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Proposal for a

COUNCIL DECISION

authorising France to apply a reduced rate of certain indirect taxes on 'traditional' rum produced in Guadeloupe, French Guiana, Martinique and Réunion and amending Decision 2007/659/EC

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Council Decision°2007/659/EC of 9 October 2007, adopted on the basis of Article 299(2) of the EC Treaty (now Article 349 TFEU), as amended by Council Decision 896/2011/EU of 19 December 2011 authorises France to apply to 'traditional' rum produced in its overseas departments and sold on the French mainland a reduced rate of excise duty which may be lower than the minimum rate of excise duty set by Directive 92/84/EEC but not more than 50% lower than the standard national excise duty on alcohol. The reduction in excise duty is limited to an annual quota of 120 000 hl of pure alcohol. The derogation expired on 31 December 2013.

The purpose of this measure is to compensate the producers from the French Overseas Departments (FOD) for their competitive disadvantage triggered by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, notably the sugar-cane-rum value chain, the permanence and combination of which severely restrain their development.

On 12 March 2013, the French authorities asked the Commission to submit a proposal for a Council Decision extending Council Decision 2007/659/EC under the same conditions, for a further seven years until 31 December 2020,. This request was supplemented and modified on 3 July and 2 August 2013. In particular, the French authorities asked the Commission to extend the scope of the Council Decision so as to apply also to the “cotisation sur les boissons alcooliques” (also known as the “Vignette Sécurité Sociale (VSS)), a contribution levied for the National Sickness Insurance Fund on alcoholic beverages to counter the health risks involved in immoderate use of this product, and to amend Council Decision 2007/695/EC retroactively, i.e. as of 1 January 2012 by extending it to cover the VSS so that a lower rate can be applied to ‘traditional’ rum produced in the four French outermost regions listed in Council Decision 2007/659/EC.

2. CHARACTERISTICS OF THE FRENCH AND THE EUROPEAN RUM MARKET AND OF THE DEROGATION

The size of the European rum market has fluctuated over time while showing an overall increase from about 250.000 to 300.000 hectolitres of pure alcohol (hlpa) in the late 1980s to around 800 000 hlpa nowadays (table 1).

While the size of the European rum market about tripled between the late 1980s and today, the volumes of rum from the FOD sold on the European market only doubled between the early 1990s and today, and it grew by a mere 50% between the late 1980s and today. This resulted in a decline of the share of rum from FOD in the entire European market from about 50% in the late 1980s to about 25% today, where it seems to have stabilised.

Fluctuations from one year to another on the entire European market had been as high as plus/minus 150.000 hlpa or plus/minus 20% of the annual market, e.g in the period 2002/2004 and 2007/2010. These fluctuations were mirrored in both sales volumes for rum from third countries as well as for rum from FOD. In 2011, the main countries of origin of imported rum from third countries were Cuba, Venezuela, Brazil, the United States and Mexico. Rum produced in the FOD was mainly exported to mainland France (71%) and to other EU countries (27%), notably Spain and Germany.

Table 1

Trends on the European rum market

(hectolitres of pure alcohol)

Year	Total	Rum from third countries	Rum from the FOD	FOD share (%)
1986	313 459	152 252	161 207	51%
1987	300 152	158 117	142 035	47%
1988	252 877	130 976	121 901	48%
1989	293 462	161 485	131 977	45%
1990	368 913	227 975	140 938	38%
1991	336 252	221 861	114 391	34%
1992	332 145	223 522	108 623	33%
1993	322 743	231 059	91 684	28%
1994	357 936	253 215	104 721	29%
1995	284 178	184 835	99 343	35%
1996	359 295	249 239	110 056	31%
1997	453 050	354 858	98 192	22%
1998	500 295	395 031	105 264	21%
1999	567 449	428 790	138 659	24%
2000	645 237	495 625	149 612	23%
2001	695 033	534 316	160 717	23%
2002	734 249	557 458	176 791	24%
2003	880 653	713 535	167 118	19%
2004	727 772	569 278	158 494	22%
2005	726 876	571 317	155 559	21%
2006	791 542	626 157	165 385	21%
2007	785 695	608 449	177 246	23%
2008	851 748	657 725	194 023	23%
2009	720 958	523 172	197 786	27%
2010	838 749	640 923	197 826	24%
2011	809 393	603 911	205 485	25%
2012	764 490	574 562	189 928	25%

Source: Eurostat

If one compares developments on the European market to the French mainland market over the last decade, i.e. between 2000 and 2010/2012 one can see that certain patterns are common to both markets, but with a much more dynamic performance on the French mainland market (table 2):

- While the annual growth rate for the entire European rum market reached on average between two to three per cent, it was almost twice this size on the French mainland market.
- While between 2000 and 2010 the volumes of rum imported from third countries grew by about 50.000 hlpa on the entire European market, they grew by about 20.000 hlpa on the French market, a market that represents one quarter of the entire European market.

Table 2

Trends in the French rum market (mainland France)
(hectolitres of pure alcohol)

	Released for consumption at the reduced rate of excise duty	Non-quota	From third countries	Total
2000	78 300	30 000	1 000	109 300
2001	86 200	26 500		
2002	86 900	37 000		
2003	86 400	26 200		
2004	87 900	30 800		
2005	90 000	35 500	5 500	131 000
2006	90 000	33 500		
2007	96 100	33 500		
2008	99 500	33 000		
2009	102 400	32 400		
2010	105 700	40 600	20 000	166 300
2011	108 900	28 500		
2012	109 800	24 975	21 395	156 170

Source: French authorities, own calculations

According to the French authorities, the market share of rum of non-EU origin on the French mainland market has risen from less than 1% in 2000 to 4.2% in 2005, 12% in 2010 and

13.7% in 2012. Over the same period, the market share of these imports decreased from 77% to 75% on the entire European market.

The key reason for the strength of 'traditional' rum on the French market is that France applies a reduced excise duty to 'traditional' rum, which it is allowed doing so up to a maximum of 50% of the standard rate. Moreover, since 2012 it also applied this reduction to the VSS, to compensate for changes to the method of calculating the VSS - from VSS per hectolitre to VSS per hectolitre of pure alcohol, thus, 'penalising' strong 'traditional' rum over rum from third countries. Taken both taxes together, France now applies a tax of EUR 1.264,20 per hlpa on 'traditional' rum and of EUR 2.193,00 per hlpa on rum from third countries (table 3).

Table 3

Excise tax and VSS on 'traditional' rum and on competing rum

- per hlpa –

Rate at year end	FOD rum			All other rum			Advantage for FOD rum	
	Excise	*VSS*[1]	*Total*	*Excise*	*VSS*[2]	*Total*	*€ per hlpa*	*reduction from sum of standard rates*
2008	835.00	325.00	1,160.00	1,450.00	325.00	1,775.00	615.00	34.6%
2009	848.00	400.00	1,248.00	1,471.75	400.00	1,871.75	623.75	33.3%
2010	858.38	400.00	1,258.38	1,512.96	400.00	1,912.96	654.58	34.2%
2011	859.24	400.00	1,259.24	1,514.47	400.00	1,914.47	655.23	34.2%
2012[3]	903.00	361.20	1,264.20	1,660.00	533.00	2,193.00	928.80	42.4%
2013	918.80	367.52	1,286.32	1,689.05	542.33	2,231.38	945.06	42.4%

Source: Own calculations

This policy has helped to keep the market share of 'traditional' rum on the French mainland market to 87%, way above its market share on the rest of the EU market, where it remains limited to just over 10%. On the other hand has it also come at a price in terms of revenues foregone by the French tax authorities. Indeed, the revenue foregone can be estimated to have increased from about EUR 70 million in 2007 to more than EUR 120 million in 2012, when taking both the reduced excise duties and VSS and the VAT revenue forgone into account[4] (table 4).

1 Prior to 2009, the 'vignette' (or 'social security contribution') applied at a rate of €130 per hi, equivalent to €325 per hipa on a product at 40% vol.. it rose to €160 per hi (€400 per hipa) in 2011 and, from 2012, was (a) converted to apply per hipa, and (b) as applied to FOD rum, cannot exceed 40% of its excise rate.

2 See footnote 1

3 Tax rates changed twice in 2012. Until the second change in May, the advantage for FOD rum was €972.02 per hipa.

4 However, this estimation might be somewhat at the high end as it neglects both that wholesale and retail sale traders might not have passed on to the consumers the entire reduction in excise duties and VSS and a potential decline in demand when applying the

Table 4

Revenue foregone as a consequence of reduced excise and VSS for 'traditional' rum

	Volume of FOD rum sales in France under the quota[5] (hlpa)	Excise tax differential between FOD rum and other spirits[6](€ per hlpa)	Excise duty and VSS revenue foregone as a consequence of reduced rates for FOD rum (€ million)	VAT revenue foregone (19.6% of excise duty and VSS) (€ million)
2007	96,100	615.00	59.1	11.6
2008	99,500	615.00	61.2	12.0
2009	102,400	623.75	63.9	12.5
2010	105,700	654.58	69.2	13.6
2011	108,900	655.23	71.3	14.0
2012	109,800	928.80	102.0	20.0

Source: Own calculations

3. COST DISADVANTAGE AND PROPORTIONALITY OF THE DEROGATION

With respect to the proportionality of the measures to compensate producers of 'traditional' rum in the French overseas departments three elements should be considered:

- the difference in production (and shipping) cost,
- the difference in marketing costs, triggered by higher excise duties and VSS on bigger bottles and rum with higher alcohol strength,
- the development of the market share of 'traditional' rum on both the French and on the entire European market.

In the latter context the figures above have already shown that the market share of 'traditional' rum in mainland France (where it is subsidised) seems to continue edging down while it seems to have stabilised on the rest of the European market (where it is not subsidised).

standard rates for excise and VSS as compared to reduced rates or that a one-to-one substitution of 'traditional' and competing rum would lead to lower tax revenue as competing rum comes at lower alcohol strength

5 Source: COM (2011) 577 final of 22 September 2011. Estimates for 2011 - 2013 from same source, and also shown in recitals to Decision 896 / 2011.

6 Difference between standard excise tax on spirits and the reduced rate on 'POD rum' including the social security contribution ('vignette').

3.1 Difference in production cost

The best proxy as a starting point for quantifying in monetary terms the adverse effects of the special characteristics and constraints of the outermost regions on the producers of rum should be the difference in production costs compared to rum produced in other regions of the world, including the shipping cost to mainland Europe / France.

Despite all efforts to modernise the cane-sugar-rum value chain in the French outermost departments, production of marketable rum is, according to information provided by France, about three times as expensive as production in other regions of the world. While rum produced in FOD can be imported at costs (including freight and insurance cost) of about EUR 300 per hectolitre of pure alcohol, rum produced in other regions of the world can be imported at a price of about EUR 100 per litre of pure alcohol (table 5).

Table 5

Cost differences (after taxes) between 'traditional' rum and rum from 3rd countries if taxed at standard rates

(per litre of pure alcohol and per bottle)

	FOD Rum	FOD Rum	FOD Rum	FOD Rum	FOD Rum	FOD Rum	FOD Rum	**Rum of 3rd countries**
	70cl 40°	70cl 42°	70 cl 50°	1 litre 40°	1 litre 50°	1 litre 55°	1 litre 59°	**70 cl 37,5°**
Cost of rum in bulk per litre of pure alcohol (insurance and freight costs included)	**3,00**	**3,00**	**3,00**	**3,00**	**3,00**	**3,00**	**3,00**	**1,01**
A : Cost of the liquid	0,84	0,88	1,05	1,20	1,50	1,65	1,77	**0,27**
B : Unloading costs	0,04	0,04	0,04	0,04	0,04	0,04	0,04	**0,04**
C : Customs duties	0,00	0,00	0,00	0,00	0,00	0,00	0,00	**0,17**
D : Bottling costs	0,40	0,40	0,40	0,50	0,50	0,50	0,50	**0,40**
E : Labour costs after unloading	0,25	0,25	0,25	0,25	0,25	0,25	0,25	**0,25**
F :Mainland transport	0,07	0,07	0,07	0,08	0,08	0,08	0,08	**0,07**
Sum of A to F	**1,60**	**1,64**	**1,80**	**2,07**	**2,37**	**2,52**	**2,64**	**1,20**
G : Excise duty	4,73	4,97	5,91	6,76	8,45	9,29	9,97	**4,43**
H : Social security contribution « Cotisation sur les boissons alcooliques »	1,52	1,59	1,90	2,17	2,71	2,98	3,20	**1,42**
VAT	1,54	1,61	1,89	2,16	2,65	2,90	3,10	**1,38**
Sale price (all taxes included) before marketing and distribution margin	**9,39**	**9,81**	**11,51**	**13,15**	**16,18**	**17,69**	**18,90**	**8,43**
Number of bottles sold, in '000, (Nielsen data base 2011)	9029,9	1271,2	2618,0	6716,0	3941,6	3684,2	35,6	8150

3.2 Difference in ‘marketing’ cost

The effects of this cost difference are aggravated by the fact that in France, ‘traditional’ rum is typically sold at higher alcohol strengths (40°, 42°, 50°, 55° and 59° instead of 37.5°) and in larger bottles (1 litre instead of 0.7 litre). The higher levels of alcohol content trigger in turn higher excise duties, a higher VSS (since 2012) and, additionally, higher VAT per litre of rum sold. In consequence, the cost disadvantage (including taxes) can range from EUR 0.95 to EUR 3.07 per bottle of 0.7 litres with maximum alcohol strength of 50° and EUR 10.47 per bottle of 1.0 litre with maximum alcohol strength of 59° (table 5).

Thus, the cost disadvantage of marketing ‘traditional’ rum results not only from higher production and transportation costs, but also from higher “marketing costs” that are linked to the 'traditional' character of rum produced in the FOD, in the form of higher domestic taxes and levies due to the specificities of how ‘traditional’ rum is marketed (notably higher degree of alcohol content and larger bottles).

Indeed, only one third of ‘traditional’ rum is marketed in bottles that are somewhat similar to those of their competitors, i.e. 0.7 litres of content and alcohol strength of 40° (instead of 37.5°). If one takes these bottles as a benchmark to calculate the cost difference (after taxes) compared to other supplies, the cost gap would correspond to around EUR 340 per hlpa, or about 20% of the standard excise duty rate applied in 2012. In the light of the above arguments on proportionality, compensating this “cost disadvantage” (after taxes) can still be considered proportionate.

Moreover, although ‘traditional’ rum sells at significantly lower prices than comparable rum imported from third countries as a result of the reduction in excise duties and VSS (table 6) it was nevertheless unable to avoid losing part of its mainland France market to competitors over the last decade. This indicates that ‘traditional’ rum seems to be established in a market segment where a (relative) increase in prices triggers a decline in market shares while a further (relative) decline in prices does not come with the benefit of higher market shares.

Table 6

Retail prices for rum in France

2008 to 2012, in €/bottle

	2008	2009	2010	2011	2012
Rum from 3rd countries					
Havana club (70cl, 37.5°)	13.57	14.11	14.42	14.65	15.90
Bacardi (70cl 37.5°)	13.44	13.89	14.25	14.21	14.92
‘Traditional’ rum					
Saint James (70cl, 40°)			11.14	11.17	11.32
Négrita (100cl, 40°)	10.49	10.66	10.54	10.47	10.66
Charrette (100cl, 49°)	13.89	14.54	14.39	14.48	15.02
Dillon (100cl, 55°)	14.82	15.65	16.37	16.41	17.00

Source: IRI market studies

Also, to a large extent ‘traditional’ rum seems to be sold at lower marketing and distribution margins in the wholesale and retail sale value chain: When comparing the retail sales price ‘traditional’ rum with competing rum brands on the one hand (table 6) and with the cost price (before taxes and marketing and distribution margins) on the other (table 5) and then applying a reduction of up to 50% in excise duties and VSS, the marketing and distribution margins for rum from 3rd countries easily exceeds 80%, while the same margins for ‘traditional’ rum marketed in 1l bottles with high alcohol strengths are just over 60%.

3.3 Proportionality of a derogation decision

According to Article 110 TFEU no Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products. Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.

However, on the basis of Article 349 TFEU the Council may authorise Member States with outermost regions and departments to derogate from the provisions of Article 110 TFEU so as to take account of the structural social and economic situation of these regions and which is compounded by other factors that severely restrain their development. Such derogation may not undermine the integrity and the coherence of the Union legal order, including the internal market and common policies, such as common taxation policies based on Article 113 TFEU. Thus, such derogations must remain proportionate, i.e. must not go further than necessary to address the adverse framework conditions hampering the economic development of these regions and it must not excessively distort competition in the single market. In consequence, any derogation from Article 110 TFEU should in principle remain limited to fully or partially compensating the cost disadvantage from which producers in these regions suffer.

On the other hand, there are no producers of rum in other Member States, and the competition with other strong alcohol products such as whisky or cognac is rather limited. It would require a rather significant difference in prices in favour of ‘traditional’ rum so as to persuade consumers to switch from these competing products to ‘traditional’.

France claims that it should be allowed to compensate for the entire “cost disadvantage” stemming from both higher production and shipping costs and higher excise duties and VSS per bottle irrespective of the size of the bottle, i.e. ‘traditional’ rum sold in bigger bottles and at higher alcohol strength should receive a correspondingly higher reduction in excise duties. The reasoning behind this claim is that, according to the French authorities, French consumers of ‘traditional’ rum are not willing to pay more for rum in bigger bottles and with higher alcohol strength with the higher excise duty VSS and VAT such products would carry. This seems to be confirmed by the above analysis.

Therefore, France has requested (as it is authorised by the Council until end 2013) to be allowed to reduce the excise duty by up to 50% of the national standard rate. At present, France applies a reduced rate corresponding to about 55% of the standard rate applied to other strong alcohol marketed in France.

Moreover, France has as of 1 January 2012 switched the basis for calculating the VSS from 160 EUR per hectolitre to 533 EUR per hectolitre of pure alcohol. This VSS comes on top of the national excise duty. As ruled by the Court of Justice of the European Union, this VSS is not an excise duty. However, a maximum VSS is generally applicable which corresponds to 40% of the excise duty. At present, the standard rate of VSS corresponds to about 32% of the standard rate of the excise duty.

In total, since 2012, the fiscal advantage (excise duty and VSS) for ‘traditional’ rum has been set to about 42% of the sum of the standard excise duty and the standard VSS rate.

While a reduction in the standard rate of excise duties of up to 50% of the standard rate had been authorised by Council Decision 2007/659/EC as amended by Council Decision 896/2011/EU for ‘traditional’ rum for up to 120 000 hlpa, the reduction in the VSS for ‘traditional’ rum was not included in the Council Decision.

However, as there is no reason to apply different treatment for excise duties compared to other levies on alcoholic beverages, in particular the VSS so long as the cumulative discrimination in favour of ‘traditional’ rum remains proportionate, combining the two measures into one single one might be justified.

The Council might in fact have authorised France to apply a reduced VSS along the same lines as it had authorised a reduced excise duty rate, if France had notified this measure applied to VSS since January 2012. Thus, it is proposed that the Council should retroactively authorise the reduction in the VSS up to a rate of 50% of the standard VSS rate for up to 120 000 hlpa of "traditional’ rum".

3.4 Conclusion

For the period 2014 to 2020 it is therefore proposed that France should be allowed to apply a reduced rate of excise duty and VSS of up to 50% of the respective standard rates but that the cumulative reduction in both excise duty and VSS should not be higher than 50% of the full rate for alcohol set in application of Article 3 of Directive 92/84/EEC.

It is also proposed that France should draw up a mid-term report addressed to the European Commission by no later than 31 July 2017 so that it can be assessed whether the reasons which justify the granting of the tax derogation still apply and whether the fiscal advantage granted by France remains proportionate and sufficient to support a competitive cane-sugar-rum value chain in Guadeloupe, French Guiana, Martinique and Réunion. This report should also provide information on “marketing costs”. In case the information provided demonstrates that the tax derogation is not, partly or entirely, justified any more, or it is less suitable than alternative measures for competitiveness reasons and also in view of its international dimension, a phasing out process could be introduced until the end of the period.

4. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed measures

The proposed decision authorises France to apply from 1 January 2014 to 31 December 2020 a reduced rate of excise duty and of the “cotisation sur les boissons alcooliques” (VSS) on ‘traditional’ rum produced in Guadeloupe, French Guiana, Martinique and Réunion in respect of a quota of 120 000 hlpa.

The sum of the reduced rates of (referred to in Article 1) may be lower than the minimum rate of excise duty on alcohol set by Directive 92/84/EEC, but each individual reduced rate may not be more than 50% lower than the corresponding standard national rate on alcohol.

For 2012 and 2013, the proposal amends Council Decision 2007/659/EC as amended by Council Decision 896/2011/EU in order to include the VSS within its scope, retroactively, i.e. as of 1 January 2012 so that a lower rate of VSS can be applied for ‘traditional’ rum produced in Guadeloupe, French Guiana, Martinique and Réunion. For this period, the reduced rate of this VSS may also 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 rate of the VSS.

The French authorities will have to send a mid-term report to the Commission by 31 July 2017 in order to assess whether the reasons which justify the granting of the tax derogation still apply and whether the fiscal advantage granted by France remains proportionate and sufficient to compensate the cane-sugar-rum value chain in Guadeloupe, French Guiana, Martinique and Réunion for their unfavourable structural social and economic situation that is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development. This mid-term report shall also include up-dated information on the associated marketing costs and on any measures that have been undertaken to align them with those of competing rum.

Legal basis

Article 349 TFEU.

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 outermost regions, including the common policies, because of the permanent handicaps which affect the economic and social conditions 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

The proposal does not go beyond what is necessary to offset the adverse social and economic conditions reflected in higher production and marketing costs associated with the production and marketing in mainland France of traditional rum. The existence of special tax and levy arrangements as proposed is not, therefore, preventing competing rums from continuing to increase their penetration of the French market.

Choice of instrument

Proposed instrument: Council Decision.

Other instruments would not have been appropriate for the following reasons. Derogations granted under Article 349 TFEU are contained in Council decisions. In addition, the proposal proposes to amend a legal text which is itself a Council Decision, adopted on the same legal basis (what was Article 299(2) of the EC Treaty).

4. BUDGETARY IMPLICATION

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

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authorising France to apply a reduced rate of certain indirect taxes on ‘traditional’ rum produced in Guadeloupe, French Guiana, Martinique and Réunion and amending Decision 2007/659/EC

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[7],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Decision 2007/659/EC[8] authorises France to apply to 'traditional' rum produced in Guadeloupe, French Guiana, Martinique and Réunion, and sold on the French mainland a reduced rate of excise duty which may be lower than the minimum rate of excise duty set by Council Directive 92/84/EEC[9] but not more than 50% lower than the standard national excise duty on alcohol. As of 1 January 2011 the reduction in excise duty is limited to an annual quota of 120 000 hectolitres of pure alcohol (hlpa). That derogation expires on 31 December 2013.

(2) On 12 March 2013, the French authorities asked the Commission to submit a proposal for a Council Decision extending the derogation set out in Decision 2007/659/EC, under the same conditions, for seven years, until 31 December 2020. This request was supplemented by submission of additional information and amended concerning the different French taxes to be covered by the decision, on 3 July and 2 August 2013.

(3) The French authorities also informed the Commission that the national legislation on the ‘cotisation sur les boissons alcooliques’ (also known as ‘vignette sécurité sociale’ or VSS), which is a contribution levied for the National Sickness Insurance Fund on alcoholic beverages sold in France to counter the health risks involved in immoderate use of this product that is levied in addition to the national excise duty, had been amended as of 1 January 2012. In particular, the tax base was changed from 160 EUR

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[7] OJ C XXX, XXX, p. XXX.

[8] Council Decision 2007/659/EC of 9 October 2007 authorising France to apply a reduced rate of excise duty on 'traditional' rum produced in Guadeloupe, French Guiana, Martinique and Réunion (OJ L, 13.10.2007, p. 12).

[9] 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).

per hectolitre to 533 EUR per hlpa, and a limitation of the amount of the VSS was introduced which was linked to the applicable excise duty.

(4) In the context of the request by the French authorities for an extension of the derogation set out in Decision 2007/659/EC until 31 December 2020, the French authorities asked the Commission to include the VSS in the list of taxes for which a lower rate can be applied for ‘traditional’ rum produced in the four outermost regions of France listed in Decision 2007/659/EC as of 1 January 2012.

(5) It is therefore more appropriate to adopt a new Decision on a derogation covering both taxes: the differentiation of the excise duty as set out in Directive 92/84/EEC and the VSS, instead of extending the derogation set out in Decision 2007/659/EC.

(6) Given the small scale of the local market, the overseas departments’ distilleries can develop their activities only if they have sufficient access to the market in mainland France, which is the main outlet for their rum (71% of rum). The difficulty for ‘traditional’ rum to compete on the Union market is attributable to two parameters: higher production costs and higher taxes per bottle as the ‘traditional’ rum is typically marketed at higher levels of alcohol strength and in bigger bottles.

(7) Production costs of the cane-sugar-rum value chain in the overseas departments are higher than in other regions of the world. In particular wage costs are higher as the French social legislation is applicable in Guadeloupe, French Guiana, Martinique and Réunion. Those outermost regions are also subject to Union environment and safety standards, which entail important investments and costs which are not directly related to productivity, even if part of those investments is covered by the Union structural funds. Furthermore, distilleries of those outermost regions are smaller than distilleries of international groups. This generates higher production costs per unit of output. Globally, all of those direct additional production costs, including freight and insurance correspond, according the French authorities, to about 12% of the French excise duty applicable normally to strong alcohols in 2012.

(8) ‘Traditional’ rum sold in mainland France is typically marketed in bigger bottles (60% of rum is sold in bottles containing 1 litre) and at higher levels of alcohol (ranging from 40° to 59°) than competing rum, which is typically marketed in bottles of 0,7 litre at 37,5°. The higher levels of alcohol content trigger in turn higher excise duties, a higher VSS and, in addition, a higher value added tax (VAT) per litre of rum sold. Thus, the cumulative “additional costs”, i.e. higher production costs, higher freight cost and higher taxes (excise duty and VAT) correspond to between 40% and 50% of the French excise duty applicable normally on strong alcohols in 2012. Moreover the change in the basis for calculating the VSS from 160 EUR per hectolitre to 533 EUR per hlpa as of 1 January 2012 would have had (including VAT) an additional adverse impact on the price of ‘traditional’ rum, which is marketed at higher levels of alcohol corresponding to about 10% of the standard excise rate. In order to offset this additional adverse effect, a reduction of the VSS rate was introduced that benefits the ‘traditional’ rum of the four outermost regions of France.

(9) The fiscal advantage covering both the harmonised excise duties and the VSS to be authorised needs to remain proportionate so as not to undermine the integrity and the coherence of the Union legal order, including safeguarding undistorted competition in the internal market and state aid policies.

(10) The extra costs stemming from the decade-long marketing practice of selling ‘traditional’ rum at higher levels of alcohol and, thus, triggering higher taxes should therefore also be taken into account.

(11) In 2012, France applied an excise duty of EUR 903 per hlpa to ‘traditional’ rum, which corresponds to 54,4% of the standard rate. It also applied a VSS of EUR 361,20 per hlpa, which corresponds to 67,8% of the standard rate of VSS. Both reductions taken together correspond to a tax advantage of EUR 928,80 per hlpa, or a tax advantage compared to the aggregated standard rates (excise duty and VSS) of 42,8%.

(12) Decision 2007/659/EC authorises France to reduce the national excise duty applicable on ‘traditional’ rum by up to 50% of the standard national excise duty on alcohol. That Decision did not include the reduced rate of the VSS for ‘traditional’ rum which was only introduced as a compensatory measure for the additional burden created for that rum by the reform of the VSS system as of 1 January 2012.

(13) It is necessary to remedy that situation by applying the same principles that had been applied to a derogation from Article 110 of the Treaty for harmonised excise duties also to the VSS. At the same time, it should cap from January 2014 the tax advantage that can be granted at a maximum percentage of the standard rates per hlpa of the harmonised excise duty on strong alcohol and of the VSS.

(14) A new derogation should be granted for seven years, from 1 January 2014 to 31 December 2020.

(15) France should submit a mid-term report to enable the Commission to assess whether the reasons justifying the derogation still exist, whether the fiscal advantage granted by France is still proportionate and whether alternative measures to a tax derogation system which are also sufficient to support a competitive cane-sugar-rum value chain can be envisaged, taking into account their international dimension.

(16) Decision 2007/659/EC could not yet take account of the new circumstances after the reform of the VSS system. It is therefore necessary to amend that Decision by integrating the reduced VSS rate into the derogation set out in that Decision as of 1 January 2012

(17) This Decision is without prejudice to the possible application of Articles 107 and 108 of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

By derogation from Article 110 of the Treaty, France is authorised to extend the application on the French mainland, to ‘traditional’ rum produced in Guadeloupe, French Guiana, Martinique and Réunion, of a rate of excise duty lower than the full rate for alcohol set by Article 3 of Directive 92/84/EEC and a rate of the levy called “cotisation sur les boissons alcooliques” (VSS) lower than the full rate which would be applicable according to the national legislation.

Article 2

The derogation set out in Article 1 shall be limited to rum as defined in point 1(f) of Annex II to Regulation (EC) No 110/2008 of the European Parliament and of the Council [10] produced in Guadeloupe, French Guiana, Martinique and Réunion from sugar cane harvested at the place of manufacture, having a content of volatile substances other than ethyl and methyl alcohol equal to or exceeding 225 grams per hectolitre of pure alcohol and an alcoholic strength by volume of 40% or more.

Article 3

1. The reduced rates of excise duty and of VSS referred to in Article 1 and applicable to the rum referred to in Article 2 shall be confined to an annual quota of 120 000 hectolitres of pure alcohol.

2. The reduced rates of excise duty and of VSS referred to in Article 1 of this Decision may each be lower than the minimum rate of excise duty on alcohol set by Directive 92/84/EEC, but shall not be more than 50% lower than the full rate for alcohol set in accordance with Article 3 of Directive 92/84/EEC or the full rate for alcohol for the VSS.

3. The cumulative fiscal advantage authorised in accordance with paragraph 2 of this Article shall not be more than 50% of the full rate for alcohol set in accordance with Article 3 of Directive 92/84/EEC.

Article 4

By 31 July 2017 at the latest, France shall submit a report to the Commission to enable the Commission to assess whether the reasons justifying the derogation still exist and whether the fiscal advantage granted by France has remained and is expected to remain proportionate and sufficient to support a competitive cane-sugar-rum value chain in Guadeloupe, French Guiana, Martinique and Réunion.

Article 5

Decision 2007/659/EC is amended as follows:

(1) Article 1 is replaced by the following:

"Article 1

By derogation from Article 110 of the Treaty, France is authorised to extend the application on the French mainland, to ‘traditional’ rum produced in Guadeloupe, French Guiana, Martinique and Réunion, of a rate of excise duty lower than the full rate for alcohol set by Article 3 of Directive 92/84/EEC and a rate of the levy called “cotisation sur les boissons alcooliques” (VSS), lower than the full rate which would be applicable according to the national legislation.”

(2) Article 3 is replaced by the following:

"Article 3

[10] 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).

1. The reduced rate of excise duty and of the VSS referred to in Article 1 and applicable to the rum referred to in Article 2 shall be confined to an annual quota of 120 000 hectolitres of pure alcohol.

2. The reduced rates of excise duty and of VSS referred to in Article 1 of this Decision may each be lower than the minimum rate of excise duty on alcohol set by Directive 92/84/EEC, but shall not be more than 50% lower than the full rate for alcohol set in accordance with Article 3 of Directive 92/84/EEC or the full rate for alcohol for the VSS."

Article 6

This Decision shall apply from 1 January 2014 until 31 December 2020.

However, Article 5 shall apply from 1 January 2012 until 31 December 2013.

Article 7

This Decision is addressed to the French Republic.

Done at Brussels,

For the Council
The President