EUROPEAN
COMMISSION

Brussels, 27.6.2014
COM(2014) 395 final

2014/0200 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds 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 off-set 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.

- **General context**

By letter dated 31 May 2012, 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 Decision 2008/318/EC of 7 April 2008 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 ([2]). This Decision authorised Italy to apply, until 31 December 2012, in certain particularly disadvantages areas reduced rates of excise duty on domestic fuel and LPG used for heating. In addition the Italian authorities have included in its request an extension of the scope of the authorisation to municipalities which are part of provinces where over 70 % of the municipalities are classified in climate zone F but they themselves do not fall within climate zone F. Additional information and clarifications were provided by the Italian authorities on 4 December 2012, 16 July 2013, 31 December 2013, 22 January 2014. With letter dated 19 March 2014 the Italian authorities informed the Commission that they request a renewal of the authorisation granted by Council Decision 2008/318/EC for a new period of six years without adding to the list new municipalities as initially requested.

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 parts of its territory and would like to continue to apply the same reduction as introduced in 2006. The tax reduction amounts to EUR 129.11 per 1 000 litres in the 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). The applicable tax rates are above the minimum levels of taxation prescribed by the Directive.

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

([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.

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, 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 commune concerned; this part of the regimes covers all Italian islands apart from Sicily.

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 is only aimed 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 costs for mountainous regions for transport of LPG are 120 % higher than the rest of the country and for gas oil 132 % higher.

According to the Italian authorities, for climate zones E and F, the tax reduction equals on average to 11 – 12 % of the price of gas oil and LPG for heating purposes.

These figures have to be compared with the average heating costs: these are, due to climate conditions, by 90 % higher than the national average in climate zone E and by 170 % higher than the national average in climate zone F.

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

The Italian authorities explain that there is no development of natural gas network in those areas which is an additional disadvantage for these mountain communes, Sardinia and the small islands.

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 2008/318/EC of 7 April 2008 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 the Energy Tax Directive further provides that measures adopted under its provisions must be limited in time, and sets a maximum period of six years, with a possibility of renewal. The Commission's understanding is that as this is a tax measure of temporary nature its prolongation should provide Italy with sufficient time to make an assessment of the environmental effect of the measure but also to put in place incentives to improve energy efficiency and evaluate those. The prolongation of the measure should provide the Italian authorities with enough time to collect the information necessary for such an assessment. It will also give the signal that in the future the focus would be on more targeted energy saving measures in order to improve energy efficiency and have a positive effect on the environment. For these reasons at the present stage, it appears appropriate to grant the authorisation for three years.

State aid rules

The reduced tax rates of EUR 274.10 per 1 000 l for gas oil and EUR 30.87 per 1 000 kg for LPG used for heating envisaged by the Italian authorities are above the EU minimum levels of taxation pursuant to Article 9 of Directive 2003/96/EC. The measure is therefore covered by

Article 25 of Regulation 800/2008/EC ([3]) (the 'General Block Exemption Regulation') and would thus be considered compatible with the internal market and exempted from the notification requirement. The period of validity of the General Block Exemption Regulation was originally limited to 31 December 2013 but it was extended by Commission Regulation 1224/2013/EU ([4]) to 30 June 2014. In case new State aid rules are adopted by the Commission prior to the Council's decision on this proposal the notification obligations will need to be reassessed under the new rules.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

- **Consultation of interested parties**

This proposal concerns only Italy.

- **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.

3. LEGAL ELEMENTS OF THE PROPOSAL

The proposal aims at authorising Italy to derogate from the general provisions of Council Directive 2003/96/EC and to apply a reduced rate of taxation to gas oil and LPG used for heating purposes.

Legal basis

Article 19 of Council Directive 2003/96/EC.

Subsidiarity principle

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

However, the exercise by Member States of their competences in this field is strictly circumscribed and limited by existing EU law. Pursuant to Article 19 of Directive 2003/96/EC, only the Council is empowered to authorise a Member State to introduce further exemptions or reductions within the meaning of that provision. Member States cannot substitute themselves for the Council.

The proposal therefore respects the principle of subsidiarity.

Proportionality principle

The proposal respects the principle of proportionality. The tax reduction does not exceed what is necessary to attain the objective in question (cf. the considerations on the internal market and fair competition aspects, above).

([3]) Commission Regulation (EC) No 800/2008/EC of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty, OJ L 214, 9.8.2008, p. 3.

([4]) OJ L 320, 30.11.2013.

Choice of instruments

Instrument(s) proposed: Council Implementing Decision.

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

4. BUDGETARY IMPLICATION

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.

2014/0200 (NLE)

Proposal for a

COUNCIL IMPLEMENTING DECISION

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

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 ([5]) 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 LPG used for heating. The authorisation was granted until 31 December 2012 by Council Decision 2008/318/EC of 7 April 2008 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 ([6]).

(2) By letter dated 31 May 2012 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 above-mentioned Council Decision in some areas, and this before it has expired. Additional information and clarifications were provided by the Italian authorities on 4 December 2012, 16 July 2013, 31 December 2013 and 22 January 2014. By letter dated 19 March 2014 the Italian authorities requested a renewal of the authorisation granted by Council Decision 2008/318/EC without changes in its territorial scope. The authorisation was requested for the period from 1 January 2013 to 31 December 2018.

(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 to 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 Italian population by means of reducing their disproportionately high heating costs which are due to

([5]) OJ L 283, 31.10.2003, p. 51, Directive as last amended by Directive 2004/75/EC (OJ L 157, 30.4.2004, p. 100).

([6]) OJ L 109, 19.4.2008, p. 27–29.

severe climate conditions or difficulties with fuel procurement in comparison with the rest of the Italian territory.

(5) The tax reduction is applicable in geographical areas fulfilling the following criteria: i) most severe climate conditions within the Italian territory (communes falling into zone F as defined in the Presidential decree No 412 of 1993 ([7])), severe climate conditions combined with difficulties with fuel procurement (communes falling into zone E as defined in the Presidential decree No 412 of 1993 as long as the natural gas network has not been made available in the commune), geographical isolation combined with difficult and costly fuel procurement: Sardinia and small islands. Since the development of the natural gas network would to an important extent reduce the additional heating costs and would lead to greater diversity of fuel supply, where appropriate, the application of the reduced rates is restricted until the completion of the natural gas network in the communes concerned.

(6) The 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 remains higher than the EU minimum levels of taxation set out in the Directive 2003/96/EC and it only partially alleviates the additional heating costs incurred in the geographical areas in question.

(7) The measure in question applies only to space heating purposes (both for private individuals and businesses); it does not apply for other forms of business use of the said products. According to the Italian authorities the amount of the tax advantage for business users is in each particular case covered by the Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the TFEU to de minimis aid ([8]). Nevertheless, if the benefit to any single undertaking exceeds the ceiling laid down in that Regulation, it should be notified to the Commission in accordance with Council Regulation (EU) No 734/2013 of 22 July 2013 amending Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([9]).

(8) Considering the potential environmental effects of the measure, it appears appropriate to grant the authorisation for three years. This period of application would provide Italian authorities with enough time to assess the environmental effect of the measure and it will also indicate that in the future more targeted energy saving measures would need to be put in place in order to improve energy efficiency and ensure a positive effect on the environment,

HAS ADOPTED THIS DECISION:

Article 1

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

1. Communes falling in the climate zone F as established by the Presidential Decree of 26 August 1993 No 412.

([7]) The Presidential decree No 412 of 1993 divides the Italian territory into six climate zones (A to F). The classification is based on the unit ‘grades 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.

([8]) OJ L 352 of 24.12.2013, p.1.

([9]) OJ L 204 of 31.7.2013, p. 15.

2. Communes falling in the climate zone E as established by the Presidential Decree of 26 August 1993 No 412.
3. Communes of Sardinia and small islands ([10]).

In order to avoid any overcompensation, the reduction must 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.

The reduced rate shall comply with the requirements of Council 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 the annex under point 2 and 3 is conditional on the non-availability of the natural gas network in the commune.

Article 3

This Decision shall take effect on the day of its notification. It shall expire three years thereafter.

Article 4

This Decision is addressed to the Republic of Italy.

Done at Brussels,

For the Council
The President

([10]) All Italian islands, except Sicily.