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2020/0163 (CNS)

Proposal for a

COUNCIL DECISION

on the AIEM tax applicable in the Canary Islands

{SWD(2020) 154 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Treaty on the Functioning of the European Union (TFEU), which applies to the outermost regions of the EU, which include the Canary Islands, does not in principle allow any difference between the taxation of local products and the taxation of products from Spain or other Member States. Article 349 of the TFEU allows for specific measures for the EU outermost regions to be taken as it acknowledges that permanent and combined constraints severely restrain their development and affect their economic and social situation.

The proposal concerns a Council Decision to replace the current Council Decision No 377/2014/EU of 12 June 2014[1]. This Decision, adopted on the basis of Article 349 TFEU, authorises Spain, to apply exemptions from or reductions in the 'Arbitrio sobre Importaciones y Entregas de Mercancías en las Islas Canarias' (hereinafter 'AIEM') to certain products produced locally in the Canary Islands until 31 December 2020.

The AIEM is an indirect State tax levied in a single stage on the supplies of goods in the Canary Islands. The specific measures covered by Decision No 377/2014/EU establish a form of differentiated taxation, benefiting the local production of some products. This tax benefit constitutes a State aid, currently implemented by the Spanish authorities under the regional aid section of the General Block Exemption Regulation[2].

The objective of this measure is to compensate producers in the Canary Islands for the permanent constraints linked to isolation, raw material and energy dependence, the obligation to build up stocks, the small size of the local market and the low level of export activity. The combination of these constraints means that production costs, and therefore the cost price of goods produced locally, are higher, so that without specific measures local producers would be less competitive than producers from mainland Europe, even when taking into account the cost of transporting goods to the Canary Islands. This would make it harder to maintain local production. The specific measures are designed to strengthen local industry by compensating them for their additional costs, and thus creating a level-playing field.

On 24 April 2019, Spain submitted a request to the Commission to extend the period of application of Decision No 377/2014/EU.

As regards the request for the extension of the period of application of Decision No 377/2014/EU, the Commission launched an external study in order to assess the current regime as well as the potential impacts of possible options for the period after 2020, including the option on which the current proposal is built. Based on that study, the Commission considers that it is justified to grant the requested extension, with some amendments to the existing regime.

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1 Council Decision No 377/2014/EU of 12 June 2014 on the AIEM tax applicable in the Canary Islands OJ L 182, 21.6.2014, p. 4–8

2 The GBER (Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty) is the EU legal base on which the AIEM State aid scheme is allowed under EU rules.

Therefore, this proposal entails establishing the legal framework for the AIEM from 1 January 2020 to 31 December 2027, with revisions of the current arrangements aimed at making the regime more flexible and transparent.

The proposed amendments, compared to the current regime, are as follows:

(a) Revision of criteria for the identification of eligible products.

The revised regime proposes a new method used for the identification of the products supported through the special tax regime. Instead of the current approach where each specific product is explicitly identified in the Decision (based on a coding ranging from CN4 to TARIC10), the proposed Decision indicates only the eligible product categories (CN4), while specific products (CN8 or higher) are detailed by national authorities in their legal and administrative frameworks.

The Spanish authorities have requested that 99 product categories of the Harmonized System (HS) Headings[3], according to the four digits of the Combined Nomenclature, should benefit from this measure. The Commission agrees with the list in Annex I as these products categories comply with the eligibility criteria.

The products are selected based on the following criteria:

– that local production exists and its share of the local market accounts for no less than 5%;

– that significant importation of goods (including from mainland Spain and other Member States) exists that could jeopardise the continuation of local production, and its share of the local market accounts for at least 10%; and

– that additional costs exist which increase the cost price of local production in comparison with products produced elsewhere, compromising the competitiveness of products produced locally.

The market share thresholds can be derogated from in duly justified circumstances, which include labour-intensive production; production otherwise strategic for local development; production subject to periodical fluctuations; production located in particularly disadvantaged areas; production of medical products and personal protective equipment required to address health crises.

(b) Revision of mechanisms to establish the maximum permitted differential.

The revised regime intends to simplify the arrangements regarding the establishment of tax differential, replacing the current four different product lists with only one list with a single maximum permitted threshold of 15% as the maximum permitted differential for all the products listed in the Annex I of the new Decision.

The Spanish authorities will decide which will be the appropriate percentage for each product and will provide this information to the Commission before the entry into force of the new Council Decision. Nevertheless, the quantitative limit of EUR 150 million each year of foregone revenue should apply, except in duly justifiable cases.

[3] The Combined Nomenclature (CN) is a tool for classifying goods, which is used in the Common Customs Tariff and is regulated in Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff. It is based on the Harmonized System (HS) nomenclature, maintained by the World Customs Organisation (WCO). Its classification headings consist of 4-digits.

This list of products and the maximum permitted differential addresses the objective of Article 349 TFEU of adopting specific measures to take into account the special characteristics of the Canary Islands as an EU outermost region, while at the same time not distorting competition in a way that could undermine the internal market.

(c) Revised monitoring arrangements.

This proposal also aims at reducing the burden of frequent re-assessment and enhancing the utility and effectiveness of monitoring and evaluation activities. Therefore, it puts forward a standardised structure for reporting based on a harmonised set of indicators common to all EU outermost regions benefitting from a special tax regime.

- **Consistency with existing policy provisions in the policy area**

The 2017 Communication "A stronger and renewed strategic partnership with the EU's outermost regions"[4] 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 and identifying new sectors to enable growth and job creation.

In this context, the aim of this proposal is supporting Spain's outermost region in building on its assets in order to enable growth and job creation in the local sector. This proposal supplements the Programme of Options Specifically Relating to Remoteness and Insularity (POSEI)[5], which targets support for the primary sector and the production of raw materials, the European Maritime and Fisheries Fund (EMFF)[6] and the funding of the European Regional Development Fund (ERDF)[7] Specific Additional Allocation.

- **Consistency with other Union policies**

The proposal is consistent with the 2015 Single Market Strategy[8], 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 of production involved and the limited scope of AIEM on the Canary Islands only, no negative impacts 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.

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4 COM(2017) 623 final

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

6 Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund.

7 Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund.

8 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.

- **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.

- **Choice of the instrument**

A Council Decision is proposed to replace Council Decision No 377/2014/EU.

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

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

The scope of the AIEM regime satisfactorily addresses the needs of the economic operators concerned. The rationale of the AIEM special regime is to support local products by reducing the competitiveness gap of local products against goods produced outside the islands caused by additional production costs as a result of the permanent constraints affecting the Canary Islands. The AIEM regime compensates only for a portion of the estimated additional costs. On average, the reduced rate address about one-quarter of additional costs, but in monetary terms the total compensation – measured in relation to the total tax charged on imports – accounts for only 14% of the overall additional costs. In this sense, the AIEM primarily mitigates a decline in local industry in the Canary Islands instead of fully aiding development and growth.

The results of the quantitative data analysis of the external study suggest that, in the absence of the AIEM support, the performance of the local production sectors would have been significantly worse. About one third of the value of AIEM-supported products (about EUR 570 million) was theoretically enabled by the tax differential mechanism, with positive effects on employment - which registered an increase of nearly 2,000 units in the AIEM sectors since 2014 – and on the number of active enterprises, which has grown by approximately 300 units in the same period. There is no evidence of benefits on the total value of investments and on the diversification of productions. In efficiency terms, the performance of the special regime is generally positive with a nearly 1:3 ratio between the 'cost' of the measure (the foregone tax revenue) and the additional local production it possibly enables.

- **Stakeholder consultations**

Overall, some 120 stakeholders were interviewed as part of the external study supporting the analysis of the current regime. The interview programme involved the relevant Commission services and the representatives of Spain.

For this consultation, attention was paid to ensure an appropriate coverage of and balance between relevant stakeholders, including both the representatives of the local productive

sectors - i.e. the beneficiaries of the special regimes - and the trade and service sectors that are directly or indirectly affected by them.

- **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.

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 Spanish authorities and the Commission as it has been to date.

The Spanish authorities will be required 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; as well as information on continued relevance and EU added value of the 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 Spanish 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 Spain 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 monitoring report are annexed to the proposal in Annex II. When the Spanish authorities submit the monitoring report, the Commission will evaluate the effects of the differentiated rates and assess the need for changes.

- **Detailed explanation of the specific provisions of the proposal**

This part is not applicable as articles are self-explanatory.

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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[9],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Pursuant to Article 349 of the TFEU, the Council, taking into account the structural social and economic constraints of the outermost regions, including their remoteness, insularity, small size, difficult topography and economic dependence on a few products, shall adopt specific measures aimed, in particular, at laying down the conditions of application of the Treaties to those regions, including common policies.

(2) Specific measures should therefore be adopted in order to establish the conditions for applying the Treaty to those regions. They must take account of the special characteristics and constraints of these regions, without undermining the integrity and coherence of the Community legal order, including the internal market and common policies.

(3) The Canary Islands' economic dependence on the services sector and in particular tourism as measured in the region's GDP share linked to this sector, constitute a significant constraint. This sector plays a significantly larger role in the economy of the Canary Islands than the industry sector.

(4) The isolation and insularity inherent in an archipelago hinders the free movement of persons, goods and services and it is the second biggest constraint facing the Canary Islands. The location of the islands increases their dependence on air transport and maritime transport. Transport to, from and on those remote and insular islands further increases production costs for local industries. Production costs are greater because these modes of transport are less efficient and more expensive than road or rail.

(5) As a further consequence of this isolation, higher production costs result from the islands' dependence on importing raw materials and energy, the obligation to build up stocks and difficulties affecting the supply of production equipment.

(6) The small size of the market and the low level of export activity, the geographical fragmentation of the archipelago, and the obligation to maintain diversified small

[9] OJ C , , p. .

production lines in order to meet the requirements of a small market, restrict the opportunities for economies of scale.

(7) It is, in many cases, more difficult or more expensive in the Canary islands to obtain specialised services and maintenance, and training for managers and technicians, or to subcontract or promote business expansion beyond the regional market. The narrow range of distribution methods also results in overstocking.

(8) As regards the environment, the disposal of industrial waste and the treatment of toxic waste give rise to higher environmental costs. These costs are higher because there are no recycling plants, other than for certain products, and waste has to be transported to be treated outside the Canary Islands.

(9) A careful examination of the situation confirms that it is necessary to grant Spain's request of renewing the authorisation concerning the application of a tax to a list of products for which exemptions for local products may be allowed.

(10) The AIEM tax is serving the objective of autonomous development of the Canary Islands' industrial production sectors and of diversifying the Islands' economy.

(11) Council Decision 2002/546/EC of 20 June 2002, adopted on the basis of Article 299 of the EC Treaty, initially authorised Spain to apply exemptions from or reductions in the tax known as 'Arbitrio sobre Importaciones y Entregas de Mercancías en las Islas Canarias' (hereinafter 'AIEM') to certain products produced locally in the Canary Islands until 31 December 2011. The Annex to that Decision contains a list of products to which tax exemptions and reductions may be applied. The difference between the taxation of locally manufactured products and the taxation of other products may not exceed 5, 15 or 25 percentage points, depending on the product.

(12) Council Decision No 895/2011/EU of 19 December 2011 amended Council Decision 2002/546/EC, extending its period of application until 31 December 2013.

(13) Council Decision No 1413/2013/EU of 17 December 2013 amended Council Decision 2002/546/EC, extending its period of application until 30 June 2014.

(14) Council Decision No 377/2014/EU of 12 June 2014 authorised Spain to apply exemptions from or reductions in the tax known as AIEM to certain products produced locally in the Canary Islands until 31 December 2020. The Annex to the Decision contains the list of products to which the tax exemptions or reductions may be applied.

(15) The maximum differential rate, which may be applied to the industrial products in question, is 15 %. In keeping with the principle of subsidiarity, the Spanish authorities will decide upon the appropriate percentage for each product. The authorised tax differential should not exceed the proven additional costs. Nevertheless, this fiscal advantage should apply subject to a limit of EUR 150 million per annum, save in duly justifiable cases.

(16) In keeping with the principle of subsidiarity and in order to ensure flexibility, the Spanish authorities may amend the products and their authorised tax differential to reflect the actual level of additional costs incurred producing such products in the Canary Islands. In this context, it should be possible for the Spanish authorities to apply lower differential rates and to establish a minimum tax for specific products where necessary, provided that any amendment is in line with the objectives of Article 349 of the TFEU. Any amendment of the list of products should be based on the following eligibility criteria: that local production exists and its share of the local market accounts for no less than 5%; that significant importation of goods (including

from mainland Spain and other Member States) exists which could jeopardise the continuation of local production, and its share of the local market accounts for at least 10%; that additional costs exist which increase the cost price of local production in comparison with products produced elsewhere, compromising the competitiveness of products produced locally.

(17) The market share thresholds can be derogated from in duly justified circumstances, which include: labour-intensive production; production otherwise strategic for local development; production subject to periodical fluctuations; production located in particularly disadvantaged areas; production of medical products and personal protective equipment required to address health crises. It should be possible for the Spanish authorities to amend the list of products and their authorised tax differential, provided that any amendment is in line with the objectives of Article 349 TFEU.

(18) The objectives of promoting the socio-economic development of the Canary Islands are reflected at national level in the purpose of the tax and the allocation of the revenue it generates. The incorporation of the revenue from this tax in the resources of the Canary Islands' economic and tax system and its use for an economic and social development strategy involving the promotion of local activities is a legal obligation.

(19) The exemptions from or reductions in the AIEM tax should apply for 7 years. In order to allow the Commission to assess whether the conditions justifying the authorisation continue to be fulfilled Spain should submit to the Commission a monitoring report by 30 September 2025.

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

HAS ADOPTED THIS DECISION:

Article 1

1. By way of derogation from Articles 28, 30 and 110 of the Treaty on the Functioning of the European Union, the Spanish authorities shall be authorised until 31 December 2027 to lay down, in respect of products falling within the categories listed in Annex I that are produced locally in the Canary Islands, total exemptions from or partial reductions of the tax known as 'Arbitrio sobre las Importaciones y Entregas de Mercancías en las islas Canarias (AIEM)'. These exemptions must form part of the strategy for economic and social development of the Canary Islands and contribute to the promotion of local activities.

2. Application of the total exemptions or reductions referred to in paragraph 1 shall not lead to differences in excess of 15 % for the products falling within the categories listed in Annex I.

Spain shall ensure that the exemptions or reductions applied to the products do not exceed the percentage strictly necessary to maintain, promote and develop local activities. The authorised tax differential shall not exceed the proven additional costs.

3. This fiscal advantage shall apply subject to a limit of EUR 150 million per annum, save in duly justifiable cases.

Article 2

The products referred to in Article 1(1) of this Decision shall be selected taking the following criteria into account:

(a) that local production exists and its share of the local market accounts for no less than 5%;

(b) that significant importation of goods (including from mainland Spain and other Member States) exists which could jeopardise the continuation of local production, and its share of the local market accounts for at least 10%;

(c) that additional costs exist which increase the costs of local production in comparison with products produced elsewhere, compromising the competitiveness of products produced locally.

The market share thresholds referred to in paragraph a and b can be derogated in duly justified circumstances, which include:

(i) labour-intensive production;

(ii) production otherwise strategic for local development;

(iii) production subject to periodical fluctuations;

(iv) production located in particularly disadvantaged areas;

(v) production of medical products and personal protective equipment required to address health crises.

Article 3

By 1 January 2021, the Spanish authorities shall communicate to the Commission the initial list of products to which exemptions or reductions are applied to. Those products shall fall within the product categories set out in Annex I of this Decision. Amendments to this list of products may be made by the Spanish authorities, provided that the Commission is notified of all the relevant information.

Article 4

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

Article 5

This Decision shall be applicable from 1 January 2021.

Article 6

This Decision is addressed to the Kingdom of Spain.

Done at Brussels,

For the Council
The President