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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

{SWD(2020) 141 final}

EXPLANATORY MEMORANDUM

Traditional rum from France's outermost regions has been subject to special excise duty arrangements on the French mainland market since 1923. Since the creation of the internal market and the harmonisation of excise duty in Europe, these special excise duty arrangements have been extended with EU approval.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The proposal concerns a Council Decision to replace the current Council Decision 189/2014/EU of 20 February 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 outermost regions to be taken as it acknowledges that permanent and combined constraints severely restrain 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 France to apply a reduced rate of certain indirect taxes[2] on traditional rum produced in the French outermost regions of Guadeloupe, French Guiana, Martinique and Réunion when transported to mainland France and consumed there. The reduction in the indirect taxes may not exceed 50% of the French standard excise duty on alcohol and is limited to an annual quota of 144 000 hectolitres of pure alcohol. The derogation expires on 31 December 2020.

The aim of this regime is to compensate for the higher production cost of traditional rum in the French outermost regions and guarantee market access to the French mainland, which is their main market outlet. The competitive disadvantage faced by economic operators is triggered by the French outermost regions' remoteness, insularity, small size, difficult topography and climate and economic dependence on a few products, notably the cane-sugar-rum value chain, which severely restrain their economic development.

Based on the analytical document accompanying this proposal, which examines the current regime as well as the potential impacts of possible options for the period after 2020, the Commission proposes to renew the regime until 2027 with an increased annual quota of 153 000 hectolitres of pure alcohol (hlpa). The maximum rate of reduction is maintained at 50%. The increase of the annual quota to 153 000 hlpa is in line with the historical increases of the quota, which will accommodate production growth and is sufficient to reduce the need for further amendments prior to the expiry of the seven years of the new Decision. This will tackle the identified problem of the fixed quota, which has resulted in the quota being periodically adjusted by means of amendments to the Council Decisions, typically applied retrospectively. This has had a negative impact on the ability of producers to plan their production and in some cases their long-term investments. The small increase in the quota, moreover, ensures coherence with public health and competition policy.

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[1] OJ L 59, 28.2.2014, p. 1.

[2] These indirect taxes are excise duties and 'vignette sécurité sociale' (VSS). Excise duties are indirect taxes on the sale or use of specific products, such as alcohol and tobacco, and are usually applied as an amount per quantity of the product. All revenues from excise duties go entirely to the Member States. VSS is a social security contribution levied on alcoholic beverages sold in France to counter the health risks of excessive consumption of ethyl alcohol. VSS is levied in addition to the national excise duty.

Consistency with existing policy provisions in the policy area

The 2017 Communication "A strategic partnership with the EU's outermost regions"[3] notes 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, identifying new sectors to enable growth and job creation.

In this context, the aim of this proposal is support the French outermost regions in building on their assets in order to enable local growth and job creation in the sugar-cane and rum sector. This proposal supplements the Programme of Options Specifically Relating to Remoteness and Insularity (POSEI)[4], 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[5], 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 involved (the volume of rum involved represents less than 1,5% of the consumption of alcoholic beverages in France), 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 (for non-exclusive competence)

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

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.

The quota of 153 000 hlpa corresponds to the historical annual growth rate of 2 % of rum production.

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3 COM(2017) 623 final

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

5 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.

Choice of the instrument

A Council Decision is proposed to replace Council Decision No 189/2014/EU.

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

Ex-post evaluations/fitness checks of existing legislation

The external study confirmed the relevance of the regime as producers of the outermost regions continue to face higher production costs than counterparts in the mainland, which are currently compensated by the excise duty reduction.

This increase in rum production increased the demand for sugarcane and the study estimated that 53,000 tonnes of sugarcane was due to the regime, which resulted in 400 jobs in the cane-sugar-rum value chain. The study found that in financial terms, the costs exceed the benefit of the regime. Rum plays a significant role in the economies of the French outermost regions, which must be taken into account when determining the overall efficiency of the regime.

Despite a decline in the market share of traditional French outermost regions rum, the study found that the regime was generally effective in maintaining access to the French mainland market in absolute terms.

The overall effectiveness of the regime is however reduced by the quota mechanism. The study also notes the overall efficiency could be increased with an improved monitoring framework.

Finally, the study found that the regime remains coherent with other related EU policies.

Stakeholder consultations

As part of the external study supporting the analysis of the current regime, responses via questionnaires, interviews and discussions were received from all stakeholders. The public consultation allowed for responses from wider stakeholders, although participation was limited (ten in total) to five responses from EU citizens, two from economic operators, one non-governmental organisation, one trade union organisation and one business association.

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 IMPLICATIONS

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 French authorities and the Commission, as it has been to date.

France will be asked to submit a report by 30 September 2025 for the period from 2019 to 2024. This 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 French 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 France 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 report are annexed to the proposal in Annex 1.

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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,

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

Having regard to the opinion of the European Parliament[6],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Decision 189/2014/EC[7] 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 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 144 000 hectolitres of pure alcohol. That derogation expires on 31 December 2020.

(2) On 18 October 2019, the French authorities asked the Commission to submit a proposal for a Council Decision extending the time limit of the authorisation set out in Decision 189/2014/EU, with a higher quota for another seven year period, from 1 January 2021 until 31 December 2027.

(3) Given the small scale of the local market, the distilleries of the four outermost regions covered by this authorisation can only develop their activities if they have sufficient access to the market in mainland France, which is the main outlet for their rum (65% 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.

(4) Production costs of the cane-sugar-rum value chain in these four outermost regions are higher than in other regions of the world. In particular, the remoteness, difficult topography and climate of the the four outermost regions significantly impact the cost of ingredients and production. Furthermore the labour costs are higher than those in neighbouring countries as the French social legislation is applicable in Guadeloupe, French Guiana, Martinique and Réunion. These outermost regions are also subject to

6 OJ C XXX, XXX, p. XXX.

7 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014D0189

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 co-financed by the Union structural funds. Furthermore, distilleries of these outermost regions are smaller than distilleries of international groups. This generates higher production costs per unit of output.

(5) 'Traditional' rum sold in mainland France is typically marketed in bigger bottles (36% of rum is sold in bottles containing 1 litre) and at higher levels of alcohol (ranging from 40° to 59°) than competing rum based products, which are 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 *vignette sécurité sociale* (VSS) and, in addition, a higher value added tax (VAT) per litre of rum sold. Thus, a reduced rate of excise duty, which is not more than 50% lower than the standard national excise duty on alcohol, remains proportionate to the cumulative additional costs from the higher production costs and higher excise duty, VSS and VAT.

(6) 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.

(7) 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 single market and state aid policies.

(8) The fiscal advantage has not, to date, impacted the single market as the market share of traditional rum decreased by 11% in recent years, due to the increasing consumption of rum based alcoholic drinks.

(9) In order to avoid severely restraining the economic development of the French outermost regions and to ensure the continuation of the sugar-cane-rum industry and the jobs it provides in the French outermost regions, it is necessary to renew and increase the annual quota of the authorisation set out in Decision 189/2014/EU.

(10) In order to ensure that the present decision does not undermine the single market, the quantities of rums originating in the overseas departments eligible for this measure should be fixed at 153 000 hectolitres of pure alcohol per annum.

(11) 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 limited to consumption on the French mainland, the measure does not undermine the integrity and coherence of the Union legal order.

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

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

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[8] 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 apply 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[9] until 24 May 2021 and to rum as defined in point 1(g)(i) of Annex I to Regulation (EU) 2019/787 of the European Parliament and of the Council[10] as of 25 May 2021, 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 of this Decision and applicable to the rum referred to in Article 2 of this Decision shall be confined to an annual quota of 153 000 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.

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8 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).

9 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).

10 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).

Article 4

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

Article 5

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

Article 6

This Decision is addressed to the French Republic.

Done at Brussels,

For the Council
The President