

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(82) 153 final

Brussels, 25th March 1982

PROPOSAL FOR A COUNCIL DECISION

authorizing the French Republic to apply in its overseas departments and in metropolitan France, in derogation from Article 95 of the Treaty, a reduced rate of the revenue duty imposed on the consumption of "traditional" rum produced in those departments

(presented from the Commission by the Council)

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EXPLANATORY MEMORANDUM

Article 227(2) of the EEC Treaty provides that only some of the Treaty provisions were to be immediately applicable to the French overseas departments. It was for the Council to determine, before 1 January 1960, the conditions under which the other provisions of the Treaty, including those on taxation, were to apply. Prior to the judgment delivered by the Court of Justice on 10 October 1978 in Case 148/77 (Hansen & Balle v Hauptzollamt Flensburg), the two-year period provided for in Article 227(2) was not construed as a strict time limit. Consequently, it was assumed that, in the absence of a Council Decision, a Treaty provision could not be implicitly extended to the overseas departments. This was the interpretation adopted both by the Commission and by the Council.

In the abovementioned case, the Court of Justice set aside the former interpretation by ruling that, after the expiry of the two-year period provided for in Article 227(2), the provisions of the Treaty and of secondary legislation must apply automatically to the French ODs. It acknowledged however, "in order to make due allowance for the special geographic, economic and social situation of those departments", that the Council might take, after the expiry of the two-year period, measures commensurate with "the specific requirements of those parts of the French territories".

In view of the Court's interpretation of Article 227 of the Treaty, the favourable tax arrangements granted by France within the limits of an annual quota of 204 050 hl in respect of "traditional" rum produced in its overseas departments must be considered to be in infringement of Article 95 of the Treaty.

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The need to authorize France to maintain special tax arrangements for traditional rum from the overseas departments stems from the fact that the outlets for that product would be jeopardized if France, which is its main consumer, were to apply to it the full spirits rate (see Annexes 2 and 3).

The application of those favourable tax arrangements is, not only in the territory of the overseas departments themselves, but also and above all in the territory of metropolitan France, a measure essential to the economic and social development of those departments within the meaning of Article 227 of the Treaty.

The attached proposal for a Decision will enable the Council, by means of the abovementioned authorization, to bring to an end the state of infringement in which the French Republic finds itself as a result of the Court's judgment in Case 148/77. Nevertheless, in the interests of the Community and having regard, in particular, to the situation on the Community spirits market, it would be appropriate to place certain restrictions on the derogation:

(a) The Council will periodically examine the situation in the French ODs on the basis of a report by the Commission and will, if necessary, review the derogation;

(b) in metropolitan France, the reduced rate of consumption tax should apply only to a quota equal to the annual average consumption of "traditional" rum in metropolitan France during the 10 years preceding the entry into force of the Council Decision; this restriction, if it were based on the period 1971-80,¹⁾ would result in an annual quota of 120.500 hl of pure alcohol per year; on the other hand, no restriction should be imposed on rum released for home use in the overseas departments themselves;

¹⁾ See Annex 3

(c)

the ratio between the rate of consumption tax applied in metropolitan France to "traditional" rum produced in the overseas departments and the full rate applied to spirits should not be lower than the ratio applying in metropolitan France on the date of the entry into force of the Council Decision; in practice, this restriction means that the rate applicable to French OD rum must be at least equal to 57.5 % of the rate applied to other spirits, for on 1 February 1982, the full rate for spirits was FF 7 655 per hectolitre of pure alcohol and that applicable to traditional rum was FF 4 405.

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Article 227, paragraph 2, thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas the institutions of the Community are obliged to take care
that the economic and social development of the French overseas
departments is made possible;

Whereas the provisions of the EEC Treaty and of secondary legislation are
applicable to the French overseas departments, subject to decisions by the
Community institutions adopting specific measures commensurate with the
economic and social conditions of those departments;

Whereas, for reasons connected with their geographic, economic and social
situation, the French Republic should be authorized to apply, in derogation
from Article 95 of the Treaty, a reduced rate of the revenue duty imposed
on the consumption of "traditional" rum produced in those departments;

Whereas it is necessary to limit this derogation in terms of its duration, the quantities which can benefit from it and the level of reduction of the duty; whereas a periodical review of the arrangements must be provided for on the basis of a report by the Commission,

HAS ADOPTED THIS DECISION:

Article 1

The French Republic is hereby authorized to apply in its overseas departments and in metropolitan France, in derogation from Article 95 of the Treaty establishing the European Economic Community, to the consumption of "traditional" rum produced in those departments a rate of revenue duty lower than the full rate of that duty applicable to spirits falling under CCT heading 22.09 C.

Article 2

The derogation referred to in Article 1 is limited to the product obtained exclusively by distillation after fermentation of sugar cane juice, sugar cane syrup or sugar cane molasses in the sugar cane producing areas of the French overseas departments. This product must have a volatile element content, excluding ethyl alcohol, in excess of 225 g/hl at 100 % vol. and must be produced at an alcoholic strength by volume of less than 80 % vol.

Article 3

1. In metropolitan France the reduced fiscal duty applicable to the product referred to in Article 2 shall be applied to an amount of the product not exceeding an annual quota corresponding to the average annual consumption of that product in metropolitan France during the 10 years preceding the entry into force of this Decision.

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2. The ratio between the reduced rate of consumption tax applied in metropolitan France to "traditional" rum and the full rate applied to spirits, expressed in percentage terms, may not be less than the ratio between those two rates obtaining in metropolitan France at the time of the entry into force of this Decision.

3. Upon the expiry of a period of five years from the date of entry into force of this Decision and thereafter as and when necessary, the Council shall review, on the basis of a report drawn up by the Commission, the situation with regard to the derogation referred to in Article 1 and shall, if necessary, acting unanimously on a proposal from the Commission, decide to abolish or amend it.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels,

For the Council

The President

Rates of the consumption tax applied on "traditional" rum
in Metropolitan France and in the French Overseas Departments

(in FF per hl of pure alcohol) (Situation at 1.2.1982)

	Metropolitan France	Guadeloupe	Martinique	Réunion	Guyane
Rum	4405	82	82	250	48

Tax-paid consumption of spirits (in hectolitres of
pure alcohol) in Metropolitan France

<u>Year</u>	<u>Rum</u>	<u>Total</u>
1971	121.000	1.119.000
1972	131.000	1.151.000
1973	133.000	1.230.000
1974	135.000	1.256.000
1975	127.000	1.275.000
1976	117.000	1.237.000
1977	112.000	1.260.000
1978	111.000	1.312.000
1979	112.000	1.354.000
1980	106.000	1.358.000

Breakdown of the production of rum of the F.O.D. per campaign (Hectolitres of pure alcohol)

Campaign	Total Production	Local Consumption	Shipped to Metropolitan France	Exportation (EEC and third countries)
1974-75	246.712	61.317	127.362	58.033
1975-76	233.809	61.517	126.603	45.689
1976-77	217.691	62.144	112.637	42.910
1977-78	223.457	64.572	118.775	40.110
1978-79	233.057	66.894	118.622	37.541
1979-80	217.686	61.264	116.234	40.188
1980-81	215.924	61.419	107.171	47.334