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<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: SA.33313 (2011/NN) – Lithuania  
Excise duty reduction for biofuels**

Sir,

**1. PROCEDURE**

- (1) By electronic notification (SANI 6025), registered by the Commission on 7 July 2011, the Lithuanian authorities, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (thereinafter "TFEU") notified the above mentioned measure. The Commission requested additional information by letters of 22 August 2011, 27 October 2011, 30 March 2012, 24 May 2012 and 4 March 2014. The Lithuanian authorities submitted the additional information by letters of 19 September 2011, 11 November 2011, 20 April 2012, 19 June 2012, 18 April 2014, 26 August 2014, 11 November 2014, 11 May 2015, 10 June 2015, 21 August 2015, 30 October 2015 and 4 December 2015.
- (2) This aid measure is the prolongation and modification of the scheme under case N44/2005 approved by the Commission until 31 December 2010. The Lithuanian authorities continued granting the excise duty reduction to biofuels in the modified form as from 1 January 2011. Following the confirmation that the excise duty reduction for biofuels is being granted prior to Commission's approval of the

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notified measure, the Lithuanian authorities were informed by letter of 6 January 2012 that the measure under assessment has been transferred to the non-notified (NN) aid registry.

## 2. DESCRIPTION OF THE MEASURE

### 2.1. Description of the notified measure

- (3) The main objective of this aid measure is to meet the commitment laid down in the Act on renewable energy (Official Gazette 2011, 62-2936) to increase the share of renewable energy in final energy consumption in the transport sector by at least 10% by 2020 for all forms of transport in view of reaching Lithuania's targets for 2020. Furthermore, the Lithuanian authorities refer to the fact that the application of this aid measure will contribute to achieving the objectives set in Directive 2009/28/EC of 23 April 2009 amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC on the promotion of the use of energy from renewable sources<sup>1</sup> and the Lithuanian Act on renewable energy<sup>2</sup>, i.e. ensuring that the share of renewable energy in gross final energy consumption in the period 2013–14 is at least 17.4%, with the share of renewables in the transport sector making up 6% of gross final energy consumption in transport. The Lithuanian authorities also refer in this context to the reduction of the energy sector's dependence on petroleum based fuels and motor fuels by promoting the production and use of biofuel blends.
- (4) The aid is to be granted under the scheme as from 1 January 2011 until 31 December 2020.
- (5) Lithuania estimated the total budget of the scheme until the end of 2020 at approximately EUR 30 million.

*Table 1: Estimated yearly budgets*

Year	Amount of aid - in million LTL (EUR)
2011	5.5 (1.6)
2012	6.5 (1.9)
2013	8 (2.3)
2014	4.2 (1.2)
2015	13 <sup>3</sup>
2016	2.0 <sup>4</sup>
2017	2.0

<sup>1</sup> OJ L 140, 5.6.2009, p. 16.

<sup>2</sup> Official Gazette 2011, 62-2936.

<sup>3</sup> In 2015 Lithuania introduced the Euro as its national currency; therefore all estimated budgets since 2015 are shown in Euro.

<sup>4</sup> The Lithuanian authorities indicated that the increase in the budget in 2015 is due to an uptake of biodiesel blends higher than 7%, and that the 2016 budget is estimated presuming that the Law on Excise Duties will withdraw the excise duty exemptions for biodiesel blends higher than 7%.

2018	2.0
2019	2.0
2020	4 (1.16)

- (6) The reduced rate of excise duty will apply once the biofuels are released for consumption. The beneficiaries will be all types of companies, SMEs as well as large companies acting as suppliers of biofuels. Ultimately the scheme promotes the consumption of biofuels and thus favours the biofuel producers. The Lithuanian authorities estimate the number of biofuel plants benefiting from the scheme and operating in Lithuania at below 10.
- (7) The notification concerns exclusively the support of sustainable biofuels as defined by the 2008 Community Guidelines on State Aid for Environmental Protection<sup>5</sup> (hereinafter referred to as "EAG") in point 70 (8) and section 3.3.2.2 of the 2014 Guidelines on State aid for environmental protection and Energy ("EEAG").
- (8) The national legal basis is the Act on excise duties (Official Gazette 2001, No 98-3482; 2010, No 45-2174).
- (9) The Ministry of Energy acts as the granting authority.

## **2.2. Blending obligation with regard to biofuels in Lithuania**

- (10) As from 1 January 2007, a blending obligation applies in Lithuania, imposing a minimum content of bio-component in all the fuels marketed in Lithuania (with a few exceptions) per litre. The blending obligation levels correspond to the requirements laid down in the 2010 Mandatory Quality Parameters for petroleum products, biofuels and liquid fuels consumed in the Republic of Lithuania<sup>6</sup>: 5% for bioethanol blended with petrol and 5% for fatty acid methyl ester (FAME) blended with diesel. These rates remained unchanged in 2011.
- (11) Since 2012, the minimum content of bio-component per litre 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.
- (12) All economic entities trading in petroleum products in Lithuania must comply with the blending obligation (wholesale or retail traders/suppliers) and in principle biofuels must be incorporated in all the fuels marketed. Exempted from the obligatory biofuel admixture are 98 RON petrol and Class-2 arctic diesel used in the winter months (December to February).

<sup>5</sup> OJ C 82, 1.4.2008, p. 1.

<sup>6</sup> Lithuania Order No 1-348/D1-1014/3-742 22 December 2010

- (13) The trade in petroleum products is a regulated activity in Lithuania and can only be carried out by those holding the appropriate permits. The failure to comply with conditions governing licensed activities when selling petroleum products is subject to a penalty<sup>7</sup>. The control authorities have detected only a few isolated cases in which the biofuel blending obligation was not fully complied with. The Lithuanian authorities explained that the high rate of compliance was because infringements could also result in the suspension or withdrawal of a seller's trading licence.

### **2.3. Excise duty reduction and granting mechanism**

- (14) As from 1 January 2010, the excise duty reduction is granted to:
- high concentration biofuel blends, in which the proportion of additives of biological origin is 30% or higher – the rate of excise duty is reduced in proportion to the percentage of additives of biological origin in the product; where products are manufactured only from biomaterials, they are exempt from excise duties.
  - low concentration biofuel blends that exceed the mandatory quality parameters of additives of biological origin laid down by law for petroleum products supplied to the country's domestic market – the rate of excise duty is reduced in proportion to the percentage of additives of biological origin in excess of the mandatory percentage laid down by law. The Lithuanian authorities have confirmed that the Directive 98/70/EC (The Fuel Quality Directive)<sup>8</sup> is complied with.
- (15) The relief is granted through refunding of the excise duty under procedures laid down by the Lithuanian central tax administration. The excise duty reduction applies to products manufactured in Lithuania as well as to products from other Member States or third countries.
- (16) The excise duty reduction is granted in order to cover the difference between the production costs of biofuels and the market price of the respective type of fuel. Following the introduction of the blending obligation, under which in principle only low concentration blends can be marketed in Lithuania (no pure fossil fuels, with the exceptions described above), the Lithuanian authorities use as a comparative the market price of low concentration biofuel blends. In order to demonstrate the absence of overcompensation, the Lithuanian authorities submitted the following comparison of the price of low concentration biofuels with high concentration biofuels:

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<sup>7</sup> For failure to comply with the conditions governing licensed activities in the wholesale trade, the penalty comprises LTL 5 000 to LTL 10 000 and confiscation of the petroleum products concerned; failure to comply with the conditions governing licensed activities in the retail trade when selling petroleum products is subject to a penalty of LTL 1 000 to LTL 3 000 and confiscation of the petroleum products concerned.

<sup>8</sup> Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC, OJ L 350 28.12.1998

Table 2a: Production costs and sale price (before tax) of pure biodiesel and diesel in 2010

Production costs, LTL <sup>1</sup> per litre	Biodiesel (FAME)
1. Raw materials	[...]*
2. Processing costs <sup>2</sup>	[...]
3. Other costs <sup>3</sup>	[...]
4. Logistics	[...]
5. Sale price of by-product	[...]
<b>6. Production costs (1 + 2 + 3 + 4 - 5)</b>	[...]
7. Profit margin (5%)	[...]
<b>8. Biodiesel sale price (excluding excise duty and VAT) (6 + 7)</b>	<b>2.29</b>
<b>9. Diesel sale price (excluding excise duty and VAT)</b>	<b>1.66</b>
<b>10. Difference between biodiesel and diesel sale price (8-9)</b>	<b>-0.63</b>

Table 2b: Sale price of fuel biodiesel blend in 2010

Price of fuel blend, LTL <sup>1</sup> per litre	5% biodiesel (FAME)
<b>Biodiesel costs in blend</b> (5% x LTL 2.29 per litre)	0.11
<b>Diesel costs in blend</b> (95% x LTL 1.66 per litre)	1.58
<b>Excise duty</b> (95% x LTL 0.95 per litre)	0.90
<b>Excise duty on bio component:</b> 5% of LTL 0.95	0.05
Total sale price of fuel blend	2.64
Adjustment due to lower energy content of blend (15%) <sup>4</sup>	0.02
Sale price of fuel blend (relative)	<b>2.66</b>

Table 2c: Diesel sale price in 2010

<b>Diesel sale price (excluding excise duty and VAT) (100% x LTL 1.66 per litre)</b>	<b>1.66</b>
Excise duty	0.95
<b>Diesel sale price (excluding VAT)</b>	<b>2.61</b>

Notes: 1. Exchange rate used LTL 3.4528 = EUR 1.

2. Processing costs comprise the cost of materials and depreciation.

3. Other costs comprise wages and salaries, reorganisation of production, energy consumption, and taxes.

4. The energy value of biodiesel compared with mineral fuel (diesel) is lower: the amount of biodiesel needed to produce a unit of energy has been calculated to be 15% higher than the amount of diesel to produce the same unit of energy.

Table 2d: Sale price of fuel biodiesel blend between January 2015 to June 2015.

Price of fuel blend, euro per litre	7% biodiesel (FAME)	10% biodiesel (FAME)
<b>Biodiesel costs in blend</b> (7% of 0.71674 euro per litre)	0.0502	0.0717
(10% of 0.71674euro per litre)		

\* *Business secrets*

Price of fuel blend, euro per litre	7% biodiesel (FAME)	10% biodiesel (FAME)
<b>Diesel costs in blend</b> (93% of 0.44678 euro per litre) (90% of 0.44678 euro per litre)	0.4155	0.4021
<b>Excise duty on diesel</b> (93% of 0.33017 euro per litre) (90% of 0.33017 euro per litre)	0.3071	0.2972
<b>Excise duty on bio component:</b> 7% of 0.33017 euro per litre Taxable mandatory mix in FAME part (7%)	0.0231	0.0231
Total sale price of fuel blend	0.7959	0.7941
Adjustment due to lower blend energy content blend (15%) biodiesel)	0.0075	0.1171
Sale price of fuel blend (relative)*	<b>0.8034</b>	<b>0.9112</b>

\* Pure diesel costs, including excise duty: 0,44678+0,33017=0.77695 euro per litre.

*Table 3a: Production costs and sale price (before tax) of pure bioethanol and petrol in 2010*

Price of fuel, LTL <sup>1</sup> per litre	Bioethanol
1. Raw materials	[...]
2. Processing costs <sup>2</sup>	[...]
3. Other costs <sup>3</sup>	[...]
4. Logistics	[...]
5. By-product sale price	[...]
<b>6. Production costs (1+2+3+4-5)</b>	[...]
7. Profit margin (5%)	[...]
<b>8. Sale price set by manufacturer (before tax and VAT) (6+7)</b>	<b>1.95</b>
<b>9. Petrol sale price (before tax and VAT)</b>	<b>1.65</b>

*Table 3b: Sales price of fuel (bioethanol and petrol) blend in 2010*

Price of fuel blend, litas <sup>1</sup> (national currency) per litre	5% bioethanol	E85 (85 % bioethanol)
<b>Bioethanol costs in blend</b> (5% of 1,95 litas per litre) (85 % of 1,95 litas per litre)	0.0975	1.6575
<b>Petrol costs in blend</b> (95% of 1,65 litas per litre) (15% Of 1,65 litas per litre)	1.5675	0.2475
<b>Excise duty on petrol</b> (95% of 1,50 litas per litre) (15 % of 1,50 litas per litre)	1.425	0.225
<b>Excise duty on bio component:</b> Taxable mandatory mix in bioethanol part (5%) For high blends (>30% biofuels) the excise duty on bio-component does not apply	0.075	–
<b>Total costs of fuel blend</b>	<b>3.165</b>	<b>2.13</b>

Price of fuel blend, litas <sup>1</sup> (national currency) per litre	5% bioethanol	E85 (85 % bioethanol)
Adjustment due to lower blend energy content 40% blend bioethanol <sup>4</sup>	0.039	0.663
<b>Costs of fuel blend after adjustment</b>	<b>3.204</b>	<b>2.793</b>
Additional costs according to data in 3rd table for each 15000 km	–	0.43
<b>Total costs of fuel blend</b>	<b>3.204</b>	<b>3.223</b>

Table 3c: Petrol sale price in 2010

<b>Petrol sale price (before excise duty)</b> (100% x LTL 1.65 per litre)	1.65
Excise duty	1.50
<b>Petrol sale price (before VAT)</b>	<b>3.15</b>

Notes: 1. Exchange rate used: LTL 3.4528 = EUR 1.

2. Processing costs comprise the cost of materials and depreciation.

3. Other costs comprise wages and salaries, reorganisation of production, energy consumption, and taxes.

4. The energy value of biodiesel compared with mineral fuel (diesel) is lower: the amount of bioethanol needed to produce a unit of energy has been calculated to be 60% higher than the amount of petrol to produce the same unit of energy

Table 3d - Petrol and bioethanol blend costs in 2014

Price of fuel blend, litas* (national currency) per litre	E5 (5% bioethanol)	E85 (85 % bioethanol)
<b>Bioethanol costs in blend</b> (5% of 1,97 litas per litre) (85 % of 1,97 litas per litre)	0.0985	1.6745
<b>Petrol costs in blend</b> (95% of 1,85 litas per litre) (15% Of 1,85 litas per litre)	1.7575	0.2775
<b>Excise duty on petrol</b> (95% of 1,50 litas per litre) (15 % of 1,50 litas per litre)	1.425	0.225
<b>Excise duty on bio component:</b> Taxable mandatory mix in bioethanol part (5%) For high blends (>30% biofuel) the excise duty on bio-component does not apply	0.075	–
<b>Total costs of fuel blend</b>	<b>3.356</b>	<b>2.177</b>
Adjustment due to lower blend energy content 40% blend bioethanol	0.0394	0.6698
<b>Costs of fuel blend after adjustment</b>	<b>3.3954</b>	<b>2.8468</b>
Additional costs according to data in 3rd table for each 15000 km	–	0.57
<b>Total costs of fuel blend</b>	<b>3.3954</b>	<b>3.4168</b>

Note: \* 1 euro = 3.4528 litas

Table 3e - Additional costs according to data for each 15000 km

Conditions	Unit	Petrol (conventional/traditional petrol)	E85 (85 % bioethanol)
Coefficient of increase of consumption of blends of bioethanol vs petrol		1	1.3
Provisory (conditionally) consumption of fuel	litre/100 km	6	7.8
Frequency of oil exchange for different fuels	km	30 000	15 000
Additional costs according to data for each 15000 km	litas	–	500* 670**
Times of exchange oils per 15000 km	times of exchange	–	1
Amount of consumed liters till 15000 km	litre	–	15000/100*7.8 =1170
Additional costs according to data for each 15000 km	litas per litre	No additional costs, when used conventional petrol	*500*1/1170 =0.43 **670*1/1170 =0.57

Notes: \* 2010 additional costs according to data for each 15000 km

\*\* 2014 additional costs according to data for each 15000 km

- (17) In 2010 Lithuania confirmed that petrol and diesel, both containing 5% of bioethanol and FAME respectively, were sold.<sup>9</sup> The trade of petrol blended with more than 30% of bioethanol was rather symbolic, according to the Lithuanian authorities: only 6164 liters of E33 were sold in 2014, which constitutes 0.002% of total petrol sales volume, and during the first five months of 2015 only 142 tons of E33 were sold. The sales of petrol blended with 10-30% of bioethanol is prohibited in Lithuania, under Directive 98/70/EC and petrol standard EN 228 requirements, according to which petrol cannot be blended with more than 10% of bioethanol.
- (18) According to Lithuania, petrol with the content of more than 30% bioethanol is treated as a separate category of fuels. These fuels can be used only in specially adapted vehicles. The majority of vehicles are not adapted to use fuels with more than 30% bioethanol content, because the use of such fuels may cause damage to the engine of the vehicle. Based on this, Lithuania considers that high bioethanol blends cannot be considered a substitute for petrol. Their use also entails additional costs, and justifies a different treatment. Under the Lithuanian legislation, if petrol includes less than 30% of biofuels, the excise duty exemption

<sup>9</sup> Lithuania also initially provided data on blends containing 10% and 31% biofuels, but since Lithuania confirmed that such blends were not traded until 2015, the respective information is not included in the decision. Lithuania further indicated that in the past and up to 2015, diesel with more than 7% of FAME (such as D10, D31, and so on) has not been traded.



is applied to the difference between the upper (30%) and the mandatory (currently 5% for petrol) parts of the biofuels blend. However, when the content of biofuels blended is higher than 30%, the excise duty exemption is applied to the whole content of biofuels.

- (19) The Lithuanian authorities informed the Commission that data provided by biofuel producers shows that all working biofuel plants in Lithuania are relatively new and none of these are depreciated, nor will they be depreciated during the operation period of this scheme. Therefore the calculations submitted by the Lithuanian authorities are based on the actual operational data of non-depreciated plants but do not cover any depreciation costs.
- (20) The calculations of production costs include return on capital at the level of 5%.
- (21) In addition to the excise duty, the Lithuanian authorities also grant direct aid for production of biofuels. The Lithuanian authorities confirmed in this context that the actual production costs of biofuels are higher than those submitted in tables above by an amount equal to the direct aid.
- (22) Lithuania confirmed that the reduced excise duty applies regardless of the origin of the petroleum products and biofuels.
- (23) The Lithuanian authorities will monitor the production costs on a yearly basis and adapt the excise duty reduction in case it will be necessary in order to exclude the overcompensation in time.

### **3. ASSESSMENT**

#### **3.1. State aid in the sense of Article 107(1) TFEU**

- (24) A measure constitutes State aid under Article 107(1) 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.
- (25) The notification concerns an aid scheme very similar to the one previously approved by the Commission in the case N44/2005. The reduced rate of excise duty for biofuels provides an advantage to biofuel producers because it off-sets part of the biofuel production costs. Biofuels are traded among Member States and compete with other types of fuel (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**

- (26) The aid scheme approved by the Commission in the case N 44/2005 expired on 31 December 2010. The scheme has however continued to be applied in absence of any further approval from the Commission.
- (27) The Commission regrets that Lithuania has put the notified aid measure into effect before obtaining the approval of the Commission, in breach of Article 108(3) TFEU.

### **3.3. Compatibility of the aid**

- (28) The Commission has assessed the compatibility of the aid scheme according to Article 107(3) (c) TFEU and in the light of the 2008 EAG for the aid granted until 1 July 2014, and in the light of the EEAG for the aid granted as of 1 July 2014 (see points 246-248 of the EEAG).

#### *3.3.1. Compatibility of the aid granted before 1 July 2014*

- (29) Part of the aid granted under the aid measure may also concern the agricultural products listed in Annex I of the TFEU (e.g. pure rapeseed oil). The aid for these products would fall within the scope of the Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013<sup>10</sup>. In compliance with points 62 and 63 of these guidelines, the EAG can be directly applied in the assessment of environmental operating aid such as aid to support the production of biofuels. Therefore, the Commission assessed the compatibility of the notified measure directly under the EAG.
- (30) The aid 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.
- (31) The Lithuanian authorities confirmed that the aid is only granted to sustainable biofuels as defined in point 70(8) EAG.
- (32) 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.
- (33) In accordance with points 107 and 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 the fuel concerned, in this case the price of low concentration biofuel blends.
- (34) Furthermore, the Lithuanian authorities submitted detailed calculations of the production costs of high concentration biofuel blends compared to the price of low concentration biofuel blends (Tables 2 and 3 above), which demonstrate the

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<sup>10</sup> OJ C 319, 27.12.2006, p 1.

absence of overcompensation. Lithuania explained that none of the plants benefiting from aid is currently depreciated, nor will any be depreciated by 2020. The Lithuanian authorities have stated that if this were to change they would inform the Commission accordingly.

- (35) The Commission notes that for high blends Lithuania considered additional costs, related to the use of the respective blends. The Commission notes that in a previous case (SA. 39654 – Czech Republic – Multi-annual support to biofuels for transport) it was accepted that such additional costs could be covered by aid, in order to incentivise the use of the biofuels (since otherwise the users would not opt for using high blends, as they would incur additional costs and their use would be more expensive, even if the price were comparable with the price of low blends). The Commission has assessed the arguments provided by Lithuania in this case and considers that the respective costs can be taken into account for establishing the level of aid.
- (36) The Commission also considers that such costs would normally be passed on to final consumers, increasing the final price of biofuels relative to alternative fuels. Therefore, the aid ensures that consumers are sufficiently incentivised to actually purchase biofuels. Since, according to the methodology for calculating excise duty reductions, the allowance for such costs is limited to the minimum necessary, producers will not be over-compensated as long as the methodology is applied.
- (37) As regards the rate of return applied in the production costs calculations, the Commission considers the level of 5% used by the Lithuanian authorities in the calculations provided as reasonable, and agrees this can be considered a normal return on capital in the light of point 109 (a) of the 2008 EAG.
- (38) In order to avoid the overcompensation in time, the Lithuanian authorities confirmed they are monitoring the production costs on a yearly basis and adapt the aid in case it is necessary in order to exclude any overcompensation in time.
- (39) The Commission considers therefore that the measure complies with the conditions set out in point 109(a) EAG.
- (40) The Lithuanian authorities informed the Commission that the aid under this scheme cannot be cumulated with any other aid to cover the same eligible costs.
- (41) The Commission notes however that in addition to the excise duty, the Lithuanian authorities also grant direct aid for the production of biofuels (SA 35051, 2012/N). The Lithuanian authorities confirmed in this context that the actual production costs of biofuels are higher than those submitted in the tables above by an amount equal to the direct aid. In the light of these explanations the Commission concludes that the cumulation of the two aid measures complies with the cumulation requirements of the EAG, since the direct aid was deducted from the costs considered for the purpose of assessing this aid measure.

- (42) As regards the incentive effect of the aid to be granted, the Commission notes that the calculations provided by the Lithuanian authorities show that the production costs of high concentration biofuel blends are higher than the market price of low concentration biofuel blends. Hence, without the notified aid, there would be an insufficient incentive to produce high concentration biofuel blends as such activity would be unlikely to be economically viable.
- (43) The Commission notes that there is also a blending obligation in Lithuania, but the reduced rate of excise duty will not apply to low concentration biofuel blends for the biofuel percentage which is subject to the blending obligation and the blending obligation is highly unlikely to incentivise the use of high blends in the absence of aid, due to their higher costs.

#### *Compliance with Union tax law*

- (44) As the notified measure concerns excise duty reductions and exemptions for energy products, the Commission also assessed its compliance with Directive 2003/96/EC on restructuring the Community framework for the taxation of energy products and electricity (“the Energy Taxation Directive”).<sup>11</sup>
- (45) Article 16(1) of the Energy Taxation Directive allows Member States to apply an exemption or a reduced rate of taxation on biofuels. Article 16(2) limits the exemption or reduction in taxation to the part of the product that actually derives from biomass, which is the case under the assessed measure.
- (46) Furthermore, the notified under assessment also complies with Article 16(3) of the Energy Taxation Directive: Indeed, as was concluded above, the aid will not entail overcompensation of biofuel producers. Moreover, Lithuania has committed that, in case of any overcompensation in the future, the aid levels would be adapted so as to remedy the overcompensation.
- (47) 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 and the reduced rate of excise duty is applicable regardless of the origin of the petroleum products and biofuels.
- (48) Accordingly, the Commission comes to the conclusion that the notified scheme complies with the EAG for the period until 30 June 2014.

#### *3.3.2. Compatibility of the aid granted after 1 July 2014*

- (49) The scheme was in operation on 1 July 2014 when the 2014 EEAG came into force. Therefore the Commission has assessed the compatibility of the notified scheme also as from 1 July 2014 until the date of its closure on 31 December 2020 in the light of the 2014 EEAG points 3.2 and 3.3.2.2.

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<sup>11</sup> OJ L 283, 31.10.2003, p. 51.

- (50) In compliance with point 3.2 of the scope and definitions chapter of the Community Guidelines for State aid in the agricultural and forestry sectors in rural areas 2014-2020,<sup>12</sup> the 2014 EEAG can be directly applied in the assessment of the production of biofuels.

*Objective of Common interest*

- (51) The measure will promote the use of energy in renewable forms in the transport sector encouraging specifically the use of sustainable high biofuel blends.
- (52) This will have the benefit of reducing the emissions from vehicles and supports the EU's long term climate goals of reducing CO<sub>2</sub> emissions and therefore supports a common interest objective.

*Need for state intervention*

- (53) Without state intervention the biofuel blends would remain more expensive than petroleum and diesel based fuels. However, Lithuania has in place a blending obligation and as a general rule fuels cannot be marketed if they do not contain a minimum percentage of biofuel. According to point 114 of the EEAG, the Commission will consider that the aid does not increase the level of environmental protection and can therefore not be found compatible with the internal market if the aid is granted for biofuels which are subject to a supply or blending obligation, unless a Member State can demonstrate that the aid is limited to sustainable biofuels that are too expensive to come on the market with a supply or blending obligation only.
- (54) Lithuania confirmed that for the blends covered by the Fuel Quality Directive (blends containing no more than 30% biofuel), the tax exemption is not granted to the percentage subject to the blending obligation, but only for the difference. As illustrated in table 2d above, for D10, the aid will be granted only to the biodiesel exceeding the mandatory 7%, (i.e. to the biodiesel representing 3% of the blend); similarly, should E10 be marketed in Lithuania, the aid would be granted only to the bioethanol exceeding the mandatory 5% (i.e. to the bioethanol representing 5% of the blend). Under these circumstances, the Commission considers that no aid is granted in Lithuania to the low blends covered by the Fuel Quality Directive) for the biofuel part that is subject to the blending obligation. For the biofuel part that is not covered by the blending obligation the aid is necessary, since in the absence of the aid the biofuel content of the blends will be limited to the level imposed by the blending obligation, because adding more biofuels would make the blend more expensive than the fuel's market price.
- (55) In so far as high blends (containing more than 30% biofuel) are concerned, Lithuania argued that these blends should be considered a separate category of fuels, since their use requires adapted vehicles (see recital 18). For these blends aid is granted for the total content of biofuel in the blend. The Commission notes that high blends cannot be used in normal, non-adapted vehicles, and that their use involves additional costs. The Commission further notes that although in the past there was aid available for the entire content of biofuels in high blends, in the context of the existing blending obligation, high blends were not marketed in

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<sup>12</sup> OJ C 204 01.07.2014, p 1.

Lithuania (except for small volumes in 2014 and 2015). In this context, the Commission considers that in the absence of the aid, the blending obligation would be insufficient to allow the high blends to come on the market, as they would be more expensive than the blends covered by the blending obligation.

- (56) The aid is therefore necessary, as it allows the biofuels to compete with fossil fuels, which helps achieving the objective of common interest in accordance with section 3.2.2 and 3.3 (including point 114) of the EEAG.

#### *Appropriateness*

- (57) The excise duty reduction provides specific and quantified aid to producers of biofuel blends. Since the reduced rate of excise duty applies to biofuels quantity not subject to the supply obligation and to the biofuels contained in high blends the Commission considers that it can indeed increase the level of environmental protection and in particular the reduction of CO<sub>2</sub> emissions (the objectives of common interest identified above in accordance with section 3.2.3 of the EEAG and section 3.3 Aid to energy from renewable sources (in particular point 116)).

#### *Incentive Effect*

- (58) The incentive effect is present if the aid changes the beneficiary's behavior towards reaching the objective of common interest.
- (59) The Commission notes that the calculations provided by the Lithuanian authorities show that the production costs of high concentration biofuel blends are higher than the market price of low concentration biofuel blends. Hence, without the notified aid, there would be an insufficient incentive to produce high blended biofuels as there would be little incentive for the consumers to purchase more expensive high blends.
- (60) Taking into account the above considerations, it can be concluded that the aid measure provides for the necessary incentive effect in accordance with section 3.2.4 of the EEAG.

#### *Proportionality*

- (61) The excise duty reduction covers the difference between the production costs of biofuels and the market price of conventional fuels. It is in place to make biofuels competitive with less environmentally friendly fuels. It does not make the use of biofuels cheaper than other fuels.
- (62) Point 131(a) of the EEAG requires that the aid per unit of energy does not exceed the difference between the total levelised costs of producing energy (LOCE) from the particular technology in question and the market price of the form of energy concerned. The Commission considers the measure is in accordance with point 131(a) as the aid per unit of energy does not exceed in difference between the total levelised costs, as illustrated by tables 2a to 3c.

- (63) Point 131 (b) states that the LOCE may include a normal return on investment. The Commission considers that the measure is in accordance with 131(b) as the rate of return as applied in the production costs is reasonable (see recitals 21, 38 and 39).
- (64) Point 131 (c) requires production costs to be updated regularly, at least once a year. The Commission considers that the measure is in accordance with point 131 (c) as the Lithuanian authorities have confirmed that they monitor the production costs on an annual basis and adapt the excise duty reduction as appropriate.
- (65) Point 131 (d) requires that aid is only granted until the plant has been fully depreciated according to normal accounting rule. The Commission considers that the measure is in accordance with point 131 (d) as the Lithuanian authorities have explained that none of the plants benefitting from aid are already depreciated.
- (66) Point 113 of the EEAG limits the period for which operating aid for food-based biofuels can be granted until 2020. The Commission notes that this aid measure will expire in 2020. Furthermore, the reduced rate of excise duty should be limited only to biofuel producing plants that started operation before 31 December 2013 in accordance with Point 113 of the EEAG. The Lithuanian authorities informed the Commission that according to their information there are no plans to build any new biofuel production plants, including food based biofuel plants, until 2020. If this were to change they would take EEAG in due consideration.
- (67) Pursuant to Point 114 of the EEAG the Commission will consider that the aid does not increase the level of environmental protection and can therefore not be found compatible with the internal market if the aid is granted for biofuels which are subject to a supply or blending obligation, unless a Member State can demonstrate that the aid is limited to sustainable biofuels that are too expensive to come on the market with a supply or blending obligation only.
- (68) In Lithuania the reduced excise duty rate is applicable only to biofuels which are not subject to a supply obligation in the case of low blends, and to the biofuel contained in high blends. The Lithuanian authorities submitted detailed calculations of the production costs of biofuels (Tables 2 and 3 above), which show that without the aid, the blending obligation will not be sufficient to incentivise the use of blends containing more than the required percentage of biofuels. In fact this is further demonstrated by the fact that high bioethanol blends are only traded in a very reduced quantity, and high biodiesel blends are not traded at all in Lithuania. Under the circumstances the Commission considered that the aid is granted only to the part of biofuels not covered by the blending obligation, and to certain fuels (high blends, with a content higher than 30% biofuel) that are too expensive to come on the market with a blending obligation only.

- (69) In line with Point 115 of the EEAG, the Commission presumes that a residual market failure exists in the Lithuanian biofuels market, which can be addressed through this aid measure.
- (70) The Lithuanian authorities confirmed they will respect the annual reporting and monitoring provisions of the EAG as laid down in Sections 7.1 and 7.3. The relevant reports have been submitted.
- (71) Considering the above, the Commission concludes that the State aid granted under the notified measure is proportionate as it is limited to the minimum necessary to achieve the above identified object of common interest in accordance with section 3.2.5 of the EEAG.

#### *Cumulation*

- (72) The Lithuanian authorities have demonstrated (see recital 41) that any cumulation of the aid granted under this aid measure with other forms of aid does not exceed the limits fixed in the EEAG in accordance with section 3.2.5.2.

#### *Avoidance of undue negative effects on competition and trade*

- (73) The Commission notes that the aid is limited to environmentally friendly forms of fuel whose use is linked to environmental benefits. The aid is limited to the difference between production costs of biofuel producers and market price of the fuel.
- (74) Therefore it can be concluded that possible distortions of competition and trade resulting from the State Aid for the envisaged measure are limited, and that the overall balance with regard to the objective of common interest is positive in accordance with section 3.2.6 of the EEAG.

#### *Transparency*

- (75) The Lithuanian authorities have confirmed they will respect the annual reporting and monitoring requirements of section 6 of the EEAG.
- (76) Accordingly, considering recitals 48 to 74, the Commission concludes that the notified scheme complies with the 2014 EEAG.

#### *Compliance with Union tax law*

- (77) As shown in recitals 44 – 46 above, the measure under assessment complies with the Energy Taxation Directive.

## **4. CONCLUSION**

The Commission finds that the aid scheme "Excise duty reduction for biofuels" is compatible with the internal market in accordance with Article 107(3) (c) TFEU and has therefore decided not to raise objections to the notified measure.



The Commission reminds the Lithuanian authorities that, in accordance with Article 108(3) of the TFEU, plans to refinance, alter or change this scheme have to be notified to the Commission pursuant to the provisions of Commission Regulation (EC) No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty.<sup>13</sup>

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

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[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission



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<sup>13</sup> OJ L 140, 30.4.2004, p.1.