



Brussels, 9.6.2017
COM(2017) 297 final

2017/0127 (CNS)

Proposal for a

COUNCIL DECISION

amending Council Decision No 189/2014/EU authorising France to apply a reduced rate of certain indirect taxes on ‘traditional’ rum produced in Guadeloupe, French Guiana, Martinique and Réunion and repealing Decision No 2007/659/EC

EXPLANATORY MEMORANDUM

Traditional rum from France's outermost regions has been subject to special excise duty arrangements on the French mainland market since 1923. This reflects a long-term fiscal State aid strategy based on the observation that, occasional years of particularly strong growth notwithstanding, the global rum market is expanding steadily (by around 3.2 %), and on aligning the eligible quantities with this growth rate to ensure the long-term competitiveness of the cane-sugar-rum sector in France's outermost regions. 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. The current system permitting this extension was introduced by **Council Decision No 2002/166/EC** of 18 February 2002 authorising France to extend the application of a reduced rate of excise duty on 'traditional' rum produced in its overseas departments¹ to take into account the sugar common market organisation review in 2001 and the dismantling in 2003 of the customs protection for spirits. Decision No 2002/166/EC also noted that the Community and national measures taken to improve the competitiveness of the cane-sugar-rum sector in the overseas departments still did not in themselves make it possible to reach the level of competitiveness which would enable France to adapt the taxation of traditional rum produced in its overseas departments.

Decision No 2002/166/EC limited the reduced rate of excise duty to an annual quota of **90 000 hl** of pure alcohol, corresponding to traditional trade flows recorded in the last few years before the Decision was adopted, without taking a growth rate into account. The authors of Decision No 2002/166/EC felt that, in order to create a climate of legal certainty for traders in the cane-sugar-rum sector and given the time it takes to amortise equipment and buildings, an annual fixed quota of 90 000 hl applicable for seven years, from 1 January 2003 until 31 December 2009, would suffice.

In fact, the Council has already amended Decision No 2002/166/EC, by **Decision No 2007/659/EC**² of 9 October 2007; this Decision retroactively introduced an annual quota of **108 000 hl** of pure alcohol, applicable from 1 January 2007 until 31 December 2012. Decision No 2007/659/EC also noted (in recital 9) that only the market in mainland France, where rum from the overseas departments qualifies for special tax arrangements that partially compensate its high cost price, has enabled the overseas departments' rum industry to survive.

Council Decision No 896/2011/EU³ of 19 December 2011 amended Decision No 2007/659/EC by shortening the period of application of the annual quota of 108 000 hl by two years, until 31 December 2010, and introducing an annual quota of **120 000 hl** of pure alcohol for the period from 1 January 2011 until 31 December 2013.

In Council Decision No 896/2011/EU of 19 December 2011 (recital 5), the Council

¹ Council Decision No 2002/166/EC of 18 February 2002 authorising France to extend the application of a reduced rate of excise duty on 'traditional' rum produced in its overseas departments, OJ L [55], [26.02.2002], p. [33].

² Council Decision No 2007/659/EC of 9 October 2007 authorising France to apply a reduced rate of excise duty on 'traditional' rum produced in its overseas departments and repealing Decision 2002/166/EC, OJ L [270], [13.10.2007], p. [12].

³ Council Decision No 896/2011/EU of 19 December 2011 amending Decision No 2007/659/EC as regards its period of application and the annual quota benefiting from a reduced rate of excise duty, OJ L [345], [29.12.2011], p. [18].

considered that the quota eligible for a rate of excise duty lower than the full rate should allow an annual growth rate of 3.2 % and 4.3 % for years of strong growth. It goes without saying that this Decision did not imply any future legal obligation on the part of the Council and the Commission. However, it is very clear that these growth rates have, for more than 25 years, been the most stable economic factors and those closest to the economic reality:

‘...since the competitiveness of traditional rum from the overseas departments needs to be supported on the market in mainland France in order to safeguard the activity of their sugar-cane-rum sector, the quantities of traditional rum originating in the overseas departments eligible for a reduced rate of excise duty when released for consumption on that market should be reviewed. The 108 000 hectolitre annual quota established by Decision No 2007/659/EC should be, therefore, increased to 120 000 hectolitres, including the quota for 2011 in order to ensure continuity, taking into account the increase forecasted for that year. This increase would cover annual growth of 4.3 %, i.e. a little more than the 3.2 % increase witnessed in 2007-10’.

Council Decision No 189/2014/EU⁴ repeals and replaces Decision No 896/2011/EU, capping the annual quota at 120 000 hectolitres of pure alcohol (hap) for the period from 1 January 2010 until 31 December 2020. The quota set by Decision No 189/2014/EU does not fully reflect the growth rates referred to in Decision No 896/2011/EU. Moreover, setting the quota at an annual level of 120 000 hap for a lengthy period of ten years increased the discrepancy between the growth rates projected by the Council in 2011 and the quotas available.

Year	Projected growth rate	End of year requirement according to the projected rate (hap)	Available quota (hap)	EC/EU Decision
2002	0 %	90 000		2002/166
2003	3.2 %	92 880	90 000	2002/166
2004	3.2 %	95 852	90 000	2002/166
2005	3.2 %	98 919	90 000	2002/166
2006	3.2 %	102 084	90 000	2002/166
2007	3.2 %	105 351	90 000	2002/166
			108 000	2007/659
			108 000	2011/896
2008	3.2 %	108 722	90 000	2002/166

⁴ Council Decision No 189/2014/EU of 20 February 2014 authorising France to apply a reduced rate of certain indirect taxes on ‘traditional’ rum produced in Guadeloupe, French Guiana, Martinique and Réunion and repealing Decision No 2007/659/EC OJ L [59], [28.2.2014], p. [1].

			108 000	2007/659
			108 000	2011/896
2009	3.2 %	112 201	90 000	2002/166
			108 000	2007/659
			108 000	2011/896
2010	3.2 %	117 025	108 000	2007/659
			108 000	2011/896
2011	4.3 %	122 057	108 000	2007/659
			120 000	2011/896
2012	4.3 %	127 306	108 000	2007/659
			120 000	2011/896
			120 000	189/2014
2013	4.3 %	131 379	120 000	2011/896
			120 000	189/2014
2014	3.2 %	135 583	120 000	189/2014
2015	3.2 %	139 922	120 000	189/2014
2016	3.2 %	144 400	120 000	189/2014
2017	3.2 %	149 020	120 000	189/2014
2018	3.2 %	153 789	120 000	189/2014
2019	3.2 %	158 710	120 000	189/2014
2020	3.2 %	163 789	120 000	189/2014

As a result, producers of traditional rum have been unable to benefit from sufficient access to the French mainland market. The projected growth rates permitted a quota of 144 400 hap at the end of 2016, yet the quota was limited to 120 000 hap. For this reason, the retroactive increase of the quota for 2016 to 144 400 hap is an adjustment measure aimed at aligning the quota with growth rates already projected by the Council.

The urgency of the increase is clear: the quota of 120 000 hap for 2016 was used before the end of 2016 and, without a retroactive increase with effect from 1 January 2016, producers will suffer significant - and likely irreparable - harm. Relations between traditional rum producers and retailers in France are governed by annual contracts that include commitments on volumes delivered, purchase prices, and discounts and promotions. The expiry of the quota brings about a subsequent increase in taxation for quantities that exceed it, yet at the

start of the year when the contracts are signed, producers cannot foresee either the likelihood that the quota will be exceeded or to what extent. Given that the purchase price is set at the start of the year on the basis of a lower rate of taxation, the tax increase created by the quota being exceeded before the end of the year is a risk that rum producers have to face. This risk became a reality in 2016. Without a retroactive increase in the quota, rum producers will suffer substantial losses for the quantities exceeding it.

Furthermore, not increasing the quota would weaken rum producers in France's outermost regions in terms of their commercial strategies for 2017: with a lack of visibility concerning the expiry date of the quota for 2017, they would have to abandon the idea of offering their rum during the promotional season at the end of the year.

The urgency of the increase is accentuated by the economic climate, in which exports of traditional rum to the EU from Guadeloupe, French Guiana, Martinique and Réunion have fallen. Between 2005 and 2011, exports of traditional rum to the EU from these regions increased from 155 559 to 205 482 hap. Since 2012, they have fallen dramatically: after dropping to 189 928 hap that year, they rose slightly in 2013 (190 382 hap), before falling in 2014 (179 755 hap) and increasing slightly again in 2015 (180 482 hap).

This substantial decrease was mainly caused by the fall in exports of traditional rum to the EU from Réunion, which is the largest producer of traditional rum among these outermost regions. Between 2005 and 2011, exports of traditional rum from Réunion increased from 60 092 hap to 87 314 hap. They began to fall sharply in 2012, dropping to 69 491 that year before rising slightly in 2013 (74 702 hap), only to then fall to 63 240 hap in 2014 and 58 890 hap in 2015.

The drop in shipments of traditional rum from these outermost regions to mainland Europe was mainly due to the fact that they had lost market share for light rum in Germany to producers from third countries. In 2008, sales of light rum from these outermost regions reached 46 065 hap. In 2014 and 2015, they came to just 22 885 and 17 091 hap respectively.

At this point, it cannot be ruled out that the discrepancy between the quotas corresponding to the growth rates projected by the Commission and the Council and the quotas actually authorised may have had an impact on these trends. This analysis will be conducted as part of the forthcoming review of Decision No 189/2014/EU.

It should also be noted that consumption in France of rum from third countries, including ACP rum (Africa, the Caribbean and the Pacific), has increased far more than that of rum from Guadeloupe, French Guiana, Martinique and Réunion. Total consumption in France of rum from third countries amounted to 20 733 hap in 2013, before rising to 22 679 hap in 2014 and 26 147 hap in 2015. Traditional rum produced in these outermost regions and released for consumption in France also increased during this period to a lesser extent, rising from 115 438 hap in 2013, to 119 066 hap in 2014 and 120 000 hap in 2015.

An independent economic analysis carried out by the Commission and finalised in July 2016 concluded that French imports of traditional rum from Guadeloupe, French Guiana, Martinique and Réunion represented only a small proportion of total alcohol consumption in France (between 1 and 2 %) and that, for this reason, the presence of a reduced rate for rum was not likely to create distortions of competition on the French rum market. Under these conditions, it is even less likely that these imports will affect the functioning of the single market.

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

On 22 September 2016, the French authorities asked the Commission to present a draft technical adaptation to Council Decision No 189/2014/EU of 20 February 2014, increasing the annual quota from 120 000 to 144 000 hap. The request was accompanied by a report justifying the adaptation requested.

• Consistency with existing policy provisions in the policy area

This initiative is consistent with the priorities determined by the policy directives set out in Article 349 of the Lisbon Treaty, which acknowledges that the structural social and economic situation of France's outermost regions including Guadeloupe, French Guiana, Martinique and Réunion 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. Accordingly, Article 349 states that the Council, on a proposal from the Commission and after consulting the European Parliament, shall adopt specific measures aimed, in particular, at laying down the conditions of application of the Treaties to those regions, including common policies. The aim of the quota increase is to create and safeguard jobs, economic growth and investment in the sugar-cane and rum sector. This increase strengthens the single market and makes it more accessible to economic operators established in the regions referred to above by offsetting the disadvantages caused by their geographical and economic situation.

As well as adjusting the quota, for the future management and justification of quotas, the Commission will need to draw on the analyses provided by France by 31 July 2017 as part of the mid-term review scheduled under Decision No 189/2014/EU of 20 February 2014.

• Consistency with other Union policies

Under Article 349(3) of the Treaty on the Functioning of the European Union (the Lisbon Treaty), the Council adopts measures taking into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the Union legal order, including the internal market and common policies. Decision No 189/2014/EU and the parameters on which it is based were deemed consistent with the EU's other policies. The increase in the quota is a retroactive and limited adaptation bringing it up to a level consistent with the annual growth rates already envisaged by the Council. The other parameters of Decision No 189/2014/EU are unchanged. Under these conditions, the increase in the annual quota from 120 000 hap to 144 000 hap will have no impact at all on the consistency of Decision No 89/2014/EU with the EU's other policies.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Article 349 of the Lisbon Treaty (Treaty on the Functioning of the European Union – TFEU).

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

The proposal for a Council Decision therefore complies with the subsidiarity principle.

- **Proportionality**

Under the principle of proportionality, the content and form of Union action should not exceed what is necessary to achieve the objectives of the Treaties. The quota of 144 000 hl corresponds to the projected growth rate and the quantity arising from the application of this rate for the end of 2016. Within the legal framework of Decision No 89/2014/EU, the only way of achieving the quota increase with effect from 1 January 2016, in order to bring it up to the level matching the growth rate of 3.2 %, is to modify the existing Decision with retroactive effect. Therefore, neither the content nor the form of the action exceed what is necessary to achieve the objectives of Article 349 TFEU.

- **Choice of the instrument**

See ‘Proportionality’.

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

- **Ex-post evaluations/fitness checks of existing legislation**

1. It follows from the first subparagraph of Article 349 TFEU, as interpreted by the Court of Justice in Joined Cases C-132/14 to C-136/14, that the ‘specific measures’ it refers to are adopted ‘taking into account’ the ‘structural social and economic situation’ of the outermost regions, which is ‘compounded’ by a number of factors ‘the permanence and combination of which severely restrain their development’. The first subparagraph of Article 349 therefore presents these factors as elements that compound the structural social and economic situation of the outermost regions which the Council must take into account, pursuant to the third subparagraph of Article 349 TFEU, when adopting specific measures (Judgment of the Court (Grand Chamber) of 15 December 2015 in Joined Cases C-132/14 to C-136/14, paragraphs 67 and 68). As indicated by the Court above and for the reasons set out below, the Commission believes that an urgent retroactive increase in the quota eligible for a reduced rate of excise duty, from 120 000 hap to 144 000 hap, is the only appropriate measure:

- producers of traditional rum have been unable to benefit from sufficient access to the French mainland market. The projected growth rates corresponded to a quota of 144 400 hap at the end of 2016. For this reason, a retroactive increase to the quota for 2016 to 144 000 hap is a simple adjustment aimed at bringing the quota up to the level already envisaged by the Commission and the Council.

- the economic framework has already been specified and determined by the Commission and the Council;

- a rapid, retroactive increase is necessary to avoid immediate and likely irreparable harm for producers;

- Eurostat figures show a clear fall in exports to the European Union of traditional rum produced in these outermost regions;

- the figures show that market share for traditional rum in other EU countries has been lost to producers in third countries;

- imports of rum from other third countries released for consumption in mainland France have shown far more growth;

the other parameters of Decision No 189/2014/EU remained unchanged.

2. The aim of this measure is to adjust to the limited economic implications that do not currently justify the costs incurred by an ‘impact assessment’. In the case in question, increasing the quota with retroactive effect from 1 January 2016 is the only option to ensure that ‘traditional rum’ from these outermost regions remains competitive on the EU market.

Moreover, an independent economic analysis⁵ carried out by the Commission and finalised in July 2016 with the aim of assessing whether Directive 92/83/EEC was still fit for purpose concluded that French imports of traditional rum from Guadeloupe, French Guiana, Martinique and Réunion represented only a small proportion of total alcohol consumption in France (between 1 and 2 %) and that, for this reason, the presence of a reduced rate for rum was not likely to create distortions of competition on the French rum market. Under these conditions, it is even less likely that these imports will affect the functioning of the single market.

These conclusions were published and all stakeholders were consulted. Although the study did not specifically target an increase in the quota of traditional rum from Guadeloupe, French Guiana, Martinique and Réunion eligible for a reduced rate in mainland France, the Commission nonetheless notes that none of the 750-plus contributions received and verified as part of the consultation put forward arguments or any other information justifying additional analyses⁶.

- **Stakeholder consultations**

See paragraph above.

As well as immediately adjusting the quota, the Commission will need to draw on the analyses provided by France by 31 July 2017 as part of the mid-term review planned by Decision No 189/2014/EU of 20 February 2014. This review will involve further consultation with all stakeholders.

- **Collection and use of expertise**

See above, ‘Ex-post evaluations/fitness checks of existing legislation’.

- **Regulatory fitness and simplification**

Not applicable.

⁵ Page 28 of the report and Annex 7, pages 17 to 20
<https://circabc.europa.eu/sd/a/3e197d56-02d3-4efd-b056-5b7d53b8e196/Evaluation%20of%20Council%20Directive%2092-83-EEC%20on%20the%20harmonisation%20of%20the%20structures%20of%20excise%20duties%20on%20alcohol%20and%20alcoholic%20beverages.pdf>

⁶ <https://circabc.europa.eu/sd/a/c1011602-0d01-4d97-9ce1-56a23fa57929/Appendix%209a%20-%20Open%20public%20consultation%20summary%20report.pdf>

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

There are no budgetary implications.

Proposal for a

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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 Parliament⁷,

Having regard to the opinion of the European Economic and Social Committee⁸,

Having regard to the opinion of the Committee of the Regions⁹,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Pursuant to Article 1 of Council Decision No 189/2014/EU¹⁰, France was 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 Council Directive 92/84/EEC¹¹ and to apply a rate of the levy known in French as ‘cotisation sur les boissons alcooliques’ (VSS) lower than the full rate applicable under French national legislation to ‘traditional’ rum produced in Guadeloupe, French Guiana, Martinique and Réunion.
- (2) According to Article 3 of the above Decision, the reduced rates of excise duty and of VSS applicable to ‘traditional’ rum shall be confined to an annual quota of 120 000 hectolitres of pure alcohol (‘hap’).
- (3) On 22 September 2016, the French authorities asked the Commission to present a draft technical adaptation increasing the annual quota from 120 000 to 144 000 hap. The request was accompanied by a report containing all information justifying the adaptation requested. Producers of traditional rum were unable to benefit from sufficient access to the French mainland market in 2016. The projected growth rates

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¹⁰ OJ C , , p. .
Council Decision No 189/2014/EU of 20 February 2014 authorising France to apply a reduced rate of certain indirect taxes on ‘traditional’ rum produced in Guadeloupe, French Guiana, Martinique and Réunion and repealing Decision No 2007/659/EC (OJ L 59, 28.2.2014, p. 1).

¹¹ 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).

required a quota of 144 400 hap and this volume was reached at the end of 2016. The annual quota of 120 000 hap should therefore be increased to 144 000 hap. The measures authorised by Council Decision No 189/2014/EU will be analysed and a more in-depth review of the system as a whole will take place. This analysis will take into account France's report referred to in Article 4 of Decision No 189/2014/EU.

- (4) The quota of 120 000 hap for 2016 was used before the end of 2016; without a retroactive increase with effect from 1 January 2016, producers will suffer significant – and likely irreparable – harm. Relations between traditional rum producers and retailers in France are governed by annual contracts that include commitments on volumes delivered, purchase prices, and discounts and promotions. The expiry of the quota brought about a subsequent and unforeseen increase in taxation for quantities outside it, yet at the start of the year, when the contracts were signed, the producers could not foresee either the likelihood that the quota would be exceeded or to what extent. Without a retroactive increase in the quota, rum producers will suffer substantial losses for the quantities outside it. The retroactive increase in the quota with effect from 1 January 2016 must therefore be authorised.
- (5) The other parameters of Decision No 189/2014/EU remained unchanged and an independent economic analysis carried out by the Commission and finalised in July 2016 confirmed that French imports of traditional rum from Guadeloupe, French Guiana, Martinique and Réunion represented only a small portion of total alcohol consumption in France. For this reason, a reduced rate is unlikely to create distortions of competition on the French rum market, let alone on the single market.
- (6) This Decision is without prejudice to the possible application of Articles 107 and 108 TFEU.
- (7) Decision No 189/2014/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

1. In Article 3 of Decision No 189/2014/EU, paragraph 1 is replaced by the following:

‘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 for the period until 31 December 2015. For the period between 1 January 2016 and 31 December 2020, they shall be confined to an annual quota of 144 000 hectolitres of pure alcohol’.

Article 2

This Decision shall enter into force on the day following that of its publication in the Official Journal of the European Union.

Done at Brussels,

*For the Council
The President*