorises Spain, up to 31 December 2011, to apply exemptions from or reductions in the tax known as AIEM to certain products produced locally in the Canary Islands. The Annex to that Decision contains a list of products to which tax exemptions and reductions may be applied. The difference between the taxation of locally manufactured products and the taxation of other products may not exceed 5, 15 or 25 percentage points, depending on the product.

Decision 2002/546/EC sets out the reasons for adopting specific measures, which include isolation, raw material and energy dependence, the obligation to build up stocks, the small size of the local market and the low level of export activity. The combination of these handicaps means that production costs, and therefore the cost price of goods produced locally, are increased, so that without specific measures they would be less competitive than goods produced elsewhere, even taking into account the cost of transporting the latter to the Canary Islands. This would make it harder to maintain local production. The specific measures contained in Decision 2002/546/EC were thus designed to strengthen local industry by making it more competitive.

The global economic crisis of 2009, with its impact in the reduction of travelling, had severe consequences on the economy of Canary Islands, highly dependent on the revenues from tourism.

The reduction of working force in the tourism sector has led to a major increase in the unemployment rate in Canary Islands. The unemployment rate that in the period of 2001-2007 oscillated between 10,4% and 12%, rose to 17,3% in 2008 and 26,2% in 2009. This evolution confirms the danger of an economy highly dependent on tourism and the need to promote a diversification in the economic activities.

On 16 November 2010, Spain submitted a request to the European Commission to extend the period of application of Decision 2002/546/EC for two years, so that its expiry date coincides with the one of the Guidelines on National Regional Aid for 2007-2013.²

Spain has also introduced a request for the extension for two years of the period of application of Decision on State Aid NN 22/2008, according to which the aid given by the Spanish authorities, in respect of AIEM, is compatible with the common market. The Commission has

¹ OJ L 179, 9.7.2002, p.22-27

² OJ C 54, 4.3.2006, p. 13

drafted the Decision of State Aid N 544/2010, extending the period of Decision on State Aid NN 22/2008, that is ready to be adopted, ensuring the coherence with this proposal.

As regard the request for the extension of the period of application of Decision 2002/546/EC, the Commission has assessed it in light of the scale of the handicaps affecting the Canary Islands. It has come to the conclusion that it is justified to grant the request on the basis of the available elements.

First, indeed, the report from the Commission to the Council on the application of the special arrangements concerning the AIEM tax applicable in the Canary Islands, adopted on 28 August 2008, confirmed that the AIEM was functioning in a satisfactory manner and without the need to any amendments to the provisions of Decision 2002/546/EC. The continued existence of the handicaps is also confirmed by the report sent with the present request for extending the period of application of Decision 2002/546/EC.

Second, the the request seeks an extension for two years only.

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

The Spanish authorities' request to extend the application of the AIEM was a response to requests from the economic sectors concerned.

The Commission has not used an impact assessment.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed measures

To extend the period of application of Decision 2002/546/EC that authorises Spain to apply exemptions from or reductions in the tax known as AIEM for certain products produced locally in the Canary Islands.

Legal basis

Article 349 TFEU.

Subsidiarity 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 subsidiarity 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 2004/162/EC for a period of two years, in order to make it coincide with the Guidelines on National Regional Aid, that are applicable for the period 2007-2013.

The Commission has confirmed in its report to the Council on the application of the special arrangement concerning the AIEM tax applicable in the Canary Islands that the AIEM was functioning in a satisfactory manner and without the need to any amendments to the provisions of Decision 2002/546/EC.

Any further extension will be authorised only following a fresh product-by-product analysis.

Choice of instrument

Proposed instrument: Council Decision.

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

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

4. BUDGETARY IMPACT

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

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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,³

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament,⁴

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Decision 2002/546/EC of 20 June 2002, adopted on the basis of Article 299(2) of the EC Treaty, authorises Spain, up to 31 December 2011, to apply exemptions from or reductions in the tax known as AIEM to certain products produced locally in the Canary Islands. The Annex to that Decision contains a list of products to which tax exemptions and reductions may be applied. The difference between the taxation of locally manufactured products and the taxation of other products may not exceed 5, 15 or 25 percentage points, depending on the product.
- (2) It appears justified to extend the period of application of Decision 2002/546/EC for two years, since the basic elements justifying the authorisation provided through this decision have remained unchanged. In this regard, the report from the Commission to the Council on the application of the special arrangements concerning the AIEM tax applicable in the Canary Islands⁵ confirmed that the AIEM was functioning in a satisfactory manner and without the need for any amendments to the provisions of Council Decision 2002/546/EC.
- (3) Moreover, the report received from the Spanish authorities confirms that the handicaps that justified the approval of total exemptions and partial reduction of the AIEM tax to a list of products produced locally in the Canary Islands are still valid,

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

⁵ COM (2008) 528

HAS ADOPTED THIS DECISION:

Article 1

In Article 1 of Decision 2002/546/EC, the date of 31 December 2011 is replaced by the date of 31 December 2013.

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Brussels,

*For the Council
The President*