Council Decision (EU) 2020/1792 of 16 November 2020 on the AIEM tax applicable in the Canary Islands

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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[(1)],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Pursuant to Article 349 of the Treaty on the Functioning of the European Union (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, is to 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 TFEU to those regions. Such measures are to take account of the special characteristics and constraints of those regions, without undermining the integrity and coherence of the Union 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 that sector, constitutes a significant constraint. That sector plays a significantly larger role in the economy of the Canary Islands than the industry sector.

(4) The combination of 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 those modes of transport are less efficient and more expensive than road or rail.

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2020/1792. (See end of Document for details)*

(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 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. Those 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) The tax known as '*Arbitrio sobre Importaciones y Entregas de Mercancías en las Islas Canarias*' ('AIEM tax') is serving the objective of autonomous development of the Canary Islands' industrial production sectors and of diversifying the Canary Islands' economy.

(10) Council Decision 2002/546/EC[(2)], adopted pursuant to Article 299 of the EC Treaty, initially authorised Spain to apply exemptions from or reductions in the AIEM tax until 31 December 2011 to certain products produced locally in the Canary Islands. The Annex to that Decision contained a list of products to which tax exemptions and reductions could be applied. The difference between the taxation of locally produced products and the taxation of other products could not exceed 5, 15 or 25 percentage points, depending on the product.

(11) Council Decision No 895/2011/EU[(3)] amended Decision 2002/546/EC, extending its period of application until 31 December 2013.

(12) Council Decision No 1413/2013/EU[(4)] further amended Decision 2002/546/EC, extending its period of application until 30 June 2014.

(13) Council Decision No 377/2014/EU[(5)] authorised Spain to apply exemptions from or reductions in the AIEM tax until 31 December 2020 to certain products produced locally in the Canary Islands. The Annex to that Decision contains a list of products to which the tax exemptions or reductions can be applied.

(14) A careful examination of the situation confirms that it is necessary to grant Spain's request of renewing the authorisation.

(15) The maximum differential rate, which may be applied to the industrial products in question, should not exceed 15 %. In accordance with the principle of subsidiarity, the Spanish authorities should be able to decide upon the appropriate percentage for each product. The authorised tax differential should not exceed the proven additional costs.

Nevertheless, that fiscal advantage should apply subject to a limit of EUR 150 million per annum, except in duly justifiable cases.

(16) In accordance with the principle of subsidiarity and in order to ensure flexibility, the Spanish authorities should be allowed to amend the list of products and their authorised tax differential to reflect the actual level of additional costs incurred in the production of such products in the Canary Islands. In that 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 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 at least 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 %; 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.

(17) The Spanish authorities should be allowed to derogate from the market share thresholds in duly justified circumstances, which include: labour-intensive production; production which is otherwise of strategic importance for local development; production subject to periodical fluctuations; production located in particularly disadvantaged areas; and 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 objective of promoting the socioeconomic development of the Canary Islands is reflected at national level in the purpose of the AIEM tax and the allocation of the revenue it generates. The incorporation of the revenue from the AIEM tax in the resources of the Canary Islands' economic and tax system and the use of that revenue for an economic and social development strategy involving the promotion of local activities are legal obligations.

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

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

HAS ADOPTED THIS DECISION:

Article 1

1 By way of derogation from Articles 28, 30 and 110 TFEU, the Spanish authorities shall be authorised until 31 December 2027 to lay down, in respect of the products falling within the categories listed in Annex I that are produced locally in the Canary Islands, total exemptions from or partial reductions in the tax known as '*Arbitrio sobre las Importaciones y Entregas de*

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Mercancías en las islas Canarias' ('AIEM tax'). Those exemptions or reductions shall 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 of the partial 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.

The Spanish authorities 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 The fiscal advantage shall apply subject to a limit of EUR 150 million per annum, except in duly justifiable cases.

Article 2

1 The Spanish authorities shall select the products referred to in Article 1(1) taking into account the following criteria:

a local production exists and its share of the local market accounts for at least 5 %;

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

2 The Spanish authorities may derogate from the market share thresholds referred to in points (a) and (b) of paragraph 1 in duly justified circumstances, which include:

a labour-intensive production;

b production which is otherwise of strategic importance for local development;

c production subject to periodical fluctuations;

d production located in particularly disadvantaged areas;

e 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. 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, the Spanish authorities shall submit a monitoring report to the Commission to enable it to assess whether the conditions justifying the authorisation set out in Article 1 continue to be fulfilled. The monitoring report shall contain the information set out in Annex II.

Article 5

This Decision shall apply from 1 January 2021.

Article 6

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 16 November 2020.

For the Council

The President

M. ROTH