DECISIONS

COMMISSION DECISION

of 11 June 2014

on the State aid SA.18832 (2013/C) (ex 2013/NN) (ex 2011/MX) (ex N 44/2005) implemented by Lithuania for excise tax reductions on biofuels

(notified under document C(2014) 3600)

(Only the Lithuanian text is authentic)

(Text with EEA relevance)

(2014/830/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having called on interested parties to submit their comments pursuant to the provision(s) cited above [1]

Whereas:

I. PROCEDURE

(1) Since 2006, the Directorate-General for Competition carries out each year an *ex-post* monitoring exercise of a sample of aid measures implemented by Member States. The Lithuanian excise tax reduction on biofuels scheme was included in the 2011 monitoring exercise, in the context of which the Commission examined how Member States applied a sample of existing schemes for the period 2009-2010. This scheme was approved by the Commission under the case number N44/2005 by its decision K (2005) 2957C of 27 July 2005 (hereinafter referred to as the Commission decision).

(2) The Commission has requested Lithuania to provide the necessary information in view of assessing the way the aid scheme has been implemented in 2009 and 2010, by letters dated 7 October 2011, 27 January 2012 and 26 June 2012. Lithuania provided the requested information by letters dated 10 November 2011, 24 February 2012 and 18 July 2012.

(3) By letter dated 17 July 2013, the Commission informed Lithuania that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union in respect of the aid scheme, as it was concerned about a possible misuse of the aid. The Lithuanian authorities provided their observations on 13 August 2013.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* on 8 November 2013. The Commission called on interested parties to submit their comments.

(5) The Commission received no comments from interested parties.

II. DESCRIPTION OF THE AID SCHEME

(6) The scheme N 44/2005 consisted of a reduction in the excise tax on biofuels blended with fossil fuels. This reduction applied only to the biofuel component of the mixture. Consequently, the tax rate of the excise duty to be applied to the blended biofuel products was reduced according to the proportion of biofuel in the final blend.

[1] OJ C 323, 8.11.2013, p. 74.

(7) The objective of the scheme was to promote the production and use of biofuels. It was also meant to assist Lithuania in meeting the 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]).

(8) The tax excise reduction was open to any biofuel producer in Lithuania as well as to any importer of biofuels from another Member State or third countries to Lithuania.

(9) The scheme was approved by the Commission on 27 July 2005 and expired on 31 December 2010.

(10) During the monitoring exercise, the Commission noticed that Lithuania implemented the scheme in a way that apparently was not totally in compliance with the Commission decision.

(11) First of all, as indicated in the Commission decision, Lithuania undertook to annually review the production costs of biofuels eligible for the excise tax reduction as well as the price movement of biomass relative to fossil fuel prices and to adjust the aid amount if necessary in order to avoid any overcompensation and to keep the price of biofuel at the same level of that of conventional fuels. Lithuania also undertook 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. All these elements have been taken into account by the Commission, when assessing the aid scheme and concluding it was compatible with the internal market.

(12) Since 2005 when the Commission decision was adopted, the Commission's relevant services (DG Competition) did not receive any annual report containing relevant information on the production costs of the biofuels and the market price of fuels to demonstrate that the absence of overcompensation was monitored and ensured. Such information was provided by Lithuania at the explicit request of the Commission during the monitoring procedure, but only for the years covered by the respective monitoring exercises.

(13) In the notification of the scheme, Lithuania provided data on the production costs of bioethanol and biodiesel and such data were assessed by the Commission. Lithuania mentioned that apart from bioethanol and biodiesel aid could be granted also to pure vegetable oil and undertook to carry out an analysis as soon as a biofuel product would benefit from the tax reduction to ensure that the reduction would not lead to overcompensation. This information should have been submitted to the Commission in the annual monitoring reports. The Commission's relevant services (DG Competition) did not receive any information that such analysis was carried out by Lithuania.

(14) Secondly, during the monitoring exercise, Lithuania submitted documents proving that the Ministry of Economy had already in 2009 requested that the beneficiaries should provide information on the average costs and sale prices of fuel for 2008. The Ministry of Economy received such data in 2009 and provided them for the selected beneficiaries to the Commission during the 2011 monitoring exercise. Nevertheless, Lithuania did not submit aggregate data on production costs of biofuels. Therefore the Commission was not able to properly verify the absence of overcompensation.

III. **COMMENTS FROM LITHUANIA**

(15) Following the opening of the formal investigation, Lithuania submitted additional information to the Commission.

(16) The Lithuanian authorities provided the Commission with copies of reports on the promotion of the use of biofuels from 2005 to 2010.

(17) The Lithuanian authorities explained that although the legislation included the possibility to grant aid under the scheme to pure vegetable oil, no biodiesel was produced from pure vegetable oil. Therefore no such aid was granted under the scheme NN44/2005. This explains why no such report was submitted to the Commission.

(18) For 2009 the annual report includes several tables containing information on the production costs of biofuels, the prices of fossil fuels, the prices of biofuels and the prices of different blends. This information is summarised in the tables below, based on an exchange rate of EUR 1 = LTL 3,4528.

([1]) OJ L 123, 17.5.2003, p. 42.

Table 1

Production costs and sale price (before tax) of fuels (biodiesel and diesel) in 2009

Price of fuel, LTL [1] per litre	Biodiesel (FAME)	Diesel
1. Raw material (+)	[…] (*)	[…]
2. Processing (+)	[…]	[…]
3. Other costs (research, reorganisation of production) (+)	[…]	—
4. the costs of production	[…]	[…]
5. Logistics (+)	[…]	[…]
6. By-product sale price (–)	[…]	—
7. Profit	—	[…]
8. **Sale price set by producer (before tax)**	**3,42**	**1,25**

(*) *Business Secret*
(1) Exchange rate used: LTL 3,4528 = EUR 1

Table 2

Sale price of blended (diesel and biodiesel) fuel

Price of fuel blend, LTL per litre 5 % FAME	5 % FAME
Biodiesel (FAME) costs in blend *(5 % × LTL 3,42 per litre)*	0,171
Diesel costs in blend *(95 % × LTL 1,25 per litre)*	1,188
Excise duty (95 % × LTL/litre) 1,14	1,08
Total sale price of fuel blend	2,439
Adjustment due to lower energy content of blend (15 %) (1)	0,025
Sale price of fuel blend (relative)	**2,46**

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

Table 3

Diesel sale price

Diesel sale price (before tax)	1,25
Excise duty on diesel	1,14
Diesel sale price in 2009 (1)	2,39

(1) Without VAT.

Table 4

Bioethanol and petrol production costs and sale price (before tax) in 2009

Price of fuel, LTL per litre	Bioethanol (ETBE)	Petrol
1. Raw material, incl. seed/grain payments (+)	[…]	[…]
2. Processing (+)	[…]	[…]
3. Other costs (research, reorganisation of production) (+)	[…]	—
4. Cost of production	[…]	[…]
5. Logistics (+)	[…]	[…]
6. By-product sale price (–)	[…]	—
7. Profit	—	[…]
8. **Sale price set by producer (before tax)**	**2,04**	**1,36**

Table 5

Sale price of fuel (bioethanol and petrol) blend

Price of fuel blend per litre	Containing 5 % bioethanol
Bioethanol costs in blend *(5 % × 2,04 LTL/litre);*	0,102
Petrol costs in blend: *(95 % × LTL 1,36 per litre);*	1,292
Excise duty *(95 % × LTL 1,50 per litre);*	1,425
Total sale price of fuel blend	2,819
Adjustment due to lower energy content of blend (60 %) [1]	0,0612
Sale price of fuel blend (relative)	**2,88**

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

Table 6

Petrol sale price

Petrol sale price (before tax) (100 % × LTL 1,36 per litre)	1,36
Excise duty on petrol	1,50
Petrol sale price in 2009 [1]	2,86

[1] Without VAT.

(19) The Lithuanian authorities argued that the data provided for 2009 and 2010 (reflected in the tables above) clearly demonstrates that neither the production of biodiesel nor of bioethanol where overcompensated.

IV. **ASSESSMENT OF THE AID**

(20) The Commission concluded already in its decision on N44/2005 that the measure at hand involved aid in the meaning of Article 107(3) of the Treaty on the Functioning of the European Union (TFEU). The Commission assessed this aid scheme on the basis of the 2001 Environmental Aid Guidelines ([1]), especially its section E.3.3, and concluded that aid was compatible with the internal market.

(21) The Lithuanian authorities confirmed to the Commission that they had submitted annual reports on NN44/2005. These reports were submitted to DG Energy as an annex to the report on the promotion of the use of biofuels or other renewable fuels for transport.

(22) The Lithuanian authorities have now provided DG Competition with copies of the reports they had submitted for the years 2005, 2006, 2007, 2008, 2009 and 2010. These reports contain detailed information on the biofuel production costs and sale prices. Furthermore, the price of different fuel blends is included.

(23) In the course of the investigation, the Commission was able to assess that the Lithuanian authorities have complied with point 34 of decision N44/2005 and submitted the necessary annual monitoring reports on the scheme to the Commission.

(24) The Lithuanian authorities explained no biofuels were produced from pure vegetable oil during the period the scheme was operating.

(25) In the course of the investigation the Commission was able to assess that as no biofuel was produced from vegetable oil during the period the scheme was operating that there was no information that needed to be included in the reports submitted to the Commission.

(26) Having now assessed all the information provided by Lithuania on production costs of biofuels and prices of fuels for 2009 and 2010, the Commission agrees that no overcompensation took place on an aggregate basis in 2009 or 2010.

V. **CONCLUSION**

(27) The Commission finds that Lithuania has correctly implemented the aid scheme N44/2005, in line with the Commission decision approving it.

HAS ADOPTED THIS DECISION:

Article 1

The State aid scheme N44/2005 which Lithuania has implemented is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty on the Functioning of the European Union and has been correctly implemented, in line with the Commission decision K (2005) 2957C of 27 July 2005.

Article 2

This Decision is addressed to the Republic of Lithuania.

Done at Brussels, 11 June 2014.

For the Commission
Joaquín ALMUNIA
Vice-President

([1]) OJ C 37, 3.2.2001, p. 3.