

# **VIEWLS PROJECT**

## **Report on the Legal Issues Regarding Biofuels for Transport**

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## GENERAL INTRODUCTION

1. One of the main aims of the VIEWLS Project is to assist the Commission in identifying its future policies on biofuels for transport. An important aspect thereof is to determine whether or not EU and national legislations regarding this matter need to be modified.

This report contains two parts:

- A protocol containing a “*Notification procedure for excise duty exemption for biofuels by Member States*”, supported by “*Guidelines for reporting detaxation schemes for biofuels in the transport sector*”; and
- An analysis of the European regulatory framework for the import and trade regulations on biofuels, the impact of international trade agreements, as well as the main stakeholders within and outside the European Union and the current state of negotiations of the EU with its biofuel trade partners.

Both parts provide for an analysis of the regulatory framework, based on the European Treaties and the subsequent directives and regulations.

2. The implementation of the European Directives on the promotion of biofuels for transport applications raises several legal issues related to the obligation of the Member States to report to the European Commission on the Measures undertaken to promote biofuels, including the detaxation, as well as trade issues with third countries governed by international agreements and the WTO.

This report was undertaken to analyse and clarify the above issues.

The information contained in this report is based on the regulatory framework in place until the date of this report.

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## EXECUTIVE SUMMARY

**New EU regulatory framework.** The transport sector accounts for 32% of the EU consumption and produces 28% of the EU greenhouse gas (GHG) emissions.

It is the only sector of the economy where energy consumption and GHG emissions continue to increase at an alarming rate. As a consequence, there is an urgent need for alternative and GHG emissions neutral fuels for transport applications, such as biofuels.

The limited capacity and the volatile price of the conventional energy sources, in particular oil, accelerates the need to prepare and implement a new energy strategy. Reducing the reliance on fossil fuels is thus one of the first steps to implement the new energy strategy. The introduction of renewable energy, including biofuels, can help diversify the energy supplies and increase energy security. In practice, there is a growing need for blends. Also, as long as the EU has no sufficient production capacity of its own, biofuels will need to be more and more imported into the EU.

The EU adopted a new regulatory framework to encourage substitute transport fuels. Two directives were adopted, one to promote the use of biofuels or other renewable fuels for transport (Directive 2003/30/EC) and another one to restructure the Community framework for the taxation of energy products and electricity Directive 2003/96/EC.

Member States have to ensure compliance with the Directives, but retain the right to choose whether they promote the use of pure biofuels or a blend of biofuel and conventional fuels.

This report focuses on two biofuels: biodiesel and bio-ethanol.

Part I of the report provides for an overview of the legal framework of the detaxation for biofuels. Part II deals with trade issues of biofuels between the EU and third countries.

**2. Reporting obligations for Member States.** The terms and conditions for the requests for detaxation schemes by the Member States are laid down in Directives 2003/96/EC and 2001/77/EC, as well as in Articles 87 and 88 of the EC Treaty and the Community Guidelines on State Aid for Environmental Protection (2001/37/03).

The notification procedure and annual reporting by the Member States to the European Commission are specified in Commission Regulation (EC) N° 794/2004. A protocol for such notification procedure is provided.

**3. Impact of international agreements.** The international and preferential bilateral agreements the EU has signed and negotiated on international trade, import duties and tariffs, could to a great extent jeopardize the EU initiatives for biofuels.

The Commission coordinates the EU trade policy in respect of the procedure for the conclusions of agreements between the Community and one or more States or international organisations. As an example, Council Regulation (EC) No. 3285/94 governs the common rules for imports from most third countries. It lays down the principle of freedom to import products originating in third countries, subject to possible safeguard measures. Council Regulation (EC) No 520/94 established a common procedure for administering quantitative quotas

Also, one needs to take into account the impact of the World Trade Organisation, in which the EU is one of the key players. The Commission negotiates on behalf of the EU Member States.

The EU is one of the driving forces behind the current round of multilateral trade negotiations in the WTO, the Doha Development Agenda (DDA), which has as main objective to put development at the heart of the world trade system in a way that will help developing countries combat poverty.

In Council Decision 94/800/EC, the main objective was to liberalise trade in industrial and agricultural goods under fair conditions of competition, via, amongst others, reducing tariff and non-tariff barriers to trade in goods.

Further, Communication COM(94) 212 lays down guidelines to revise and modernise the General System of Preferences, which guidelines are still in force and which aim to support development in the broader sense, embracing social and environmental concerns, and to complement the GATT and foster the integration of the developing countries into the international economy and the WTO.

Finally, Council Regulation (EC) N° 2501/2001 applies a scheme of generalised tariff preferences. It is presently under review.

4. **Main international trade partners (importers) on biofuels.** The 1992 Blair House Agreement between the US and the EU was an important element of the final Uruguay Round Agreement for agriculture. It is part of the EU's WTO schedule of commitments and resolved a GATT dispute over EU domestic support programs that impaired access to the EU oilseeds market. It's current relevance forms the object of a discussion between the EU and the US.

The Treaty of Asuncion of 1991 established a Common Market between the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay. This led to the creation of the Mercosur organisation with whom the EU started negotiations in April 2000.

Regarding EU-Pakistan relations, a number of actions have been prepared. However, the Commission now plans to reduce imports by requesting the application of a safeguard clause on Pakistani alcohol.

5. **Major Biofuels Exporting Countries.** The bioethanol production in Brazil by far exceeds the production in any other country and has the potential to increase further as it is linked to the production of sugar. The EU is the main producer of biodiesel in the World with a continuously increasing production estimated to about 1.6 billion litres in 2003. Biodiesel is currently produced in 9 Member States with the main production taking place in Germany, France and Italy.

At present only bioethanol has the potential to be used for international trade. Being the main global biodiesel producer, the EU will not face any major challenge from biodiesel imports. Even if the US would develop further its own biodiesel industry, the fuel would be used for the internal US market rather than exported to the EU.

Brazil is in a position to export large quantities of bioethanol to other markets, if there is demand and the price is at a reasonable level. The Brazilian alcohol sector is a government created market at least 8 times the size of the EU alcohol market. It is very volatile and, thus, unpredictable. This combined with the imposing size of the Brazilian output, puts Brazil in a powerful position to distort the world alcohol market. Due to a series of internal measures including subsidies, the Brazilian production cost is 1/3 of the EU production cost. Detaxation in the EU makes it very attractive for the Brazilian bioethanol industry to target the European market.

Although until now there is no biofuel capacity in Ukraine, the country has the potential to become a major exporter of both bioethanol and biodiesel.

6. **Import Duties for Biofuels.** In contrast with bioethanol, for which the custom duties have been well established in the Union, the custom classification of biodiesel has been often questioned by the different Members States' customs authorities as well as by the market traders themselves. However, the custom classification of biodiesel remained unchanged.

7. **Status of Negotiations with Mercosur.** So far, the negotiations failed as there was disagreement among the EU Member States and the Commission's services. Also, other problems occurred, related to the EU offer for access to the EU market for agricultural products and the Mercosur offer for market openness for industrial products and services. It was agreed that the negotiations would start again in 2005.

8. **Future Trends and Negotiation positions with Mercosur.** The EU must find WTO-compatible ways to prevent third country cheap biofuels to disrupt this process. To that purpose, tax reductions for biofuels are necessary to achieve the ambitious goals set forth by the EU.

Finding a balance between the desire of the EU trade partners to export their biofuels to the EU and the desire of the European industry to develop its own facilities and production, will remain the biggest challenge. Also, Community State Aid Rules and the Energy Taxation Directive must remain consistent with each other.

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## **PART I**

**Overview of the legal framework of the detaxation for biofuels**

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**Protocol for notification procedure**

# GUIDELINES FOR REPORTING DETAXATION SCHEMES FOR BIOFUELS IN THE TRANSPORT SECTOR

## II. INTRODUCTION

The transport sector accounts for more than 30% of the final energy consumption in the Community and is expanding along with carbon dioxide emissions. Therefore, for nearly two decades, the European Commission has encouraged the development of biofuels as a renewable energy source. Indeed, in the short term, biofuels are the most promising form of alternative fuels.

In September 2001, the European Commission published its White Paper "*European transport policy for 2010 : time to decide*" (COM(2001)370). The White Paper states that pollution from transport is a serious problem and the main source of air pollution in urban areas.

The promotion of the use of biofuels and other renewable fuels forms a part of a wider EU strategy aiming to replace 20% of mineral oil derivatives used in the road transport sector with alternative fuels by the year 2020.

This objective was put forward by the Commission Green Paper "*Towards a European strategy for the security of energy supply*" (November 2001 – COM(2001)547). Its objective is twofold: (1) to improve security of supply and (2) to reduce greenhouse gas emissions.

Hence, biofuels for transport are currently the subject of two directives:

- Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003, on the promotion of the use of biofuels or other renewable fuels for transport. This Directive contains general guidelines, pursuant to which each Member State is to set a national indicative target for the introduction of biofuels and other renewable fuels on the basis of reference values applicable to the Union as a whole (2% and 5.75% calculated on an energy content of all petrol and diesel for transport purposes respectively by 31 December 2005 and by 31 December 2010);
- Directive 2003/96/EC of the Council of 27 October 2003, restructuring the Community framework for the taxation of energy products and electricity. In order to secure the competitiveness of biofuels towards conventional fuels a detaxation policy may be applied according to this Directive. Various schemes ranging from full to zero detaxation are possible, taking into account the effect of the introduction of biofuels on automotive diesel and gasoline retail prices.

Member States will seek such detaxation policy in order to reach the national indicative targets for the introduction of biofuels as foreseen in Directive 2003/30/EC.

## III. TERMS AND CONDITIONS FOR DETAXATION OF BIOFUELS : LEGAL FRAMEWORK

### 1.a Article 16 of Directive 2003/96/EC

According to Article 16 of Directive 2003/96/EC, Member States are authorised to apply an exemption or a reduced rate of taxation on the taxable products, referred to as energy products in Article 2 of this Directive, i.e. pure biofuels or biofuels blended with mineral oils, which are motor fuels.

Article 2, as well as Article 16, refers to the CN codes in order to define these specific products. The CN codes are laid down in Commission Regulation (EC) No 1789/2003 of 11 September 2003, amending Annex I to Council Regulation (EEC) No 2658/87 on the Tariff and Statistical nomenclature and on the Common Customs tariff.

However, pursuant to Article 16(5) detaxation measures have to be limited in time and may not be applied for a period of more than six consecutive years. This period may be renewed.

### **1.b Article 2(a) of Directive 2001/77/EC**

Article 2(a) of Directive 2001/77/EC of the European Parliament and the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal market, lists the renewable energy sources.

The definition given by the Member State for biofuels must be in line with the definition used in Article 2(a) of Directive 2001/77/EC.

### **2. Article 26 of Directive 2003/96/EC**

According to Article 26(2) of the Directive 2003/96/EC, Member States have to inform the Commission when taking measures foreseen in the above Article 16, such as tax exemptions, tax reductions, tax differentiation and tax refunds.

Furthermore, since these measures might constitute State aid, an assessment according to Article 87 of the EC Treaty has to be made and the Member States have to comply with the notification pursuant to Article 88(3) of the EC Treaty.

### **3. Article 87 of the EC Treaty**

#### **a) Existence of State aid**

According to Article 87(1) of the EC Treaty, State aid involves an aid, granted by a Member State or through State resources, in any form whatsoever, which distorts or threatens to distort competition, by favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States, shall be incompatible with the common market.

It is clear that detaxation measures provided in Article 16 of Directive 2003/96/EC are destined to alleviate costs incumbent on a specific sector and, therefore, favour certain undertakings and/or the production of certain goods. Such alleviation is granted from State resources and its relating advantages may distort competition in the internal EU market. The measures are also likely to affect trade between Member States in the relating sector and therefore constitute State aid pursuant to Article 87(1) of the EC Treaty.

#### **b) Exemptions under Article 87(3) (b) and (c) of the EC Treaty.**

Pursuant to Article 87(3) (b) of the EC Treaty, aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State, may be considered compatible with a common market. The execution of such projects, which are geared by way of priority to the environment, may thus be authorised under this derogation.

The development of renewable energies, especially biofuels, is no doubt an important project of common European interest.

Moreover, Article 87(3) (c) of the EC Treaty foresees an exemption to the general rule of Article 87(1) for aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

Detaxation measures for biofuels in the transport sector are designed to enhance the use of environmentally friendly fuels, in order to reduce the emission of greenhouse gases and promote substantial development. This is in accordance with the EU policy in this sector as, amongst others, laid down, in the Community Guidelines on State aid for environmental protection (2001/C37/03).

### **4. Community Guidelines on State aid for environmental protection (2001/C37/03)**

The Community Guidelines are meant to determine whether, and under what conditions, State aid may be regarded as necessary to ensure environmental protection and sustainable development, without having disproportionate effects on competition and economic growth (section A.5).

According to section E.3.3. of the Community Guidelines operating aid in favour of the production of renewable energy will usually be allowable (Point 54). The Commission takes the view that such aid qualifies for special treatment because of the difficulties the sources of energy have sometimes encountered in competing effectively with conventional sources (Point 55).

Point (56) of the Community Guidelines provides that operating aid must be limited to cover the difference between the cost of producing energy from renewable energy sources and the market price of that energy.

Therefore, detaxation measures for biofuels may not result in :

- a lower market price for biofuels compared to the one for comparable fossil fuel, or
- an overcompensation for extra production costs of biofuels.

In order to benefit from the combined exemptions of Article 87(3) (b) and (c) of the EC Treaty and Section E.3.3. of the Community Guidelines, the Member States have to comply with Article 88(3) of the EC Treaty.

#### **5. Article 88(3) of the EC Treaty**

Pursuant to Article 88(3) of the EC Treaty, the Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

#### **IV. NOTIFICATION PROCEDURE**

Commission Regulation (EC) No 794/2004 of 24 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (presently Article 88 of the EG Treaty) sets out detailed provisions concerning the form, content and other details of notifications and annual reports referred to in the above Regulation.

Pursuant to Article 2 of the above Commission Regulation, notifications of new aid shall be made on the notification form set out in Part I of Annex I of this regulation, whereas Part II contains summary information for publication in the Official Journal. Supplementary information needed for the assessment of the measure in accordance with regulations, guidelines, frameworks and other texts applicable to State aid, shall be provided on the supplementary information sheets set out in Part III of Annex I.

In order to inform the Commission of detaxation measures such as tax exemptions, tax reductions, tax differentiation and tax refunds within the meaning of Directive 2003/96/EC, notification forms set out Part I, II and III.10 (sections (1) Objective of the aid, (9) Operating Aids in Favour of renewable energies and eventually (11) Other Information) need to be completed.

Pursuant to Article 3 of Commission Regulation (EC) No 794/2004 the notification shall be transmitted to the Commission by the Permanent Representative of the Member State and addressed to the Secretary-General of the Commission.

If the Member State intends to avail itself of a specific procedure laid down in any regulations, guidelines, frameworks and other text applicable to State aid, a copy of the notification shall be addressed to the Director-General responsible (Article 2.1§2).

No specific procedure as referred to in paragraph 2 will have to be used in order to obtain the approval for detaxation measures.

Until 31 December 2005 notifications shall be transmitted on paper as well, when ever possible, as by electronic copy. As from 1 January 2006, notifications shall be transmitted electronically, unless otherwise agreed by the Commission and the notifying Member State. All correspondence in connection with the notification submitted after 1 January 2006 shall be transmitted electronically.

A copy of the relating notification forms is attached to the present document as Exhibit 1.

## V. ANNUAL REPORTING

Pursuant to Article 16(7) of Directive 2003/96/EC, Member States shall communicate to the Commission the schedule of tax reductions or exemptions applied in accordance with this Article by 31 December 2004 and every 12 months thereafter.

Since detaxation measures will be part of the national policy of the Member States to reach the indicative targets for the introduction of biofuels as foreseen in Directive 2003/30/EC, such tax exemption or reduced rate of taxation will also have to be reported and assessed annually pursuant to Article 4 of Directive 2003/30/EC.

## EXHIBIT I

<p>Standard form for notification of State aids pursuant to Article 88 (3) EC Treaty and for the provision of information on unlawful aid</p>
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This form shall be used by Member States for the notification pursuant to Article 88(3) EC Treaty of new aid schemes and individual aid.

Member States are also requested to use this form when the Commission requests comprehensive information on alleged unlawful aid.

The present form consists of three parts:

- **I. General Information:** to be completed in all cases
- **II. Summary Information for publication in the Official Journal**
- **III. Supplementary Information Sheet depending on the type of aid**

## Chapter I - Part I. General Information

### Chapter II - Status of the notification

Does the information transmitted on this form concern:

- a notification pursuant to Article 88 (3) EC Treaty?
- a possible unlawful aid<sup>1</sup>?

If yes, please specify the date of putting into effect of the aid. Please complete this form, as well as the relevant supplementary forms.

- a non-aid measure which is notified to the Commission for reasons of legal certainty?

Please indicate below the reasons why the notifying Member State considers that the measure does not constitute State aid in the meaning of Article 87(1) EC Treaty. Please complete the relevant parts of this form and provide all necessary supporting documentation.

A measure will not constitute State aid if one of the conditions laid down in Article 87(1) EC Treaty is not fulfilled. Please provide a full assessment of the measure in the light of the following criteria focusing in particular on the criterion which you consider not to be met:

- ✓ No transfer of public resources (*For example, if you consider the measure is not imputable to the State or where you consider that regulatory measures without transfer of public resources will be put in place*)
- ✓ No advantage (*For example, where the private market investor principle is respected*)
- ✓ No selectivity/specificity (*For example, where the measure is available to all enterprises, in all sectors of the economy and without any territorial limitation and without discretion*)
- ✓ No distortion of competition / no affectation of intra-community trade (*For example, where the activity is not of an economic nature or where the economic activity is purely local*)

### 1. Identification of the aid grantor

#### 1.1. Member State concerned

<sup>1</sup> According to Article 1(f) 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 (OJ L 83, 27.3.1999, p. 1) (hereinafter "Procedural Regulation"), unlawful aid shall mean new aid put into effect in contravention of Article 88(3) of the EC-Treaty.

.....

**1.2. Region(s) concerned (if applicable)**

.....

**1.3.**

.....

Responsible contact person:

Name : .....  
Address : .....  
Telephone : .....  
Fax : .....  
E-mail : .....

**1.4. Responsible contact person at the Permanent Representation**

Name : .....  
Telephone : .....  
Fax : .....  
E-mail : .....

**1.5. If you wish that a copy of the official correspondence sent by the Commission to the Member State should be forwarded to other national authorities, please indicate here their name and address:**

Name : .....  
Address : .....  
.....  
.....

**1.6. Indicate Member State reference you wish to be included in the correspondence from the Commission**

## 2. Identification of the aid

**2.1. Title of the aid (or name of company beneficiary in case of individual aid)**

.....

**2.2. Brief description of the objective of the aid.**

Please indicate primary objective and, if applicable, secondary objective(s) :

	<b>Primary objective</b> <i>(please tick <u>one</u> only)</i>	<b>Secondary objective<sup>2</sup></b>
✓ Regional development	<input type="checkbox"/>	<input type="checkbox"/>
✓ Research and development	<input type="checkbox"/>	<input type="checkbox"/>
✓ Environmental protection	<input type="checkbox"/>	<input type="checkbox"/>
✓ Rescuing firms in difficulty	<input type="checkbox"/>	<input type="checkbox"/>
✓ Restructuring firms in difficulty	<input type="checkbox"/>	<input type="checkbox"/>
✓ SMEs	<input type="checkbox"/>	<input type="checkbox"/>
✓ Employment	<input type="checkbox"/>	<input type="checkbox"/>
✓ Training	<input type="checkbox"/>	<input type="checkbox"/>
✓ Risk capital	<input type="checkbox"/>	<input type="checkbox"/>
✓ Promotion of export and internationalisation	<input type="checkbox"/>	<input type="checkbox"/>
✓ Services of general economic interest	<input type="checkbox"/>	<input type="checkbox"/>
✓ Sectoral development <sup>3</sup>	<input type="checkbox"/>	<input type="checkbox"/>
✓ Social support to individual consumers	<input type="checkbox"/>	<input type="checkbox"/>
✓ Compensation of damage caused by natural disasters or exceptional occurrences	<input type="checkbox"/>	<input type="checkbox"/>
✓ Execution of an important project of common European interest	<input type="checkbox"/>	<input type="checkbox"/>
✓ Remedy for a serious disturbance in the economy	<input type="checkbox"/>	<input type="checkbox"/>
✓ Heritage conservation	<input type="checkbox"/>	<input type="checkbox"/>
✓ Culture	<input type="checkbox"/>	<input type="checkbox"/>

**2.3. Scheme - Individual aid<sup>4</sup>**

**2.3.1. Does the notification relate to an aid scheme?**

yes                       no

<sup>2</sup> A secondary objective is one for which, in addition to the primary objective, the aid will be exclusively earmarked. For example, a scheme for which the primary objective is research and development may have as a secondary objective small and medium-sized enterprises (SMEs) if the aid is earmarked exclusively for SMEs. The secondary objective may also be sectoral, in the case for example of a research and development scheme in the steel sector.

<sup>3</sup> Please specify sector in point 4.2.

<sup>4</sup> According to Article 1(e) 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 (OJ L 83, 27.3.1999, p. 1), individual aid shall mean aid that is not awarded on the basis of an aid scheme and notifiable award of aid on the basis of a scheme.

➤ If yes, does the scheme amend an existing aid scheme?

yes  no

➤ If yes, are the conditions laid down for the simplified notification procedure pursuant to Article 4(2) of the Implementation Regulation (EC) N° (...) of (...) fulfilled?

yes  no

➤ If yes, please use and complete the information requested by the simplified notification form (see Annex II).

➤ If no, please continue with this form and specify whether the original scheme which is being amended was notified to the Commission.

yes  no

➤ If yes, please specify:

Aid number: .....

Date of Commission approval (reference of the letter of the Commission (SG(..)D/...):  
.../.../.....

Duration of the original scheme:.....

Please specify which conditions are being amended in relation to the original scheme and why:.....

**2.3.2** Does the notification relate to individual aid?

yes  no

➤ If yes, please tick the following appropriate box

aid based on a scheme which should be individually notified

Reference of the authorised scheme:

Title : .....

Aid number : .....

of Commission approval : .....

Letter

individual aid not based on a scheme

**2.3.3.** Does the notification relate to an individual aidor scheme notified pursuant to an exemption regulation? If yes, please tick the following appropriate box:

- Commission Regulation (EC) No 70/2001 on the application of Articles 87 and 88 EC Treaty to State aid to small and medium-sized enterprises<sup>5</sup>. Please use the supplementary information sheet under part III, 1
  
- Commission Regulation No 68/2001 on the application of Articles 87 and 88 EC Treaty to training aid<sup>6</sup>. Please use the supplementary information sheet under part III, 2
  
- Commission Regulation (EC) No 2204/2002 on the application of Articles 87 and 88 EC Treaty to State aid for employment<sup>7</sup>. Please use the supplementary information sheet under part III, 3
  
- Commission Regulation (EC) No 1/2004 on the application of Articles 87 and 88 EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products (OJ L 1 of 03.01.2004).

**3. National Legal Basis**

**3.1.** Please list the national legal basis including the implementing provisions and their respective sources of references:

Title:.....  
 .....  
 .....  
 .....  
 Reference (where applicable): .....  
 .....  
 .....

**3.2.**Please indicate the document(s) enclosed with this notification:

A copy of the relevant extracts of the final text(s) of the legal basis (and a web link, if possible)

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<sup>5</sup> Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium sized enterprises, OJ L 10, 13.1.2001, p. 33., as amended by Commission Regulation (EC) 364/2004, OJ L 364/2004 of 28.02.2004, p. 27  
<sup>6</sup> Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to training aid, OJ L 10, 13.1.2001, p. 20, as amended by Commission Regulation (EC)363/2004, OJ L 63 of 28.02.2004 p. 20  
<sup>7</sup> Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment, OJ L 337, 13.12.2002, p. 3 and OJ L 349, 24.12.2002, p. 126.

A copy of the relevant extracts of the draft text(s) of the legal basis (and a web link, if existing)

**3.3.** In case of a final text, does the final text contain a clause whereby the aid granting body can only grant after the Commission has cleared the aid (stand still clause)?

yes  no

## 4. Beneficiaries

### 4.1. Location of the beneficiary(ies)

- in (an) unassisted region(s)  
 in (a) region(s) eligible for assistance under Article 87(3)(c) EC Treaty (specify at NUTS-level 3 or lower)  
 in (a) region(s) eligible for assistance under Article 87(3)(a) EC Treaty (specify at NUTS-level 2 or lower)  
 mixed: specify .....

### 4.2. Sector(s) of the beneficiary(ies):

- ..... Not sector specific  
 .....A Agriculture  
 .....B Fisheries  
 .....C Mining and Quarrying  
 .....10.1 Coal  
 .....D Manufacturing industry  
     .....17 Textiles  
     .....21 Pulp and paper  
     .....24 Chemical and pharmaceutical industry  
     .....24.7 Man-made fibres  
     .....27.1 Steel<sup>8</sup>  
     .....29 Industrial machinery  
     .....DL Electrical and optical equipment  
     .....34.1 Motor vehicles  
     .....35.1 Shipbuilding  
     ..... Other Manufacturing sector, please specify:.....  
 .....E Electricity, gas and water supply  
 .....F Construction  
 .....52 Retail Services  
 .....H Hotels and restaurants (Tourism)  
 .....I Transport  
     .....60 Land transport and transport via pipelines  
     .....60.1 Railways  
     .....60.2 Other land transport  
     .....61.1 Sea and coastal water transport  
     .....61.2 Inland water transport  
     .....62 Air transport  
 .....64 Post and telecommunications  
 .....J Financial intermediation  
 .....72 Computer and related activities  
 .....92 Recreational, cultural and sporting activities  
 ..... Other, please specify according to NACE rev. 1.1 classification<sup>9</sup>: .....

<sup>8</sup> Annex B to the Communication from the Commission: "Multisectoral framework on regional aid for large investment projects", OJ C 70, 19.3.2002, p. 8.

<sup>9</sup> NACE Rev.1.1 is the Statistical classification of economic activities in the European Community.

### 4.3. In case of an individual aid:

Name of the beneficiary : .....

Type of beneficiary : .....

SME

Number of employees : .....

Annual turnover : .....

Annual balance-sheet : .....

Independence : .....

*(please attach a solemn declaration in line with the Commission Recommendation on SME<sup>10</sup> or provide any other evidence to demonstrate the above criteria):*

.....

large enterprise

firm in difficulties<sup>11</sup>

### 4.4. In case of an aid scheme:

Type of beneficiaries:

all firms (large firms and small and medium-sized enterprises)

only large enterprises

small and medium-sized enterprises

medium-sized enterprises

small enterprises

micro enterprises

the following beneficiaries: .....

Estimated number of beneficiaries :

under 10

from 11 to 50

from 51 to 100

from 101 to 500

from 501 to 1000

over 1000

<sup>10</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, OJ L 124, 20.5.2003, p. 36 and Commission Regulation (EC) No 364.../2004 amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development.

<sup>11</sup> As defined in the Community Guidelines for rescuing and restructuring firms in difficulties OJCE C 288 of 9.10.1999, p. 218.

## 5. Amount of aid / Annual expenditure

In case of an individual aid, indicate the overall amount of each measure concerned:

.....  
In case of a scheme, indicate the annual amount of the budget planned and the overall amount (in national currency):

.....  
For tax measures, please indicate the estimated annual and overall revenue losses due to tax concessions for the period covered by the notification:

.....  
If the budget is not adopted annually, please specify what period it covers:

.....  
If the notification concerns changes to an existing scheme, please give the budgetary effects of the notified changes to the scheme:

## 6. Form of the aid and means of funding

Specify the form of the aid made available to the beneficiary (where appropriate, for each measure):

- Direct grant
- Soft loan (including details of how the loan is secured)
- Interest subsidy
- Tax advantage (e.g. tax allowance, tax base reduction, tax rate reduction, tax deferment). Please specify:  
.....
- Reduction of social security contributions
- Provision of risk capital
- Debt write-off
- Guarantee (including amongst others information on the loan or other financial transaction covered by the guarantee, the security required and the premium to be paid)
- Other. Please specify:.....

For each instrument of aid, please give a precise description of its rules and conditions of application, including in particular the rate of award, its tax treatment and whether the aid is accorded automatically once certain objective criteria are fulfilled (if so, please mention the criteria) or whether there is an element of discretion by the awarding authorities.

.....  
Specify the financing of the aid: if the aid is not financed through the general budget of the State/region/municipality , please explain its way of financing:

- Through parafiscal charges or taxes affected to a beneficiary, which is not the State. Please provide full details of the charges and the products/activities on which they are levied. Specify in particular whether products imported from other Member States are liable to the charges. Annex a copy of the legal basis for the imposition of the charges.....
- Accumulated reserves
- Public enterprises
- Other (please specify) .....

## 7. Duration

7.1. In the case of an individual aid:

Indicate the date when the aid will be put into effect (If the aid will be granted in *tranches*, indicate the date of each *tranche*)

Specify the duration of the measure for which the aid is granted, if applicable

**7.2.** In the case of a scheme:

Indicate the date from which on the aid may be granted

Indicate the last date until which aid may be granted

If the duration exceeds six years, please demonstrate that a longer time period is indispensable to achieve the objective(s) of the scheme:

**8. cumulation of different types of aid**

Can the aid be cumulated with aid received from other local, regional, national or Community schemes to cover the same eligible costs?

yes  no

If so, describe the mechanisms put in place in order to ensure that the cumulation rules are respected:

**9. Professional Confidentiality**

Does the notification contain confidential information which should not be disclosed to third parties?

yes  no

If so, please indicate which parts are confidential and explain why:

If no, the Commission will publish its decision without asking the Member State.

**10. Compatibility of the aid**

Please identify which of the existing Regulations, frameworks, guidelines and other texts applicable to State aid provide an explicit legal basis for the authorisation of the aid (where appropriate please specify for each measure) and complete the relevant supplementary information sheet(s) in part III

- SME aid
  - Notification of an individual aid pursuant to Article 6 of Regulation (EC) No 70/2001 as amended by Regulation (EC) No.364/2004
  - Notification for legal certainty

- Aid for SMEs in the agricultural sector
- Training aid
  - Notification of an individual aid pursuant to Article 5 of Regulation (EC) No 68/2001 as amended by Regulation (EC) 363/2004
  - Notification for legal certainty
- Employment aid
  - Notification of an individual aid pursuant to Article 9 of Regulation (EC) No 2204/2002
  - Notification of a scheme pursuant to Article 9 of Regulation (EC) No 2204/2002
  - Notification for legal certainty
- Regional aid
  - Aid coming under the multisectoral framework on regional aid for large investment projects
  - Research and development aid
  - Aid for rescuing firms in difficulty
  - Aid for restructuring firms in difficulty
  - Aid for audio-visual production
  - Environmental protection aid
  - Risk capital aid
  - Aid in the agricultural sector
  - Aid in the transport sector
  - Shipbuilding aid

Where the existing Regulations, frameworks, guidelines or other texts applicable to State aid do not provide an explicit basis for the approval of any of the aid covered by this form, please provide a fully reasoned justification as to why the aid could be considered as compatible with the EC Treaty, referring to the applicable exemption clause of the EC Treaty (Article 86(2), Article 87(2) (a) or (b) , Article 87(3) (a), (b), (c) or (d)) as well as other specific provisions relating to Agriculture and Transport

**11. Outstanding recovery orders**

In the case of individual aid has any potential beneficiary of the measure received state aid which is the subject of an outstanding recovery order by the Commission?

- yes                       no

If yes, please provide complete details:.....  
 .....  
 .....  
 .....

**12. Other Information**

Please indicate here any other information you consider relevant to the assessment of the measure(s) concerned under State aid rules.

**13. Attachments**

Please list here all documents which are attached to the notification and provide paper copies or direct internet links to the documents concerned.

**14. Declaration**

I certify that to the best of my knowledge the information provided on this form, its annexes and its attachments is accurate and complete.

Date and place of signature .....

Signature : .....

Name and position of person signing.....

## Chapter III - Part II. Summary Information for publication in the Official Journal

<b>Number of aid:</b>	(to be completed by the Commission)		
<b>Member State:</b>			
<b>Region:</b>			
<b>Title and objective of aid schemes or name of company beneficiary of an individual aid (aid based on a scheme which should however be notified individually and aid not based on a scheme):</b>			
<b>Legal basis:</b>			
<b>Annual expenditure planned or overall amount of individual aid granted: (In national currency)</b>	Aid scheme	Annual expenditure planned:	EUR ... million
		Overall amount:	EUR ... million
	Individual aid	Overall amount of each measure:	EUR ... million
<b>Duration:</b>			
<b>Maximum aid intensity of the individual aid or the aid scheme:</b>			
<b>Economic sectors:</b>	All sectors:		
	<ul style="list-style-type: none"> <li>• <i>or</i> Limited to specific sectors as mentioned in the "General information", (Part I, par. 4.2.)</li> </ul>		
<b>Name and address of the granting authority</b>	Name:		

## Chapter IV - Part III. Supplementary Information Sheets

To be completed as necessary depending on the type of aid concerned:

1. SME aid
2. Training aid
3. Employment aid
4. Regional aid
5. Aid coming under the multisectoral framework
6. Research and development aid
  - a) in the case of a scheme
  - b) in the case of individual aid
7. Aid for rescuing firms in difficulty
  - a) in the case of a scheme
  - b) in the case of individual aid
8. Aid for restructuring firms in difficulty
  - a) in the case of a scheme
  - b) in the case of individual aid
9. Aid for audio-visual production
10. **Environmental protection aid**
11. Risk capital aid
12. Aid in the agricultural sector
  - a) Aid for agriculture
    - i. Aid for investment in agricultural holdings
    - ii. Aid for investments in connection with the processing and marketing of agricultural products
  - b) Agri-environmental aid
  - c) Aid to compensate for handicaps in the less favoured areas
  - d) Aid for the setting up of young farmers

- e) Aid for early retirement or for the cessation of farming activities
- f) Aid for closing production, processing and marketing capacity
- g) Aid for producer groups
- h) Aid to compensate for damage to agricultural production or the means of agricultural production
- i) Aid for land reparation
- j) Aid for the production and marketing of quality agricultural products
- k) Aid for the provision of technical support in the agricultural sector
- l) Aid for the livestock sector
- m) Aid for the outermost regions and the Aegean Islands
- n) Aid in the form of subsidised short-term loans
- o) Aid for the promotion and advertising of agricultural and certain non-agricultural products
- p) Aid for rescue and restructuring firms in difficulty
- q) Aid for TSE tests; fallen stock and slaughterhouse waste

### **13. Aid in the transport sector**

- a) Individual aid for restructuring firms in difficulty in the aviation sector
- b) Aid for transport infrastructure
- c) Aid for maritime transport
- d) Aid for combined transport

### **14. Aid to the fisheries sector**

**Part III.10**  
**Supplementary Information Sheet on environmental protection aid**

*This supplementary information sheet must be used for the notification of any aid covered by the Community Guidelines on State aid for environmental protection<sup>12</sup>.*

**1. objective of the aid**

1.1. Which are the objectives aimed at in terms of environmental protection? Please submit a detailed description for each part of the scheme

.....

If the measure in question has already been applied in the past, what have been the results in terms of environmental protection?

.....

1.2. If the measure is a new one, what environmental results are anticipated, and over what period ?

.....

**2. Investment aid aimed at the adaptation to new Standards or aimed at going beyond existing standards**

2.1. Aid for adaptation to new Community standards

*2.1.1. Will aid be granted for reaching Community standards already adopted at the time of notification?*

yes                       no

In the affirmative which are the Community standards in question?

.....

Date at which they have been formally adopted by the competent Community Institutions?.....

Please confirm that no aid will be granted to large enterprises for reaching Community standards already adopted but not yet in force

<sup>12</sup> Community Guidelines on State aid for environmental protection, JOC 37, 3.2.2001, p. 3.

yes                       no

If Community Standards are set in a directive, which deadlines are set for the transposition?.....

2.1.2. *Which are the eligible costs?*

.....  
.....

Please explain how it will be ensured that the eligible costs are only the extra costs necessary to meet the environmental objective, and how any cost savings engendered over the first 5 years of the life of the investment will be taken into account

.....  
.....

To what extent are advantages deriving from a possible capacity increase and from accessory additional productions taken into account?.....

.....

2.1.3. *What is the maximum aid intensity expressed as a gross amount of the planned aid?* .....

2.2. State aids aimed at going beyond Community standards or planned in case no Community Standard exists.

2.2.1. *If Community standards exist, please describe*.....

If there are no Community standards, are there national standards?

yes                       no

If yes, please attach copies of the relevant texts.

Please confirm that an enterprise will only be granted aid for reaching national standards which are more stringent than Community standards or where no Community standards exist, if it complies with the relevant standard on the final date laid down in the national measure: .....

Please give examples of eligible investments:.....

In the case of national standards, are they stricter than Community standards?

yes                       no

If yes, please specify, .....

.....

2.2.2. *What are the eligible costs?*

Please explain in what way it will be ensured that the eligible costs are only the extra costs necessary to meet the environmental objective, and how any cost savings engendered over the first 5 years of the life of the investment will be taken into account.

.....  
.....  
To what extent have possible advantages deriving from a capacity increase and additional accessory productions been taken into account?

**2.2.3. Please state the maximum gross aid intensity of the planned measure**

What is the standard maximum gross aid intensity of the planned measure?

Does the aid scheme provide for a bonus for undertakings situated in regions eligible for national regional aid?

yes                       no

If yes, which bonuses are foreseen?.....

Does the aid scheme provide for a bonus for SMEs?

yes                       no

If                      yes,                      please                      give                      details?  
.....

Can the bonus be cumulated with the bonus for undertakings situated in assisted regions?

yes                       no

If yes, please describe the modalities:.....

**3. Investment aid in the energy sector**

**3.1. Aids for investments aimed at energy saving**

**3.1.1. What are the energy savings expected as a result of the ad hoc aid or aid scheme?**

Is the amount of the expected savings assessed by an independent expert? Please give examples of eligible investments  
.....

**3.1.2. What are the CO2 saving expected as a result of the ad hoc aid or aid scheme ?**

**3.1.3. What are the eligible costs?**

Please explain in what way it will be ensured that the eligible costs are only the extra costs necessary to meet the environmental objective, and how any cost savings engendered over the first 5 years of the life of the investment will be taken into account.

To what extent have possible advantages deriving from a capacity increase and additional accessory productions been taken into account?

What is the maximum gross aid intensity of the planned aid ?

Does the project provide for a bonus for undertakings in areas eligible for national regional aid schemes?

yes                       no

If yes, which bonuses are foreseen?

Does the planned scheme provide for a bonus for SMEs?

yes                       no

If yes, which bonus?

Can this bonus be cumulated with the bonus applicable to undertakings in assisted areas?

yes                       no

If yes, what are the conditions?.....

### 3.2. Aids in favour of the combined production of electricity and heat

3.2.1. *Which primary source of energy will be used in the production process?*

3.2.2. *What will be the environmental benefit of the measure in question?*

If the conversion efficiency is particularly high, give the comparative average.

What will be the minimum conversion efficiency of the eligible CHP plants?

If the measures allow energy consumption to decrease, in what proportion?

Have the provisions been elaborated by an independent expert?

In what respect and to what extent is the production process less damaging for the environment, if at all?

3.2.3. *What are the eligible costs?*

What would be the investment costs for the installation of a production entity for electricity (or heat) for the same capacity in terms of effective energy production?

To what extent is the sale of heat (if the installation is primarily destined for the production of energy) or the sale of electricity (in the opposite case) taken into account in order to decrease the higher investment costs?

In the case of the replacement of an existing installation, is there an advantage deriving from the increase of capacity or from cost saving?

How are those advantages calculated?

3.2.4. *What is the maximum gross aid intensity of the planned aid?*

What is the standard maximum gross intensity of the aid?

Does the planned scheme provide for a bonus for undertakings in assisted areas?

yes                       no

If yes, which bonuses are foreseen? .....

Is a bonus foreseen for SMEs?

yes                       no

If yes, please give details

Can this bonus be cumulated with the bonus for undertakings in assisted areas?

yes                       no

If yes, under what conditions?

### 3.3. Aids for investment in renewable energies

*3.3.1. Which are the types of energy in question? Do they fall under the definition of renewable energies described in Art. 2 of Directive 2001/77/CE of the European Parliament and of the Council of 27 September 2001<sup>13</sup>?*

In case the investments are meant to provide energy for a whole Community, describe the limits of this community and the types of energy used before for that purpose.

*3.3.2. What are the eligible costs?*

What would be the investment costs for the installation of a production entity for electricity for the same capacity in terms of effective energy production?

*3.3.3. What is the maximum gross aid intensity of the planned aid?*

If the aid may cover the total eligible costs, why is such an aid rate indispensable?

In similar circumstances, how would the produced energy be traded, through which distributors and at what tariffs? .....

Does the planned aid scheme provide for a bonus for undertakings situated in regions eligible for national regional aid?

yes                       no

If so, what is the size of the bonus? .....

Is a bonus foreseen for SMEs?

yes                       no

---

<sup>13</sup> Directive 2001/77/CE of the European Parliament and of the Council of 27 September 2001, OJ L 283, 27.10.2001, p. 3.

If yes, please give details:.....

Can this bonus be cumulated with the bonus provided for undertakings in assisted regions?

yes                       no

If yes, under which conditions? .....

Can the notified investment aid be combined with other State aid within the meaning of Article 87(1) of the Treaty, or with other forms of Community financing?

yes                       no

If yes, please undertake to respect the maximum aid intensities stipulated in the environmental aid guidelines, or, where aid serving different purposes and involving the same eligible costs is granted, the most favorable aid ceiling:.....

**4. Aid in favour of the rehabilitation of polluted industrial areas**

4.1. What is the site in question (description of the site) and what is the nature of the pollution?

Has the nature, extent and risk to human health and the environment of the pollution been subject to an independent expert assessment?

yes                       no

Which ones ? Attach copies of the reports.

4.2. In the case of ad-hoc aid, please answer the following questions :

Is the current ownership of the site public or private ?

If the current ownership of the site is public, has this site been purchased by the public administration in order to carry out the remediation/rehabilitation actions?

yes                       no

Has the person responsible for the pollution of the site been identified?

yes                       no

If not, please describe briefly the exemption circumstances that render the polluter not liable

Has the value of the polluted site (before rehabilitation) been evaluated through an independent expert analysis?

yes                       no

What is the market value of the site before the rehabilitation action ?

.....

What are the costs calculated for the rehabilitation work? .....

What are the primary costs in the sense of the Commission Communication on State aid elements in sales of land and buildings by public authorities?

.....

Has the value of the site after rehabilitation been estimated by an independent expert assessment?

yes                       no

What is the estimated market value of the rehabilitated site?.....

Has the public administration the intention of selling the land within three years after the date of acquisition?

What land use will be given to the polluted site after its rehabilitation?

What is the scope of the envisaged aid?

What is the maximum gross aid intensity of the planned aid?

4.3. In case of an aid scheme, please explain

What is the scope of the envisaged aid ?

What is the maximum gross aid intensity of the planned aid ?

Have similar aid schemes been given to fund the rehabilitation of other polluted sites in your Member State? Please explain how many sites have been remediated under similar schemes and what were the amounts allocated to such schemes?.....

.....

**5. Aid in favour of relocalisation of an Undertaking**

5.1. Where is the undertaking which should benefit from the relocation aid situated?

If the location is in a Zone Natura 2000, which legislative text provides for that qualification?

5.2. Why does the relocation takes place?

Please provide a thorough description of the environmental, social or public health circumstances that render the relocation necessary. Is the owner of the undertaking liable (under national or Community legislation) for the pollution/environmental problem?

5.3. Is there an administrative or judicial decision ordering the relocation of the undertaking ?

yes                       no

If yes, attach a copy of the relevant decision.

Please confirm that the beneficiary will comply with the strictest environmental standards applicable in the new region where it is located.

5.4. What profits can the undertaking expect from the sale, the expropriation, or rent of the abandoned territories or installations ?

5.5. What costs will have to be assumed in relation with the new installation with equal production capacity as the one abandoned ?

Will the relocation cause penalties for the anticipated termination of the contract regarding the rent of the territory or of the buildings ?

Will there be any benefits from the new technology used following the relocation ?

Are there accounting gains from the better use of the installations following the relocation ?

What is the maximum gross aid intensity of the planned aid?.....

**6. Aid to smes for advisory/consultancy services in the environmental field**

6.1. Who are the potential beneficiaries of the aid ?

Do they fulfil all the conditions of Annex 1 of Regulation (CE) No 70/2001 of the Commission of 12 January 2001, concerning the application of Articles 87 and 88 of the Treaty CE to state aids for SMEs<sup>14</sup>

6.2. Will the consultancy services be provided by external companies ?

yes                       no

Do the external companies have financial links with the undertakings beneficiaries of the aid?

yes                       no

Please state the exact nature of the consultancy services:.....  
.....

**7. Operating aid To promote waste management and energy saving**

7.1. What are the extra production costs and what share is covered by the aid?

If the aid is degressive please state the modalities?

7.2. What is the foreseen duration for the application of the notified aid scheme?

7.3. Specific questions in case of aid to promote waste management :

How is it ensured that a beneficiary finances the service provided in proportion to the amount of waste produced and/or the cost of treatment?

In case of an aid for industrial waste management are there Community rules applicable ?

yes                       no

If yes, please describe:.....

In the absence of Community rules, are there national rules ?.....

yes                       no

If yes, please describe:.....

If, yes, are these national rules stricter than Community rules?

yes                       no

<sup>14</sup> Regulation (EC) No 70/2001 of the Commission of 12 January 2001 concerning the application of Article 87 and 88 EC Treaty to State aids to small and medium-sized enterprises, OL L 10, 13.10.2001, p. 33.

If yes, please describe:.....

**8. Operating Aids in form of tax reductions or exemptions**

8.1. Introduction of a new tax as a result of a Community obligation

8.1.1. *The Member State grants exemptions which lead to a rate lower than the minimum Community rate*

From which tax will a reduction or exemption be granted?

How does the levying of the tax contribute to environmental protection?

What results have been obtained as a direct consequence of the tax, or are expected to be obtained?

Have these exemptions been authorized by the Council applying Community fiscal rules?

Why is it necessary to apply lower rates than the minimum Community rates?

Are the sectors benefiting from the tax reductions subject to strong intra-community and/or international competition?

How many undertakings may benefit from this measure?

Are those undertakings subject to other charges concerning environmental protection?

8.1.2. *The Member State grants tax reductions at a rate lower than the minimum Community rate*

From which tax will a reduction or exemption be granted ?

How does the levying of the tax contribute to environmental protection ?

What results have been obtained as a direct consequence of the tax, or are expected to be obtained ?...

Are the derogations conditional on the conclusion of agreements between the recipient firms and the Member State in order to improve environmental protection?

yes                       no

What is the nature of these agreements ? .....

Are the agreements open to all sectors of the economy which can benefit from the tax measure ? .....

If the signing up to an agreement is voluntary and not a condition for receiving the tax benefit, what is the (expected) rate of accession to agreements among the beneficiaries of the tax benefit ?.....

Who ensures the monitoring of the agreements entered into by the firms ?

Which sanctions are foreseen in case of non-compliance of the obligations undertaken in the agreements ? .....

Attach a copy of such agreements or describe them in detail.

If national rules have the same effects as the above-mentioned agreements, please attach a copy of the rules.

In the absence of agreements between firms and the Member State, what will be the rate effectively paid by the firms after application of the reduction and what will be the difference between this amount and the minimum Community rate?

8.1.3. *Derogation applicable for the introduction of a new tax imposed in the absence of a Community obligation*

Are the derogations conditional on the voluntary or obligatory conclusion of agreements between the firms and the Member State aiming at an improvement of the environment?

yes                       no

What is the nature of such agreements ?

yes                       no

Are they open to all sectors of the economy which can benefit from the tax measure ?

yes                       no

If the signing up to an agreement is voluntary and not a condition for receiving the tax benefit, what is the rate of accession to agreements among the beneficiaries of the tax benefit ?

Who ensures the respect of the commitments entered into by the firms ?

What are the sanctions in case of non-compliance with the commitments foreseen in the agreements ? .....

Attach a copy of the draft agreements if available or describe their content.

If there are national rules having the same effect as the aforementioned agreements, attach a copy of these national rules.

In the absence of agreements between firms and the Member State which rate will be effectively paid by the firms after application of the reduction and which will be the difference to the "normal" national rate ?  
.....

Please submit figures which enable the Commission to assess the share of the tax actually paid.

Which duration is foreseen for the application of the notified planned aid scheme? .....

8.1.4. *Derogations applicable to existing taxes*

What is the environmental effect of the tax concerned by the measure?

When was the tax introduced ?

For which beneficiaries ?

Was the decision to grant a tax reduction for the beneficiaries concerned by this notification made in connection with a significant increase of the tax ?

yes                       no

If yes, please show the development of the relevant tax rate over time in absolute terms.

Have the derogations become necessary following a significant change in the economic conditions ?

Describe the change.....;

Is this change specific to one Member State or does it exist in all Member States ?.....

Which increase of charges is due to the change of economic conditions ?.....

What is the duration of the application of the notified planned aid scheme?

8.1.5. *Tax exemption necessary for the modernisation of production of energy in order to obtain a higher energy efficiency.*

What traditional energy sources will be used for the production of energy ?.....

What will be the difference in energy efficiency as compared to traditional methods of production ?.....

What additional costs will be caused by the envisaged production ?

.....

## 9. Operating Aids in Favour of renewable energies

### 9.1. Which are the categories of energy in question?

Do these types of energy fall within the definition of renewable energies as set out in Art.2 of Directive 2001/77/CE of the European Parliament and of the Council of 27 September 2001?

### 9.2. Aids for compensating the difference between the production costs for renewable energies and the market prices for such energy:.....

Are these new plants?

yes                       no

What are the average production costs and the difference to the average market price for every source of renewable energy? .....

Please describe the precise support mechanism and in particular the method for calculating the amount of aid:.....

What is the foreseen duration for amortizing the plants? .....

Please show that the net present value of the aid will not exceed the net present value of the total investment costs for the power plant or the type of power plant benefiting from the aid.....

If the aid is foreseen for several years, what are the modalities for the revision of production costs and market prices? .....

Are the plants for the production of renewable energy sources as well eligible for investment aids?

yes                       no

If yes, how much?

How will the investment aid be taken into account when determining the need for operating aid?

Does the aid include an element of return on capital?

yes                       no

If yes, how much? Please explain why this is considered to be necessary. For the biomass sector, can the aid go beyond the coverage of the investments?

### 9.3. Aids in the form of market mechanisms

Are these new plants?

yes                       no

What are the average costs for the production of the renewable energy in question and the difference to the average market price for energy?

How will the mechanism function?

How is it ensured that the mechanism does not dissuade renewable energy producers from becoming more competitive?

How does the mechanism take imports and exports of electricity into account?

In the case of green certificates will the Member State intervene directly or indirectly in the price - setting?

Can the Member State, if it so wishes, put new certificates on the market or can it buy them?

yes                       no

Will the system include a charge to be paid in case of non-fulfilment of an obligation?

yes                       no

If yes, how will this money be collected, administered and used?

How will the control be ensured in order to avoid an overall overcompensation of the participating firms?

#### 9.4. Operating aid on the basis of the external costs avoided

Are these new plants?

yes                       no

How and by whom have the external costs avoided been calculated? Please submit a reasoned and quantified comparative cost analysis together with an assessment of external costs caused by competing energy producers.....

What is the maximum amount of aid per kWh? .....

How is control ensured that the amounts of aid going beyond the amount resulting from option 1 is in fact re-invested in the sector or renewable energies? .....

**10. Operating aid for the combined production of Heat and Electricity**

10.1. Which primary energy source will be utilised in the production process?

What is the benefit of the planned measure for the environment?

If the conversion efficiency is particularly high, what is the comparative average?

What will be the minimum conversion efficiency of the eligible CHP plants?

In which proportion, if at all, does the measure allow for the reduction of energy consumption?

Have the measures been assessed by an independent expert?

In which aspects and to what extent, if at all, does the production process damage less the environment?

What are the modalities of the planned aid?

What are the average production costs and the average market prices of the produced energies?

What is the average market price of a traditional energy unit?

In case of industrial use of the combined production of heat and electricity, which are the possible benefits from the production of heat?

If the aid is foreseen for several years, which are the conditions for the adjustment of production costs and market prices?

## **11. Other Information**

Please indicate here any other information you consider relevant to the assessment of the measure(s) concerned under the guidelines on aid for environmental protection.

# NOTIFICATION PROCEDURE FOR EXCISE DUTY EXEMPTION FOR BIOFUELS BY MEMBERS STATES

## I. PROCEDURE

- Notification (cover letter and standard form for notification of State aid pursuant to Article 88(3) EC Treaty) to be sent by the Permanent Representative of the Member State to the Secretary – General of the Commission.

(Regulation (EC) No 794/2004)

- Notification transmitted on paper until 31 December 2005, as from 1 January 2006 electronically.

## II. COVER LETTER AND STANDARD FORM (consisting of three parts)

1. General Information Sheet, to be completed in all cases
2. Summary Information Sheet for publication in the Official Journal
3. Supplementary information Sheet on Environmental Protection Aid (section 10).

Specific points of attention:

- Objectives of the proposed measures (i.e. promotion of production and use of renewable fuels and reduction of emissions of greenhouse gases).  
(Directive 2003/30/EC + Community Guidelines (2001/C 37/03))
- Definition of biofuels as energy products (liquid and gaseous fuels for road transport).  
(Directive 2003/96/EC + CN Codes + Art.2(a) Directive 2001/77/EC)
- Description of existing biofuels market in the Member State.
- Proposed targets for biofuels in the Member State.  
(Directive 2003/30/EC)
- Description of national level of existing excise duties for:
  - mineral oils (diesel and petrol)
  - biofuels (biodiesel, bioethanol, biogas, et. al)
- Proposed level of excise duty exemptions for biofuels.  
(Directive 2003/96/EC)
- Calculation of loss of Member State revenue.

- Evaluation of State aid within the limitations laid down in Point 56 of Community Guidelines (operating aid to be limited to cover the difference between the production cost of the biofuel and its market price).  
(2001/C 37/03)
- Indication of time limitation (up to six years, renewable).  
(Directive 2003/96/EC)
- Commitment for transmission of annual reports on the monitoring of overcompensation and application of the State aid to the Commission.

Failure to complete the form correctly may result in the notification being returned as incomplete.

### III. FOLLOW UP BY THE EUROPEAN COMMISSION

- Additional information may be requested by the Commission.
- Internal assessment procedure and inter-service consultation.
- Notification of the decision to the Member State.
- Publication of the decision in the Official Journal for disclosure to Third Parties.

## **PART II**

### **The trade issues of biofuels between the EU and third countries**

# Chapter I - EU Import and Trade Regulations on Biofuels for Transport

## I. INTRODUCTION

### A. Historical Background

Transport fuels account for 32% of the total EU energy consumption and road traffic is forecast to increase massively.

These alarming figures are not only an EU problem, but represent a global issue. Therefore, increasing the diversifications of the energy matrix and reducing the reliance on fossil fuels will impact on energy security.

World market prices for conventional energy sources, in particular oil, are quite volatile. This poses great risks for the world's economic and political stability. In this context, renewable energy, including biofuels, can help diversify the energy supplies and increase energy security. Therefore, the use of biofuels appears as an important strategic option to diversify the world's energy matrix, both for developed and developing countries.

The 2000 Transport Green paper forecasted that passenger transport in EU-15 will rise by 19% between 1998 and 2010, and goods transport by 38% over the same period. Growth in the new Member States will be even faster, as their economies rise to reach European norms. Dependence on oil brings severe risks of social and economic disruption if supplies falter or their prices significantly increase. The Green Paper put forward a target of 20% substitution of conventional fuels by alternatives such as biofuels, natural gas and hydrogen by 2020.

Moreover the environmental impact from transport using traditional fossil fuels is a serious problem. Replacing the latter by biofuels would therefore highly contribute to the reduction of the greenhouse effect. In 1997, the international Kyoto Protocol on greenhouse gas emissions was signed, and entered into force on 16 February 2005. As Europe produces around 14% of the greenhouse gasses that contribute to global warming, the EU is determined to confront the causes of climate change. At Kyoto, the EU committed itself to an 8% reduction in annual greenhouse gas emissions by 2010 compared to the 1990 level.

Transport overall produces 28% of Europe's carbon dioxide emissions, so implementing substitute fuels that reduce CO<sub>2</sub> emissions is vital to meet the Kyoto Protocol commitments.

The White Paper on European transport policy, adopted in 2001, highlighted the need for a new regulatory framework to encourage substitute transport fuels. Calling for tax harmonisation for conventional fuels, which would allow the real costs, including the cost of harm to the environment, to be included, the White Paper proposed a rapid adoption of tax exemptions for substitute fuels.

In this framework the EU adopted two directives in 2003:

- Directive 2003/30/EC of the European Parliament and the Council of 8 May 2003 “on the promotion of the use of biofuels or other renewable fuels for transport” (Biofuels Directive); and
- Directive 2003/96/EC of the Council of 27 October 2003 “restructuring the Community framework for the taxation of energy products and electricity” (Energy Taxation Directive).

The Biofuels Directive aims to promote the substitution of conventional transport fuels by biofuels derived from agricultural crops. In order to achieve this, the directive, accompanied by the Energy Taxation Directive, sets indicative targets for biofuel substitution and thus gives a legal framework for fiscal and other national measures to promote biofuels.

These indicative targets for the biofuel share of all transport fuels are set at 2 % by 2005 and 5.75 % by 2010. The Member States have to set their own targets, which take account of the overall European targets.

Currently, in the Biofuels Directive, art. 2 (2) recognizes 10 different biofuel types: bioethanol, biodiesel, biogas, biomethanol, biodimethylether, bio-ETBE, bio-MTBE, synthetic biofuels, biohydrogen and pure vegetable oil. This list may be updated in the case of technical progress and the development of additional biofuels.

Member States have to ensure compliance with the directive, but retain the right to choose whether they promote the use of pure biofuels or a blend of biofuel and conventional fuels. Blends are a mix of biofuel and petroleum-based fuel.

This report focuses on two biofuels: biodiesel and bio-ethanol.

In order to achieve the replacement goals, biodiesel can technically replace petroleum-based diesel and bio-ethanol can replace gasoline. Biodiesel cannot replace gasoline and bioethanol cannot replace diesel.

Diesel can be blended with biodiesel, gasoline can be blended with bio-ethanol. For technical reasons blends of diesel and bio-ethanol or gasoline and biodiesel are not possible.

## **B. Definitions**

### **- Biodiesel**

Biodiesel is the colloquial name for “fatty acid methyl ester” (FAME), which is based on biomass. It is produced from vegetable oil, mainly rapeseed, sunflower and soybeans oil, and methanol.

EU emission standards have a big influence on the use of pure biodiesel. In the past this has worked in favour of biodiesel. In the future it might limit the use of biodiesel in its pure form.

The introduction of tighter EU emission standards EURO IV (2005/2006) and EURO V (2008/2009) forced car/truck manufacturers to develop new engines that use different methods to comply with the emission standards, depending on whether they are driven with biodiesel or petroleum-based diesel.

EURO IV (2005/2006) is effective on 1 January 2005 for new truck types and will be effective on 1 January 2006 for all newly produced trucks. EURO V (2008/2009) will become effective on 1 October 2008 for new trucks types and on 1 October 2009 for all newly produced trucks. For cars the EURO V norm has not yet been confirmed.

The tightened emission standards will lead to a new generation of engines that will need newly “designed” fuels. These fuels need additives that work as lubricants. Due to its chemical specifications, biodiesel can be used as such an additive. As a result this would further increase the use of biodiesel blends.

All in all, it appears that the future of biodiesel lies in blends rather than the traditional 100 percent pure biodiesel.

### **- Bio-ethanol**

Bio-ethanol is an alcohol-based fuel produced from biological feedstock, containing significant amounts of sugar or material that can be converted into sugar, such as starch or cellulose through fermenting.

Wheat and sugar beet are the most commonly used feedstock for bioethanol production in the EU. Brazil uses mainly sugarcane and the USA maize.

Bio-ethanol can be used in its pure form as a gasoline substitute or it can be blended with gasoline. Vehicle manufacturers generally do not recommend the use of blends over 10 % in unmodified engines. Specially equipped cars powered by 100 % bio-ethanol are not currently for sale.

Blends between about 5 and 22 % also have certain effects on other emissions that run the risk of breaching EU limits. For this reason, most ethanol used for fuel in the EU is currently converted into bio-ETBE (ethyl-tertio-butyl-ether), which can be more easily blended in gasoline. However, there is an increasing interest in high-percentage blends.

Future changes in the Common Agricultural Policy (CAP), such as the abolition of import restrictions or subsidized surplus exports, could make ethanol production a lucrative alternative use for sugar and wine-ethanol. It could also be a good alternative use for low quality cereals.

The truly limiting factor is a lack of production capacity to produce all required bio-ethanol locally. Therefore, in order to reach the indicative targets of 2 % by 2005 and 5.75 % by 2010 for the use of biofuels for transport, the EU will, up to a certain extent, have to rely on import of third countries.

### **C. International Relations**

Although the above mentioned legal framework and incentives developed by the EU may result in the achievement of the proposed targets within the internal market, the international and preferential bilateral agreements the EU has signed and negotiated on international trade, import duties and tariff – non tariff barriers (WTO, MERCOSUR, BLAIR HOUSE), could to a great extent jeopardize these initiatives.

## **II. INTERNATIONAL TRADE - TRADE ORGANISATIONS**

### **A. External Trade Relations of the EU (Article 133 of the EC Treaty (amended by the Treaty of Nice))**

The common commercial policy of the EU is laid down in Title IX (articles 131 – 134) of the EC Treaty and more particularly in Article 133.

On this basis, the Commission negotiates on behalf of the Member States, in consultation with a special committee, “the Article 133 Committee”. The 133 Committee is composed of representatives from the 25 Member States and the European Commission. Its main function is to coordinate the EU trade policy.

By virtue of Article 133 (1), the Common Commercial Policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, and the achievement of uniformity in measures to protect trade such as those to be taken in the event of dumping or subsidies. Furthermore, where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with Community policies and rules (Article 133 (3)).

The relevant provisions of Article 300 shall apply. Article 300 lays down the procedure that needs to be followed for the conclusions of agreements between the Community and one or more States or international organisations.

### **B. Common rules for imports**

Council Regulation (EC) No. 3285/94 of 22 December 1994 on the common rules for imports

This Regulation applies to imports of products originating in third countries, except for textile products, covered by special common rules for imports. It is also complementary to the regulations on agricultural products covered by organisations of the market. It applies to imports from all third countries with the exception of Albania, the Commonwealth of Independent States (CIS) and certain Asian countries (North Korea, China, Mongolia and Vietnam) covered by Regulation (EC) No. 519/94.

It lays down the principle of freedom to import products originating in third countries, subject to possible safeguard measures.

Safeguard measures may be applied, where products are imported into the Community in such greatly increased quantities and/or on such terms and conditions as to cause or threaten to cause, serious injury to Community producers. Regarding members of the World Trade Organisations (WTO), these measures are cumulative.

This Regulation does not preclude the fulfilment of obligations arising from special agreements, concluded between the Community and third countries.

Council Regulation (EC) No 520/94 of 7 March 1994 establishing a common procedure for administering quantitative quotas

The common import regime also aims to establish a system for administering quantitative quotas, based on the principle of a uniform common commercial policy and respect for free movement of goods.

The basic rules are laid down in the Council Regulation (EC). No 520/94. However, this Regulation does not apply to the agricultural products listed in Annex II of the EC Treaty (see Annex I).

Therefore, the Regulation will be applicable depending on the programmes biofuels are listed under and whether or not, within such frameworks, they are considered as agricultural products as such, or as derived agriculture products.

Quantitative quotas for agricultural products

The quotas for agricultural products listed in Annex II of the EC Treaty are subject to specific regulations in accordance with Articles 33 (Objectives of the Common Agricultural Policy) and 131 of the EC Treaty.

## **C. The World Trade Organisation (WTO) and the Multilateral Trade Framework**

### The World Trade Organisation (WTO)

The WTO was established in 1995 as a result of the Uruguay Round of multilateral trade negotiations (1986 – 1994).

It is an international organisation that sets global rules of trade between nations.

The core of the WTO system, referred to as the multilateral trading system, are the WTO agreements, which lay down the legal ground rules for international trade, as well as the market-opening commitments taken by its members.

The WTO is composed of governments and political entities (such as the EU) and is a member driven organisation with decisions mainly taken on a consensus basis.

A vast majority of its members are developing countries.

The EU is one of the key players in the WTO. Since the EU has a common trade policy, the Commission negotiates on behalf of the EU's 25 Member States.

As such, the EU is one of the driving forces behind the current round of multilateral trade negotiations in the WTO, the Doha Development Agenda (DDA).

The DDA comprises both further market openings and additional rule making, underpinned by commitments to take measures necessary to integrate developing countries into the world trading system, notably by strengthening assistance to build capacity.

The main objective of the New Round is to put development at the heart of the world trade system in a way that will help developing countries combat poverty.

In July 2004 the WTO adopted a Framework Agreement on the DDA that sets out the modalities for further negotiations.

Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, with regard to matters within its competence, of agreements reached in the Uruguay Round multilateral negotiations (1986 -1994)

Through this Decision, the Council adopted, on behalf of the European Community and with regard to matters within its competence, the legal texts resulting from the Uruguay Round multilateral trade negotiations, concluded through the signature in Morocco by the representatives of the European Community and the Member States, and the creation of the WTO.

The main objective of this Decision and the creation of WTO was to liberalise trade in industrial and agricultural goods under fair conditions of competition. This can, amongst others, be achieved by reducing tariff and non-tariff barriers to trade in goods.

The Agreement establishing the WTO incorporates several annexes, containing the WTO agreements. Annex 1A encompasses the multilateral agreements on trade in goods. Some of them are described below.

a. General Agreement on Tariffs and Trade (GATT 1994)

This General Agreement regulates the market access of the Member States. It is the basic text containing the general rules governing trade in goods, the specific rules being laid down in sector agreements established in the Marrakesh Final Act.

The General Agreement lays down a number of fundamental principles based on GATT 1947, in particular:

- the general principle of most favoured nation treatment,
- the principle of national treatment with regard to taxation and with internal regulations.

The Agreement also provides, amongst others, for the reduction and binding of customs duties and the elimination of quantitative restrictions on imports and exports. It also covers anti-dumping duties and regulates subsidies and safeguards measures.

b. Agricultural products (Agreement on Agriculture)

In accordance with the Agreement on Agriculture (AOA), access to agricultural markets is now covered by a regime based solely on import duties. Non-tariff border measures are replaced by customs duties ensuring equivalent protection.

As regard to domestic support measures of farmers, these are regulated through a reduction in the total aggregate measurement of support (total AMS). Developed countries were committed to reducing their total AMS by 20% over six years and developing countries their total AMS by 13% over ten years.

The present rules and commitments on agriculture are often called the “Uruguay Round reforms programme”, since they were negotiated in the Uruguay Round.

This agricultural package has fundamentally changed the way domestic support in favour of agricultural products was treated under the GATT 1947.

The main conceptual consideration is that these are basically two categories of domestic support- support with no, or minimal, distorting effect on trade on the one hand (often referred to as “Green Box” measures) and trade-distorting support on the other hand (“Amber box” measures).

#### - The Green Box

The AOA sets out a number of general and measure-specific criteria which, when met, allow measures to be placed in the Green Box (Annex 2 of the Agreement). These measures are exempt from reduction commitments and, indeed, can even be increased without any financial limitations under the WTO.

The general criteria are that the measures must have no, or at most minimal, trade-distorting effects or effects on production. They must be provided through a publicly-funded government programme, not involving transfer from consumers and must not have the effect of providing price support to producers.

The Green Box covers many government programmes such as research in connection to environmental programmes, as well as payments made under certain environmental programmes.

Products considered as “sensitive products” are also covered by the Green Box.

#### - The Amber Box

All domestic support measures considered to distort production and trade (with some exceptions) fall into the Amber Box, which is defined in Article 6 of the Agriculture Agreement as all domestic supports except those in the Blue and Green Boxes. These include measures to support prices, or subsidies directly related to production quantities.

#### - The Blue Box

This is the “amber box with conditions” — conditions designed to reduce distortion. Any support that would normally be in the Amber Box, is placed in the Blue Box if the support also requires farmers to limit production (details set out in Paragraph 5 of Article 6 of the Agriculture Agreement).

### c. Rules concerning non-tariff measures (Agreement on Technical Barriers to Trade)

The Agreement on Technical Barriers to Trade (TBT) aims to ensure that technical regulations and standards and uniformity assessment procedures do not create unnecessary obstacles to international trade. The Agreement recognises the right of countries to adopt such measures in order to fulfil a legitimate objective, for example the protection of human health or safety or the protection of the environment. Technical regulations and standards must not discriminate between national products and alike products that are imported. It encourages the use of international standards and the harmonisation and mutual recognition of technical regulations, standards and conformity assessment procedures.

### d. Customs and trade administration (Agreement on Customs Valuation)

Where customs duties are levied on an ad valorem (value) basis, it is important to establish a clear procedure to determine the customs value of the imported goods. If not, the customs valuation may have

the effect of a non-tariff protective measure and be more restrictive than the customs duty itself. This value should, in principle, be based on the transaction value, in other words the real price of the goods.

#### e. Trade protection measures (Agreement on Safeguards)

The Agreement on Safeguards lays down the rules for application of the safeguard measures provided for in Article XIX of GATT 1994. This article enables WTO members to apply safeguards measures on a non-discriminatory basis to limit imports, when certain conditions are met in order to protect a domestic industry from serious injury or threat of serious injury caused by an increase in imports.

#### Trade and Development policy in the EU

##### Communication of the Commission to the Council and the European Parliament of 1 June 1994 (COM(94) 212)

- Integration of developing countries in the international trading system.
- Role of the General System of Preferences (GSP) 1995-2004.

The objective of this Communication is to lay down guidelines with a view to revising and modernising of the GSP for the period of 1995-2004, in order to promote the development of developing countries and countries in transition and to facilitate their integration into the global economy.

The present regulation governing the EU scheme for GSP entered into force on 1 January 2002 and covers the period until the end of 2004.

The GSP offers manufactured products and certain agricultural products exported by developing countries tariff reductions or duty-free access to the Community market. The EU GSP now covers virtually all sectors and fully incorporates the new EBA initiative, which was adopted in February 2001.

The tariff modulation has been simplified with the establishment of two categories of products/sensitivity. It is therefore an autonomous tariff instrument that is complementary to the multilateral liberalisation of the GATT.

The preferential margins that were eroded as a result of progressive trade liberalisation have been restored by reducing ad valorem duties on sensitive products by a flat rate of 3,5 percentage points and specific duties by 30%. The special incentive arrangements have been made more attractive by further reducing ad valorem and specific duties by an additional 5 percentage points and 30% respectively.

Finally, the GSP's role as a tool to foster sustainable development has been reinforced, predictability has been enhanced by requiring that graduation and exclusion only occur where the conditions are fulfilled during three consecutive years.

Indeed, it is both a trade policy instrument and an instrument of the development policy of the EC. As an instrument of cooperation, the GSP has a transitional function and should be phased out when countries no longer need it.

The EU position, based on Article 20 of the AOA, takes into account the need to aim at a balance between trade concerns (market access, export competition, domestic support) and non-trade concerns (the protection of the environment, the sustained vitality of rural communities, food safety and other consumer concerns including animal welfare), which reflect important societal goals. Moreover, the EU considers that further liberalisation and expansion of trade for agricultural products are an important contribution to sustained and continued economic growth, in both developed and developing countries.

The two priorities for the GSP are:

- to support development in the broader sense, embracing social and environmental concerns,
- to complement the GATT and foster the integration of the developing countries into the international economy and the WTO.

*- Modulation of preferential tariffs*

The GSP takes account of the sensitivity of certain Community sectors or products in order to protect them against a surge of imports. This protection is ensured by modulation of the preferential tariff margins and an emergency safeguard clause.

Modulation of preferential duties is a mechanism that provides for the reduction of duties under the most favoured nation clause in accordance with the sensitivity of sectors or products on the Community market. For each sector or product, a preferential tariff applicable to all the beneficiary countries is established. This system reflects the concern of the Community's commercial policy by basing the GSP not on the origin of products, but on their impact on Community production.

Applications of this mechanism make it possible to draw up a list of sensitive sectors and products and a list of non-sensitive sectors and products subject to different rates of preferential duty.

This mechanism can also be supplemented by a safeguard clause to restore common customs tariff duties, if a product originating in a developing country is imported under conditions that cause or threaten to cause serious difficulties.

*- Suspension of GSP*

Preferences may be withdrawn in full or in part, following a hearing with the party concerned in certain circumstances, such as, amongst others non-compliance with international rules on fair trade, human rights, inadequate governmental controls on export or transit of drugs or money laundering.

*- Future negotiations*

Although the last GSP expired in 2004, negotiations are still going on in order to revise and adapt the schemes laid down in the 1995-2004 GSP and set up a programme for the next decade. Hence, the existing guidelines are still in force.

Council Regulation (EC) N° 2501/2001 applying a scheme of generalised tariff preferences for the period from January 2002 to 31 December 2004

The objective of this Regulation was to administer the new scheme of GTP from 1 January 2002 to 31 December 2004, by simplifying and harmonising the procedures of the various existing arrangements in order to improve the access of developing countries to the Community market, while ensuring the promotion of fundamental social and environmental standards.

This Regulation aims to extend the Community's scheme of general preferences for developing countries to 31 December 2004. It provides for general arrangements, special incentive arrangements for the protection of labour rights, special incentive arrangements for the protection of the environment, special arrangements for least developed countries and, finally, special arrangements to combat drugs.

As such this Regulation complements the guidelines laid down in Communication (94) 212 regarding the GSP and likewise negotiations are still ongoing in order to put in place a new scheme for the coming years.

## **Chapter II - MAIN INTERNATIONAL TRADE PARTNERS (IMPORTERS) ON BIOFUELS**

### **I. The Blairhouse Agreement (USA – EU)**

The 1992 Blair House Memorandum of Understanding on Oilseeds (or Blair House Agreement (BHA)) between the US and the EU was an important element of the final Uruguay Round Agreement for agriculture.

The BHA is part of the EU's WTO schedule of commitments and resolved a GATT dispute over EU domestic support programs that impaired access to the EU oilseeds market.

Under the BHA, EU oilseed plantings (mainly rapeseed, sunflower seed, and soybeans) for food purposes are limited to an adjusted Maximum Guaranteed Area (MGA) for producers benefiting from crop specific oilseeds payments. This limits the EU oilseeds production area and penalizes overproduction.

The BHA also limits the annual output of side products (oil meals) from oilseeds (rapeseed, sunflower seed and soybeans) planted on set-aside land for industrial purposes to 1 million MT of soybean meal equivalent.

With the reform of the CAP (AGENDA 2000) the EU has reduced its oilseeds payments to the same level as for grains.

In the mind of the EU these reforms have rendered the BHA obsolete. This opinion is not shared by the United States.

If the increased importance of biodiesel results in EU oilseed plantings in excess of the BHA rules, this could result in a conflict between the US and the EU, insofar the agreed limits of use of set-aside land for these plantings would be exceeded in the EU.

Rapeseed and rapeseed oil trade between the US and the EU is marginal and is unlikely to be influenced by the situation described above. However, some indirect effects on other commodities such as soybeans can be expected.

### **II. Mercosur**

The Treaty of Asuncion signed on 26 March 1991 established a Common Market between the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay. This led to the creation of Mercosur.

Negotiations on an Interregional Association Agreement with Mercosur started in April 2000. The future agreement is to include a political dialogue, a co-operation pillar and a trade pillar. Negotiations are taking place on a bi-regional basis from customs union to customs union.

This reflects one of the key objectives of the EU vis-à-vis Mercosur, notably the strengthening of the Mercosur integration process. The second stage of negotiations were launched in July 2001. By now, most text proposals on the different negotiating items have been exchanged. In addition, both sides have exchanged their tariff offers. The third stage of negotiations is currently being prepared.

### **III. Pakistan within the GSP**

Regarding EU-Pakistan relations, a number of actions have been prepared, including the signature of a 3rd Generation Co-operation Agreement in November 2001.

A comprehensive package of trade preferences was agreed by the Council under the GSP drug regime for the period 2002-2004. In May 2002, the European Commission adopted a five year strategy (2002-2006) for its cooperation with Pakistan. Priorities set in this Country Strategy Paper include the development of trade.

This allowed Pakistan to emerge in 2003 as an ethanol exporter to the industrial markets in the EU. Indeed, since the country is the world biggest exporter of molasses, it has the capacity of bringing growing quantities of cheap alcohol on the market.

This is of course a growing concern for the local EU bioethanol producers. However, the Commission now plans to reduce these imports by requesting, within the GSP framework, the application of a safeguard clause on Pakistani alcohol, although prior initiatives failed to come to a concrete action because of political issues.

## **Chapter III - Major Biofuels Exporting Countries**

### **I. INTRODUCTION**

This analysis primarily focuses on ethanol and biodiesel, since these are the two biofuels that are presently produced to a significant extent and can therefore be traded internationally.

The introduction of technologies currently under development by the research community to produce biofuels based on the gasification process (from wood and other lignocellulosic materials such as black-liquor, straw, grasses and other energy crops) will enable almost any major market player or country to produce biofuels other than ethanol and biodiesel.

There are several types of biofuels that can be produced from synthesis gas based on the gasification process such as di-methyl-ether, Fischer-Tropsch, methanol and even hydrogen; however, these are out of scope for this study, since it is unclear when these technologies will become commercially viable and almost certainly they will first be commercialised in the EU, US or Canada.

Thus the EU will not face an immediate threat of imports for such biofuels in its market and especially in the foreseeable future. In Annex II, Figure 1 shows the global production of biofuels, while Figure 2 compares the biofuels production in the EU and the world.

The global production of bioethanol by far exceeds that of biodiesel; however, in the EU the opposite is happening with biodiesel representing about 75% of all biofuels production. To a great extent this is due to the fact that diesel is by far the most widely used transport fuel in the EU and in several countries such as France, Germany and Belgium it represents about 2/3 of the total volumes used.

The global production of bioethanol is mentioned in Figure 3 (Annex II).

Therefore in the EU the interest to develop biofuels for diesel displacement is greater than that for biofuels for gasoline, while in the US, where main interest is to develop biofuels for gasoline displacement, the opposite is happening.

### **II. GLOBAL FUEL ETHANOL PRODUCTION**

Ethanol is by far the most widely used biofuel for transport applications with large production and utilisation volumes in Brazil and the US.

The production of fuel ethanol in Brazil is based on sugarcane and it began back in 1975 with the "Proálcool" support scheme of the government. The bioethanol production peaked in 1997 with 15 billion litres, declined to 11 billion litres in 2000 and is now on the rise again with about 13 billion litres in 2003.

All gasoline sold in Brazil contains between 22 and 26% bioethanol by volume and recently there is a major push for flexible fuel vehicles accompanied by appropriate action to develop the infrastructure in the filling stations.

The bioethanol production in Brazil by far exceeds the production in any other country and has the potential to increase further as it is linked to the production of sugar.

In the US bioethanol is produced mainly from corn since the 1980s and now provides more than 10 billion litres per year accounting for just over 2% of total US consumption of motor gasoline on a volume basis (about 1.4% on an energy basis).

In the US, Bioethanol is used as a 10% blend in gasoline and although there is a relative large fleet of flexible fuel vehicles there are very few filling stations servicing the E 85 blend. The US is leading the

OECD countries in terms of ethanol production and use and its production is more than 20 times bigger than any other OECD country.

China produced over 0.3 billion litres of bioethanol in 2003 and has a strong programme to further increase the production of this biofuel due to the tremendous pressure it faces to service its fast expanding economy with transportation fuels.

Some bioethanol is produced in Australia, 0.04 billion litres, but this is relative small and at present there are no strong incentives to further increase the Australian bioethanol production significantly.

Pakistan is the world largest exporter of molasses and is mainly focussing on the Japanese and EU market.

In the EU bioethanol is produced in five countries (Spain, France, Sweden, Poland and the Czech Republic) with a total volume of 0.45 billion tons in 2003 (see Figure 4, Annex II).

Since in the foreseeable future all European production will be absorbed by the EU needs, there are no prospects for extra production capacity for bioethanol that could be used for export and thus there is no point to further analysing the EU bioethanol industry.

### **III. GLOBAL BIODIESEL PRODUCTION**

The EU is the main producer of biodiesel in the World with a continuously increasing production estimated to about 1.6 billion litres in 2003 (a small fraction of about 0.02 billion litres is used for heating purposes mainly in Italy). Biodiesel is currently produced in 9 Member States with the main production taking place in Germany, France and Italy (see Figure 5, Annex II).

Several new production facilities are under construction in various countries and are expected to come in full production in 2005, increasing further the EU output. The EU production accounts for more than 95% of global biodiesel production.

The US has some biodiesel production of about 0.07 billion litres but this is too small a quantity to be considered as a viable option for export from the US to the EU.

### **IV. ANALYSIS OF EXTERNAL TRADE FOR BIOFUELS**

An analysis of the above situation and taking into consideration the national policies of the various biofuel producers, concludes that at present only bioethanol has the potential to be used for international trade.

Being the main global biodiesel producer, the EU will not face any major challenge from biodiesel imports, since there is no other major biodiesel producer. Even if the US would develop further its own biodiesel industry, the fuel would be used for the internal US market rather than exported to the EU.

The US, the EU, China and Australia need their local production of bioethanol to satisfy their national policies and none of them has the availability of resources and potential to become a major net bioethanol exporter in the foreseeable future. Brazil is in a position to export large quantities of bioethanol to other markets. Thus only the situation in Brazil will be analysed further.

### **V. THE BRAZILIAN ALCOHOL PROGRAMME**

The Brazilian government support scheme for bioethanol, known as Proálcool, started in 1975 aiming to make Brazil the leading country in sugar and bioethanol.

In the initial phase of this programme anhydrous alcohol was used in various blends up to 22% in volume and resulted in a more than ten-fold increase between 1975 and 1979, i.e. from 0.23 to 2.7 billion litres respectively. A second phase of the Proálcool started in 1979 which introduced for the first time cars that were fuelled 100% with bioethanol. Since no gasoline was used in these cars, it was possible to use the cheaper hydrated or hydrous alcohol.

The government introduced a complex set of incentives towards the construction of special engines to run on hydrous alcohol and strong support of the biofuel through subsidies not only for its production but also for the distribution network. The production of the hydrous alcohol rose phenomenally from 0.4 to 7.15 billion litres between 1978 and 1985.

In 1989 there was a collapse of the fuel ethanol market caused by a significant increase in the world price of sugar and bad intervention of the government resulting in Brazil becoming the world's largest importer of ethanol: between 1989 and 1996 Brazil imported 0.6 billion litres per year. The situation was stabilised in 1999 by eliminating the price controls on hydrous alcohol.

The ethanol prices are now decisively linked to the changes in the alternative use of sugar cane.

The Association for Fair Trade in Alcohol (AFTA) concluded that the Brazilian alcohol sector, a government created market at least 8 times the size of the EU alcohol market, is very volatile, what makes it unpredictable. This combined with the imposing size of the Brazilian output, puts Brazil in a powerful position to distort the world alcohol market.

According to AFTA, direct subsidies amount to 300 million US\$. A range of indirect measures - especially tax exemptions which represent about 200 US\$ per year- intended at boosting demand is also granted to bioethanol producers in Brazil. Finally, hidden subsidies in the form of un-serviced interest charges on unpaid debt of over 5.6 million US\$ were estimated in 1999 at 1.1 billion US\$.

When making a comparative analysis of producing bioethanol in the EU, US and Brazil it is clear that the Brazilian production cost is 1/3 of the EU production cost (Figure 6, Annex II).

## **VI. COUNTRIES WITH HIGH BIOFUEL EXPORT POTENTIAL**

### **- Brazil**

The above analysis indicates that Brazil could easily and at any moment export significant quantities of bioethanol to any market if there was demand and the price was at a reasonable level. The detaxation provided in the EU, at least in those Member States which introduced 100% detaxation, makes it very attractive for the Brazilian bioethanol industry to target these European markets.

### **- Ukraine**

Another country with a significant potential is Ukraine, which has a strong agricultural basis and a significant unused industrial capacity for alcohol production. At present Ukraine does not produce any fuel alcohol but this is more due to lack of investment ability, rather than political determination.

Ukraine has been discussing the issue of bioethanol exports to the EU with the European Commission but so far no concrete actions have been undertaken. There is however a strong interest from the European industry to invest in Ukraine for the upgrading of the existing unused capacity and/or the development of new state of the art plant capacity, due to cheap labour and low cost of agricultural produce either for grains or seeds.

Although until now there is no biofuel capacity in Ukraine, the country has the potential to become a major exporter of both bioethanol and biodiesel. It is understood that investors from the Baltic countries are currently planning to build a rape-seed based biodiesel plant in Ukraine.

#### - Argentina

Argentina also is characterised by cheap labour and strong agricultural capacity and could relatively easily mobilise its resources to become a biofuels producer. The primary emphasis in Argentina would be placed on biodiesel from soy, but its sugar-cane industry could also become a medium strength exporter of bioethanol.

#### - Pakistan

Pakistan is another country that is producing bioethanol and in addition molasses (biggest world exporter). After its inclusion in the Drug Regime of the Regulation on the GSP, Pakistan was allowed to export duty-free industrial alcohol to the EU. In 2003 Pakistani exports of alcohol amounted to 42% of the total GSP exports.

Pakistan is not the only country responsible for the significant increase of GSP industrial alcohol exports. Together with Pakistan, Bolivia and Guatemala represented 80% of the total 2003 GSP industrial alcohol exports. Between 2002 and 2003, their exports to the EU have respectively increased by 530%, 250% and 700% (although industrial alcohol is not used for fuel applications).

#### - Far East

Finally in the Far East the main producers of palm oil could convert part of their production from oil for food to fuel by producing biodiesel. It is also envisaged that it would be possible to further expand the palm oil plantations to produce more oil for biodiesel production.

However, countries like Malaysia and Thailand already have started to consider the production of biodiesel for their own needs and the Indian market could well absorb the biodiesel production from the Far East.

## **VII. CONCLUSIONS**

At present, only Brazil is in position to export large quantities of bioethanol to the EU. However, Brazil could end up being an unreliable long term exporter due to the close-coupling of bioethanol to the sugar market and prices.

None of the other countries discussed above could become a potential exporter of biofuels to the EU in the short term (*i.e.*, within the next 5 years). Argentina and Ukraine have the potential to develop strong biofuel industries for exports to the EU markets in the medium to long term (*i.e.*, within the next 5 to 15 years), after the implementation of appropriate national policies and strong investment.

Due to the political will to help stabilise the Ukrainian democracy and attract the country closer to the EU, it can be envisaged that the EU may relax the custom/import measures on biofuel exports from this country to the EU, especially when EU investment would be behind the production facilities in Ukraine.

## Chapter IV - Import Duties for Biofuels

### I. INTRODUCTION

In contrast with bioethanol, for which the custom duties have been well established in the Union, the custom classification of biodiesel, being a relatively new product, has been often questioned by the different Members States' customs authorities as well as by the market traders themselves.

The European Biodiesel Board (EBB) - the biodiesel industry association - had requested the Commission to change the present custom code of biodiesel or to find a precise custom definition, since it was of the opinion that Chapter 3824 of the Custom Headings was inappropriate for covering biodiesel and that a specific and independent custom code for biodiesel should be defined. However, following extensive discussions between the Commission services (DG TAXUD and EUROSTAT) and the biodiesel industry, it was decided to leave the custom classification of biodiesel unchanged.

Custom duties for bioethanol are well established at EU and international level.

The current custom duties in force are:

▪ Biodiesel	Custom Code 38249099	Import duty 6,5%
▪ Bioethanol denaturated	Custom Code 22072000	Import duty 10,2 €/hl
▪ Bioethanol undenaturated	Custom Code 22071000	Import duty 19,2 €/hl

The above import duties do not apply to imports from those countries that are part of the GSP programme or from countries that have concluded Association Agreements with the EU (such as some of its neighbours, Mexico and the ASEAN countries) or the African – Caribbean – Pacific countries (ACP).

For comparison purposes, the denaturated bioethanol import duties in some selected countries are listed below (note conversion rate 1€ = 1,2 US \$):

Japan	0 €/hl
New Zealand	0 €/hl
Canada	4.2 €/hl
Brazil	5,8 €/hl
USA	11,6 €/hl
Australia	19,2 €/hl

### II. BIOFUEL IMPORTS IN THE EU

Data on bioethanol trade for fuel are unreliable. However, Sweden has imported Brazilian bioethanol for direct blending applications, while imported bioethanol is used in France and Spain for ETBE.

In 2003, Finland imported 29,000 hl of biofuels from Brazil. The import duty was paid (*i.e.*, 10,2 €/hl) and the oil companies obtained the tax exemption of 30 €/hl. The tax exemption corresponds to the maximum of the production cost of bioethanol in Brazil, which means that the tax exemption actually totally covered the production costs of Brazilian alcohol.

Brazil's bioethanol sales price varies in the range of 200-300 €/toe compared to about 400 €/toe for the US and 750-850 €/toe for the EU. (toe = tonnes of oil equivalent). Transport and distribution costs increase the cost of Brazilian bioethanol by an extra 150-200 €/toe and the import duty adds an additional 300 €/toe, making its cost comparable to European production.

## **Chapter V - Current Status of Negotiations with Mercosur**

### **I. INTRODUCTION**

As an international actor on trade issues, the EU has passed several trade agreements with its neighbours, other countries and other Associations of Countries and is continuously involved in trade negotiations. Negotiations for a new trade agreement have also been ongoing with Mercosur.

Negotiations on an Interregional Association Agreement with Mercosur started in April 2000. The Agreement aims to include a political dialogue, a cooperation pillar and a trade pillar. Negotiations are taking place on a bi-regional basis from customs union to customs union which reflects one of the main objectives of the EU, being the strengthening of the Mercosur integration process. The second stage of negotiations was launched in July 2001 and this was followed by tabling text proposals on the various negotiating items and exchange of tariff offers.

### **II. NEGOTIATING POSITIONS**

On 24 May 2004, the EU Trade Commissioner Lamy presented the official offer to Mercosur entailing a quota of 500,000 tonnes of biofuels entering the EU free of duty, after the ratification of the agreement and an additional quota of 500,000 tonnes after the conclusion of the WTO Doha round.

This offer created a significant uneasiness for the industry as well as for some Member countries, since it was considered that such a high volume of imports would suffocate the European market with cheap bioethanol and would undermine the development of a European based bioethanol industry.

Six Member States, France, Germany, Italy, Austria, Finland and the Netherlands expressed misgivings on the Commissions proposal and, led by France, pointed out that such a high quota of duty-free ethanol would be the end of the development of European bioethanol. The EU Agriculture Commissioner Fischler rejected the criticism from the Member States basing his argument on the fact that the 1,000,000 duty-free imports from Mercosur would represent 1/10 of the EU 5.75% target of petrol fuel substitution for 2010. However, when the offer to Mercosur was made, the European production was only about 400,000 tonnes.

Moreover, it appears that the offer to Mercosur had not been approved by all Commission services. DG TRADE's motivation for this high offer to Mercosur was for obvious trade reasons, while it seems that DG AGRI's motivation was to protect the sugar market. Other DGs such as TREN, TAXUD and ENTR were opposed to the offer, since it would significantly undermine the development of a European based industry.

On 20 October 2004 the EU and Mercosur failed to reach agreement and concluded their negotiations on a free-trade agreement. This implied that it was not possible to meet the deadline of 31 October 2004 to conclude the negotiations and it was agreed that the negotiations would start again in early 2005.

One must point out that the biofuel imports were not one of the major issues upon which the negotiations failed. The main problems for both parties were:

- Mercosur was not satisfied with the EU offer for access to the EU market for agricultural products (especially beef and poultry),
- The EU was not satisfied with the Mercosur offer for market openness for industrial products and services.

This issue remains very controversial in Europe. Since only Germany and Sweden have full detaxation for biofuels and thus an open market, most of any imported bioethanol from Mercosur (basically Brazil) would

end up in the markets of these two countries. Advocates state that the bioethanol should be produced where production is cheapest and has better environmental performance; opponents criticize that the Brazilian and not the European economy would benefit from the European tax breaks and that expanding the Brazilian capacity for sugar cane would be detrimental to the environment due to the destruction of tropical forests and grasslands.

## **Chapter VI - Future Trends and possible Negotiating positions of the EU with Mercosur**

### **I. INTRODUCTION**

The future trends concerning biofuels in the European Union is a complex matrix of implementation of existing policies, harmonisation of regulations, development of necessary standards to support the market introduction of biofuels, as well as the eventual initiation of new legislative actions.

It also entails the eventual position the European Union will take towards Mercosur concerning the imports of biofuels, as well as from other countries and or associations.

If the EU wishes to build its own biofuel programme and achieve its objectives of reducing energy dependency, minimising climate change and promoting rural development, it must find WTO-compatible ways to prevent third country cheap biofuels to disrupt this process.

### **II. COMMON AGRICULTURAL POLICY**

The reforms of the Common Agricultural Policy (CAP) have opened the door for farmers to adapt their production to market requirements, which include the growing demand for energy crops. Since energy crops can be specifically grown for biofuels production, the reforms provide new options to farmers.

The set aside rate of 10% for the EU corresponds to an area of about 4 million ha. However the set aside has been “temporarily” reduced on an annual basis, it was about 2,3 million ha in 2003-2004 and 2 million ha in 2004-2005. In the long term, it may be that the set aside scheme will be abolished. Non-food crops can be grown on set aside land. In 2003 0,9 million ha was used for energy crops, mostly oilseeds for the production of biodiesel. When set aside is used for energy crops, the area is not eligible for any other additional aid.

With the CAP reforms, the direct payments are now decoupled from the actual crop (such as cereals or oilseeds), and there is, thus, no discrimination for non-food production under the new policy.

Furthermore, a premium of 45 €/ha for a maximum of 1,5 million ha for energy crops is granted according to the reference area aiming to make such crops more attractive to farmers. However, sugar-beet is not covered by this policy. Due to its low level, in the short run, the EU 45/ha subsidy is expected to have only little impact on EU production of energy crops.

Additional opportunities exist in the Rural Development and are based on the Lisbon initiative of the European Union (Lisbon European Council of 23 – 24 March 2000). The Lisbon strategy aimed at transforming the European Union into “the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.

Renewable energy sources and, in particular, energy from biomass and agricultural products and residues are considered as new markets for agriculture that can contribute to the Lisbon initiative.

There are some options for the EU to further steer the agricultural policy towards energy crops that could further increase the EU production of biofuels.

For example the sugar-beet is excluded from the energy crops scheme of 45 €/ha premium. Including the sugar-beet in the energy crops scheme to produce bioethanol, would make this crop attractive to farmers and in the medium term to the sugar industry.

This is considered a critical issue, since the EU sugar price for domestic production is about 3 times higher than that of the world sugar price, a position that cannot be sustained for long with the WTO rules

and negotiations. Redirecting the redundant sugar-beet crop to produce bioethanol, would offer a win-win solution for the farmers, the sugar industry and the EU biofuels policy. Furthermore, this energy crop premium is limited to a guaranteed area of 1.5 million ha, increasing the guaranteed area would be another positive signal.

The premium of 45 €/ha is relatively low to attract the farmers to overcome the barriers they may face towards these new crops that would most definitely change the way they may conduct their business. DG Agriculture may decide to raise this premium in order to encourage a shift towards energy crops.

### III. OVERCOMPENSATION

At present, the tax reductions for biofuels are necessary to achieve the ambitious goals set forth by the EU.

However, other Community policies have an effect, especially the Community State Aid Rules that do not allow any overcompensation, *i.e.*, no tax reduction superior to the price difference between the biofuels and the equivalent fossil fuel is allowed. State aids have to be limited to cover the difference between the cost of producing energy from renewable energy sources and the market price of such energy.

The Energy Taxation Directive specifies that the tax exemption or reduction cannot be greater than the amount of taxation payable on the volume of the biofuels present in the fuels considered for detaxation. So, the higher the percentage of biofuel in a fuel blend, the greater the value of the potential reduction in excise duty on the final product. Therefore, it is important that the exemption or reduction in taxation applied by Member States can be adjusted, in order to consider changes in raw material prices to avoid overcompensating for the extra costs involved in the manufacturing of the biofuels.

It is important that Community State Aid Rules and the Energy Taxation Directive remain consistent with each other. The overcompensation clauses of the latter aiming to limit the exemption or reduction in taxation, correspond to the cost difference of producing energy from renewable energy sources and the market price of that energy of the former.

When considering the production cost of biofuels, it is generally agreed that the cost of the raw material (seeds for biodiesel and grains or sugar-beets for bioethanol) by far exceed all other production costs (the average costs are about 75-85% and 45-55% respectively for biodiesel and bioethanol). In the case of Brazilian ethanol, the cost of sugar cane - its raw material - is significantly lower than the one of European based ethanol produced either from sugar-beet or starch based crops. Detaxation of such Brazilian imports would most certainly lead to overcompensation.

Another problem related to the issue of overcompensation is that tax exceptions are not differentiated in relation to the raw material and the process used for the production of biofuels. Therefore, their overall environmental performance in terms of green-house gas emissions and their energy balance is not taken into account. This appears to be unfair, since the new generation of biofuels, such as cellulose ethanol, is still in the development stage and faces very high production costs.

Furthermore, the most environment-friendly biofuels should be favoured more by having a higher percentage of detaxation than those biofuels that have a lesser environmental performance.

For the efficient functioning of a European biofuel market with internal and external trade and a multiple of biofuels from various resources and conversion processes, it will be necessary to develop certification schemes and appropriate standards. The issue of "green certificates" as an additional "income" for biofuels has been discussed extensively by the industry, but there is no initiative yet from the European Commission to consider this issue.

The basic rules concerning overcompensation are known and they will have to be applied at some stage after the industry has been established. However, with the expected rising trade of biofuels additional

measures have to be considered, in order to provide legal certainty to operators and the Member States. Such additional measures will have to be WTO compatible.

#### **IV. MANDATED MARKET**

An idea that is under examination by some Member States is to mandate the oil companies to place in the market of the Member State's territory a given or fixed quantity of biofuel. With such an approach, the additional cost of the biofuel is passed to the consumer and there is no need to de-tax the biofuels. This would segregate the national budgets from the loss of income due to detaxation.

#### **V. FUTURE NEGOTIATING POSITIONS WITH MERCOSUR**

It is very important that an appropriate balance be found between imports and EU own production in order to meet the targets of the Biofuels Directive.

At the moment, the EU has one of the most biofuel-friendly tax systems of the WTO Member States, although certain EU Member States limit their tax breaks to certain quantities, if they have them at all. Nevertheless the EU market is very attractive as an export destination for countries outside the EU. For this reason, it is expected that Member States will ask the EU to introduce protective measures in case of market distortions, caused by excessive biofuel imports from non-EU-25 countries that might endanger European biofuel production through very low prices.

Some of the options of the EU to negotiate with Mercosur are given below:

- The Mercosur quota should be based on a certain share of EU consumption (as is the case in the US) and should be annually determined based on the consumption of the previous year.
- Various stakeholders have proposed different percentages for this quota from 5% up to 1/3 of the EU consumption.
- The quota should apply from 2007 or 2008 to give sufficient time for the new plants under construction to become operational.
- EU biofuel producers should be allowed to import biofuels.
- The overcompensation mechanism should also apply to imports from Mercosur.
- Only ethanol from agricultural origins should be allowed under any quota, therefore there is a need to develop reliable certification systems.

## **Chapter VII - Main Stakeholders**

From the above analysis, one can conclude that biofuels and biomass are of a major importance to an increasing number of stakeholders and professional associations.

Indeed, besides compliance with EU and international commitments concerning security of energy supplies, renewable energy sources can help with environmental protection, contribute to job creation and offer promising business opportunities for EU industries.

A list of major associations and companies with interest in Biofuels for Transport Applications is provided in Annex III.

Annex IV lists the memberships of the main organisations.

## **Chapter VIII - CONCLUSIONS**

The EU biofuel initiative will undoubtedly result in new market opportunities for the European biofuels industry with positive effects on the farming community and especially the sugar industry. This is conditional to the Member States determination to meet the targets and create the necessary environment for business development with the appropriate tax incentives and other support measures. Major investments are needed to develop an EU biofuels industry. However, these will only take place when there will be business confidence that imports will be controlled and limited.

At the same time, it is recognised that imports are unavoidable. Thus the EU biofuel policies also represent significant opportunities for Mercosur and the other trade partners of the EU to expand their own industries and contribute to their economic development. Finding a balance between the desire of the EU trade partners to export their biofuels to the EU and the desire of the European industry to develop its own facilities and production, will be the difficult point.

Operating within the given EU and international legal frameworks should not represent any major problem.

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## ANNEX I

### ANNEX II to the EC Treaty : List referred to in Article 38 of the Treaty

#### LIST

*referred to in Article 38 of the Treaty*

#### **Number in the Brussels nomenclature And Description of products**

##### CHAPTER 1

*Live animals*

##### CHAPTER 2

Meat and edible meat offal

##### CHAPTER 3

*fish, crustaceans and molluscs*

##### CHAPTER 4

*Dairy produce; birds'eggs;natural honey*

##### CHAPTER 5

05.04

Guts, ú bladders and stomachs of animals (other than fish), whole and pieces thereof

05.15 Animal products not elsewhere specified or included; dead animals of Chapter 1 or Chapter 3, unfit for human consumption

##### CHAPTER 6

*Live trees and other plants: bulbs, roots and the like; cut flowers and ornamental foliage*

##### CHAPTER 7

*Edible vegetables and certain roots and tubers*

##### CHAPTER 8

*Edible fruit and nuts; peel of melons or citrus fruit*

##### CHAPTER 9

*Coffee, tea and spices, excluding mat, (heading No 09.03)*

##### CHAPTER 10

*Cereals*

##### CHAPTER 11

*Products of the milling industry, malt and starches; gluten; inulin*

##### CHAPTER 12

*Oil seeds and oleaginous fruit; miscellaneous grains, seeds and fruit; industrial and medical plants; straw and fodder*

##### CHAPTER 13

ex 13.03 Pectin

##### CHAPTER 15

15.01 Lard and other rendered pig fat; rendered poultry fat

15.02 Unrendered fats of bovine cattle, sheep or goats; tallow (including 'premier jus') produced from those fats

15.03 Lard stearin, oleostearin and tallow stearin; lard oil, oleo-oil and tallow oil, not emulsified or mixed or prepared in any way

15.04 Fats and oil, of fish and marine mammals, whether or not refined

15.07 Fixed vegetable oils, fluid or solid, crude, refined or purified

15.12 Animal or vegetable fats and oils, hydrogenated, whether or not refined, but not further prepared

15.13 Margarine, imitation lard and other prepared edible fats

15.17 Residues resulting from the treatment of fatty substances or animal or vegetable waxes

##### CHAPTER 16

*Preparations of meat, of fish, of crustaceans or molluscs*

CHAPTER 17

17.01 Beet sugar and cane sugar, solid

17.02 Other sugars; sugar syrups; artificial honey (whether or not mixed with natural honey); caramel

17.03 Molasses, whether or not decolourized

17.05 (\*) Flavoured or coloured sugars, syrups and molasses, but not including fruit juices containing added sugar in any proportion

CHAPTER 18

18.01 Cocoa beans, whole or broken, raw or roasted

18.02 Cocoa shells, husks, skins and waste

CHAPTER 20

*Preparations of vegetables, fruit or other parts of plants*

CHAPTER 22

22.04 Grape must, in fermentation or with fermentation arrested otherwise than by the addition of alcohol

22.05 Wine of fresh grapes; grape must with fermentation arrested by the addition of alcohol

22.07 Other fermented beverages (for example, cider, perry and mead)

ex 22.08 (\*) ex 22.09 (\*) Ethyl alcohol or neutral spirits, whether or not denatured, of any strength, obtained from agricultural products listed in Annex II to the Treaty, excluding liqueurs and other spirituous beverages and compound alcoholic preparations (known as 'concentrated extracts') for the manufacture of beverages

ex 22.10 (\*) Vinegar and substitutes for vinegar

CHAPTER 23

*Residues and waste from the food industries; prepared animal fodder*

CHAPTER 24

24.01 Unmanufactured tobacco, tobacco refuse

CHAPTER 45

45.01 Natural cork, unworked, crushed, granulated or ground; waste cork

CHAPTER 54

54.01 Flax, raw or processed but not spun; flax tow and waste (including pulled or garnetted rags)

CHAPTER 57

57.01 True hemp (*Cannabis sativa*), raw or processed but not spun; tow and waste of true hemp (including pulled or garnetted rags or ropes)

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(\*) Heading added by Article 1 of Regulation No 7a of the Council of the European Economic Community, of 18 December 1959 (OJ 7, 30. 1. 1961, p. 71 - Special edition (English edition) 1959-62, p. 68).

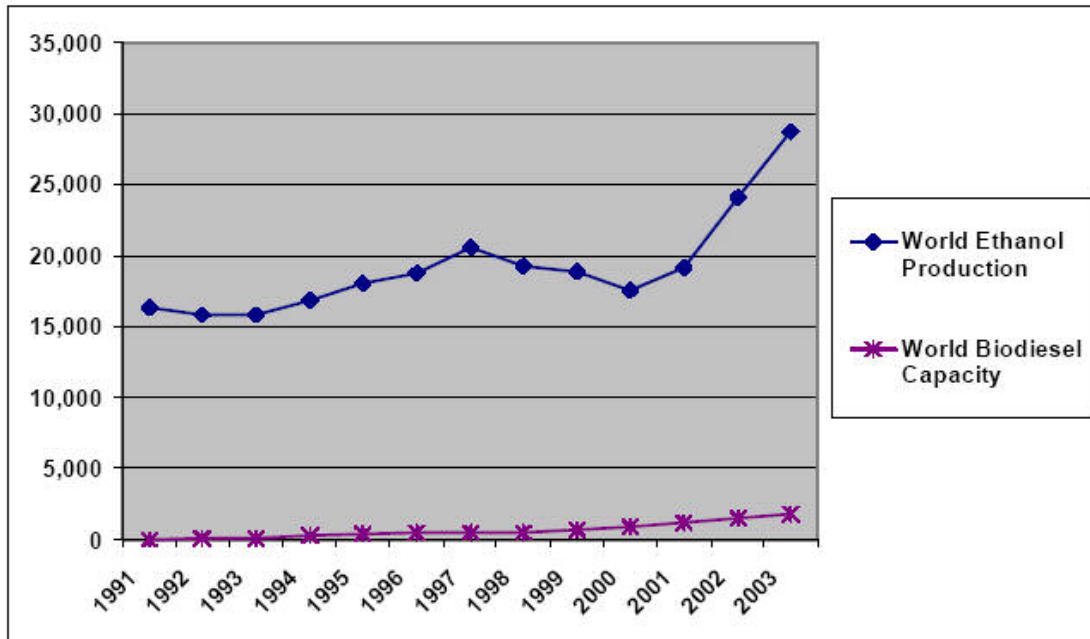
(\*) Heading added by Article 1 of Regulation No 7a of the Council of the European Economic Community, of 18 December 1959 (OJ 7, 30. 1. 1961, p. 71 - Special edition (English edition) 1959-62, p. 68).

(\*) Heading added by Article 1 of Regulation No 7a of the Council of the European Economic Community, of 18 December 1959 (OJ 7, 30. 1. 1961, p. 71 - Special edition (English edition) 1959-62, p. 68).

(\*) Heading added by Article 1 of Regulation No 7a of the Council of the European Economic Community, of 18 December 1959 (OJ 7, 30. 1. 1961, p. 71 - Special edition (English edition) 1959-62, p. 68).

## Annex II

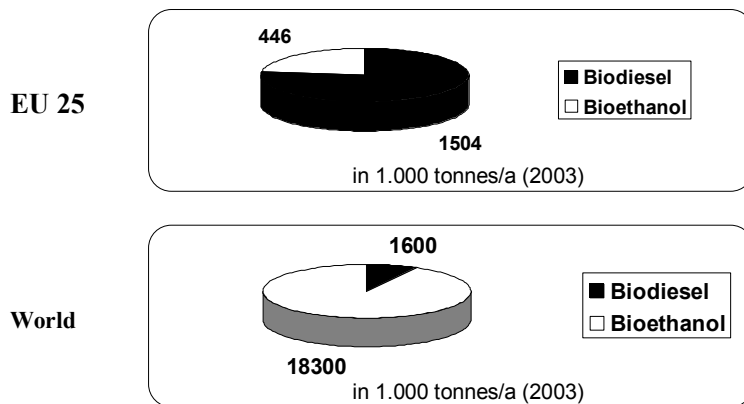
Figure 1: Worldwide biofuels production in million litres/year



*L. Fulton (2004)*

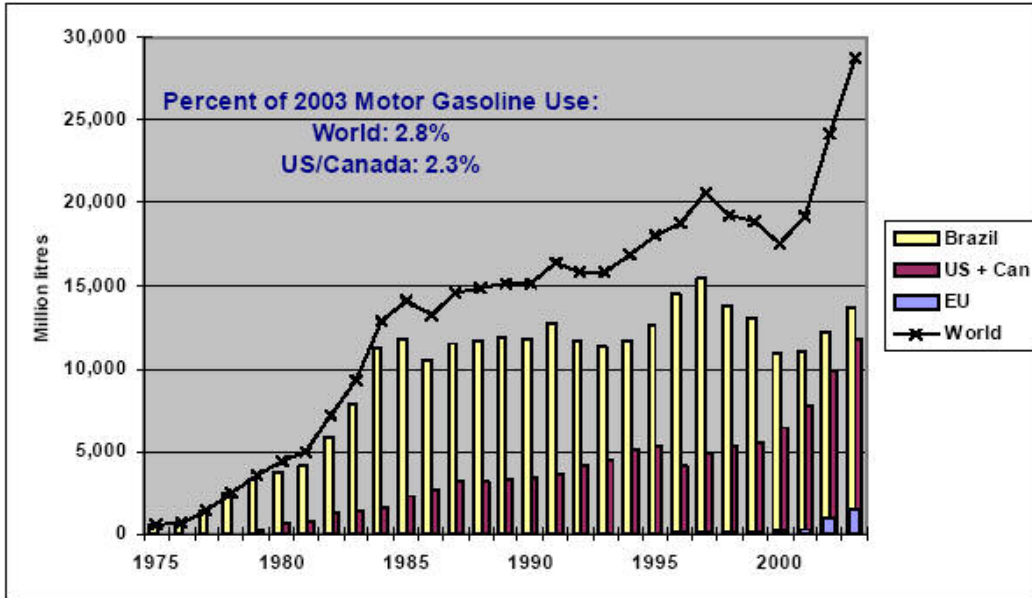
Figure 2: European and World production of biofuels

### Current EU Biofuels Production



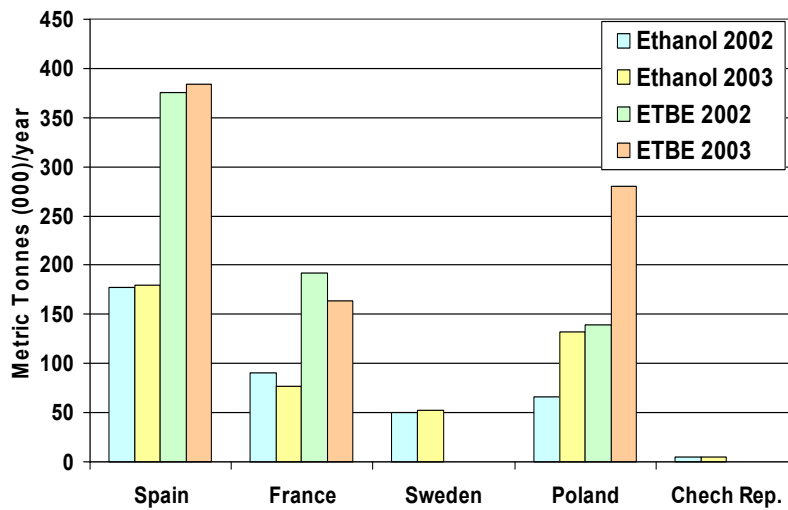
Source: Biofuels Barometer June 2004

Figure 3: Worldwide bioethanol production in million litres/year



L. Fulton (2004)

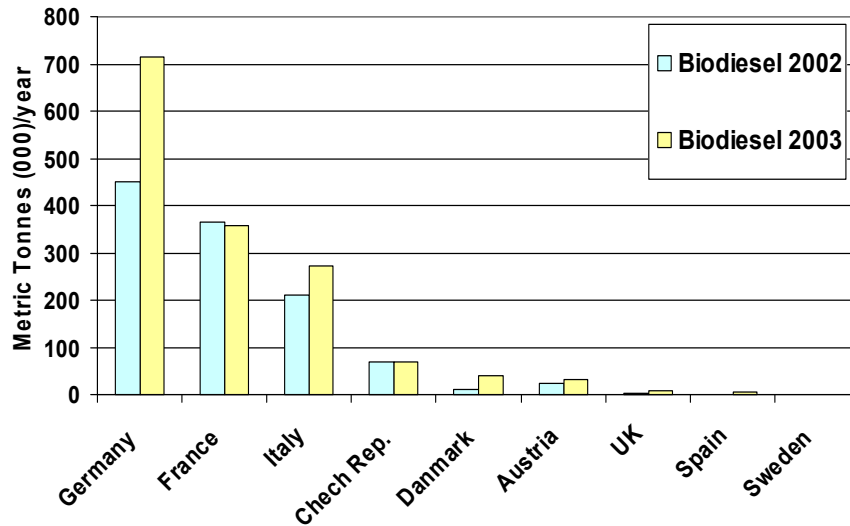
Figure 4: Bioethanol and BioETBE production in the EU



Source: Biofuels Barometer June 2004

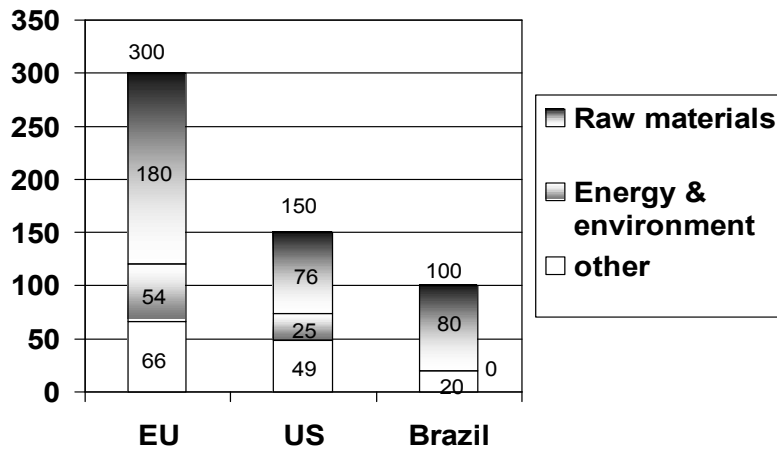
Only 5 Member States produce Bioethanol/ BioETBE providing 96% of total EU output

Figure 5: Biodiesel production in the EU



Source: Biofuels Barometer June 2004

Figure 6: Comparison of bioethanol production in EU, US and Brazil expressed in %, indexed (1€=1.2 US\$)



UEPA (2004)

### Annex III

#### Major Associations/Companies with Interest in Biofuels for Transport Applications

N°	Acronym	Name	Address	Tel/web site
1	ACEA	European Automobile Manufactures Association	Rue du Noyer 211, B-1000, Brussels, Belgium	+32-2-7325550 <a href="http://www.acea.be">www.acea.be</a>
2	BAFF	BioAlcohol Fuel Foundation	Box 73, SE-891 22 Örnköldsvik, Sweden	+46-70-5521505 <a href="http://www.baff.info">www.baff.info</a>
3	CARGILL	CARGILL	PO Box 9300, Minneapolis, MN 55440-9300 USA	+1-952-7427575 <a href="http://www.cargill.com">www.cargill.com</a>
4	CEPI	Confederation of European Paper Industries	Avenue Louise 250, Box 80, B-1050 Brussels, Belgium	+32-2-6274911 <a href="http://www.paperonline.org">www.paperonline.org</a>
5	CONCAWE	The oil companies' European organisation for environment, health and safety	Boulevard du Souverain 165, B-1160 Brussels, Belgium	+32-2-5669169 <a href="http://www.concawe.be">www.concawe.be</a>
6	COPA -COGECA	Committee of Professional Agricultural Organisations in the European Union - General Confederation of Agricultural Co-operatives in the European Union	Maison européenne de l'Agriculture, Rue de la Science 23-25, B-1040 Brussels, Belgium	+32-2-2872711 <a href="http://www.copa-cogeca.be">www.copa-cogeca.be</a>
7	EBB	European Biodiesel Board	Boulevard Saint-Michel 47, B-1040 Brussels, Belgium	+32-2-7377613 <a href="http://www.ebb-eu.org">www.ebb-eu.org</a>
8	EFOA	The European Fuel Oxygenates Association	Avenue E. Van Nieuwenhuysse 4 Box 2, B-1160 Brussels, Belgium	<a href="http://www.efoa.org">www.efoa.org</a>
9	EFPRA	European Fat Processors & Renderers Association	Boulevard Baudouin 18, Box 4, B-1000 Brussels, Belgium	+32-2-2035141
10	Ethanol Union	Ethanol Union	Rue Chateaubriand 27/29, 75008 Paris, France	+33-1-42990180 <a href="http://www.ethanolunion.com">www.ethanolunion.com</a>
11	EuropaBio	The European Association for Bioindustries	Avenue de l'Armée 6, B-1040 Brussels, Belgium	+32-2-7350313 <a href="http://www.europabio.org">www.europabio.org</a>
12	ENGVA	European Natural Gas Vehicle Association	Kruisweg 813-A, 2132 NG Hoofddorp, The Netherlands	+31-23-5543050 <a href="http://www.engva.org">www.engva.org</a>
13	EREC	European Renewable Energy Council	Renewable Energy House, Rue du Trône 26, B-1000 Brussels, Belgium	+32-2-5461933 <a href="http://www.erec-renewables.org">www.erec-renewables.org</a>
14	EUBIA	European Biomass Industry Association	Rond-Point Schuman 6, B-1040 Brussels, Belgium	+32-2-2828420 <a href="http://www.eubia.org">www.eubia.org</a>
15	EUCAR	European Council for Automotive R&D	Rue du Noyer 211, B-1000, Brussels,	+32-2-7387366

<b>N°</b>	<b>Acronym</b>	<b>Name</b>	<b>Address</b>	<b>Tel/web site</b>
			Belgium	www.eucar.be
16	EUFORES	European Forum for Renewable Energy Sources	Renewable Energy House, Rue du Trône 26, B-1000 Brussels, Belgium	+ 32-2-5461948 www.eufores.org
17	Europa	European Petroleum Industry Association	Boulevard du Souverain 165, B-1160 Brussels, Belgium	+32-2-25669100 www.europa.be
18	FEDERANE	European Federation of Regional Energy and Environment Agencies	Rue du Beau-Site 11, B-1000 Brussels, Belgium	+32-2-6468210 www.fedarene.org
19	FEDIOL	EC Seed Crushers' and Oil Processors' Association	157, avenue Churchill, B – 1180, Brussels, Belgium	+32-2- 771 53 30 www.fediol.be
20	F.O. Licht	F.O. Licht	Am Mühlengraben 22, 23909 Ratzeburg, Germany	+49-4541-88920 www.fo-light.com
21	LYONDELL	LYONDELL	Via Torino 2, 20123 Milano, Italy	+39-02-72546611 www.lyondell.com
22	NBB	National Biodiesel Board (USA)	3337a Emerald Lane • PO Box 104898 Jefferson City, MO 65110-4898, USA	+1-800-8415849 www.biodiesel.org
23	NOVAOL	NOVAOL	Via Madre Cabrini 10, I-20122 Milano, Italy	+39-2-5821051 www.novaol.it
24	SNPAA	Syndicat National des Producteurs d'Alcool agricole	Rue du Général Foy, 75008 Paris, France	+33-1-44700015
25	UEPA	Union Européene des Producteurs d'Alcool	Avenue des Nerviens 65/25, B-1040 Brussels, Belgium	+32-2-7729830

## Annex IV

### Membership of main organisations

Members of ACEA	<a href="http://www.acea.be/ASB/ASBv1_1_new.nsf">http://www.acea.be/ASB/ASBv1_1_new.nsf</a>
Members of BAFF	<a href="http://www.baff.info/english/about_Organisation.cfm?Organisation=">http://www.baff.info/english/about_Organisation.cfm?Organisation=</a>
Members of COPA	<a href="http://www.copa-cogeca.be/en/copa_membres.asp">http://www.copa-cogeca.be/en/copa_membres.asp</a>
Members of COGECA	<a href="http://www.copa-cogeca.be/en/cogeca_membres.asp">http://www.copa-cogeca.be/en/cogeca_membres.asp</a>
Members of CONCAWE	<a href="http://www.concawe.be/Content/Default.asp?PageID=9">http://www.concawe.be/Content/Default.asp?PageID=9</a>
Members of EBB	<a href="http://www.ebb-eu.org/members.php">http://www.ebb-eu.org/members.php</a>
Members of EFOA	<a href="http://www.efoa.org/about_efoa.html#3">http://www.efoa.org/about_efoa.html#3</a>
Members of EREC	<a href="http://www.erec-renewables.org/members/default.htm">http://www.erec-renewables.org/members/default.htm</a>
Members of EthanolUnion	<a href="http://www.ethanolunion.com">http://www.ethanolunion.com</a>
Members of EuropaBio	<a href="http://www.europabio.org/eu_membership.htm">http://www.europabio.org/eu_membership.htm</a>
Members of Europaia	<a href="http://www.europia.be/HTML/Members.htm">http://www.europia.be/HTML/Members.htm</a>
Members of NBB	<a href="http://www.biodiesel.org/members/full/">http://www.biodiesel.org/members/full/</a>
	<a href="http://www.biodiesel.org/members/full/">http://www.biodiesel.org/members/full/</a>