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COM(2013) 781 final

2013/0387 (CNS)

Proposal for a

**COUNCIL DECISION**

**amending Decision 2002/546/EC as regards its period of application**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT 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 (formerly Article 299(2) of the EC Treaty) provides, however, for the possibility of introducing specific measures for those regions because of the permanent handicaps which affect the economic and social conditions of the outermost regions.

Council Decision 2002/546/EC of 20 June 2002<sup>1</sup>, adopted on the basis of Article 299(2) of the EC Treaty, authorises Spain, up to 31 December 2011, 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. 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.

Decision 2002/546/EC sets out the reasons for adopting specific measures, which include 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 handicaps means that production costs, and therefore the cost price of goods produced locally, are increased, so that without specific measures they would be less competitive than goods produced elsewhere, even taking into account the cost of transporting the latter to the Canary Islands. This would make it harder to maintain local production. The specific measures covered by Decision 2002/546/EC were thus designed to strengthen local industry by making it more competitive.

The AIEM is an indirect State tax levied in a single stage on the supplies of goods in the Canary Islands effected by the producers of the goods and on the import into the territory of the Canary Islands of comparable goods or similar goods of the same type, irrespective of their place of origin. The taxable base for the imported goods is based on the customs value, and that of the supplies of goods by producers in the Canary Islands is based on the total amount of the consideration. The specific measures covered by Decision 2002/546/EC establish a form of differentiated taxation, benefiting the local production of some products. This tax benefit constitutes state aid that requires the approval of the Commission, which was granted by Decision on State Aid NN 22/2008.

The global economic crisis of 2009, with its impact in the reduction of travelling, had severe consequences on the economy of the Canary Islands, which is highly dependent on revenues from tourism. In particular, the reduction of working force in the tourism sector has led to a major increase in the unemployment rate in the Canary Islands. The unemployment rate that in the period of 2001-2007 had oscillated between 10.4% and 12%, rose to 17.3% in 2008 and to 26.2% in 2009. This evolution confirms the danger of an economy highly dependent on tourism and the need to promote a diversification in the economic activities.

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<sup>1</sup> OJ L 179, 9.7.2002, p.22-27

On 16 November 2010, Spain submitted a request to the Commission to extend the period of application of Decision 2002/546/EC for two years, so that its expiry date coincided with the one of the Guidelines on national regional aid for 2007-2013<sup>2</sup>.

In addition, Spain also introduced a request for the extension for two years of the period of application of Decision on State Aid NN 22/2008, according to which the aid given by the Spanish authorities, in respect of the AIEM, was compatible with the common market. The Commission authorized this extension for two years by means of its Decision on State Aid SA.31950 (N 544/2010)<sup>3</sup>, which extended the period of Decision on State Aid NN 22/2008 up to 31 December 2013.

As regard the request for the extension of the period of application of Decision 2002/546/EC, the Commission assessed it in light of the scale of the handicaps affecting the Canary Islands and came to the conclusion that it was justified to grant the requested extension.

In fact, the report from the Commission to the Council on the application of the special arrangements concerning the AIEM tax applicable in the Canary Islands, adopted on 28 August 2008, confirmed that the AIEM was functioning in a satisfactory manner and without the need to any amendments to the provisions of Decision 2002/546/EC.

Therefore, Council Decision 895/2011/EU of 19 December 2011<sup>4</sup> amended Decision 2002/546/EC, extending its period of application up to 31 December 2013.

The Spanish authorities have requested the renewal of the special AIEM rules for goods produced in the Canary Islands for the period 2014-2020, modifying the list of products and the maximum rates applicable to some of them. The renewal needs to be approved both by a Council Decision under Article 349 TFEU and by a Commission Decision on State Aid.

On 28 June 2013 the Commission has adopted new regional aid guidelines for the period 2014-2020<sup>5</sup>. These Guidelines are part of a broader strategy to modernise state aid control, aiming at fostering growth in the Single Market by encouraging more effective aid measures and focusing the Commission's enforcement on cases with the biggest impact on competition.

Considering that these Guidelines will enter into force on 1 July 2014, it seems justified to extend the period of application of Decision 2002/546/EC, as amended by Decision 895/2011/EU, for six months, so that its expiry date coincides with the date of entry into force of the Guidelines.

Decision 2002/546/EC, as amended by Decision 895/2011/EU, should therefore be amended accordingly.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

The relevant Directorates-General of the European Commission were consulted on this proposal and the document was revised to incorporate the suggestions made.

As the present proposal only proposes to extend the application of the existing Council Decision for a limited period of time (six months), for the same products and with the same limits, an impact assessment does not appear necessary.

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<sup>2</sup> OJ C 54, 4.3.2006, p. 13

<sup>3</sup> OJ C 237, 13.8.2011, p 1.

<sup>4</sup> OJ L 345, 29.12.2011, p. 17.

<sup>5</sup> OJ C 209, 23.7.2013, p. 1.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **Summary of the proposed measures**

To extend the period of application of Decision 2002/546/EC (as amended by Decision 895/2011/EU), that authorises Spain to apply exemptions from or reductions in the tax known as AIEM for certain products produced locally in the Canary Islands.

#### **Legal basis**

Article 349 TFEU.

#### **Subsidiarity principle**

Only the Council is authorised, on the basis of Article 349 TFEU, to adopt specific measures in favour of the outermost regions to adjust the application of the Treaties to those regions, including the common policies, because of the permanent handicaps which affect the economic and social conditions of the outermost regions.

The proposal therefore complies with the subsidiarity principle.

#### **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

Its purpose is to extend the period of application of Decision 2002/546/EC, as amended by Decision 895/2011/EU, for six months, so that its expiry date coincides with the date of entry into force of the Guidelines on regional State aid for 2014-2020.

Any further extension will be authorised only following a fresh product-by-product analysis.

#### **Choice of instrument**

Proposed instrument: Council Decision.

Other instruments would not have been appropriate for the following reason:

The text to be amended is itself a Council Decision, adopted on the same legal basis (Article 349 TFEU, former Article 299(2) of the EC Treaty).

### **4. BUDGETARY IMPLICATION**

The proposal has no impact on the budget of the European Union.

Proposal for a

## **COUNCIL DECISION**

### **amending Decision 2002/546/EC as regards its period of application**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 349 (formerly Article 299(2) of the EC Treaty) 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<sup>6</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Decision 2002/546/EC of 20 June 2002<sup>7</sup>, adopted on the basis of Article 299 of the EC Treaty, authorises Spain, up to 31 December 2011, 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. 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.
- (2) The exemptions from and reductions in the AIEM establish differentiated taxation, benefiting the local production of some products. This constitutes state aid that requires the approval of the Commission.
- (3) Council Decision 895/2011/EU of 19 December 2011<sup>8</sup> amended Decision 2002/546/EC, extending its period of application up to 31 December 2013.
- (4) On 28 June 2013 the Commission has adopted its Guidelines on regional State aid for 2014-2020<sup>9</sup>, setting out how Member States can grant aid to companies in order to support the development of disadvantaged regions in Europe between 2014 and 2020. These Guidelines, which will enter into force on 1 July 2014, form part of a broader strategy to modernise state aid control, aiming at fostering growth in the Single Market by encouraging more effective aid measures and focusing the Commission’s enforcement on cases with the biggest impact on competition<sup>10</sup>.

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<sup>6</sup> OJ C , , p. .

<sup>7</sup> OJ L 179,9.7.2001, p. 22.

<sup>8</sup> OJ L 345, 29.12.2011, p. 17.

<sup>9</sup> C (2013) 3769, 28.6.2013.

<sup>10</sup> COM/2012/0209 final.

- (5) It is justified to extend the period of application of Decision 2002/546/EC, as amended by Decision 895/2011/EU, for six months, so that its expiry date coincides with the date of entry into force of the Guidelines on regional State aid for 2014-2020.
- (6) Decision 2002/546/EC, as amended by Decision 895/2011/EU, should be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

In the first sentence of Article 1(1) of Decision 2002/546/EC, as amended by Decision 895/2011/EU, the date “31 December 2013” is replaced by “30 June 2014”.

*Article 2*

This Decision shall enter into force on the day of its adoption.

*Article 3*

This Decision is addressed to the Kingdom of Spain.

Done at Brussels,

*For the Council*  
*The President*