II

*(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)*

# DECISIONS

# COUNCIL

## COUNCIL DECISION

**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**

**(Only the Italian text is authentic)**

(2008/318/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

Having regard to the proposal from the Commission,

Whereas:

(1) By Article 18(1) of Directive 2003/96/EC, read in conjunction with Annex II to that Directive, Italy was authorised to apply in certain 'particularly disadvantaged areas' reduced rates of excise duty on domestic fuel and LPG used for heating. The derogation was applicable until 31 December 2006.

(2) By letter dated 17 October 2006 the Italian authorities requested authorisation, under Article 19 of Directive 2003/96/EC, to apply within the same geographical areas reduced rates of taxation on gas oil and LPG used for heating purposes. Italy wishes to continue, after 31 December 2006, its national practice followed under the abovementioned derogation. The present authorisation is requested for the period from 1 January 2007 to 31 December 2012.

(3) Italy has a very diversified territory with variable climate and geographical conditions. In 1999 Italy raised the general level of excise duties as part of a reform of its tax system. Taking into account the particularities of its territory, Italy at the same time introduced reduced rates of taxation for gas oil and LPG with a view to partially offset excessively high heating costs borne by residents in certain geographical areas.

(4) The tax differentiation aims at putting the population of the eligible areas on a more comparable footing with the rest of the Italian population by means of reducing excessively high heating costs. For the purposes of identifying the eligible areas, Italy has based itself on objective criteria, concerning the climatic conditions of the area in question as well as access to the natural gas network. The latter criterion mirrors the degree of choice as between fuels, open to the population of the area concerned.

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

(5) Thus, the tax reduction is applicable in geographical areas (communes) fulfilling the following alternative criteria: (i) communes falling within climate zone F as defined in the Presidential Decree No 412 of 1993 [1], that is communes with more than 3 000 'day degrees'; (ii) communes falling within zone E as defined in the Presidential Decree No 412 of 1993, that is communes with 2 100 to 3 000 'day degrees' [2]; and (iii) Sardinia and small islands (all Italian islands apart from Sicily). Since the development of the natural gas network would to an important extent reduce the additional heating costs and would in particular improve the variety of options between fuels, available to consumers, the reduction will no longer apply in communes belonging to the second and third areas mentioned once the natural gas network is completed in the commune concerned.

(6) The common feature of the communes in question is the additional heating costs as compared to the rest of Italy. For climate zones E and F, the tax reduction equals on average 11 to 12 % of the price of gas oil and LPG for heating purposes. The average heating costs are, due to climate conditions, 90 % higher than the national average in climate zone E and 170 % higher than the national average in climate zone F. For the islands, the additional heating costs, as compared to mainland Italy, are due to the geographical particularities of the islands, restricted fuel supply and additional transport costs, and to the higher fuel prices as a consequence, as compared to mainland Italy.

(7) The tax reduction remains in all cases below the additional heating costs borne by the population concerned, so that there is no overcompensation in the matter. In particular the Italian authorities have stated that the tax reduction does not go beyond the extra costs incurred in zones E and F due to the colder climate. Furthermore, as far as the islands are concerned, the authorities have stated that the tax reduction does not drive the price of the fuels in question below the price of the same fuel on the mainland.

(8) The reduced rate of taxation remains both for gas oil and LPG higher than the Community minimum levels of taxation laid down in Directive 2003/96/EC.

(9) The measure in question applies only to the heating of rooms (both for private individuals and businesses). It does not apply for other forms of business use of the said products.

(10) The measure has been found not to distort competition or hinder the operation of the internal market and it is not considered incompatible with Community policy on the environment, energy and transport.

(11) Italy should therefore be authorised, pursuant to Article 19(2) of Directive 2003/96/EC, to apply a reduced rate of taxation to gas oil and LPG used for heating purposes in certain geographical areas characterised by a high level of heating costs, as indicated in the Annex to this Decision, until 31 December 2012.

(12) It should be ensured that Italy can apply the specific reduction to which this Decision relates seamlessly following on from the situation existing before 1 January 2007, under Article 18 of Directive 2003/96/EC read in conjunction with Annex II thereto. The authorisation requested should therefore be granted with effect from 1 January 2007,

HAS ADOPTED THIS DECISION:

*Article 1*

Italy is hereby authorised to apply reduced rates of taxation to gas oil and LPG used for room heating purposes in certain geographical areas characterised by a high level of heating costs, as specified in the Annex.

In order to avoid any overcompensation, the reduction must not go beyond the additional heating costs incurred in the areas in question.

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

*Article 2*

Consumption in communes situated in the areas referred to in point 2 or point 3 of the Annex hereto shall be eligible only as long as the commune concerned lacks a natural gas network.

*Article 3*

This Decision shall apply from 1 January 2007 until 31 December 2012.

[1] This decree divides the Italian territory into six climate zones (A to F). The classification is based on the unit 'day degrees' which represents for the conventional heating period the sum of daily average temperatures differing from the optimal 20 °C. The higher the number attributed to a commune, the lower is the average outside temperature during the heating period.

[2] The remaining climate zones are defined in terms of 'day degrees' as follows: Zone A (below 600), Zone B (above 600, but not exceeding 900), Zone C (above 900, but not exceeding 1 400) and Zone D (above 1 400, but not exceeding 2 100).

*Article 4*

This Decision is addressed to the Italian Republic.

Done at Luxembourg, 7 April 2008.

*For the Council*
*The President*
R. ŽERJAV

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*ANNEX*

Geographical areas concerned by the Decision

— communes falling within climate zone F as established by the Presidential Decree of 26 August 1993 No 412,

— communes falling within climate zone E as established by the Presidential Decree of 26 August 1993 No 412,

— communes in Sardinia and in small islands (all Italian islands, except Sicily).