



Brussels, 01.03.2018
C(2018) 1379 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 30 and 31 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
--	--	--

Subject: State Aid SA.48424 (2017/N) – Italy - Support scheme for the production and distribution of advanced biomethane and other advanced biofuels for use in the transport sector

Sir,

1. PROCEDURE

- (1) By electronic notification of 14 June 2017, the Italian authorities notified to the Commission a support scheme for the production and distribution of advanced biomethane and other advanced biofuels for use in the transport sector. Further information was submitted on 9 and 27 October 2017, 15 January and 15 February 2018.
- (2) During the notification process, the Commission received third parties' submissions alleging the measure would be incompatible with Article 107(3)(c) TFEU. Sections 2 and 3 below include the third parties' main arguments, Italy's observations and the Commission's assessment.
- (3) On 15 February 2018, Italy agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of the EC Regulation 1/1958 and to have the present decision adopted and notified pursuant to Article 297 of the Treaty in English language.

Onorevole Angelino Alfano
Ministro degli Affari esteri e della Cooperazione Internazionale
P.le della Farnesina 1
I - 00194 Roma

2. DESCRIPTION

2.1. Background: existing obligations for the promotion of biofuels

- (4) Previous to the introduction of the notified measure, which is specifically targeted at advanced biomethane and other advanced biofuels, Italy had already implemented support schemes for biogas and biofuels for use in transport¹.
- (5) In 2006, Italy introduced for the first time the obligation for fuel retailers to ensure that a certain percentage of the fuel sold was made of biofuels ('supply obligation')².
- (6) In 2011, the supply obligation was modified to bring it in line with the provisions of Directive 2009/28³ (the 'Renewables Directive'), which sets mandatory targets for the consumption of biofuels in the transport sector and provides that the target can be achieved only through the consumption of *sustainable* biofuels.⁴ In 2014, Italy established that the fulfilment of the supply obligation would have to be demonstrated by fuel retailers through the presentation of an amount of certificates ('*Certificati di Immissione in Consumo*', or 'CIC')⁵, issued by the Gestore dei Servizi Energetici ('GSE')⁶, corresponding to the amount of biofuels they are obliged to place onto the market.
- (7) In 2014, Italy also introduced for the first time in the national legislation the definition of 'advanced biofuels'⁷ and established that, as of 2018, a share of the supply obligation must be satisfied by placing on the market advanced biofuels.
- (8) Following the adoption of Directive 2015/1513 (the 'ILUC Directive')⁸, Italy in March 2017:
 - (a) aligned the definition of advanced biofuels with the one provided for in the ILUC Directive⁹ and with the waste hierarchy principle;

¹ For instance, reductions of excise duties for biofuels, which received State aid clearance. See decisions in cases SA. 461/2001, SA.582/2004, and SA.326/2007.

² Law Decree no. 2/2006, converted in Law no.81/2006.

³ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, OJ L 140, 5.6.2009, p. 16–62.

⁴ Legislative Decree no. 28 of 3 March 2011 and subsequent implementing measures.

⁵ Decree of the Minister of Economic Development 10 October 2014.

⁶ The GSE is a public company, wholly owned by the Ministry of Economy and Finance and controlled by the Minister of Economic Development. Its main activity is the implementation of the renewable energy policies of the Italian government. In particular, the GSE manages, under the control of the Italian government, the programmes aimed at fostering the production of energy produced from renewable sources, including by administering economic subsidies.

⁷ Decree of the Minister of Economic Development of 10 October 2014.

⁸ Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources, OJ L 239, 15.9.2015, p. 1–29.

⁹ The production of advanced biofuels is defined in Annex 3 of the measure (identical in formulation to Annex IX of ILUC, except for the references made to the national implementing legislation instead of

- (b) modified the subtarget of the supply obligation for advanced biofuels as of 2018 (setting them above the minimum non-mandatory target foreseen by the ILUC Directive (0.5%))¹⁰ and clarifying explicitly that it should include biomethane;
 - (c) brought the provisions on double counting of biofuels in line with the ILUC Directive¹¹.
- (9) In 2015, the supply obligation was complemented by a system of sanctions.¹² The sanction is set at EUR 750 (reduced to EUR 250 if paid within 30 days) per each 'missing' certificate. The part of the supply obligation that has not been fulfilled is carried out to the following year. As regards the fulfilment of the advanced biofuels quota, the sanction for not complying can be reduced in case of scarce availability of this type of biofuels on the market (when availability is lower than 1.2 times the required minimum quota) or subsequently adapted to the foreseen production capacity levels. Availability of advanced biofuels will be verified by the Ministry of Economic Development based on data from EU producers.
- (10) Italy claims that the supply obligation in force since 2014 -for the advanced biofuels to be implemented as of 2018- has not produced the expected results in terms of increasing the use of biofuels, and in particular biomethane, in the transport sector. In particular, biomethane has been used mainly for production of energy/electricity, for which it benefits from specific incentives¹³. Moreover, the few existing plants for the production of other advanced biofuels are only demonstration projects. Finally, whilst Italy has already achieved the EU targets for renewable energies in the electricity sector, it is still behind achieving the EU 10% target of renewables in the transport sector, and even more as regards the national sub-target for advanced biofuels.

ILUC) as deriving from:(Part A: Raw materials and fuels, which can be counted as "advanced") (a) Algae if cultivated on land in ponds or photobioreactors; (b) Biomass fraction of mixed municipal waste, but not separated household waste subject to recycling targets under [...]; (c) Bio-waste as defined in [...] from private households subject to separate collection as defined in [...]; (d) Biomass fraction of industrial waste not fit for use in the food or feed chain, including material from retail and wholesale and the agro-food and fish and aquaculture industry, and excluding feedstocks listed in part B of this Annex; (e) Straw; (f) Animal manure and sewage sludge; (g) Palm oil mill effluent and empty palm fruit bunches; (h) Tall oil pitch; (i) Crude glycerine; (l) Bagasse: (m) Grape marcs and wine lees; (n) Nut shells; (o) Husks; (p) Cobs cleaned of kernels of corn; (q) Biomass fraction of wastes and residues from forestry and forest-based industries, i.e. bark, branches, pre-commercial thinnings, leaves, needles, tree tops, saw dust, cutter shavings, black liquor, brown liquor, fibre sludge, lignin and tall oil; (r) Other non-food cellulosic material as defined in point (s) of the second paragraph of Article 2 [...]; (s) Other ligno-cellulosic material as defined in point [...] except saw logs and veneer logs; (t) Renewable liquid and gaseous transport fuels of non-biological origin; (u) Carbon capture and utilisation for transport purposes, if the energy source is renewable in accordance with point (a) of the second paragraph of Article 2; (v) Bacteria, if the energy source is renewable in accordance with point (a) of the second paragraph of Article 2. Part B. Raw materials and fuels which cannot account as "advanced": (a) Used cooking oil; (b) Animal fats classified as categories 1 and 2 in accordance with Regulation (EC) No 1069/2009 of the European Parliament and of the Council.

¹⁰ See Table 1 below.

¹¹ Legislative Decree n.51 of 21 March 2017. As of 30 June 2018, only advanced biofuels will benefit from 'double counting', meaning that one CIC will be issued for 5 GigaCalories (GCal) of advanced biofuels put on the market rather than for 10 GCal as for non-advanced biofuels.

¹² Decree of the Minister of Economic Development of 20 January 2015.

¹³ See Commission decision in case SA.43756 (2015/N).

- (11) According to the Italian authorities, the situation cannot be remedied simply by applying the sanctions for non-compliance with the supply obligation. This is due to the limited production of advanced biofuels and biomethane not only in Italy, as explained in recital (9) above, but also in the rest of the EU. Italy estimates that, in the absence of a support scheme for advanced biofuels and biomethane, their availability on the Italian market would be largely below the minimum levels imposed in the supply obligation. As a consequence, the sanction system would be inapplicable.

2.2. Objective and description of the measure

- (12) The aim of the notified scheme, contained in a draft Decree of the Ministry of Economic Development (the 'MISE Decree')¹⁴ is to achieve the EU 2020 10% target for the consumption of renewable energy in the transport sector, and, within that target, the national subtarget for advanced biomethane and other advanced biofuels.
- (13) The measure specifies that the subtarget for advanced biofuels must be fulfilled for 75% by biomethane and for 25% by other biofuels. The respective shares of biomethane and other biofuels within the subtarget for advanced biofuels will be reviewed every two years, based on estimates on the availability of such products.
- (14) Table 1 below provides an estimate of the amount of advanced biofuels to be placed on the market for use in transport.

Table 1
Estimates of advanced biofuels to be used in the transport sector in Italy for 2018-2022 **

STIME DI BIOCARBURANTI AVANZATI DA IMMETTERE IN ITALIA NEL PERIODO 2018-2022 SECONDO LE SUDDIVISIONI PREVISTE NEL DECRETO NOTIFICATO ALLA CE																				
Anno	Imnesso in consumo di benzina e gasolio - valore proxy consumi del 2016 - (Gcal)	% obbligo di biocarburanti	obbligo di biocarburanti (Gcal)	BIOCARBURANTI AVANZATI		Di cui biometano avanzato (0,75% del totale)		Di cui altro avanzato (0,25% del totale)		Stima produzione di biometano avanzato in Smc*	Stima produzione e di biometano avanzato in Gcal†	Stima produzione di altri biocarburanti avanzati per il mercato nazionale in tonnellate‡	Stima produzione di altri biocarburanti avanzati per il mercato nazionale in Gcal†	% del Biometano avanzato stimato su obbligo avanzato totale	% di altro biocarburante avanzato stimato su obbligo avanzato totale	differenziale in Gcal rispetto al 75% del Biometano avanzato	differenziale in Gcal rispetto al 25% di altri biocarburanti avanzati	verifica >20 obbligo disponibilità in Gcal del Biometano avanzato	verifica >20 obbligo disponibilità in Gcal di altri biocarburanti avanzati	
				di cui % obbligo biocarburanti	Obbligo biocarburanti (Gcal)	%	Energia (Gcal)	%	Energia (Gcal)											
2018	340.000.000	7,0%	23.800.000	0,90%	2.040.000	0,45%	1.530.000	0,15%	510.000	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
2019	340.000.000	8,0%	27.200.000	0,80%	2.720.000	0,60%	2.040.000	0,20%	680.000	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
2020	340.000.000	9,0%	30.600.000	0,90%	3.060.000	0,68%	2.295.000	0,23%	765.000	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
2021	340.000.000	9,0%	30.600.000	1,50%	5.100.000	1,13%	3.825.000	0,38%	1.275.000	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
2022	340.000.000	9,0%	30.600.000	1,85%	6.290.000	1,39%	4.717.500	0,46%	1.572.500	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

Stima del MISE basata su circa 300 manifestazioni di interesse (di cui circa 50 con contratto di allacciamento) di connessioni alla Rete di trasporto del gas di SNAM Rete gas

Stima basata su comunicazioni degli operatori economici del settore al Ministero dello sviluppo economico per gli anni 2018 e 2019, stima del MISE dal 2020 al 2022.

Source: Italian authorities

- (15) In order to achieve these targets, the measure provides incentives for the production of advanced biomethane and other advanced biofuels and for the distribution of advanced biomethane, as described in Sections 2.2.1 and 2.2.2.

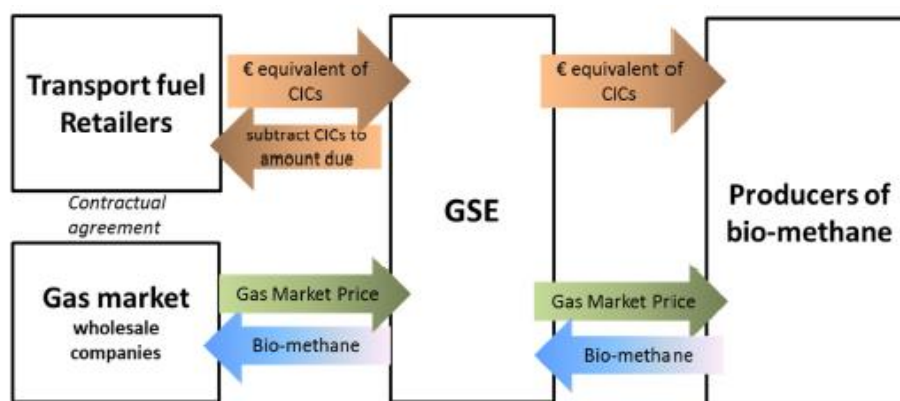
¹⁴ The MISE Decree will implement Legislative Decree n.51 of 21 March 2017.

**Parts of figures have been redacted so as not to divulge confidential information

2.2.1. Support measures to producers of advanced biomethane

- (16) Two options are available to producers of advanced biomethane who wish to benefit from the measure:
- i) Option 1: centralised exchange mechanism managed by GSE*
- (17) The GSE will purchase advanced biomethane from producers who request to participate in this mechanism. Producers will receive:
- the gas market price (equal to the monthly weighted average price for natural gas on the *Gestore dei Mercati Energetici* (GME) market), minus 5%; and
 - a premium corresponding to the value of the CICs, which in turns reflects the calorific value of the biomethane purchased. Under this mechanism, the value of one CIC is set at EUR 375. Double counting applies in line with the provisions of the ILUC Directive (meaning that one CIC will be issued for 5 GCal of advanced biofuels, as compared to one CIC for 10 GCal for non-advanced biofuels).
- (18) Subsequently, preferably through auctions to be organized on a monthly basis, the GSE sells the biomethane at market price to wholesalers, upon proof of the conclusion of transportation and supply contracts with transport fuel retailers for a volume equal at least to the one they intend to purchase.
- (19) The obliged fuel retailers who decide to participate in the mechanism, commit to buy from GSE CICs, at the price of EUR 375/CIC, in the amount necessary to fulfil their yearly supply obligation.

Figure 1
Centralised mechanism for advanced biomethane



Source: Italian authorities

- (20) The total amount purchased by the GSE is limited to 1.1 billion Standard Cubic meter ('SmC') per year. Applications will be accepted in chronological order based on the date when the plant has become operational.

ii) Option 2: Direct sale of advanced biomethane

- (21) Producers of advanced biomethane can opt out from the centralised mechanism and trade directly their biomethane without the intervention of the GSE.
- (22) In order for those producers to be entitled to receive the guaranteed premium of EUR 375/CIC, the biomethane must either be injected in the gas network but measured separately or be injected in a network not subject to third party access. The GSE will verify, including by means of on-site inspections, that the biomethane has been placed on the market in the transport sector. Then it will pay to the producers the value of the CICs corresponding to the amount of biomethane injected in the system and sold for use in transport.
- (23) The guaranteed CICs' price is financed by the obliged fuel retailers who have decided to participate in the support scheme as described in recital (19) above. Non participating fuel retailers still have the obligation of fulfilling their supply obligation (see recital (30) below).

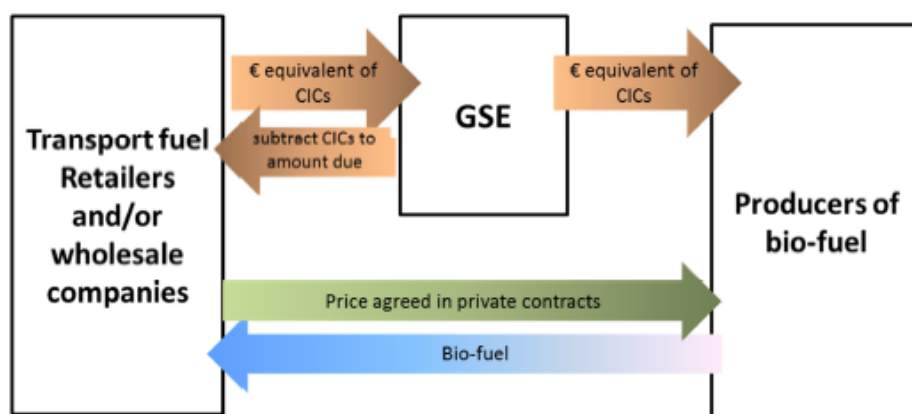
iii) Additional incentives for distribution and production plants

- (24) Biomethane producers which invest in distribution or liquefaction plants can benefit from a 20% increase of the value of the CICs in order to take into account the additional costs incurred. The measure foresees a cap of 70% of investment costs, up to EUR 600 000 for a distribution plant and EUR 1 200 000 for a liquefaction plant.

2.2.2. Support measures to producers of advanced biofuels

- (25) The GSE awards the value of EUR 375/CIC to advanced biofuel producers corresponding to the quantity of biofuels sold to obliged fuel retailers who participate in the scheme and upon proof submitted by those retailers that the said quantity has been placed on the market for use in transport.
- (26) Obligated fuel retailers finance the scheme. The amount of CICs thus financed is deducted from those needed to proof compliance with the supply obligation.

Figure 2
Incentives for the production of advanced biofuels other than biomethane



Source: Italian authorities

- (27) Advanced biofuels are eligible under the measure up to an amount corresponding to the subtarget for advanced biofuels other than biomethane within the supply obligation (see recital (13) above). Italy estimates that such amount currently corresponds to 150.000 tons/year¹⁵. Applications will be accepted in chronological order based on the date when the application is submitted.
- (28) The Italian Authorities have foreseen specific conditions to tag the biofuel prices to diesel prices (based on the average Platt's published levels, minus 5%), in line with the equivalent price set for biomethane linked to wholesale gas price.

2.2.3. *Opt out of obliged fuel retailers*

- (29) Obligated fuel retailers can decide to opt out from either mechanisms described in Sections 2.2.1 and 2.2.2 above. In such case, they should inform the GSE within 30 days of the entry into force of the MISE Decree (or within 30 days of becoming operational). However, those obliged suppliers have the possibility to opt in at a later stage. In that case, by 1 December 2022, fuel retailers should inform the GSE of their intention to participate in the scheme for the period 2023-2032.
- (30) Obligated fuel retailers who do not participate in the mechanisms described in Sections 2.2.1 and 2.2.2 will have to fulfil the mandatory supply obligation autonomously by purchasing the CICs on the market (for instance, from other fuel retailers that have put on the market more advanced biofuels or biomethane than required under the supply obligation) or by demonstrating that they have effectively placed on the market the prescribed amount of advanced biomethane and other advanced biofuels, including by means of imports.
- (31) The amount of CICs issued to fuel retailers who do not participate in the mechanisms described in Sections 2.2.1 and 2.2.2 is deducted from the maximum eligible amounts referred to in recitals (20) and (27) above.

2.3. **Aid amount and intensity**

- (32) The notified measure provides that the GSE will pay a premium to the participating producers of advanced biofuels and biomethane in addition to the market price.
- (33) The Italian authorities have provided Levelised Costs Of Energy ('LCOE') estimates only for advanced biomethane, given that there is no production of advanced biofuels in Italy. However, they have confirmed that the amount of the premium for advanced biofuels and advanced biomethane shall not in any case exceed the difference between production costs of advanced biofuels/biomethane and the market price of the corresponding alternative fossil fuel, namely natural gas for advanced biomethane and diesel for advanced biofuels.

¹⁵ However, as mentioned in recital (13), the allocation of quotas between biomethane and other biofuels will be periodically reassessed.

- (34) As regards the production of biomethane, the Italian authorities have estimated the production costs of plants of three different sizes (500, 1 000 and 2 000 kWe¹⁶). The estimates are based on data from reports published by research institutes. In particular, investment costs take into account construction costs for the digester (i.e. for biogas production), the upgrading system (i.e. to transform biogas in biomethane), and the costs for the network connection and for compression. The operating costs take into account the following elements: costs for raw materials, labour costs, ordinary and extra-ordinary maintenance, insurance costs, and other costs for the management of the upgrade and connection process.
- (35) Table 2 below shows that the aid intensity per unit of energy does not exceed the difference between the LCOE from biomethane for transport and the market price of natural gas, including a 5% of return on investment.

¹⁶ Kilowatt-electric.

Table 2
Aid intensity calculation for incentive measure to the production of biomethane
for transport (without investment aid)

size of production plant in kW		500	1000	2000	
annual production (based on 8000h/year)		4,000,000.00	8,000,000.00	16,000,000.00	
annual production biogas (Smc ¹⁷)		2,000,000.00	4,000,000.00	8,000,000.00	
annual production Biomethane (Smc)		1,000,000.00	2,000,000.00	4,000,000.00	
a	Biomethane production (Smc/hour)	125	250	500	
b	investment cost – digester	2,800,000.00	3,500,000.00	5,800,000.00	€
c	investment cost - upgrading ¹⁸	1,000,000.00	1,350,000.00	1,750,000.00	€
d	investment cost - network connection, measure and compression	1,000,000.00	1,100,000.00	1,350,000.00	€
e=(b+c+d)/20	total capex depreciation¹⁹	240,000.00	297,500.00	445,000.00	€
	Feedstock	560,000.00	1,120,000.00	2,240,000.00	€
	labour cost	30,000.00	60,000.00	120,000.00	€
	other operative costs (upgrading, compression, ...)	160,000.00	320,000.00	640,000.00	€
f	total opex	750,000.00	1,500,000.00	3,000,000.00	€
g=e+f	total cost of production	990,000.00	1,797,500.00	3,445,000.00	€
h=g/a	total unit cost	0.99	0.90	0.86	€/Smc
	of which capex	0.24	0.15	0.11	€/Smc
	of which opex	0.75	0.75	0.75	€/Smc
i	fair remuneration of capital (5%)	0.24	0.15	0.11	€/Smc
l	Market price for natural gas²⁰	0.199	0.199	0.199	€/Smc
m=h+i-l	Cost-price differential	1.03	0.85	0.77	€/Smc
	number of CICs ²¹	1,650.00	3,300.00	6,600.00	n
	value of CICs	618,750.00	1,237,500.00	2,475,000.00	€
	Incentive for unit of production	0.62	0.62	0.62	€/Smc
	Aid intensity	60%	73%	80%	

Sources: Politecnico di Milano 2013 "Costi di produzione di energia elettrica da fonti rinnovabili" – Report for the Italian Authority for Electricity and Gas (AEEG); Vienna University of Technology 2012

¹⁷ 1 Smc (standard cubic meter) is equal to 8 250 kcal; 1 MWh is equal to 102.04 Smc.

¹⁸ Total investment costs for upgrading depend on the technology chosen. They can vary within the range of EUR1.2-1.375 million for small plants and EUR1.75-1.85 million for large plants.

¹⁹ Annual total cost of investment (digester, upgrading, and network connection) on the basis of accounting rules applicable, taking into account a residual useful life period estimated in 20 years.

²⁰ Average natural gas price thermal year October 2016 - September 2017. Wholesale prices for natural gas are available at: <http://www.mercatoelettrico.org/En/Statistiche/Gas/StatMGP-GAS.aspx>

²¹ 1 CIC has a value of EUR 375. The values reported in Table 2, Table 3, Table 4, Table 5, and Table 6 take into account the fact that the production plants will benefit from the double counting of certificates.

"Dal biogas al biometano tecnologie di upgrading" - A project under the Intelligent Energy – Europe programme; R. Scagliotti, RSE 2015 "Sistemi di upgrading a confronto e quadro normativo"; Althesys "Il Biometano. Potenzialità, economics e prospettive di sviluppo".

- (36) The Italian authorities explained that plants having received investment aid above 40% cannot participate in the scheme²². Table 3 below shows that for those plants, also deducing the investment aid (row k below), the aid intensity per unit of energy does not exceed the difference between the total levelised costs of producing energy (LCOE) from biomethane for transport and the market price of natural gas.

Table 3

Aid intensity calculation for incentive measure to the production of biomethane for transport (with deduction of investment aid of 40%)

	size of production plant in kW	500	1000	2000	
	annual production (based on 8000h/year)	4,000,000.00	8,000,000.00	16,000,000.00	
	annual production biogas (S _{mc})	2,000,000.00	4,000,000.00	8,000,000.00	
a	annual production Biomethane (S _{mc})	1,000,000.00	2,000,000.00	4,000,000.00	
	Biomethane production (S _{mc} /hour)	125	250	500	
b	investment cost - digester	2,800,000.00	3,500,000.00	5,800,000.00	€
c	investment cost - upgrading	1,000,000.00	1,350,000.00	1,750,000.00	€
d	investment cost - network connection, measure and compression	1,000,000.00	1,100,000.00	1,350,000.00	€
$e=(b+c+d)/20$	total capex depreciation	240,000.00	297,500.00	445,000.00	€
$k=60\%*e$	net investment cost (contribution 40% investment) ¹⁸	144,000.00	178,500.00	267,000.00	
	Feedstock	560,000.00	1,120,000.00	2,240,000.00	€
	labour cost	30,000.00	60,000.00	120,000.00	€
	other operative costs (upgrading, compression, ...)	160,000.00	320,000.00	640,000.00	€
f	total opex	750,000.00	1,500,000.00	3,000,000.00	€
$g=k+f$	total cost of production	894,000.00	1,678,500.00	3,267,000.00	€
$h=g/a$	total unit cost of production	0.89	0.84	0.82	€/S _{mc}
	of which				
	capex	0.24	0.15	0.11	€/S _{mc}
	of which opex	0.75	0.75	0.75	€/S _{mc}
i	fair remuneration of capital (5%) ¹⁹	0.14	0.09	0.07	€/S _{mc}
l	Market price for natural gas	0.199	0.199	0.199	€/S _{mc}
$m=h+j-l$	Cost-price differential (including remuneration)	0.84	0.73	0.68	€/S _{mc}
	number of CICs	1,650.00	3,300.00	6,600.00	n
	value of CICs	618,750.00	1,237,500.00	2,475,000.00	€
p	Incentive for unit of production	0.62	0.62	0.62	€/S _{mc}
$q=p/m$	Aid intensity	74%	85%	90%	

Sources: Politecnico di Milano 2013 "Costi di produzione di energia elettrica da fonti rinnovabili" – Report for the Italian Authority for Electricity and Gas (AEEG); Vienna University of Technology 2012 "Dal biogas al biometano tecnologie di upgrading" - A project under the Intelligent Energy – Europe programme; R. Scagliotti, RSE 2015 "Sistemi di upgrading a confronto e quadro normativo"; Althesys "Il Biometano. Potenzialità, economics e prospettive di sviluppo".

²² The Italian authorities have explained that this type of incentives has been available only for the production of biogas.

- (37) The Italian authorities have submitted data showing that when the value of the CICs is increased to cover the costs of distribution or liquefaction plants, the remuneration is still lower than the costs borne by the producers, taking into account a rate of return of 8% for distribution plants and 10% for liquefaction plants. These data are reported in Table 4 and Table 5 below.

Table 4
Aid intensity calculation for incentive measure to the production of biomethane for transport including investments in distribution plants

AID INTENSITY CALCULATION FOR INCENTIVE MEASURE TO THE PRODUCTION OF BIOMETHANE FOR TRANSPORT including investments in distribution plant (art.6 par11)				
Calculation does not take into account possible capital contribution by regional aid funds				
	size of production plant in kW	500	1000	2000
	annual production (based on 8000h/year)	4.000.000,00	8.000.000,00	16.000.000,00
	annual production biogas (Smc)	2.000.000,00	4.000.000,00	8.000.000,00
<i>a</i>	annual production Biomethane (Smc)	1.000.000,00	2.000.000,00	4.000.000,00
	Biomethane production (Smc/hour)	125	250	500
<i>b</i>	investment cost - digester	2.800.000,00	3.500.000,00	5.800.000,00
<i>c</i>	investment cost - upgrading	1.000.000,00	1.350.000,00	1.750.000,00
<i>d</i>	investment cost - network connection, measure and compression	1.000.000,00	1.100.000,00	1.350.000,00
<i>S</i>	investment cost - distribution plant/point of sale	600.000,00	600.000,00	600.000,00
$e=(b+c+d+S)/20$	total capex depreciation	270.000,00	327.500,00	475.000,00
	feedstock	560.000,00	1.120.000,00	2.240.000,00
	labour cost	30.000,00	60.000,00	120.000,00
	other operative costs (upgrading, compression, ...)	160.000,00	320.000,00	640.000,00
<i>y</i>	others operative costs of the distribution plant (labour, fondo bombole metano, others ...)	210.000,00	420.000,00	840.000,00
<i>f</i>	total opex	960.000,00	1.920.000,00	3.840.000,00
$g=e+f$	total cost of production	1.230.000,00	2.247.500,00	4.315.000,00
$h=g/a$	total unit cost	1,23	1,12	1,08
	of which capex	0,27	0,16	0,12
	of which opex	0,96	0,96	0,96
<i>i</i>	fair remuneration of capital (5% biomethane plant and 8% for distribution plant)	0,29	0,17	0,12
<i>l</i>	Market price for natural gas	0,199	0,199	0,199
<i>z</i>	Price at the final consumers of natural gas (net of TVA and EXCISE)	0,529	0,529	0,529
$m=h+i-z+l$	Cost-Price differential	1,19	0,97	0,87
	number of CICs	1.650,00	3.300,00	6.600,00
	value of CICs	618.750,00	1.237.500,00	2.475.000,00
	value of 20% additional CICs	123.750,00	247.500,00	495.000,00
	additional incentive cap (70% of investment)	420.000,00	420.000,00	420.000,00
	maximum incentive for distribution plant	123.750,00	247.500,00	420.000,00
	total value of CICs	742.500,00	1.485.000,00	2.895.000,00
	Incentive for unit of production	0,74	0,74	0,72
	Aid intensity	63%	77%	83%

Source: Italian authorities

Table 5
Aid intensity calculation for incentive measure to the production of biomethane for transport
including investments in liquefaction plants

AID INTENSITY CALCULATION FOR INCENTIVE MEASURE TO THE PRODUCTION OF BIOMETHANE FOR TRANSPORT including investments in liquefaction plant (art.6 par12)					
Calculation does not take into account possible capital contribution by regional aid funds					
	size of production plant in kW	500	1000	2000	
	annual production (based on 8000h/year)	4.000.000,00	8.000.000,00	16.000.000,00	
	annual production biogas (Smc)	2.000.000,00	4.000.000,00	8.000.000,00	
<i>a</i>	annual production Biomethane (Smc)	1.000.000,00	2.000.000,00	4.000.000,00	
	Biomethane production (Smc/hour)	125	250	500	
<i>b</i>	investment cost - digester	2.800.000,00	3.500.000,00	5.800.000,00	€
<i>c</i>	investment cost - upgrading	1.000.000,00	1.350.000,00	1.750.000,00	€
<i>d</i>	investment cost - network connection, measure and con	1.000.000,00	1.100.000,00	1.350.000,00	€
<i>S</i>	investment cost - liquefaction plant	1.000.000,00	1.000.000,00	1.000.000,00	€
$e=(b+c+d+S)/20$	total capex depreciation	290.000,00	347.500,00	495.000,00	€
	feedstock	560.000,00	1.120.000,00	2.240.000,00	€
	labour cost	30.000,00	60.000,00	120.000,00	€
	other operative costs (upgrading, compression, ...)	160.000,00	320.000,00	640.000,00	€
<i>f</i>	total opex	750.000,00	1.500.000,00	3.000.000,00	€
$g=e+f$	total cost of production	1.040.000,00	1.847.500,00	3.495.000,00	€
$h=g/a$	total unit cost	1,04	0,92	0,87	€/Smc
	of which capex	0,29	0,17	0,12	€/Smc
	of which opex	0,75	0,75	0,75	€/Smc
<i>i</i>	fair remuneration of capital (5% biomethane plant and 10% for liquefaction plant)	0,34	0,20	0,14	€/Smc
<i>l</i>	Market price for natural gas	0,199	0,199	0,199	€/Smc
<i>z</i>	Price at the final consumers of natural gas (net of TVA and EXCISE)	0,000	0,000	0,000	€/Smc
$m=h+i+l-z$	Cost-Price differential	1,18	0,92	0,81	€/Smc
	number of CICs	1.650,00	3.300,00	6.600,00	n
	value of CICs	618.750,00	1.237.500,00	2.475.000,00	€
	value of 20% additional CICs	123.750,00	247.500,00	495.000,00	€
	additional incentive cap (70% of investment)	700.000,00	700.000,00	700.000,00	€
	maximum incentive for distribution plant	123.750,00	247.500,00	495.000,00	€
	total value of CICs	742.500,00	1.485.000,00	2.970.000,00	€
	Incentive for unit of production	0,74	0,74	0,74	€/Smc
	Aid intensity	63%	80%	92%	

Source: Italian authorities

- (38) For the reasons mentioned in recitals (10) and (33) above, the Italian authorities do not dispose of LCOE data for advanced biofuels other than biomethane. However, they have provided an estimate of the expected LCOE of future producers (equal to EUR [850-1200]** EUR/Ton). The support granted through CICs would cover only part of the currently estimated costs, as shown in Table 6 below.

Table 6
Comparison of the LCOE for advanced biofuels and the price of conventional fuels

Ipotesi caso altri biocarburanti avanzati		
Prezzo gasolio	429.00	€/t
Prezzo biodiesel		
RME	842.18	€/t
Prezzo biodiesel avanzato	[850-1200]**	€/t
PCI Gasolio	10.27	Gcal/t
PCI biodiesel	8.93	Gcal/t
Tipologia CIC [Gcal/CIC]	5	Avanzato

Costo gasolio e biodiesel per certificato		
Gasolio	208.86	€/CIC
Biodiesel	471.44	€/CIC
Biodiesel avanzato	[500-700]	€/CIC
valore CIC	375.00	€/CIC

Source: Italian authorities

- (39) Italy committed to update the calculation of the production costs of advanced biomethane and other advanced biofuels and to adapt the value of the CICs accordingly on a yearly basis.²³ The MISE Decree has been modified to that effect. The GSE will also publish on a yearly basis a report on the support schemes for biomethane in the different EU Member States which will also compare production costs of advanced biomethane across the EU.

2.4. Beneficiaries

- (40) The beneficiaries are the owners of new plants for the production of advanced biomethane and other advanced biofuels for transport use, which become operational after the entry into force of the measure and in any case before 31 December 2022. The MISE Decree extends the support to advanced biomethane and other advanced biofuels produced in other Member States and placed on the

²³ The MISE Decree has been modified to reflect this commitment (see Article 10(6)).

**Parts of figures in the text and in the table have been redacted so as not to divulge confidential information; those figures are enclosed in ranges in square brackets.

Italian market for transport use, subject to the conclusion by Italy of a cooperation agreement with the Member State where the producer is located.

- (41) The scheme is also open to existing plants for the production of biogas which are converted partially or totally in plants for the production of advanced biomethane after the entry into force of the MISE Decree and before 31 December 2022.
- (42) The scheme also covers new distribution and liquefaction plants for advanced biomethane for transport use built by advanced biomethane producers.
- (43) Applications to participate in the scheme must be submitted to the GSE within one year from the date the plant becomes operational or is reconverted.
- (44) Participation to the scheme is limited to a period of maximum ten years.
- (45) Since no plant for the production of advanced biomethane or other advanced biofuels reaches the threshold of 150 000 tonnes per year, the obligation to notify individual aid under point 20 (c) of the Guidelines on State aid for environmental protection and energy 2014 – 2020 (EEAG)²⁴ is not applicable.
- (46) When 90% of the thresholds referred to in recitals (20) and (27) above is reached, the GSE publishes a warning. Thereafter, only producers which start production in the 12 following months are eligible.

2.5. Financing

- (47) The measure is financed by obliged fuel retailers who decide to participate in either mechanism described in Sections 2.2.1 and 2.2.2, with an intermediation of the GSE.

2.6. Legal basis

- (48) The legal basis is Article 21, paragraph 1, letter b) and c) of Legislative Decree no. 28/2011 and the MISE Decree, which implements Legislative Decree no. 28/2011.

2.7. Budget and duration

- (49) The Italian authorities have estimated a total budget of EUR 4,7 billion, of which EUR 3,5 billion for advanced biomethane and EUR 1,2 billion for other advanced biofuels. Those figures take into account that the support will be granted for a period of ten years and are based on the estimated availability of advanced biomethane and advanced biofuels respectively (see Table 1). However, the Italian authorities also pointed out that it is not possible to calculate precisely the total budget of the measure given that the respective shares of biomethane and other biofuels within the subtarget for advanced biofuels will be reviewed every two years, based on estimates on the availability of such products (see recital (13) above). In any event, the maximum annual budget is EUR 680 million.
- (50) The duration of the scheme is five years (2018-2022).

²⁴ Communication from the Commission 'Guidelines on State aid for environmental protection and energy 2014-2020' (2014/C 200/01).

2.8. Cumulation, transparency and other requirements

- (51) The remuneration under the scheme can be cumulated with other aid provided that the total amount does not exceed the maximum aid intensity. Producers that have received investment aid above 40% cannot participate in the scheme (see recital (36) above).
- (52) The Italian authorities have committed to comply with the transparency, reporting and monitoring requirements contained in Section 3.2.7 of the EEAG and with the requirements of points 16 and 17 of the EEAG regarding firms in difficulty and undertakings subject to outstanding recovery orders.

2.9. Third parties' submissions

- (53) In July 2017, an association of biofuels producers and association of undertakings submitted allegations to the Commission that the measure proposed by the Italian authorities would be incompatible with State aid rules. Those allegations are based on a version of the draft MISE Decree different from the one that was notified to the Commission and further amended by the Italian authorities during the notification process.

2.9.1. Submission from an association of biofuels producers

- (54) The submission of the association of biofuel producers was received on 5 July 2017.
- (55) The association claims that the amount of aid granted to producers of advanced biomethane is higher than the current price of biomethane, taking into account, in particular, that the value of the CICs can be increased by 20% in some cases and that the aid is granted for 20 years.
- (56) In addition, the association submits that the measure hampers the development of a market for the trading of advanced biomethane and other advanced biofuels. In the case of advanced biomethane, producers have to communicate to the GSE within a short deadline after the entry into force of the MISE decree their intention whether to participate in the scheme and that decision is binding for ten years. According to the association, this would create a *de facto* State monopoly for advanced biomethane. Similarly, the fact that obliged fuel retailers who participate in the GSE scheme for advanced biofuels other than biomethane are considered to comply with the supply obligation would leave those retailers no choice but to participate in the scheme. This, in turn, would force also biofuel producers to take part in the scheme, thereby hampering the development of a free market for advanced biomethane and biofuels.
- (57) Furthermore, the association alleges that the fact that the aid is granted to advanced biomethane producers on a first-come-first serve basis and only up to the amount specified in recital (20) grants an advantage to first movers and makes it very difficult for plants who become operational only later to enter the market.
- (58) Finally, the association alleges that the scheme will distort competition between the producers of advanced biomethane and the producers of other advanced biofuels for a number of reasons. Firstly, the way the supply obligation for advanced biofuels is split between advanced biomethane and other advanced biofuels (see recital (13) above) is advantageous for biomethane to the detriment

of other biofuels. Secondly, the mere participation in the scheme for advanced biomethane managed by the GSE is sufficient for obliged fuel retailers to fulfil the supply obligation. The association claims that because of this, the scheme would not ensure that a certain amount of biomethane is used in transport as imposed by the Renewables and ILUC Directives. Conversely, as regards biofuels other than biomethane, fuel retailers must actually blend the required amount of biofuels in their fuel supply, thereby incurring storage and blending costs. This will further favour the production of advanced biomethane to the detriment of liquid biofuels.

2.9.2. *Submission from an association of undertakings*

- (59) Submissions of an association of undertakings were received on 21 and 24 July 2017.
- (60) The association's allegation can be grouped into two categories. The first relates to an alleged discrimination in favour of biomethane producers, due to the fact that they can benefit from a 20% increase of the value of the certificates (see recital (24)), from double counting (see recital (17)), and from a more favourable subtarget within the supply obligation for advanced biofuels (see recital (13)). Moreover, unlike the producers of advanced biofuels, biomethane producers do not face the risk of marketing their output as they can transfer it to the GSE. Finally, the proposed measure would allegedly not be in compliance with the waste hierarchy principle and would not ensure that a certain amount of biomethane is used in transport as imposed by the Renewables and ILUC Directives for the same reasons explained in recital (58) above.
- (61) The second set of claims concern alleged overcompensation granted to the producers of advanced biomethane, in particular as a result of the application of the 20% increase and double counting and of the possibility to cumulate the aid with other subsidies.

2.10. Observations from the Member State

- (62) Italy observes first of all that the draft MISE Decree notified to the Commission is different from the one on which the two associations based their allegations and that some of the provisions of the draft MISE Decree have been misinterpreted by the associations.
- (63) As regards the amount of compensation and the length of the period during which the premium is disbursed, Italy notes that the 20% increase of the CIC price is only available to advanced biomethane producers who also invest in distribution and liquefaction plants and thus incur additional costs. Italy puts forward that such investments are necessary to develop the use of biomethane in areas where distribution facilities are currently lacking. Italy has explained that, on the one hand, consumers do not buy methane-fuelled vehicles because they do not find a distribution plant in the vicinity and, on the other hand, investments in distribution plants do not materialise because there are not enough methane-fuelled vehicles in the area. The same is true for liquefaction plants, which will favour the use of biomethane especially in rural areas. Finally, the incentives are granted for a period of ten years, rather than twenty years as alleged by the associations.

- (64) As regards the allegations that the measure will create a *de facto* State monopoly for advanced biomethane and hamper the development of a market for the trading of advanced biomethane and other advanced biofuels, Italy observes that the measure actually aims at creating such market which is, so far, inexistent, in spite of the fact that a supply obligation has been in place in Italy for several years. Italy points out that several producers and associations of producers of biofuels have brought to the attention of the Italian authorities that investments in the production of advanced biofuels cannot take place in the absence of a market that would guarantee a certain level of return of investments and in the absence of a reference price at which demand and supply would meet.
- (65) According to Italy, based on data at its disposal, in the absence of the measure, only few producers of advanced biofuels other than biomethane would operate in the market and be able to sell their products at a price which is not sustainable for obliged retailers. This, in turn, would result in a substantial increase in the fuel price paid by end customers.
- (66) Finally, as regards the allegations that the measure would distort competition by favouring the production of advanced biomethane over the production of other advanced biofuels, Italy observes that the respective shares of biomethane and other biofuels within the subtarget for advanced biofuels will be reviewed every two years, based on estimates on the availability of such products (see recital (13) above). Moreover, while the MISE Decree incentivise obliged retailers and, in turn, advanced biofuels producers to participate in the support schemes, those producers remain free to sell their output on the market, including in other EU Member States. The incentives provided for in the MISE Decree to participate in the scheme have been foreseen at the request of potential producers of advanced biofuels that fear that their investments will not benefit from an adequate return in the absence of a support mechanism.

3. ASSESSMENT

3.1. Existence of aid

- (67) Article 107(1) of the Treaty on the Functioning of the European Union ('TFEU') provides that any 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 shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (68) In order to conclude if State aid is present, the Commission must assess whether the cumulative criteria of Article 107(1) TFEU (i.e. transfer of State resources and imputability to the State, selective advantage, potential distortion of competition and intra-EU trade) are met for the measure under assessment.

3.1.1. *Imputability and State resources*

- (69) It is settled case-law of the Union Courts that for advantages to be capable of being categorised as aid, they must be granted directly or indirectly through State resources and be imputable to the State²⁵.
- (70) In the present case, the State, through the adoption of the MISE Decree, establishes the support scheme for advanced biomethane and other advanced biofuels, including the amount of the subsidy to be paid and the quantity of biomethane / biofuels that can benefit from the scheme. The measure is therefore imputable to the State.
- (71) Moreover, it follows from the wording of Article 107(1) TFEU that only advantages granted directly or indirectly through State resources are to be considered as aid. That definition covers both advantages which are granted directly by the State and those granted by a public or private body designated or established by the State²⁶.
- (72) Furthermore, it should be noted that it follows from the case-law of the Union Courts that Article 107(1) TFEU covers all the financial means by which the public authorities may actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector. The fact that resources remain constantly under public control, and therefore available to the competent national authorities, is sufficient for them to be categorised as State resources.²⁷ Similarly, the originally private nature of the resources does not prevent them being regarded as State resources.²⁸
- (73) The relevant criterion in order to assess whether the resources are public, whatever their initial origin, is that of the degree of intervention of the public authority in the definition of the measures in question and their methods of financing²⁹. The mere fact that the contributions of the economic operators concerned to the partial financing of the measures in question are only voluntary and not obligatory is not sufficient to call that principle into question³⁰.
- (74) The Italian scheme is financed through contributions made by obliged fuel retailers. Although participation in the scheme is not compulsory, once the obliged fuel retailers decide to take part in the scheme, they must contribute to its financing in accordance with the provisions specified in the MISE Decree, which determines the amounts and methods of financing.

²⁵ Case C-303/88 *Italy v Commission* [1991] ECR I-1433, paragraph 11; Case C-482/99 *France v Commission* [2002] ECR I-4397, paragraph 24; Case C-126/01 *GEMO* [2003] ECR I-13769, paragraph 24.

²⁶ Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 58.

²⁷ Case C-83/98 P *France v Ladbroke Racing and Commission* [2000] ECR I-3271, paragraph 50, and Case C-482/99 *France v Commission*, paragraph 37.

²⁸ Case T-358/94 *Air France v Commission* [1996] ECR II-2109, paragraphs 63 to 65.

²⁹ Case T-139/09, *France v Commission*, ECLI:EU:T:2012:496, para. 63.

³⁰ Case T-139/09, *France v Commission*, ECLI:EU:T:2012:496, para. 64.

- (75) Moreover, the resources remain under the control of the GSE. The latter is a public company, wholly owned by the Ministry of Economy and Finance and controlled by the Minister of Economic Development. Its main activity is the implementation of the renewable energy policies of the Italian government. In particular, the GSE manages, under the control of the Italian government, the programmes aimed at fostering the production of energy produced from renewable sources, including by administering economic subsidies. The GSE must administer the resources it receives from fuel retailers in accordance with the provisions of the MISE Decree and other relevant national legislation. Therefore, the measure involves State resources.

3.1.2. Selective advantage

- (76) The notified scheme confers an advantage to the producers of advanced biomethane and other advanced biofuels.
- (77) Producers of advanced biomethane / biofuels will receive a premium (the guaranteed CIC price) which allows them to lower the price of the advanced biomethane / biofuels by a corresponding amount. Moreover, the producers of advanced biomethane referred to in recital (17) also benefit from the certainty of selling their output at a guaranteed price.
- (78) The advantage is selective because is granted only for the production of advanced biomethane / biofuels rather than for the production and distribution of non-advanced biomethane / biofuels and other fuels for use in transport.

3.1.3. Distortion of competition and effects on intra-EU trade

- (79) The supported producers of advanced biomethane and other advanced biofuels are engaged in a sector, the production of fuels for use in transport which is open to competition throughout the EU. Therefore, the measure at stake is likely to distort competition on the markets in which they are active and affect trade between Member States.

3.1.4. Conclusion on the assessment of existence of aid

- (80) In the light of the above assessment, the measure constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Legality of the aid

- (81) Italy has fulfilled the obligation under Article 108(3) of the TFEU by notifying the measure prior to its implementation.

3.3. Compatibility of the aid

- (82) The notified measure concerns operating aid to renewable installations and as such falls within the scope of the EEAG.

3.3.1. Objective of common interest

- (83) The measure's primary objective is to improve environmental protection by increasing the production of renewable energy, in particular the production of advanced biomethane and other advanced biofuels for transport use. In particular, the measure aims at achieving the EU 2020 10% target for the consumption of renewable energy in the transport sector, and, within that target, the national subtarget for advanced biomethane and other advanced biofuels (see recitals (12) and (13) above). The measure will also contribute to achieve the national renewable energy target.
- (84) Only sustainable biomethane / biofuels are taken into account towards the achievement of those targets (see recital (6) above) and only advanced biomethane / biofuels that meet the sustainability requirements laid down in the ILUC Directive can receive subsidies under the scheme (see recital (8) above). Moreover, contrary to the claims put forward by third parties (see recitals (58) and (60) above), the measure does ensure that aid is granted only to advanced biomethane placed onto the market for use in transport, as explained in recitals (18) and (22) above.
- (85) The objectives referred to in recital (83) are expressly recognised as objectives of common interest in points 27 and 107 of the EEAG. The measure therefore pursues an objective of common interest.
- (86) Point 118 of the EEAG states that State aid for energy from renewable sources using waste, including waste heat, as input fuel can make a positive contribution to environmental protection, provided that it does not circumvent the waste hierarchy principle. As mentioned in recital (8) above, Italy has confirmed that the definition of advanced biomethane / biofuels in the Italian legislation is in line with the waste hierarchy principle.
- (87) This ensures that only biomethane / biofuels that comply with the waste hierarchy principle are eligible to receive aid under the notified measure.

3.3.2. Need for State intervention

- (88) According to point 36 of the EEAG, aid is needed if the Member State demonstrates that the aid effectively targets a (residual) market failure which is not addressed by other policy measures. As far as the deployment of renewable energy is concerned, it is presumed in point 115 of the EEAG that a residual market failure remains, which can be addressed through the granting of aid for renewable energy.
- (89) Italy has shown that it is still behind meeting the 10% target of final consumption of renewable energy in the transport sector (see recital (10) above). Italy has also shown that the production costs of advanced biomethane and other advanced biofuels is significantly higher than the ones of natural gas and diesel respectively (see Table 2, Table 3, Table 6 above). Moreover, in spite of the existence of a supply obligation, so far biomethane has been used mainly for production of energy/electricity, object of specific incentives, and the few existing plants for the production of either advanced biomethane or other advanced biofuels are only demonstration projects (see recital (10) above). For this reason, as of 2018, Italy

intends to introduce, within the general supply obligation, specific subtargets for advanced biomethane and other advanced biofuels.

- (90) The EEAG also contain specific provisions as regards biofuels. Points 112 and 113 of the EEAG provide that investment aid to biofuels can only be granted in favour of advanced biofuels and operating aid to food-based biofuels can only be granted until 2020. The notified measure is limited to sustainable advanced biofuels. Therefore, points 112 of the EEAG is complied with, while point 113 is not applicable as the biofuels at stake are not food-based.
- (91) Moreover, according to point 114 of the EEAG, the Commission will consider that the aid does not increase the level of environmental protection and can therefore not be found compatible with the internal market if the aid is granted for biofuels which are subject to a supply or blending obligation, unless a Member State can demonstrate that the aid is limited to sustainable biofuels that are too expensive to come on the market with a supply or blending obligation only.
- (92) The amount of the sanction for non-compliance with the supply obligation, if paid within 30 days, is lower than the proposed guaranteed price of the CICs (see recital (9)). As consequence, without the granting of the aid, it would result more convenient for obliged fuel suppliers to pay the fine rather than complying with the supply obligation. Furthermore, the Italian authorities have the possibility to reduce or non-apply the fines in cases of lack of availability of products on the market (see recital (11)). Thus the fines by themselves are not effective enough to ensure that the more expensive biofuels will come on the market with the only supply obligation.
- (93) Since Italy has demonstrated that a residual market failure remains, which is not sufficiently addressed through the introduction of the supply obligation, the measure is compatible with points 36 and 114 of the EEAG.

3.3.3. *Appropriateness*

- (94) Point 116 of the EEAG provides that in order to allow Member States to achieve their targets in line with the EU 2020 objectives, the Commission presumes the appropriateness of aid and the limited distortive effects of the aid provided all other conditions are met.

3.3.4. *Incentive effect*

- (95) In line with point 49 of the EEAG, the incentive effect occurs if the aid induces the beneficiary to change its behaviour towards reaching the objective of common interest which it would not do without the aid.
- (96) The production costs of advanced biomethane and other advanced biofuels are significantly higher than the prices of natural gas and diesel respectively (see Table 2, Table 3, Table 6 above). Moreover, this market failure is not sufficiently addressed through the introduction of the supply obligation (see recital (92)). Therefore, in the absence of the aid, it would not be possible for advanced biomethane / biofuels producers to cover their costs.

- (97) The measure will thus have an incentive effect for producers of advanced biomethane and other advanced biofuels to operate their plants thus contributing to the achievement of EU 10% target for the consumption of renewable energy in the transport sector.

3.3.5. *Proportionality*

- (98) According to point 69 of the EEAG, environmental aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the environmental protection objective aimed for.
- (99) Point 131 of the EEAG establishes additional compatibility conditions regarding aid for energy from renewable sources other than electricity, namely:
- (a) the aid per unit of energy does not exceed the difference between the total levelised costs of producing energy (LCOE) of the particular technology in question and the market price of the form of energy concerned (no overcompensation);
 - (b) the LCOE may include a normal return on capital. Investment aid is deducted from the total investment amount in calculating the LCOE;
 - (c) the production costs are updated regularly, at least every year;
 - (d) aid is only granted until the plant has been fully depreciated according to normal accounting rules in order to avoid that operating aid based on LCOE exceeds the depreciation of the investment.
- (100) As explained in Section 2.3 above, the aid for advanced biomethane and other advanced biofuels is lower than the difference between the total production costs and the market price of the form of energy concerned, which is the price of natural gas and diesel, respectively.
- (101) The calculation methodology also takes into account that advanced biomethane / biofuels benefit from double counting of certificates (see recital (17) above) and includes a return on capital of 5% (see recital (35)), which could be considered a normal rate of return, typically observed for this type of renewable installations in Europe.³¹
- (102) For cases in which bio-methane producers make distribution or liquefaction investments, for which they are entitled to receive compensation up to the indicated thresholds (70% of the investment and up to a maximum of EUR 600.000 for distribution and EUR 1.2 Million for liquefaction), the Italian authorities have provided additional cost data which show that the aid is in any case less than the difference between the total production (including distribution and liquefaction) costs and the market price of natural gas (see Table 4 and Table 5). In case beneficiaries make such investments, the calculation methodology includes a return on capital at, respectively, 8% and 10% (see recital (37)). Given

³¹ See for instance Commission decisions in cases SA. 48069 – Sweden (recitals 24 and 62); SA. 43301 – Sweden (recitals 20 and 46); SA. 48184 – Lithuania (recital 53); and SA. 49509 – Slovakia (recital 46).

the higher risk levels of such activities (distribution and liquefaction) these rates of return appear justified³².

- (103) In addition, as described in Table 3 above, the Italian authorities have demonstrated that the aid is less than the difference between the total production costs and the market price of natural gas, even in case biomethane plants have benefitted from a 40% investment aid (plants receiving more than 40% investment aid are excluded by the scheme).
- (104) Therefore, the aid under the notified measure is in line with point 131, letters (a) and (b) of the EEAG.
- (105) Moreover, Italy has committed to update the calculation of the production costs of advanced biomethane and other advanced biofuels and to adapt the value of the CICs accordingly on a yearly basis³³ (see recital (39) above). The GSE will also publish on a yearly basis a report on the support schemes for biomethane in the different EU Member States which will also compare production costs of advanced biomethane across the EU (see recital (39) above). Thus the requirement of point 131 (c) is complied with.
- (106) Since the lifetime of the plants is twenty years (see footnote 19) and the implementation of the scheme is ten years (see recital (49)) the aid will not be granted after the plants have been fully depreciated under normal accounting standards. Thus the requirement of point 131 (d) is also respected.
- (107) The possibility to cumulate the aid with other aid, provided that the total amount does not exceed the maximum aid intensity, is in line with the cumulation requirements of section 3.2.5.2 of the EEAG (see recital (36) and Table 3 above). In addition, the exclusion of plants receiving more than 40% investment aid reinforces the conclusion that the maximum aid intensity cannot be exceeded.
- (108) Based on the above the Commission concludes that aid under the notified support scheme is proportional.

3.3.6. *Avoidance of distortion of competition and effects on intra-EU trade*

- (109) According to point 116 of the EEAG the Commission presumes aid to energy from renewable sources to have limited distortive effects provided the relevant conditions are met. As illustrated above, the Commission considers that all the conditions of the EEAG concerning aid to renewable energy in general and those regarding biofuels are met.
- (110) As regards third parties' observations that the scheme would create a *de facto* State monopoly for advanced biomethane and hamper the development of a market for the trading of advanced biomethane and other advanced biofuels (see recitals (56) and (57)), it should be noted, first, that incentives for both producers and obliged retailers to participate in the schemes described in Sections 2.2.1 and 2.2.2 are justified by the objective to incentivise the production and consumption

³² A rate of return of 9.5% was considered proportionate in the scheme for the production of biogas in Luxembourg, see Commission decision in case SA. 40010 (2014/N) - Luxembourg, recital 37.

³³ The MISE Decree has been modified to reflect this commitment (see Article 10(6)).

of advanced biomethane / biofuels and create a market for such products. Absent a premium that would ensure a predictable and adequate return on investments, it is unlikely that the production of advanced biomethane / biofuels would be sufficient to attain the national target for the consumption of advanced biofuels. This would also mean, in turn, that the few existing producers would be able to exercise a dominant position in the market and charge very high prices. As a consequence, obliged retailers would prefer to pay the fine for non-compliance with the supply obligation rather than placing on the market the prescribed quantities of biofuels.

- (111) Moreover, both producers and obliged retailers retain the possibility to opt out from the schemes described in Sections 2.2.1 and 2.2.2. Those producers can fulfil the supply obligation, *inter alia*, by purchasing the biomethane / biofuel on the market even by means of imports (see recital (30)). In addition, they also have the opportunity to join the scheme in 2022 for the 10 years thereafter. Making the decision of obliged retailers to participate in the scheme binding for the whole duration of the implementation period is necessary in order to guarantee sufficient funding for that period (since the aid is paid out based on contributions made by the obliged suppliers), which, in turn, is indispensable to create a stable framework for investments in advanced biomethane / biofuels production.
- (112) As concerns third parties' observations that the measure distorts competition between the producers of advanced biomethane and the producers of other advanced biofuels (see recitals (58) and (60)), it must be noted, first of all, that Member States retain a wide margin of discretion in deciding which technologies to support in order to fulfil the target of renewables for use in transport. Moreover, the respective subtargets for advanced biomethane and other advanced biofuels (see recital (13) above) are based on estimates on the respective expected production levels of the two products for the first two years of the implementation of the measure (see Table 1 above), and will be reviewed afterwards based on actual data and updated estimates. In addition, Italy has shown that biomethane has been used mainly for production of energy/electricity, for which it benefits from specific incentives (see recital (10) above). Moreover, in the absence of specific measures for the support of advanced biomethane and biofuels, it is unlikely that those products will develop and that sufficient competition in the market will be achieved. Therefore, the measure, rather than distorting competition aims first of all at creating a market for advanced biofuels and, second, at increasing competition in that market.
- (113) In light of the above, the Commission concludes that the negative effects of the measure on competition and the internal market are kept to a minimum.

3.3.7. Transparency and other requirements: companies in difficulties or subject to outstanding recovery orders

- (114) Member States are required under Section 3.2.7 of the EEAG to publish as of 1 July 2016 certain information related to the beneficiaries of aid. Italy has committed to respect the transparency requirements set out in section 3.2.7 of the EEAG as described in recital (52) above.
- (115) Moreover, Italy has committed not to grant any aid to firms in difficulty or to those which are subject to an outstanding recovery order following a previous Commission decision declaring an aid measure illegal and incompatible with the

internal market (see recital (52)), in compliance with points 16 and 17 of the EEAG.

3.3.8. *Conclusion with regard to the compatibility of the notified measure*

(116) In light of the above, the Commission considers that the notified measure is compatible with the internal market in accordance with Article 107(3)(c) TFEU.

4. CONCLUSION

The Commission has accordingly decided:

- not to raise objections to the notified measure and to authorise it for 5 years on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

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://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

