



EUROPEAN COMMISSION

Brussels, 18.12.2013
C(2013) 9114 final

PUBLIC VERSION

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Subject: SA.35051 (2012/N) Lithuania
Extension of the support scheme for biofuels N 372/07

Sir,

1. PROCEDURE

1. On 28 June 2012 Lithuania notified to the Commission the above mentioned measure. The Commission requested additional information by letters of 28 August 2012, 26 November 2012, 11 February 2013, 3 April 2013, 18 June 2013 and 1 October 2013. Lithuania submitted the additional information by letters of 25 September 2012, 11 December 2012, 4 March 2013, 19 April 2013, 1 August 2013 and 21 November 2013.

2. DESCRIPTION OF THE MEASURE

2.1. Description of the notified measure

2. The measure is related to a previous aid scheme for biofuels in the form of direct grants to producers of bioethanol and biodiesel, which was approved by the Commission in case N 372/07 on 3 March 2009¹. The respective scheme expired on 31 December 2012.
3. The present notification concerns a five year extension of the previous scheme. Lithuania confirmed that no aid would be granted before the Commission adopts a decision on the matter, but would like to provide support for biofuel produced between 1 January 2013 and 31 December 2017.
4. No material changes were made as compared to the previous aid scheme. The aid will take the form of direct non-reimbursable grants for the production of bioethanol from cereals and for the production of biodiesel from rapeseed. The maximum grant available for the production of bioethanol is LTL 266 per tonne of cereals used for bioethanol

¹ Available at <http://ec.europa.eu/competition/elojade/isef/>

production, and the maximum available grant for the production of biodiesel is LTL 279 per tonne of raw materials used².

5. In 2012, seven companies received aid under the scheme N 372/07. Lithuania indicated that the number of beneficiaries is not limited, but it does not expect the number of beneficiaries to increase under the notified measure.
6. The national legal basis is the Law No XI-1375 of the Republic of Lithuania on renewable energy (Official Gazette 2011, No 62-29361).
7. The previous scheme had a budget of LTL 310.14 million. The Lithuanian authorities reported that less than half of it was actually spent. The total budget for the notified measure is LTL 177.66 million (approx. EUR 51.5 million)³, for a duration of 5 years (2013-2017).
8. The Lithuanian authorities have submitted updated calculations of the production costs of biodiesel and bioethanol in the year 2012 and compared these with the estimated market price for biofuels⁴.

Table 1: Calculation of the amount of compensation for the production of biodiesel

	(LTL/tonne)
1. Production costs ⁵	5841
2. Sales price of the product	5234
3. Difference (1-2)	-607
4. Compensatory grant (for 1 tonne of rapeseed)	200
5. Compensatory grant (for 1 tonne of rapeseed oil)	601

Source: Lithuanian authorities

² This was the maximum grant approved by the Commission in case N 372/07.

³ Based on an exchange rate of EUR 1 = LTL 3.4528.

⁴ Prices estimated based on the price of future contracts for the respective biofuels on commodity exchanges

⁵ The bulk of the production costs consists mainly of the raw material cost, namely rapeseed (about 75%). About 10% represents energy costs. Costs of processing and revenues from the sale of by-products are also taken into account.

Table 2: Calculation of the amount of compensation for the production of bioethanol

	(LTL/tonne)
1. Production costs ⁶	3492
2. Sales price of the product	2985
3. Difference (1-2)	-507
4. Compensatory grant (for 1 tonne of cereals)	147
5. Compensatory grant (for 1 tonne of ethanol)	507

Source: Lithuanian authorities

9. The Lithuanian authorities explained that the beneficiaries are not entitled to receive automatically the maximum amount of the grant: the aid is limited to the difference between the costs of producing biofuels (including a rate of return of 5%) and the price of biofuels, and cannot exceed the maximum amount indicated in the notification. Lithuania also provided the amount of the grant for 2006-2012, showing that the aid granted was always lower than the maximum amount approved by the Commission.

2.2. Other measures concerning biofuels

10. Lithuania has in place two other measures to support biofuels, a reduction of excise duties and a supply obligation, which are not to the object of the present notification:.
11. Lithuania applies a reduction of the excise tax for biofuels⁷. When the percentage of biofuel blended with fossil fuels does not exceed the mandatory percentage imposed by law, the biofuel is subject to excise duty, just like the fossil fuel. Lithuania explained that this is the case for most biofuels marketed in Lithuania. Only a small proportion of fuels (1-2%) contain more than the mandatory percentage and only then the excise duty reduction applies. With the notification Lithuania provided also calculations including the excise duty rates, comparing the price of biofuel blends with the price of fossil fuels⁸. Lithuania stressed that the aid granted under the notified scheme is determined on the basis of the actual production costs of the beneficiaries and the prices obtained for the respective biofuels.

⁶ The bulk of the production costs consists mainly of the raw material cost, triticale (about 60%). About 10% represents energy costs. Costs of processing and revenues from the sale of by-products are also taken into account. [revenues are deducted ?]

⁷ The reduction of excise duty was approved by the Commission in case N 44/2005, until the end of 2010. On 7 July 2011 Lithuania notified an extension of the respective aid scheme. This is being assessed by the Commission in case SA.33313 and is outside the scope of the current decision.

⁸ For example, in 2012, for biodiesel, the price including excise duty of a 5% RME blend was 4.152 LTL/litre, and the price of a 6.5% RME blend was 4.158 LTL/litre, as compared to the price of diesel of 4.13 LTL/litre. For ethanol, in the same year, the price including excise duty of a 7 % ETBE blend was 4.56 LTL/litre, and the price of a 15% ETBE blend was 4.55 LTL/litre, as compared to the price of fossil petrol of 4.56 LTL/litre.

12. Lithuania has also in place legislation that regulates the blending of biofuels with fossil fuel. Currently the minimum content of biofuels in the fuels marketed in Lithuania is 5% for 95 RON (98 RON does not need to contain any biofuels) and 7% for diesel (except arctic diesel in the winter season, for which no blending with biofuels is required). The legislation provides for penalties between LTL 500 and LTL 4,000 for those market actors that sell to final consumers blends that do not contain the required amount of biofuels.
13. Lithuania has explained that the penalties alone would be insufficient to meet the biofuel target required in the EU legislation. Furthermore, it has reported that since 2007 there have only been two cases where operators were fined for not meeting the mandatory blending requirements.

3. ASSESSMENT

3.1 Existence of State aid

14. A measure constitutes State aid under Article 107(1) of the Treaty on the Functioning of the European Union (TFEU) if it fulfils four conditions. Firstly, the measure is funded by the State or through State resources. Secondly, the measure confers an advantage to the recipients. Thirdly, the measure favours selected undertakings or economic activities. And fourthly, the measure has the potential to affect the trade between Member States and to distort competition in the internal market.
15. The proposed notification only concerns a five-year extension of the previous scheme, N372/07. The aid granted by the State to biofuel producers confers on them an advantage by off-setting part of their costs. Biofuels are traded among Member States and compete with other types of fuels (e.g. fossil fuels). Therefore the measure is likely to affect trade between Member States and to distort competition. It follows that the notified measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.2 Lawfulness of the aid

16. By notifying the measure before its implementation, the Lithuanian authorities have fulfilled their obligation according to Article 108(3) TFEU. They confirmed that the aid will be granted only after authorisation of the notified measure by the Commission.

3.3 Compatibility of the aid

17. The Commission has assessed the compatibility of the notified scheme according to Article 107(3)(c) TFEU and in the light of the Environmental aid guidelines (EAG)⁹.
18. Part of the aid granted under the notified measure may concern also the agricultural products listed in Annex I of the Treaty (e.g. pure rapeseed oil). The aid for these products would in principle fall within the scope of the Agricultural aid guidelines 2007-2013¹⁰. In compliance with points 62 and 63 of the Agricultural aid guidelines, the EAG can be directly applied in the assessment of environmental operating aid, such as aid to

⁹ 2008 Community Guidelines on State Aid for Environmental Protection, OJ C 82, 1.4.2008, p. 1

¹⁰ Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013, OJ C 319, 27.12.2006, p. 1.

support the production of biofuels. Therefore, the Commission assessed the compatibility of the notified measure under the EAG.

19. The notified measure concerns operating aid for renewable energy sources, namely biofuels. It follows that the compatibility conditions laid down in point 109 EAG (Option 1 for operating aid to renewable energy sources) apply.
20. The Lithuanian authorities confirmed that the aid is only granted to sustainable biofuels as defined in point 70(8) EAG.
21. Point 109 EAG lays down three conditions for the compatibility of operating aid (absence of overcompensation, no cumulation with investment aid, biomass exception), which are examined below.
22. In accordance with point 109 (a) EAG, the aid is granted in order to partly compensate for the difference between the costs of producing biofuels and the market price of biofuels. The Lithuanian authorities submitted detailed calculations of the production costs of biofuels, summarised in tables 1 and 2 above, demonstrating the absence of overcompensation. The Commission considers the rate of return of 5% indicated by Lithuania as a normal return on capital.
23. The data provided by Lithuania on the cumulation of the notified aid with possible excise duty reductions did not show overcompensation. The Commission considers that if part of the aid granted by means of excise duty reduction is passed on to biofuel producers, this is already reflected in the price of biofuels and therefore already taken into account for the purpose of calculating the aid amount under the notified scheme.
24. The Lithuanian authorities confirmed that they will monitor the production costs on a yearly basis and adapt the aid in case it will be necessary in order to exclude any overcompensation in time.
25. The Commission considers therefore that the measure complies with the condition set out in point 109 (a) EAG.
26. In accordance with the requirement of point 109 (b) EAG, any potential investment aid will be deducted from the biofuel production costs. The conditions for granting the aid remained the same as in the previous scheme, where the Commission already concluded that the aid complies with point 109 (b) EAG.
27. There is no need to limit the duration of operating aid to plant depreciation, given that the fuels concerned are obtained from biomass and as such require less investment but result in higher operating costs compared to other renewables. The Lithuanian authorities confirmed that depreciation costs are not included in the production costs, as all plants have been depreciated. This shows, in line with point 109(c) EAG, that the aggregate costs borne by the undertakings after plant depreciation are still higher than the market prices of the biofuels.
28. The Lithuanian authorities undertook to respect the annual reporting and monitoring provisions laid down in Sections 7.1 and 7.3 of the EAG. Furthermore, the Commission notes that Lithuania submitted such reports for the previous scheme.

29. The Lithuanian authorities also confirmed that in case the applicable detailed assessment threshold of point 160 (b)(iv) EAG is exceeded, the aid will be notified individually to the Commission.
30. As regards the incentive effect of the aid, the Commission notes that the production costs of biofuels are higher than the prices at which they can be marketed. Hence, without the notified aid, there would be an insufficient incentive to undertake or carry on the production of biofuels as such activity would be unlikely to be economically viable.
31. The Commission notes that there is also a supply obligation in Lithuania. In its decision in case N372/07, the Commission concluded that since the applicable laws at the time did not foresee any particular fines or penalties for non-compliance, the obligation was not legally enforceable. Under the respective circumstances, the Commission considered that the supply obligation did not have any cumulative effect with the aid measure.
32. Lithuania explained that in the past the supply obligation has not resulted in penalties when there have been shortages of biofuel supplies or technical obstacles. In fact there were only 2 situations (one in 2011 and one in 2012) when fines were imposed, and the level of the respective sanction was very low (LTL 500 and LTL 600 respectively¹¹). On the other hand, there were situations when companies did not comply with the supply obligation, and no fines were imposed.
33. On 21 November 2013 Lithuania submitted information on the supply obligation and the penalties associated with it. It explained that penalties are rather an exception and in any event they are very small, administrative fines. The maximum fine a large company could receive for total non-compliance with the supply obligation for the whole volume of fuel sold in one year is LTL 4 000 (around EUR 1 150).
34. This situation is unlikely to change in the future. Lithuania clearly indicated that in the absence of the aid penalties will not be increased in order to enforce the supply obligation. Rather, most likely the supply obligation would be reduced or removed.
35. Based on the detailed information provided by Lithuania, the Commission concludes that the supply obligation de facto has no deterrent penalties and therefore does not undermine the incentive effect of the aid. It rather informs the companies about the objectives set up by the authorities, but would not be sufficient to make the companies comply with them in the absence of aid.
36. The Commission considers that the supply obligation creates a demand for biofuels, allowing biofuels to be sold at a different (higher) price than the fossil fuels. It follows that the effects of the supply obligation should be captured by the biofuel prices. The Commission also notes that for calculating the aid under the notified scheme Lithuania is using the market price of biofuels and not the price of fossil fuels. By taking as a reference the price of biofuels (different than the price of fossil fuels), the influence of the supply obligation on the biofuels is already taken into account, and the Commission considers that the aid granted covers only the remaining difference (between the costs of biofuels and their price), therefore not overlapping with the supply obligation. Since Lithuania provided data clearly showing that biofuel production costs are still higher

¹¹ Around EUR 150 – 180.

than biofuel prices, the Commission considers that the aid is in line with point 109 a) of EAG and has an incentive effect.

37. The Commission notes that support will be granted also for biofuels produced in 2013. In this regard, Lithuania explained that the aid is paid once a year, at the end of the year (or until the April of the following year in the case of a cash deficiency). Biofuel continued to be produced in Lithuania in 2013 (only a very small reduction was observed as compared to 2012), but according to Lithuania the biofuel production was incentivised by the expectation that the scheme would be approved. These expectations are based on the fact that the previous aid scheme (N372/07) was approved by the Commission and Lithuania notified the current measure already in 2012, maintaining all the main features of the aid scheme unchanged. The biofuel producers were therefore expecting the approval of the Commission, assuming there would be no reasons for the Commission to depart from the previous conclusion that aid is compatible. The Commission accepts the explanations of the Lithuanian authorities and considers that the expectations of the biofuel producers to continue to receive aid for the biofuel produced were a determinant factor of their decision to produce biofuels. Therefore the Commission agrees that the notified aid measure has an incentive effect also for the biofuel already produced in 2013

38. . The Commission notes that the measure is limited in time until 31 December 2017.

39. The Lithuanian authorities confirmed that the Law on renewable energy does not include provisions governing the origin of the raw materials used for the production of biofuels. The Lithuanian authorities also confirmed that foreign biofuel producers are eligible for grants under the notified measure.

4. CONCLUSION

40. The Commission finds that the notified aid scheme is compatible with the internal market in accordance with Article 107(3)(c) TFEU and has therefore decided to raise no objections to the notified measure.

41. The Commission reminds the Lithuanian authorities that, in accordance with Article 108(3) TFEU, plans to refinance, alter or change this scheme have to be notified to the Commission.

42. The Commission will publish this letter¹². If it contains confidential information, please inform the Commission within fifteen working days. Otherwise you will be deemed to agree to publication of the full text.

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President

¹² On <http://ec.europa.eu/competition/elojade/isef/index.cfm>