EUROPEAN COMMISSION

Brussels, 02.III.2005
C(2005)433 fin

Subject: **State Aid N 599/2004 - Ireland**
Excise tax reduction on biofuels

I. PROCEDURE

(1) Ireland notified its intention to introduce an excise duty reduction in favour of certain biofuels on 23 December 2004. The Commission asked further questions on 10 January 2005, to which Ireland replied by letter dated 25 January 2005, registered on 28 January 2005.

II. DESCRIPTION

(2) The objective of the measure is to assist Ireland in meeting its targets set out in 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[1]. The measure should contribute to the initial development of the market for biofuels in Ireland and to the investigation and evaluation of that market, it should instil consumer confidence in biofuels and it should provide a basis on which future policy decisions can be made. To this end Ireland intends to introduce an excise duty relief on biofuels under a controlled environment. The measure will be introduced after the approval of the Commission and its duration will be limited to an initial two years

(3) Ireland will consider the following categories of biofuels for excise tax relief:

(i) pure plant oil produced from oilseed rape which is used in modified diesel vehicle engines.

(ii) biodiesel which complies with the standard EN 14214 and which is blended with mineral diesel to a maximum of 5% of biodiesel in the blend, with the blend complying with diesel standard EN 590.

(iii) bioethanol blended with petrol to a maximum of 5% of bioethanol in the blend and used in standard petrol vehicle engines or blended up to 85% of bioethanol for use in flexible fuel vehicles.

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1 OJ L 123 of 17.5.2003, p. 42

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(4) The amount of biofuels that can be exempted is limited as follows:

(i) In the category of pure plant oil, the maximum eligible biofuel production and use is six million litres in any one year. The minimum project size in this category is 50 000 litres of biofuel per year.

(ii) In the category of biodiesel, the maximum eligible biofuel production and use is one million litres in any one year. The minimum project size in this category is 100 000 litres of biofuel per year.

(iii) In the category of bioethanol, the maximum eligible biofuel production and use is one million litres in any one year. The minimum project size in this category is 100 000 litres of biofuel per year, except where the fuel is to be used in a flexible fuel vehicle application where smaller limits may be considered.

(5) Ireland will grant the excise relief by way of excise remission upon application. The applications will be invited by the Minister for Communications, Marine and Natural Resources. They will be evaluated on the basis of specific criteria laid down in the excise relief application form and relating to the technical excellence of the proposal, its methodology and its compliance with quality standards. In the event that the scheme is oversubscribed, projects will be ranked and selected in order of merit to ensure that the overall limits of the scheme, as outlined in point 4 above, are not exceeded. The projects will be subject to review on a six monthly basis to ensure that the projected standards and conditions are being achieved. Failure to meet these standards and conditions could result in excise relief being withdrawn.

(6) According to Ireland, rapeseed oil is the only biofuel that has been sold in Ireland to date. It is estimated that over a one-year period (May 2003 to May 2004) 18 000 litres of rapeseed oil was sold and used as fuel in Ireland. Based on this data, the current market penetration of biofuels is less than 0.0003% of the total market of transport fuels in Ireland.

(7) There is an existing direct investment aid scheme in Ireland until end 2006 to assist pilot biofuel programs. It is estimated that the total capital support under this scheme will amount to €500 000 until end 2006, of which €250 000 had already been paid before the date of the notification. Ireland states that all the funding will be allocated to pure plant oil applications and the scheme will not be applicable for biodiesel and bioethanol. Under the scheme Ireland offers up to 25% support for oil pressers and up to 45% support for vehicle engine modifications for up to 100 vehicles per project.

(8) Pure biofuels will be exempted completely from the excise duty on mineral oil. In cases where biofuels are blended with fossil fuels, the excise exemption shall only apply to the biofuels component of the final product blend. Without the exemption an excise duty of €0.368 per litre would be applicable to pure plant oil and biodiesel and an excise duty of €0.443 per litre would be applicable to bioethanol.

(9) Ireland estimates that the excise duty foregone per year will be approximately €1 950 000 for pure plant oil, €325 000 for biodiesel and €292 000 for bioethanol on the basis of fossil fuel replaced. The total excise duty foregone per year for the three categories will be approximately €2 567 000 on the basis of fossil fuel replaced. On the basis of biofuel consumed, the excise foregone will be €3 000 000 per year due to the lower efficiency levels of biofuels.

(10) Ireland intends to introduce the excise duty exemption on basis of the directive 2003/96/EC on energy taxation[2].

III. ASSESSMENT

3.1. Existence of aid within the meaning of Article 87(1) EC Treaty

(11) According to Article 87 of the EC Treaty, State aid involves (1) an aid, granted by a Member State or through State resources, (2) which distorts competition, (3) by favouring certain undertakings, (4) insofar as it affects trade between Member States.

(12) The excise duty reduction is destined to alleviate costs incumbent on a specific sector, namely that of producers of certain biofuels (pure plant oil, biodiesel and bioethanol). Consequently, the exemption foreseen cannot be seen as enshrined in the general excise tax system of fuel in Ireland. It is granted from State resources. Since biofuels serve as substitutes for fossil fuels, this advantage may distort competition in the internal EU-market. The measure is also likely to affect trade between Member States in this sector and therefore constitutes State aid pursuant to Article 87 (1) EC Treaty.

(13) The envisaged measure had to be notified individually and its compatibility has to be assessed pursuant to Article 87 of the EC Treaty.

3.2. Exemption under Art. 87(3)(c) EC Treaty

(14) Article 87(3)(c) of the EC Treaty foresees an exemption to the general rule of incompatibility as stated in paragraph 1 of this Article 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.

(15) The proposed aid is designed to enhance the use of environmentally friendly fuels in order to reduce the emission of greenhouse gases. The Commission recalls that the development of renewable energies, especially biofuels, has been encouraged since 1985 by numerous Community measures[3]. The objectives of the present scheme are in line with EU policy in this sector.

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[2] Directive 2003/96/EC of the Council of 27.10.2003 restructuring the Community framework for the taxation of energy products and electricity, OJ L 283 of 31.10.2003, p. 51

[3] Among others, the White Paper of 1997 on renewable energies COM (1997) 599 final of 26.11.1997, the Commission Green paper on energy supply safety in the European Union COM

(16) The Commission assessed the notified measure in the light of the Community Guidelines on State aid for environmental protection[4] (hereafter "Community Guidelines"). According to section E.3.3 of the Community Guidelines, operating aid in favour of the production of renewable energy will usually be allowable. The Commission takes the view that such aid qualifies for special treatment because of the difficulties these sources of energy have sometimes encountered in competing effectively with conventional sources.

(17) The definition of biofuels that Ireland uses is in line with the definition used in Article 2(a) of Directive 2001/77/EC[5]. Therefore, the biofuels are also renewable energy sources within the meaning of point 6 of the Community Guidelines.

(18) Point 56 of the Community Guidelines lays down 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. In case of a complete excise duty exemption, the production costs of the energy produced from renewable energy sources without any excise duty should thus not be below the market price of a comparable energy obtained from fossil energy sources including excise duty.

(19) Ireland submitted the following information on the production costs of pure plant oil and biodiesel:

In €/litre	**Pure plant oil**	**Biodiesel**
Raw material (+)	0.65	0.70
Processing (+)	0.11	0.32
Logistic (+)	0.05	0.11
By-product selling price (-)	0.09	0.33
Value added tax (21%)	0.15	0.17
Production costs	**0.87**	**0.97**
Adjustment factor (12%)	0.10	0.12
Total	**0.97**	**1.09**

(20) The main factor determining the production costs of biodiesel and vegetable oils is the price of the raw material (usually rapeseed oil). Ireland calculates the

(2000) 769 of 29.11.2000, the Commission's communication on alternative fuels for road transport and on a set of measures to promote the use of biofuels COM(2001) 547 of 7.11.2001.

4 OJ C 37 of 3.2.2001, p.3.

5 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, OJ L 283 of 27.10.2001, p.33. Article 2 (a) of this directive lists the following renewable energy sources: wind, solar, geothermal, wave, tidal, hydropower and biomass, landfill gas, sewage treatment plant gas and biogases. Article 2 (b) lays down that biomass shall mean the biodegradable fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste.

production costs of pure plant oil (including VAT but without excise duty) at 0.87 €/l. Production costs of biodiesel (including VAT but without excise duty), are calculated to be 0.97 €/l.

(21) Moreover, in addition to these production costs it has to be taken into consideration that, due to the lower energy value of biodiesel in comparison to fossil diesel, the consumption of biodiesel is estimated to be 12% higher. The same holds for pure plant oil used as propellant. Applying the 12% adjustment factor, the production costs of pure plant oil and biodiesel amount to 0.97 €/l and 1.09 €/l respectively. For comparison, the market price of auto diesel, which is the fossil fuel equivalent for pure plant oil and biodiesel, amounted to 0.854 €/l (including VAT and excise duty) on average in between October 2003 and September 2004.

(22) On basis of this data, the production costs of pure plant oil and biodiesel are above the market price of fossil diesel. The Commission thus considers that the excise duty exemption does not overcompensate for the extra production costs of pure plant oil and biodiesel.

(23) Ireland submitted the following information on the production costs of bioethanol:

In €/litre	**Bioethanol**
Raw material (+)	0.32
Processing (+)	0.35
Logistic (+)	0.12
By-product selling price (-)	0.05
Direct investment aid for engine modifications (-)	0
Value added tax (21%)	0.16
Production costs	**0.90**
Adjustment factor (34%)	0.30
Total	**1.20**

(24) According to these calculations, the production cost of bioethanol is 0.90 €/l (including VAT but without excise duty). In addition, bioethanol has about 34% less calorific value than petrol[6]. Applying the 34% adjustment factor, the production costs of bioethanol amount to 1.20 €/l. The market price of petrol, which is the fossil fuel equivalent of bioethanol, amounted to 0.926 €/l

6 Explanatory Memorandum to the Commission’s communication on alternative fuels for road transport and on a set of measures to promote the use of biofuels COM(2001) 547 of 7.11.2001

(including VAT and excise duty) on average in between October 2003 and September 2004.

(25) On basis of this data, the production costs of bioethanol are above the market price of petrol. The Commission thus considers that the excise duty exemption does not overcompensate for the extra production costs of bioethanol

(26) The excise duty reduction applies to pure and blended biofuels. Concerning biofuels blended with fossil fuel, the excise duty exemption will be proportionate to the volume of biofuel in the end product. Thus the higher the percentage of biofuel in the end product, the greater the value of the potential reduction of excise duty on the end product.

(27) The Commission also notes that Ireland committed itself to provide annual monitoring reports to the Commission containing all relevant information on the production costs of the biofuels and the market price of fuels to show that there is no overcompensation. Ireland also confirmed that it would make annual adaptations to the exemption if necessary in order to avoid any overcompensation in the future.

(28) Taking into account the above, the Commission thus comes to the conclusion that the aid is restricted to cover the difference between the cost of producing energy from renewable energy sources and the market price of that energy and that overcompensation in the meaning of the Community Guidelines can be excluded. In addition, there is no need to limit the operating aid to plant depreciation given that the biomass requires less investment but brings higher operating costs than other renewable sources of energy, in line with point 60 of the Community guidelines.

(29) Finally, the Commission notes that the duration of the measure is limited to two years starting from the adoption of the present decision.

(30) Ireland intends to introduce the exemption on basis of the directive 2003/96/EC on energy taxation[7] and within the limits of Article 16 of this directive which allows Member States to apply a reduced excise duty and exemptions for products derived from biomass subject to certain conditions.

(31) The Commission comes to the conclusion that the notified aid measure fulfils the conditions laid down in the Community guidelines on State aid for environmental protection. The Commission also considers that the notified measure is in line with the Community legislation on taxation, in particular with directive 2003/96/EC on energy taxation.

(32) The excise exemption applies as well to some agricultural products that are included in Annex I of the Treaty. The aid for these products fall within the scope of the Community guidelines for State aid in the agriculture sector[8] and is excluded from the scope from the environmental aid guidelines in conformity

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[7] see footnote 1

[8] OJ C28 of 1.2.2000, p.2

with point 7 of these aid guidelines. Section 5.5.3 of the guidelines for State aid in the agricultural sector, however, stipulates that in duly justified cases, such as aids for the development of biofuels, the Commission may also approve operating aid in cases where these can clearly be shown to be necessary to offset the additional cost arising from the use of environmentally friendly inputs in comparison to conventional production processes. The assessment above demonstrates that these requirements and also the other requirements mentioned in section 5.5.3, are fulfilled. In addition, when assessing environmental aid granted both to sectors covered by annex I and to sectors not covered by this annex, there may not be a justification for unequal treatment. In fact, the Commission previously accepted equal treatment in some cases.[9]

(33) In conclusion the aid can be found compatible with the common market on the basis of Article 87(3)(c) of the EC Treaty.

IV. DECISION

The Commission has accordingly decides not to raise objections against the notified aid as the aid can be considered compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty.

Ireland has made a commitment to submit annual reports to the Commission on the monitoring of overcompensation and on the application of the aid.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/. Your request should be sent by registered letter or fax to:

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For the Commission

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9 e.g. Commission decision on the German Ecotax, NN47/99, OJ C166 of 12.6.199, p. 2 and N575/A/99, OJ C322 of 11.11.2000, p. 9.