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2021/0276 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

authorising Italy to apply reduced rates of excise duty to gas oil used for heating purposes supplied in the municipality of Campione d'Italia and to electricity supplied in that municipality 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 electricity[1] (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.

The Italian municipality of Campione d'Italia constitutes an exclave of Italy in Switzerland with a very limited geographical scope and a small population[2]. Its territory, which partly borders Lake Lugano, is entirely surrounded by the Swiss Canton of Ticino.

That exclave has a steep orographic structure which limits its urbanisation and, overall, accessibility, making the establishment of industrial activities more difficult.

Additionally, Campione d'Italia is experiencing a serious economic crisis (further aggravated by the COVID-19 pandemic) caused by the closure of its casino, on which its economy was almost entirely based.

Moreover, the entry of the municipality of Campione d'Italia into the Union customs territory on 1 January 2020[3] further led to an increase in the costs of energy products (such as electricity and gas oil used as fuel for heating purposes)[4].

According to the Italian authorities, the particular geographical situation of the municipality of Campione d'Italia, coupled with the absence of a gas supply network and severe climatic conditions lead to higher energy costs, whether they come from Switzerland or from the nearest Italian province. In particular, the minimum road distance required for the supply of heating oil from Italy is approximately 30 km (distance between Campione and Como). Additionally, the need to accomplish customs formalities for crossing the Italian and Swiss border, is a strong disincentive for Italian economic operators to carry out those operations, besides constituting an additional cost.

By letter dated 7 August 2020, the Italian authorities requested authorisation to apply reduced rates of excise duty to gas oil used for heating purposes and to electricity, supplied in the territory of the municipality of Campione d'Italia. In justification of its request for derogation, Italy points out the unique situation of Campione d'Italia described above.

The proposed rates are, for electricity, EUR 0.0005 per kWh, for its use in premises and places other than households, and EUR 0.001 per kWh, for its use in households, which corresponds to 4% of the national excise duty but equal to the respective minimum rates

[1] OJ L 283, 31.10.2003, p. 51–70.

[2] Approximately 2.6 km², comprising 0.9 km2 of land and 1.7 km2 of lake, and a resident population on 1 January 2019 of 1,961.

[3] This new customs and tax status of Campione d'Italia was laid down in Regulation (EU) 2019/474 of the European Parliament and of the Council of 19 March 2019 and Council Directive (EU) 2019/475 of 18 February 2019.

[4] The cost of energy for users located in Campione d'Italia steeply increased by almost 18% for electricity and 22% for gas oil since the entry into the Union customs territory on 1 January 2020 (due to excise duty and VAT).

provided for by the Energy Taxation Directive. For gas oil used as heating fuel, the proposed rate is EUR 201.50 per 1 000 litres, corresponding to 50% of the rate applied at national level, but above the minimum rate set out by the Energy Taxation Directive.

In this way, indirect taxes applied to these energy products consumed in Campione d'Italia would be broadly the same as that applied in Switzerland[5].

By the requested authorisation, Italy aims to mitigate the high energy costs for households and businesses supplied in that area since those energy products are used for heating (gas oil) and to meet all normal daily needs associated with the consumption of electricity (lighting, operation of household appliances, heating and cooling etc.).

This tax advantage would allow to alleviate the additional heating costs of the population of Campione d'Italia, which are due to cold climate, difficulties with fuel procurement and specific compliance cost.

Hence, this measure appears to be an appropriate instrument to remedy to the specific situation of the Italian municipality.

The requested period of validity is six years, starting from 1 July 2021 until 30 June 2027, which is within the maximum period allowed by Article 19 of the Energy Taxation Directive.

The tax advantage cannot be combined with other excise duty reductions. It would be reserved for consumption in the municipality of Campione d'Italia.

The annual budgetary expenditure is estimated at EUR 0.105 million.

- **Consistency with existing policy provisions in the policy area**

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.

By means of the tax reduction in question, the Italian authorities pursue the objective to reduce the social and economic effects of the crisis affecting the population of Campione d'Italia by mitigating the impact of the higher cost of purchasing heating oil and electricity.

The possibility to introduce a favourable tax treatment to certain energy products and electricity supplied in the Italian municipality of Campione d'Italia 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.

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 and electricity in Italy, the Commission suggests at this stage to grant the authorisation requested by Italy for six years, i.e. from 1 July 2021 until 30 June 2027. However, the derogation should not undermine future developments of the existing legal framework and

[5] Electricity and gas oil would still be between 7 and 8% more expensive.

should take into account the upcoming revision of the Energy Taxation Directive and a possible adoption by the Council of a legal act based on a Commission proposal for amendment of the Energy Taxation Directive. Such review follows the evaluation of the Energy Taxation Directive[6] and the Council Conclusions on the EU energy taxation framework from 28 November 2019[7]. In its Conclusions, the Council invited the Commission to analyse and evaluate possible options with a view to publishing in due course a proposal for the revision of the Energy Taxation Directive. It also called on the Commission to give particular consideration to the scope of the Directive, to minimum rates and to specific tax reductions and exemptions.

Under these circumstances, while it appears appropriate to grant the authorisation for the requested period, the validity of the derogation should be made subject to the entry into application of general provisions in the matter at a point in time earlier than the end of June 2027.

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). Upon expiry of the period of validity of the General Block Exemption Regulation on 31 December 2023 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.

- **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 costs of purchasing heating oil and electricity in the municipality of Campione d’Italia that is particularly disadvantaged compared to the rest of Italy and for which the standard tax rate would result in an excessive tax burden. Indeed, the particular geographical situation coupled with unavailability of access to the natural gas network and severe climatic conditions translates into higher costs of supplying energy products.

The reduced rates of taxation for both heating oil and electricity would allow households and businesses in Campione d’Italia to avoid an increase in the costs of the energy products. It remains equal or higher than the EU minimum levels of taxation set out in the Energy Taxation Directive.

The measure has not been found to be incompatible with the relevant EU policies on the 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. Given its limited territorial and

[6] SWD(2019) 329 final.
[7] Council conclusions of 28 November 2019, 14608/19, FISC 458.

financial effects, the measure does not distort competition or hinder the functioning of the internal market.

Finally, the tax reduction is not cumulative with any other sorts of tax reduction.

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 reductions do not exceed what is necessary to attain the objective in question. The tax reductions are applicable in a very limited geographical area. The authorised tax rates are equal or 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.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal concerns an authorisation for an individual Member State upon its own request and does not require an impact assessment.

- **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 30 June 2027. The applicable tax rates will be equal or 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 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**

The tax rates will be, for electricity, EUR 0.0005 per kWh, for its use in premises and places other than households, and EUR 0.001 per kWh, for its use in households, which correspond to the respective minimum rates provided for by the Energy Taxation Directive. For gas oil used as heating fuel, the proposed rate is EUR 201.50 per 1 000 litres, corresponding to 50% of the rate applied at national level, but above the minimum rate set out by the Energy Taxation Directive.

Article 1 stipulates that Italy will be allowed to apply reduced taxation rates to gas oil used for heating purposes supplied in the municipality of Campione d'Italia and to electricity supplied in that municipality.

Article 2 stipulates that the authorisation requested is granted with effect from 1 July 2021, until 30 June 2027, as requested by Italy, within the maximum period of 6 years allowed by the Directive.

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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[8], and in particular Article 19 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By letter of 7 August 2020, Italy requested authorisation to apply reduced rates of excise duty to gas oil used for heating purposes and to electricity, supplied in the municipality of Campione d'Italia pursuant to Article 19 of Directive 2003/96/EC. Additional information and clarifications in support of the request were provided by the Italian authorities on 19 January 2021. The authorisation was requested for the period from 1 July 2021 to 30 June 2027.

(2) The municipality of Campione d'Italia constitutes an exclave of Italy in Switzerland with a very limited geographical scope and a small population. The area is mountainous, which limits urban development, industrial activities and its overall accessibility. Given its geographical location, its lack of access to the natural gas network and its severe climatic conditions, the costs of supplying energy products to Campione d’Italia are high, whether they are supplied from Switzerland or from Italy. Moreover, the entry of Campione d’Italia into the Union customs territory on 1 January 2020 led to an increase in the energy costs for households and businesses.

(3) The excise duty differentiation aims to mitigate the high energy costs.

(4) The requested measure has been reviewed by the Commission and been found not to distort competition or hinder the proper functioning of the internal market and it cannot be considered incompatible with the Union’s 's policy on the environment, energy and transport. The reduced excise duty rates for both gas oil and electricity would remain equal to or higher than the minimum levels of taxation set out in Directive 2003/96/EC and would partially offset the increased energy costs in the municipality. The tax reduction is not cumulative with any other sorts of tax reduction.

(5) Italy should therefore be authorised to apply, in the municipality of Campione d'Italia, reduced taxation rates to electricity and gas oil used for heating purposes.

[8] OJ L 283, 31.10.2003, p. 51.

(6) Each authorisation granted under Article 19(2) of Directive 2003/96/EC is to be strictly limited in time. In order to provide the municipality of Campione d'Italia 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 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 authorisation should cease to apply on the day on which those general rules become applicable.

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

HAS ADOPTED THIS DECISION:

Article 1

Italy is authorised to apply reduced rates of excise duty to gas oil used for heating purposes supplied in the municipality of Campione d'Italia and to electricity supplied in that municipality, provided that the minimum levels of taxation referred to in Articles 9 and 10 of Directive 2003/96/EC are respected.

Article 2

This Decision shall apply from 1 July 2021 until 30 June 2027.

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 those general rules become applicable.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels,

For the Council
The President