

## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## COUNCIL DECISION

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**

(2002/166/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 299(2) thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Whereas:

- (1) By a Council Decision of 30 October 1995, France was authorised to apply to traditional rum produced in its overseas departments (OD) a rate of excise duty lower than the full rate of excise duty applicable to ethyl alcohol.
- (2) That Decision was taken pending the effects of the existing measures taken to improve the competitiveness of the cane-sugar-rum sector in those departments, and also to take account of the consequences of the abolition of tariff quotas on imports of rum originating in the ACP States. It expires on 31 December 2002.
- (3) In its memorandum regarding the measures concerning the outermost regions to be implemented under Article 299(2) of the Treaty, France indicates that it is essential to maintain the tax arrangements applicable to traditional rum marketed in mainland France.
- (4) Account being taken of the sugar common market organisation review in 2001 and the dismantling in 2003 of the customs protection for spirits, the Community and national measures taken to improve the competitiveness of the cane-sugar-rum sector in the OD still do 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.
- (5) Given the small scale of the local market, the OD distilleries can keep up their activities only by retaining their share of the market in mainland France, this being the main outlet for their rum production (over 50 % of the total). The trend on the Community market shows that competition from non-Community rum has caused a considerable drop in the volume of OD rum sold on the Community market. On a market with 28 % growth (average for the period 1986 to 1999), the ACP

<sup>(1)</sup> OJ C 270 E, 25.9.2001, p. 148.

<sup>(2)</sup> Opinion delivered on 7 February 2001 (not yet published in the Official Journal).

countries' share rose by 64,3 %, and that of third countries by 64,5 %; over the same period, the OD share dropped by 22,4 %. In 1999, the market shares of rum sold on the Community market were the following: 64,7 % (or 346 084 hl of pure alcohol) for rum from the ACP countries, 15,5 % (or 82 706 hl of pure alcohol) for rum from other third countries and 19,8 % (or 105 950 hl of pure alcohol, including 85 000 hl of pure alcohol for mainland France) for OD rum. The inability to compete on the Community market, which is mainly the result of higher marketing prices, is due to the difference between the cost price of rum produced in the OD and of rum produced outside Community territory. In the case of OD rum, attention is drawn to the purchase cost of sugar cane on the local market (four to six times higher than the prices applicable outside Community territory) and the cost of labour (three to three and a half times higher than in third countries). In future this inability to compete will be further accentuated by the need to include in the cost price of rum the costs resulting from bringing rum production units in the OD into line with environmental standards, in accordance with Community legislation. Consequently, it is only the mainland France market, in which OD rum qualifies for special tax arrangements that offset the competitive disadvantage resulting from its higher cost price, which has made it possible to safeguard rum-producing activities in the OD.

- (6) In view of the size of the turnover and the number of jobs involved, it is essential to maintain the cane-sugar-rum sector in the OD in order to ensure those departments' economic and social balance. In the three departments most affected, i.e. Réunion, Guadeloupe and Martinique, the sector produces an annual turnover of more than EUR 228 673 526 and provides some 40 000 jobs, including 22 000 direct jobs.
- (7) It is therefore necessary and justified for France to maintain, by way of derogation from Article 90 of the Treaty, a reduced rate of excise duty on 'traditional' rum produced in its OD in order to avoid endangering their development.
- (8) In order not to undermine the single market, the quantities of rum originating in the OD which may qualify for this measure may not, as before, exceed a level corresponding to traditional trade flows recorded in the last few years.
- (9) In view of the need 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, the derogation should be granted for seven years.
- (10) The granting of such a derogation must, however, be subject to the condition that a mid-term report is produced so that the Commission can assess whether the reasons which justify the granting of the tax derogation still exist.
- (11) This Decision is not to prejudice the possible application of Articles 87 and 88 of the Treaty,

HAS ADOPTED THIS DECISION:

#### *Article 1*

By way of derogation from Article 90 of the Treaty, France is hereby authorised to extend the application in its mainland territory to 'traditional' rum produced in its OD of a rate of excise duty lower than the full rate on alcohol laid down in Article 3 of Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages <sup>(1)</sup>.

<sup>(1)</sup> OJ L 316, 31.10.1992, p. 29.

*Article 2*

The derogation referred to in Article 1 shall be confined to rum as defined in Article 1(4)(a) of Council Regulation (EEC) No 1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks <sup>(1)</sup> and produced in the OD from sugar cane harvested in the place of manufacture, having a content of volatile substances other than ethyl and methyl alcohol equal to, or more than, 225 grams per hectolitre of pure alcohol and an alcoholic strength by volume of 40 % vol or more.

*Article 3*

1. The reduced rate of excise duty applicable to the product referred to in Article 2 shall be confined to an annual quota of 90 000 hl of pure alcohol.
2. The reduced rate may be lower than the minimum rate of excise duty on alcohol set by Directive 92/84/EEC, but may not be more than 50 % lower than the standard national excise duty on alcohol.

*Article 4*

By 30 June 2006, France shall send the Commission a report to enable it to assess whether the reasons which justified the granting of the reduced rate still exist.

*Article 5*

This Decision shall apply from 1 January 2003 to 31 December 2009.

*Article 6*

This Decision is addressed to the French Republic.

Done at Brussels, 18 February 2002.

*For the Council*

*The President*

J. PIQUÉ I CAMPS

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<sup>(1)</sup> OJ L 160, 12.6.1989, p. 1. Regulation as last amended by Regulation (EC) No 3378/94 (OJ L 366, 31.12.1994, p. 1).