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PROPOSAL

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL IMPLEMENTING DECISION authorising Italy to apply, in determined geographical areas, reduced rates of taxation on gas oil and liquid petroleum gas used for heating purposes in accordance with Article 19 of Directive 2003/96/EC

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2019/0079 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Italy to apply, in determined geographical areas, reduced rates of taxation on gas oil and liquid petroleum gas used for heating purposes in accordance with Article 19 of Directive 2003/96/EC

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Taxation of energy products and electricity in the EU is governed by Council Directive 2003/96/EC ([1]) (hereafter referred to as the 'Energy Taxation Directive' or the 'Directive').

Pursuant to Article 19(1) of the Directive, in addition to the provisions foreseen in particular in the Articles 5, 15 and 17, the Council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce further exemptions or reductions in excise duties for specific policy considerations.

The objective of this proposal is to allow Italy to apply, in certain particularly disadvantaged areas, reduced rates of taxation to gas oil and liquefied petroleum gas (LPG) used for heating purposes to partially offset the high heating costs of residents in such geographical areas. The high heating costs are either due to very severe climate conditions or due to severe climate condition or insularity of such zones combined with difficult fuel procurement.

The tax reduction is applicable in geographical areas fulfilling the following criteria:

Under Article 8(10) of Italian Law No 448/1998, the advantage applies to supplies of the fuels in question (gas oil and LPG) used in municipalities:

- classified in climate zone F (most severe climate conditions within the Italian territory), as referred to in Presidential Decree No 412 of 26 August 1993;
- which do not have a gas supply network and are classified in climate zone E, as referred to in the abovementioned Presidential Decree 412/1993. In this case, as provided for in Article 8(10)(c) point 4) of Law No 448/1998, the advantage will be withdrawn as soon as the municipality becomes connected to the gas supply network.
- in the region of Sardinia and the smaller islands, as long as the natural gas network has not been made available in the concerned communes. This part of the regimes covers all Italian islands apart from Sicily.

• General context

By letter dated 31 October 2018, the Italian authorities requested authorisation to apply, in certain particularly disadvantaged geographical areas, reduced rates of taxation to gas oil and LPG used for heating purposes by way of a renewal of Council Implementing Decision 2014/695/EU of 24 September 2014 authorising Italy to apply, in the geographical area defined in article 8(10) of the Italian Law No 448/1998, reduced rates of taxation on gas oil and LPG used for heating purposes in accordance with Article 19 of Directive 2003/96/EC ([2]). This Decision authorised Italy to apply, until 31 December 2018, in those disadvantages areas reduced rates of excise duty on domestic fuel and LPG used for heating. In justification of its request for derogation, Italy points to its diversified territory with variable climate and geographical conditions. The national levels of excise duty on gas oil and LPG used for heating in Italy are relatively high. In order to avoid excessive burden on certain consumers particularly dependent on heating, Italy has introduced reduced rates of taxation in certain

([1]) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for taxation of energy products and electricity (OJ L 283, 31.10.2003 p. 51; Directive last amended by Directives 2004/74/EC and 2004/75/EC (OJ L 157,30.4.2004, p. 87 and p. 100).

([2]) OJ L 109, 19.4.2008, p. 27–29.

parts of its territory and would like to continue to apply reductions for the area covered by Article 8(10) of Italian Law No 448/1998. The number of municipalities lacking a methane network, which benefit from the tax scheme in question insofar as they fall within climate zone E, has been progressively and considerably reduced due to the completion of the process of creation of the methane network. They decreased from the original 608 to the current 260.

The proposed reductions are lower than the reductions provided for in the previous Decision. The tax reduction granted by Council Implementing Decision 2014/695/EU set the reduction at EUR 129.11 per 1 000 litres in case of gas oil (driving the applicable tax rate down to EUR 274.10 per 1 000 litres) and to EUR 159.07 per 1 000 kg of LPG (driving the applicable tax rate down to EUR 30.87 per 1 000 kg).

A reduction of 5.07% of the advantage was applied as from 11 December 2015 (in accordance with Article 2 of the Decree of the President of the Council of Ministers – DPCM - of 29 September 2015 in application of Article 1, paragraph 242, of Law No. 190 of 23 December 2014) and the tax reductions currently amount to EUR 122.56 per 1 000 litters for gas oil used as heating fuel (driving the applicable tax rate down to EUR 280.65 per 1 000 litres) and to EUR 151.01 per 1 000 kilograms for LPG used as heating fuel (driving the applicable tax rate down to EUR 38.93 per 1 000 kg).

By the requested authorisation Italy aims at further maintaining these current tax reductions in the designated geographical areas.

Thus, the tax reduction currently amounts, on average, to 9-10% of the price of gas oil used as heating fuel and to about 6% of the price of LPG used for the same purpose. In particular, at present, in climate zones E and F the tax reduction accounts for about 10% of the price of LPG and gas oil used as heating fuel.

The applicable tax rates are above the minimum levels of taxation prescribed by the Directive.

The tax advantage cannot be combined with other excise duty reductions.

According to the Italian authorities, the tax differentiation is based on objective criteria and intends to ensure geographical continuity with the rest of the Italian territory, i.e. it aims at putting the population of the eligible areas on more comparable footing with the rest of the Italian population by means of reducing their disproportionately high heating costs. The amount of the tax reduction is the same for all users; it only aims at partially alleviating the additional heating costs of the population of the eligible areas, which are due to cold climate or difficulties with fuel procurement.

According to the Italian Authorities, the additional transport costs in the mountainous regions are 140% higher for gas oil and LPG than in the rest of the country.

As far as the cost of road haulage is concerned, the type of vehicle makes the difference. In the case of mountain areas and for the smaller islands (where there are no storage facilities for oil products), LPG and gas oil for heating purposes are transported by lorries with trailer which, compared to road tractors with semi-trailer, involves an additional cost of 70-80%. The need to use such small trucks results from the characteristic of the roads that are not easy and from the reduced quantities of fuel supplies.

In addition, in the case of the islands, the cost of the ferry should be added. Such entry can affect dramatically the cost of transport, up to 4 times.

The specificity of the islands consists in the fact that due to their geographical particularities, the fuel supply is restricted in scope and as a result, it is more expensive than on the Italian mainland due to additional transport costs. The tax reduction does not result in overcompensation and does not drive the prices of LPG and gas oil below the price on the mainland. With regard to the application of the subsidy in the smaller islands, in the locations in question the logistics chain is inevitably more expensive than that in mainland Italy. The higher costs are the result of a lack of primary logistics, which gives rise to higher distribution costs. Higher costs are also due to often problematic road access, higher motor fuel costs than those on the mainland and the transportation costs for accessing the smaller islands and the limited quantities of individual supplies. The Italian authorities have estimated these higher costs as being approximately 10 –15 % higher than the corresponding costs in mainland Italy.

The Italian authorities explain that during the last years the measure has reduced the end purchase price of LPG and gas oil used for heating by approximately 10 %.

With regard to the progress of the national natural gas distribution network, the Italian authorities note that the process for the creation of a methane gas distribution's network on the Italian territory can be considered generally concluded. However, on account of the diversity of the Italian territory, which is characterized by a particularly varied physical geography, this process remains particularly problematic, or even in some cases unfeasible in some parts of the territory, also in relation to the costs related thereto. In this respect the Sardinia region, the small islands and a number of municipalities located in typically mountainous areas still have no access to methane, and in some cases never will.

The annual budgetary expenditure of the measure is around EUR 230 million.

- **Existing provisions in the area of the proposal**

Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity and Council Decision 2014/695/EU of 29 September 2014 authorising Italy to apply, in determined geographical areas, reduced rates of taxation on gas oil and LPG used for heating purposes in accordance with Article 19 of Directive 2003/96/EC.

- **Consistency with the other policies and objectives of the Union**

Each request for derogation under Article 19 of the Energy Taxation Directive must be examined by the Commission taking into account the proper functioning of the internal market, the need to ensure fair competition and EU health, environment, energy and transport policies.

The tax differentiation partially alleviates the additional heating costs incurred by citizens in certain geographical areas of Italy that are particularly disadvantaged compared to the rest of the territory and for which, therefore, the standard tax rate applicable to LPG and gas oils used for heating purposes would result in an excessive tax burden. The geographical disadvantage translates into additional heating costs which are due to severe climate conditions or insularity of such zones, combined with unavailability of alternative heating resources, in particular unavailability of access to the natural gas network.

The reduced rate of taxation both for gas oil and LPG remains higher than the EU minimum levels of taxation set out in the Energy Taxation Directive and it only partially alleviates the additional heating costs incurred in the geographical areas in question.

It can be thus considered that the reduction is compatible with the goal of providing a tax incentive for the purpose of energy efficiency. The measure has not been found to be incompatible with the relevant EU policies on the environment and energy.

Furthermore, the measure is acceptable from the point of view of the proper functioning of the internal market and the need to ensure fair competition. It merely seeks to partially offset the additional heating costs associated with the objective conditions of the areas in question. The tax reduction is not cumulative with any other sorts of tax reduction and it does not apply to other use of the heating fuels then space heating.

Article 19(2) of Directive 2003/96/EC lays down, for this type of measure, a maximum period of six years, with the possibility of renewal. Taking into account the absence of any negative impact of the current arrangement on intra-EU trade and on the general level of taxation of fuels in Italy, in order to ensure legal certainty for the regions, the Commission suggests at this stage to grant the authorisation for six years, i.e. from 1 January 2019 until 31 December 2024.

However, in order not to undermine future general developments of the existing legal framework, it is appropriate to provide that, should the Council, acting on the basis of Article 113 of the Treaty, introduce a modified general system for the taxation of energy products to which the present authorisation would not be adapted, this Decision shall expire on the day on which those modified rules become applicable.

Should the Council adopt such a new system and should the Commission consider that the authorisation proposed herewith is still warranted, it would examine, positively and in a timely manner, any request from Italy for a similar authorisation adapted to that new system, so as to provide for the continuity of the present proposal.

- **State aid rules**

The measure may constitute State aid in accordance with Article 107(1) of the TFEU. Since the reduced rates are above the EU minima, the measure would be covered by Article 44 of Regulation 651/2014/EU (the General Block Exemption Regulation) and would thus be considered compatible with the internal market. Upon expiry of the period of validity of the General Block Exemption Regulation on 31 December 2020 the aid remains exempted during an adjustment period of six months (see Article 58(4) of the General Block Exemption Regulation). The decision is without prejudice to the applicable State aid rules during the period covered by the derogation.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 19 of Council Directive 2003/96/EC.

- **Principle of subsidiarity**

The field of indirect taxation covered by Article 113 of the TFEU is not in itself within the exclusive competence of the EU within the meaning of Article 3 of the Treaty.

However, pursuant to Article 19 of Directive 2003/96/EC, the Council has been granted an exclusive competence, as a matter of secondary law, to authorise a Member State to introduce further exemptions or reductions within the meaning of that provision. Member States cannot

therefore substitute themselves for the Council. As a result, the principle of subsidiarity is not applicable to the present implementing decision. In any event, since this act is not a draft legislative act, it should not be transmitted to national Parliaments pursuant to Protocol No 2 to the Treaties for review of compliance with the subsidiarity principle.

- **Principle of proportionality**

The proposal respects the principle of proportionality. The tax reduction does not exceed what is necessary to attain the objectives in question. The tax reductions are applicable in determined geographical areas. The authorised tax rates are above the minimum levels of taxation prescribed by Directive.

- **Choice of instrument**

Instrument proposed: Council implementing decision.

Article 19 of Directive 2003/96/EC makes provision for this type of measure only.

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

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

The measure does not require the evaluation of existing legislation.

- **Consultation of interested parties**

The proposal consists of a tax reduction which concerns only Italy.

- **Obtaining and using expertise**

No external expertise has been used.

- **Impact assessment**

No impact assessment has been carried out.

- **Fundamental rights**

The measure has no bearing on fundamental rights.

4. BUDGETARY IMPLICATIONS

The measure does not impose any financial and administrative burden on the Union, The proposal therefore has no impact on the Union budget.

5. OTHER ELEMENTS

Implementation plans and monitoring, evaluation and reporting arrangements.

An implementation plan is not necessary. This proposal concerns an authorisation for a tax reduction for an individual Member State upon its own request. It is provided for a limited period of six years. The tax rate that will apply will be higher than the minimum level of taxation set by the Energy Taxation Directive. The measure can be evaluated in case of a request for a renewal after the six-year period has expired.

- **Summary of the measure proposed**

The Commission proposes to authorise the tax reduction amounting to EUR 122.56 per 1 000 litres in the case of gas oil and to EUR 151.01 per 1 000 kg of LPG. The applicable taxable

rates are- EUR 280.65 per 1 000 litres for gas oil used as heating fuel respectively EUR 38.93 per 1 000 kg for LPG used as heating fuel. The applicable tax rates are above the minimum levels of taxation prescribed by Directive 2003/96/EC.

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authorising Italy to apply, in determined geographical areas, reduced rates of taxation on gas oil and liquid petroleum gas used for heating purposes in accordance with Article 19 of Directive 2003/96/EC

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity[3] and in particular Article 19(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Pursuant to Article 19(1) of Directive 2003/96/EC, Italy was authorised to apply in certain particularly disadvantages areas reduced rates of excise duty on gas oil and liquid petroleum gas (LPG) used for heating. The latest authorisation was granted until 31 December 2018 by Council Implementing Decision 2014/695/EU[4].

(2) By letter dated 31 October 2018 the Italian authorities requested authorisation to apply in certain particularly disadvantaged geographical areas, reduced rates of taxation on gas oil and LPG used for heating purposes by way of extension of a practice followed under the Decision 2014/695/EU in some areas, and this before it has expired. Additional information and clarifications were provided by the Italian authorities on 14 December 2018. The Italian authorities requested the authorisation for the period from 1 January 2019 to 31 December 2024.

(3) Italy has very diversified territory with variable climate and geographical conditions. Taking into account the particularities of its territory, Italy has introduced reduced rates of taxation on gas oil and LPG with the purpose of partially offsetting the disproportionately high heating costs for residents in certain geographical areas.

(4) The tax differentiation is based on objective criteria and aims at putting the population of the eligible areas on more comparable footing with the rest of the population of Italy by means of reducing their disproportionately high heating costs, which are due to severe climate conditions or difficulties with fuel procurement in comparison with the rest of the Italian territory.

(5) The reduced rates of taxation are applicable in geographical areas fulfilling one of the following criteria: (a) most severe climate conditions within the Italian territory (communes falling into zone F as defined in the Presidential decree No 412 of 26

([3]) OJ L 283, 31.10.2003, p. 51.

([4]) Council Implementing Decision 2014/695/EU of 29 September 2014 authorising Italy to apply, in determined geographical areas, reduced rates of taxation on gas oil and LPG used for heating purposes in accordance with Article 19 of Directive 2003/96/EC (OJ L 291, 7.10.2014, p. 16).

August 1993 [5]), (b) severe climate conditions combined with difficulties with fuel procurement, (communes falling into zone E as defined in the Presidential decree No 412 of 26 August 1993 as long as the natural gas network has not been made available in the concerned communes); and (c) geographical isolation combined with difficult and costly fuel procurement: Sardinia and small islands as long as the natural gas network has not been made available in the concerned communes. The application of the reduced rates of taxation should only be applied until the completion of the natural gas network in the communes concerned.

(6) The requested measure has been reviewed by the Commission and been found not to distort competition or hinder the operation of the internal market and it is not considered incompatible with EU's policy on the environment, energy and transport. The reduced rate of taxation both for gas oil and LPG would remain higher than the EU minimum levels of taxation set out in Directive 2003/96/EC and would only partially alleviate the additional heating costs incurred in the geographical areas in question.

(7) Italy should therefore be authorised, pursuant to Article 19(2) of Directive 2003/96/EC, to apply, in determined geographical areas reduced rates of taxation of gas oil and LPG used for heating purposes until 31 December 2024.

(8) It follows from Article 19(2) of Directive 2003/96/EC that each authorisation granted under that Article must be strictly limited in time.

(9) In order to provide the regions concerned with a sufficient degree of certainty, the authorisation should be granted for a period of six years. However, in order not to undermine future general developments of the existing legal framework, it is appropriate to provide that, should the Council, acting on the basis of Article 113 of the Treaty, introduce a modified general system for the taxation of energy products to which this authorisation would not be adapted, this Decision expires on the day on which the rules on that modified system become applicable.

(10) In order to ensure that the measure would apply without interruption in respect of the authorisation to apply reduced rates of excise duties granted by Decision 2014/695/EU, which expired on 31 December 2018, it would be appropriate that this Decision applies from 1 January 2019.

(11) This Decision is without prejudice to the application of the Union rules regarding State aid,

HAS ADOPTED THIS DECISION:

Article 1

1. Italy is authorised to apply reduced rates of taxation to gas oil and LPG used for heating purposes in the following disadvantaged geographical areas:

(a) communes falling in the climate zone F as established by the Presidential Decree of 26 August 1993 No 412;

(b) communes falling in the climate zone E as established by the Presidential Decree of 26 August 1993 No 412;

([5]) The Presidential decree No 412 of 26 August 1993 divides the Italian territory into six climate zones (A to F). The classification is based on the unit ‘degree per day’ which represents the amount of days per year in which the outside temperature differs from the optimum 20 C° and thus heating is needed.

(c) communes of Sardinia and small islands, that is all Italian islands, except Sicily.

2. In order to avoid any overcompensation, the reduction shall not go beyond the additional costs of heating in the areas in question. In the particular case of Sardinia and small islands, as a consequence, the tax reduction must not drive the price below the price of the same fuel on the Italian mainland.

3. The reduced rate shall comply with the requirements set out in Directive 2003/96/EC, and in particular with the minimum levels of taxation laid down in Article 9 of that Directive.

Article 2

The eligibility of the geographical areas referred to in points (b) and (c) of Article 1(1) shall be subject to the non-availability of the natural gas network in the concerned commune.

Article 3

This Decision shall apply from 1 January 2019 until 31 December 2024.

However, should the Council, acting on the basis of Article 113 of the Treaty, introduce a modified general system for the taxation of energy products to which the authorisation granted in Article 1 of this Decision would not be adapted, this Decision shall expire on the day on which the rules on that modified system become applicable.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels,

For the Council
The President