

Commission Decision (EU) 2018/884 of 16 October 2017 on
aid measure SA.32874 (2012/C) (ex SA.32874 (2011/NN))
implemented by Denmark (notified under document C(2017) 4461)
(Only the Danish text is authentic) (Text with EEA relevance)

- Article 1 The reduction by two thirds of the tax that was...
- Article 2 The ceiling on the calculation base for the tax, set...
- Article 3 The aid that follows from the tax exemption under Section...
- Article 4 The aid that follows from the ceiling on the calculation...
- Article 5 The aid that follows from the ceiling on the calculation...
- Article 6 (1) Denmark shall recover the aid referred to in Article...
- Article 7 Recovery of the aid referred to in Article 4 shall...
- Article 8 (1) Within two months following notification of this Decision,
Denmark...
- Article 9 This Decision is addressed to the Kingdom of Denmark.
Signature

Changes to legislation: There are currently no known outstanding effects for the Commission Decision (EU) 2018/884. (See end of Document for details)

- (1) With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union ('TFEU'). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of 'Community' by 'Union', 'common market' by 'internal market' and 'Court of First Instance' by 'General Court'. The terminology of the TFEU will be used throughout this Decision.
- (2) The Commission's conclusion in this case was that the tax scheme did not constitute State aid.
- (3) Letter SG-Greffe (2012) D/5011.
- (4) [OJ C 114, 19.4.2012, p. 4.](#)
- (5) 'Public water utilities' refers to public or private systems that supply drinking water to at least ten properties.
- (6) Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the sector of agricultural production ([OJ L 337, 21.12.2007, p. 35](#)).
- (7) Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid ([OJ L 379, 28.12.2006, p. 5](#)).
- (8) [OJ C 82, 1.4.2008, p. 1.](#)
- (9) [OJ C 319, 27.12.2006, p. 1.](#)
- (10) [OJ C 16, 22.1.2009, p. 1.](#) In 2009 this framework was extended to apply to primary agricultural production as well ([OJ C 261, 31.10.2009, p. 2](#)) and then extended until the end of 2011 for all the sectors where it is applicable ([OJ C 6, 11.1.2011, p. 5](#)).
- (11) Judgment of the Court (Third Chamber) of 22 December 2008, *British Aggregates v Commission*, C-487/06 P, ECLI:EU:C:2008:757, paragraph 82.
- (12) Judgment of the Court (Fifth Chamber) of 8 November 2001, *Adria-Wien Pipeline GmbH and Wietersdorfer & Peggauer Zementwerke GmbH v Finanzlandesdirektion für Kärnten*, C-143/99, ECLI:EU:C:2001:598, paragraph 42; and Judgment of the Court (Third Chamber) of 8 September 2011, *European Commission v Kingdom of the Netherlands*, C-279/08, paragraph 62, ECLI:EU:C:2011:551.
- (13) The maximum volume of surface water that can be extracted annually is approximately 188 million m³, of which 13 million m³ can be used for primary production (approximately 500 holdings), which is predominantly used for irrigation. The largest permit in terms of irrigation was for 270 000 m³ per year in the period 2009-2011 and the largest in terms of livestock farming was for 511 000 m² per year.
- (14) Decision C(2003) 777 final COM amended (see Decision C(2003) 1224 final).
- (15) [OJ C 384, 10.12.1998, p. 3.](#)
- (16) Judgment of the Court (Sixth Chamber) of 24 October 1996, *Federal Republic of Germany, Hanseatische Industrie-Beteiligungen GmbH and Bremer Vulkan Verbund AG v Commission of the European Communities*, joined cases C-329/93, C-62/95 and C-63/95, ECLI:EU:C:1996:394.
- (17) [OJ C 105, 24.4.2010, p. 3.](#)
- (18) C(2009) 8093 final.
- (19) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the treaty on the functioning of the European Union ([OJ L 83, 27.3.1999, p. 1](#)). This Regulation was repealed by Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union ([OJ L 248, 24.9.2015, p. 9](#)).
- (20) The statistics on trade in the EU show that Danish imports of agricultural products in 2011 accounted for EUR 6,886 billion, while exports accounted for EUR 9,223 billion. In 2013 the figures were EUR 7,811 billion and EUR 9,408 billion, respectively. For beverages the figures were EUR 271,9 million and EUR 547,3 million, respectively.

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- (21) According to the case-law of the Court of Justice, the mere fact that an enterprise's competitive position is improved by gaining an advantage which it could not have gained under normal market conditions and which other competing enterprises do not have is sufficient to bring about a distortion of competition (Case 730/79, *Philip Morris Holland BV v Commission of the European Communities*, ECLI:EU:C:1980:209).
- (22) [OJ C 262, 19.7.2016, p. 1.](#)
- (23) See Judgment of the Court (Fifth Chamber) of 8 November 2001, *Adria-Wien Pipeline GmbH and Wietersdorfer & Peggauer Zementwerke GmbH v Finanzlandesdirektion für Kärnten*, C-143/99, ECLI:EU:C:2001:598 (footnote 13), paragraph 41; Judgment of the Court (Fifth Chamber) of 29 April 2004, *GIL Insurance Ltd and Others v Commissioners of Customs and Excise*, C-308/01, ECLI:EU:C:2004:252, paragraph 68; Judgment of the Court (Second Chamber) of 3 March 2005, *Wolfgang Heiser v Finanzamt Innsbruck*, C-172/03, ECLI:EU:C:2005:130, paragraph 40; and Judgment of the Court (Grand Chamber) of 6 September 2006, *Portuguese Republic v Commission*, C-88/03, ECLI:EU:C:2006:511, paragraph 54.
- (24) See in this context the Judgment of the Court (Grand Chamber) of 6 September 2006, *Portuguese Republic v Commission*, C-88/03, ECLI:EU:C:2006:511 (footnote 26).
- (25) See footnote 23.
- (26) Currently Article 107(1) TFEU.
- (27) Currently the internal market.
- (28) Judgment of the Court of Justice of 2 July 1974, *Italy v Commission*, C-173/73, ECLI:EU:C:1974:71, paragraph 17.
- (29) See point 733 of the Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 ([OJ C 204, 1.7.2014, p. 1.](#)).
- (30) [OJ C 319, 27.12.2006, p. 1.](#) The guidelines have since been extended until 30 June 2014 by the Commission communication of 20 November 2013 ([OJ C 339, 20.11.2013, p. 1.](#)).
- (31) [OJ C 82, 1.4.2008, p. 1.](#)
- (32) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ([OJ L 283, 31.10.2003, p. 51.](#)).
- (33) [OJ C 244, 1.10.2004, p. 2.](#)
- (34) Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) ([OJ L 214, 9.8.2008, p. 3.](#)).
- (35) Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001 ([OJ L 358, 16.12.2006, p. 3.](#)).
- (36) The maximum aid amount was set at EUR 15 000 per enterprise.
- (37) Judgment of the Court of 10 June 1993, *Commission v Hellenic Republic*, C-183/91, ECLI:EU:C:1993:233, paragraph 16.
- (38) Judgment of the Court of 4 April 1995, *Commission v Italian Republic*, C-348/93, ECLI:EU:C:1995:95, paragraph 27.
- (39) Judgment of the General Court (First Chamber, Extended Composition) of 22 April 2016, *Ireland and Aughinish Alumina Ltd v Commission*, Joined Cases T-50/06 RENV II and T-69/06 RENV II, ECLI:EU:T:2016:227, paragraph 230 [*sic*].
- (40) [OJ C 272, 15.11.2007, p. 4.](#)
- (41) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union ([OJ L 140, 30.4.2004, p. 1.](#)).
- (42) Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid ([OJ L 142, 14.5.1998, p. 1.](#)).

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