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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 Union is governed by Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity¹ (the ‘Energy Taxation Directive’ or the ‘Directive’).

Pursuant to Article 19(1) of the Directive, in addition to the provisions laid down in particular in its 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 the level of taxation for specific policy considerations.

By virtue of Council Implementing Decision (EU) 2019/814 of 17 May 2019², Italy has already been authorised to apply, in certain particularly disadvantaged geographical areas, reduced rates of taxation on gas oil and liquid petroleum gas (LPG) used for heating purposes to partially offset the high heating costs of residents in such geographical areas.

The objective of this proposal is to extend that authorisation as requested by Italy, given that the current derogation will expire on 31 December 2024.

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 In this case, as provided for in Article 8(10)(c) point 4) of Law No 448/1998, the advantage will be withdrawn as soon as a municipality becomes connected to the gas supply network³. • 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.

By letter dated 24 April 2024, the Italian authorities informed the Commission of their intention to prolong the current measure until 31 December 2030. The Italian authorities provided additional information by letters dated 12 September and 21 November 2024.

The period of validity initially requested was from 1 January 2025 until 31 December 2030, which is within the maximum period allowed by Article 19 of the Energy Taxation Directive. Following discussions between the Italian authorities and the Commission, in particular in

¹ OJ L 283, 31.10.2003, p. 51–70.

² OJ L 133, 21.5.2019, p. 20–22.

³ The number of communes lacking a gas distribution network that fall into climate zone E has already been considerably reduced (from 608 to 260 communes) as the natural gas network has been extended but this process can be considered to be largely completed as further extension is proving to be particularly difficult or unfeasible in certain parts of the territory, also in relation to the costs involved.

view of the proposed revision of Directive 2003/96/EC⁴, an earlier termination date of 31 December 2028 was agreed.

The requested reductions are the same as the reductions provided for in the previous Decision and amount to EUR 122.56 per 1 000 litres for gas oil used as heating fuel and to EUR 151.01 per 1 000 kilograms for LPG used as heating fuel⁵. 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.

In addition, 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 noted that on average from 2019 to 2023 the tax reduction equated to 9% of the price of gas oil used for heating purposes and 13% of the price of LPG used for the same purpose.

As for the additional transport costs borne in the disadvantaged areas covered by the measure (mountainous areas, Sardinia and small islands) relative to other parts of the country, it is estimated that transport costs are around 120% higher than in other parts of Italy. This is because longer (and more complicated) routes are used to reach more remote areas and, in addition, smaller means of transport need to be used. The figure given above is an average that also takes account of the potential additional costs of supplying Sardinia and the small islands by ship.

In the areas eligible for the reduction, expenditure on LPG used for heating is estimated to be around 90% higher in climate zone E and 170% higher in climate zone F.

Considering all these factors, in climate zones E and F and in Sardinia and on the small islands, the cost of gas oil and LPG used for heating is currently 10% lower on average than it would be without the reduction.

⁴ COM/2021/563 final: Proposal for a COUNCIL DIRECTIVE restructuring the Union framework for the taxation of energy products and electricity (recast).

⁵ The standard rate of excise duty currently applicable is EUR 0.40321391 per litre for gas oil and EUR 0.18994458 per kilogram for LPG

As regards the number of beneficiaries of the measure, the number of potential beneficiaries is currently estimated to be 3,961,546 households.

The annual budgetary expenditure of the measure is around EUR 142.8 million.

- **Provisions under the Energy Taxation Directive**

Article 19(1), first subparagraph, of the Directive reads as follows:

In addition to the provisions set out in the previous Articles, in particular in 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 for specific policy considerations.

The possibility to introduce a favourable tax treatment to gas oil and LPG used for heating purposes in some disadvantaged geographical areas can be envisaged under Article 19 of the Directive since its purpose is to allow Member States to introduce further exemption or reductions for specific policy considerations.

Italy has requested that the measure should apply for the maximum period allowed by Article 19(2) of the Directive, i.e. 6 years (from 1 January 2025 to 31 December 2030). In principle, the period of application of the derogation should be long enough to provide the geographical areas concerned with a sufficient degree of certainty.

Following discussions between the Italian authorities and the Commission, in particular in view of the proposed revision of Directive 2003/96/EC, an earlier termination date of 31 December 2028 was agreed. Considering the likely absence of 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 geographical areas concerned, the Commission suggests granting the requested authorisation for four years, i.e. from 1 January 2025 until 31 December 2028. Moreover, 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 on the Functioning of the European Union, or any other relevant provision 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.

Under these circumstances, it appears appropriate to grant the authorisation for the above-mentioned period.

- **Consistency with other Union policies**

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 rates applicable to LPG and gas oil

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 rates 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 than space heating.

- **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 seems to fall under Article 44 of Commission Regulation (EU) 651/2014, which stipulates the conditions under which aid in the form of reductions in taxes under Directive 2003/96/EC can be exempted from the State aid notification requirements. However, it cannot be established at this stage whether all the conditions set in this Regulation are fulfilled and the proposal for a Council implementing decision does not prejudice the Member State's obligation to ensure compliance with State aid rules, in particular, in case of exempted aid, falling under Commission Regulation (EU) 651/2014. The proposal for a Council implementing decision is also without prejudice to the Member State's obligation to notify the aid to the Commission before putting it into effect, pursuant to Article 108(3) of TFEU, should the new aid not be covered by a block exemption.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 19 of Council Directive 2003/96/EC.

- **Subsidiarity (for non-exclusive competence)**

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

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.

- **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 the instrument**

The instrument proposed is a 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.

- **Stakeholder consultations**

This proposal is based on a request made by Italy and concerns only this Member State. Therefore, no stakeholder consultation has been conducted.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

No impact assessment has been carried out.

- **Regulatory fitness and simplification**

The measure does not provide for a simplification. It is the result of the request made by Italy and concerns only this Member State.

- **Fundamental rights**

The measure has no bearing on fundamental rights.

4. BUDGETARY IMPLICATIONS

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

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 until 31 December 2028. The tax rates that will apply will have to be in accordance with the minimum levels of taxation set by the Energy Taxation Directive. The measure can be evaluated in case of a request for a renewal after the validity period has expired.

- **Explanatory documents (for directives)**

The proposal does not require explanatory documents on the transposition.

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

Article 1 provides that Italy will be allowed to apply reduced rates of taxation to gas oil and LPG used for heating purposes in certain disadvantaged geographical areas. The tax rates must be in line with the minimum levels of taxation set by the Directive.

Article 2 establishes that the eligibility of some of the geographical areas concerned shall be subject to the non-availability of the natural gas network in the communes concerned.

Article 3 provides that the authorisation requested is granted with effect from 1 January 2025, in continuity with the current Council Implementing Decision 2019/814, until 31 December 2028, within the maximum period allowed by the Directive.

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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

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 electricity⁶, and in particular Article 19(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By Council Implementing Decision (EU) 2019/814⁷ Italy was authorised to apply in certain particularly disadvantaged geographical areas reduced rates of excise duty on gas oil and liquid petroleum gas (LPG) used for heating. The authorisation was granted until 31 December 2024.
- (2) By letter of 24 April 2024, Italy sought authorisation to continue to apply in certain particularly disadvantaged geographical areas reduced rates of excise duty on gas oil and LPG used for heating. The Italian authorities provided additional information by letters dated 12 September 2024 and 21 November 2024. The authorisation concerns the period from 1 January 2025 to 31 December 2028.
- (3) Italy has a very diverse 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 a more comparable economic 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 increased costs of fuel purchases 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, that is, communes situated in zone F as defined in the Presidential Decree No 412 of 26

⁶ OJ L 283, 31.10.2003, p. 51 (ELI: <http://data.europa.eu/eli/dir/2003/96/oj>).

⁷ Council Implementing Decision (EU) 2019/814 of 17 May 2019 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 (OJ L 133, 21.5.2019, p. 20, ELI: http://data.europa.eu/eli/dec_impl/2019/814/oj).

August 1993⁸; (b) severe climate conditions combined with difficulties with fuel procurement, that is, communes situated in zone E as defined in the Presidential decree No 412 of 26 August 1993; and (c) geographical isolation combined with difficult and costly fuel procurement, that is, Sardinia and small islands. 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 Union policy on the environment, energy and transport. The reduced rates of taxation both for gas oil and LPG would remain higher than the Union 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 concerned.
- (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.
- (8) It should be ensured that Italy can apply the specific reduction to which this Decision relates from 1 January 2025, following seamlessly on from the prior arrangements under Implementing Decision 2019/814. The authorisation requested should therefore be granted with effect from 1 January 2025.
- (9) In accordance with Article 19(2) of Directive 2003/96/EC, each authorisation granted under that provision is to be limited in time.
- (10) In order to provide the geographical areas concerned with a sufficient degree of certainty, the authorisation should be granted for a period of four 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 or any other relevant provision of the Treaty on the Functioning of the European Union, introduce a modified general system for the taxation of energy products to which this authorisation would not be adapted, this Decision should expire on the date on which that system becomes applicable.
- (11) This Decision is without prejudice to the application of 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 situated in the climate zone F as established by the Presidential Decree No 412 of 26 August 1993;
- (b) communes situated in the climate zone E as established by the Presidential Decree No 412 of 26 August 1993;

⁸ 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 situated on the island 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 concerned. In the particular case of the areas covered by paragraph 1, point (c), the tax reduction shall not drive the price below the price of the same fuel on the Italian mainland.

3. The reduced rates 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 Article 1(1), points (b) and (c), shall be subject to the non-availability of the natural gas network in the communes concerned.

Article 3

This Decision shall apply from 1 January 2025 until 31 December 2028.

However, should the Council, acting on the basis of Article 113 or any other relevant provision of the Treaty on the Functioning of the European Union, 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 that system becomes applicable.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels,

For the Council
The President