

COMMISSION

COMMISSION DECISION

of 23 October 2007

on the State aid C 30/2006 (ex N 367/05 and N 623/05) which Italy is planning to implement as an amendment to an existing scheme for excise duty reduction for biofuels

(notified under document number C(2007) 5091)

(Only the Italian version is authentic)

(Text with EEA relevance)

(2008/208/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to those provision(s) ⁽¹⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter of 26 July 2005, registered on 29 July 2005, the authorities of Italy notified, according to Article 88(3) of the EC Treaty, the aid measure N 367/2005 in the simplified procedure. By letter of 28 September 2005, registered on the same day, the authorities of Italy notified, according to Article 88(3) of the EC Treaty, the aid measure N 623/2005 also in the simplified procedure. The notification registered under the number N 367/05 concerned modifications to an existing aid scheme, authorised by the Commission until the end of the year 2005 under aid number N 717/2002 ⁽²⁾ and the notification registered under the number N 623/05 is a prolongation of the modified scheme until the end of the year 2007.

(2) By letters dated 29 August 2005 and 21 October 2005, the Commission asked for additional information, which was received by letters dated 27 September 2005 and

21 November 2005, registered on the same days. Following a meeting between the representatives of Italy and of the Services of the European Commission on 9 December 2005 that took place on the request of Italy, the Commission Services sent a letter on 19 December 2005 summarizing all open issues. The Italian authorities submitted missing information in two letters: on 28 February 2006 registered on 1 March 2006 and on 28 April 2006 registered on 5 May 2006. The second letter followed a meeting of Italy and of the European Commission that took place on 15 March 2006 and a letter sent to Italy on 24 March 2006.

(3) By letter dated 7 June 2006, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the measure. The two notifications (N 623/05 and N 367/05) had the same subject-matter and therefore, and for reasons of procedural efficiency, the Commission took one decision on both notifications. Furthermore, the Commission considered all correspondence with Italy concerning the notification N 367/05 as correspondence concerning also notification N 623/05. The Commission took the decision in the normal procedure due to the fact that Italy did not deliver the annual report as required by Article 4 of Commission Regulation (EC) No 794/2004 ⁽³⁾ concerning simplified procedure. Moreover the changes introduced to the scheme turned out being an alteration to an existing aid in the meaning of Article 4(1) of the above mentioned Regulation and therefore requiring evaluation of their compatibility with the common market.

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

⁽¹⁾ OJ C 157, 6.7.2006, p. 8.

⁽²⁾ OJ C 16, 22.1.2004, p. 23.

⁽³⁾ OJ L 140, 30.4.2004, p. 1.

⁽⁴⁾ OJ C 218, 9.9.2006, p. 2.

- (5) The Commission received comments from interested parties. It forwarded them to Italy, which was given the opportunity to react; its comments were received by letters dated 28 November 2006 and 10 April 2007.
- (6) By letter dated 16 July 2007 the Commission asked for additional information, which was received by letter dated 6 August 2007.

II. DESCRIPTION OF THE MEASURE

- (7) Both notifications concern amendments to an existing aid scheme.

2.1. Existing Scheme

- (8) The scheme authorised by the Commission under aid number N 717/2002 reduces excise duty for bioethanol and its derivatives (ETBE) as well as for additives and reformulates derived from other types of biomass for petrol and diesel, but not for biodiesel. The bioethanol is an agricultural product. It is 100 % from renewable origin. ETBE (ethyl-tertio-butyl-ether), which is etherised bioethanol, is derivable from agricultural alcohol. It is obtained through the reaction of bioethanol with isobutylene and is only 47 % from renewable origin. The only biomass-derived additive known so far is diethyl carbonate which can be used as additive for diesel.
- (9) The biofuels may be used in a blended or a pure form. The two blended end products which will benefit from the reduction will be the mix bioethanol-fuel (5 %-95 %) and the mix ETBE-fuel (15 %-85 %).
- (10) The project aims at encouraging the use of biofuels produced from wine, cereals and sugar beet and sugar beet and molasses. The beneficiaries of the aid are participants of an experimental project. Under the aid measure N 717/2002 three companies were selected in an open tender: Ecofuel SpA, Milan as producer of ETBE and IMA srl, Partinico, Palermo and Silcoma SpA, Corregio, Reggio Emilia as producers of bioethanol. The tender was open to all EU undertakings producing the respective biofuels and complying with the conditions set out in the decree on tender procedure.
- (11) The measure was set to apply for three years: from 2003 to 2005. The foreseen total budget was EUR 15 493 706 per year including VAT. However, the aid has been granted from the beginning of the year 2005, due to delay in the tender procedure.
- (12) The approved advantage in terms of the reduced rate for the period from the year 2003 to 2005 was as follows (all reductions are granted per one litre of the biofuel concerned):

Biofuels	Normal rate	Rebate	Reduced rate
	In Euro per litre		
Bioethanol	0,541 (petrol)	0,26	0,281
ETBE	0,541 (petrol)	0,25427	0,28673
Other additives and blends (for petrol)	0,541 (petrol)	0,26	0,281
Other additives and blends (for diesel)	0,403 (diesel)	0,16	0,243

- (13) The approved tax rebate per one litre of ETBE is equivalent to a complete tax exemption per 0,47 litre of ETBE, which is the part of ETBE derived from biomass ⁽¹⁾.
- (14) The excise duty rebate applies to pure and blended biofuels. As far as biofuels blended with fossil fuels are concerned Italy confirmed that the excise duty rebate would be proportioned to the volume of biofuel contained in the end product.
- (15) In its decision N 717/2002 the Commission concluded that the rebates did not exceed the difference between the costs of producing energy from biofuels and the market price of that energy. Therefore the Commission excluded overcompensation for the biofuels production.

2.2. Notified changes

- (16) Italy notified under the number N 367/2005 an increase of the annual total budget of the scheme to EUR 73 million including VAT. Furthermore, Italy notified under the number N 623/05 a prolongation of the existing measure until the end of the year 2007. The legal basis for both amendments is the Law No 311 (Legge finanziaria 2005) of 30.12.2004. These amendments have been introduced in order to make the program more meaningful due to the major changes regarding the policy on biofuels at the Community level (e.g. introducing of the 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 ⁽²⁾ and of the Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ⁽³⁾).

⁽¹⁾ In accordance with Article 2(2)(f) of the Directive 2003/30/EC on biofuels (OJ L 123, 17.5.2003).

⁽²⁾ OJ L 123, 17.5.2003, p. 42.

⁽³⁾ OJ L 283, 31.10.2003, p. 51.

- (17) For the new measure a new open tender procedure will be established. The Italian authorities underlined that the three beneficiaries selected in an open tender under the existing scheme N 717/2002 will not necessarily be the beneficiaries under the new scheme.
- (18) In addition Italy informed about higher excise tax reductions for biofuels and higher excise tax rates for fossil fuels and delivered updated production cost calculations for bioethanol and for bio-ETBE. The notified excise tax rates are as follows:

Biofuels	Normal rate	Reduction	Reduced rate
	In Euro per litre		
Bioethanol	0,564 (petrol)	0,275	0,289
Bio-ETBE	0,564 (petrol)	0,265	0,299

- (19) The notified tax rebate for bio-ETBE (EUR 0,265 per one litre) is equivalent to a complete tax exemption per 0,47 litre of ETBE, which is the part of bio-ETBE derived from biomass.
- (20) The production costs of bioethanol increased by EUR 32/1 000L due to an increase in costs of raw materials (sugar beet and molasses) and intermediate processing and logistics. The increase of bio-ETBE production costs (consequence of bioethanol becoming more expensive) was balanced with an increase in by-products selling prices. The reference price of fossil fuels that has been used for comparisons with the prices of biofuels was EUR 0,453/L⁽¹⁾. The production costs and the price of fossil fuels have been used in point 39 to calculate the extra production costs of biofuels eligible for aid.
- (21) Italy undertakes to monitor every six months the production costs of biofuels and the price of fossil fuels and, if necessary, to adjust the rebate in the excise duty rate so as to avoid any overcompensation of production costs throughout the duration of the aid in question.
- (22) In its letters of 21 October 2005, 19 December 2005 and 24 March 2006, the Commission has requested that

the Italian authorities suspend the payment of new aid under the current scheme to those firms that have not reimbursed the incompatible aid in compliance with earlier recovery decisions, (in particular with the Commission Decision 2000/128/EC of 11 May 1999 concerning aid granted by Italy to promote employment⁽²⁾, Commission Decision 2003/193/EC of 5 June 2002 concerning tax exemption and privileged loans in favour of public utilities in Italy⁽³⁾, Commission Decision 2004/800/EC of 30 March 2004 on the State aid scheme put into effect by Italy providing for urgent measures to assist employment⁽⁴⁾, and for Commission Decision 2005/315/EC of 20 October 2004 on the aid scheme implemented by Italy for firms investing in municipalities seriously affected by natural disasters in 2002⁽⁵⁾) in order to enable to the Commission to take into account in its assessment the cumulated distortion of new aid and old incompatible aid which has not been recovered.

- (23) The Italian authorities declined to make such a commitment. Moreover, they have stated that, in their view, Court of Justice judgment of 15 May 1997⁽⁶⁾ (hereafter 'the Deggendorf jurisprudence') — on the basis of which the Commission has to control cumulation between old and new aid — should not apply to aid schemes.
- (24) The Italian authorities underlined that the three beneficiaries selected in an open tender under the existing scheme N 717/2002 (see point 6) will not be necessarily the beneficiaries under the new scheme.
- (25) The notification registered under the number N 623/05, extends the scheme modified under the notification N 367/05 from the end of the year 2005 until the end of the year 2007.

III. GROUNDS FOR INITIATING THE ARTICLE 88(2) PROCEDURE

- (26) The Italian authorities refused to give a commitment to suspend the granting of new aid under the current scheme to firms which have not reimbursed the incompatible aid in compliance with the previous recovery decision. Therefore the Commission found it impossible to take into account the cumulated distortion arising from the old aid and the new aid.

⁽¹⁾ The price of fossil fuels is the annual average value for 2005 of the market price of fossil fuels. All changes in the production costs data are based on the observations for the year 2005 and are justified by movements of market prices.

⁽²⁾ OJ L 42, 15.2.2000, p. 1.

⁽³⁾ OJ L 77, 24.3.2003, p. 21.

⁽⁴⁾ OJ L 352, 27.11.2004, p. 10.

⁽⁵⁾ OJ L 100, 20.4.2005, p. 46.

⁽⁶⁾ Case C-355/95P *Textilwerke Deggendorf GmbH (TWD) v Commission* [1997] ECR I-2549, paragraphs 25-27.

IV. COMMENTS FROM INTERESTED PARTIES

- (27) The only third party which submitted its comments on the initiation of the procedure was Associazione Nazionale Industriali Distilatori di Alcoli e di Acquaviti (AssoDistil).
- (28) The AssoDistil stressed that the beneficiaries of the measure notified are not known and it is not a foregone conclusion that they will be the same as those which benefited under the previous measure.
- (29) AssoDistil informed also the Commission that it suggested to the Italian authorities to undertake to insert a clause in the tender procedure for biofuels that would make the right to take part in the procedure for new aid conditional on non-cumulation of aid with previous incompatible aid and that payment of the new aid will be suspended if the beneficiary still has to reimburse old incompatible aid.

V. COMMENTS FROM ITALY

- (30) By letter received on 10 April 2007 the Italian authorities, committed themselves to insert in the tender for biofuels a clause that subordinates the right to participate in the selection process to the absence of cumulus with precedent illegal aids. Furthermore, the Italian authorities commit themselves to suspend the payment of new aids whereas the beneficiary still has to repay incompatible aids.
- (31) The Italian authorities excluded that the commitment can constitute a precedent for other schemes that will be notified in the future. They stressed that the commitment is given only with regard to the present aid in consideration of its particular characteristics.

VI. ASSESSMENT OF THE MEASURE

- (32) Italy has notified the measure to the Commission and its entry into force is subject to the Commission's approval, so Italy has complied with its obligations under Article 88(3) of the EC Treaty. The notified amendments in the scheme concern the increase in the budget of the scheme and the duration. The Commission has been also informed about the change in the excise reduction and modifications in calculating biofuels production costs.
- (34) Excise tax reduction is granted from State resources. The aim of this measure is to compensate the biofuels producers for part of their production costs. By reducing the tax obligation imposed on the products, the measure favours certain undertakings and the production of certain goods. Consequently the prices for biofuels can be lowered to a level that is competitive with fossil fuels. Since biofuels serve as substitute for fossil fuels, this advantage may distort competition in the internal EU-market. As fuels are tradable internationally, the measure is also likely to affect trade between Member States and therefore constitutes State aid pursuant to Article 87(1) of the EC Treaty.

Exemption under Article 87(3)(c) of the EC Treaty

- (35) Article 87(3)(c) of the EC Treaty provides an exemption from the general rule of incompatibility with the common market as stated in paragraph (1) of that 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.

- (36) The proposed aid measures are designed to enhance the use of environmentally friendly fuels in order to reduce the emission of greenhouse gases. The development of renewable energies, especially biofuels⁽¹⁾, has been encouraged since 1995 by numerous Community measures⁽²⁾ and as of 2003 by the Directive 2003/30/EC of the European Parliament and of the Council on the promotion of the use of biofuels or other renewable fuels for transport ('Biofuels Directive')⁽³⁾. According to Article 3 of this Directive Member States should ensure that a minimum proportion of biofuels is put on their markets. It sets for the national targets a reference value of 5,75 % that should be achieved by 31 December 2010.

- (37) The objectives of the present scheme are in line with EU policy in this sector. The Commission has to assess the notified measure in the light of the Community Guidelines on State aid for environmental protection⁽⁴⁾ unless the aid is granted to support products which fall under the list in Annex I of the Treaty, which is the list of products covered by Title II on Agriculture.

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

- (33) According to Article 87 of the EC Treaty, State aid is (a) any aid granted by a Member State or through State resources (b) which distorts competition (c) by favouring certain undertakings, (d) insofar as it affects trade between Member States.

⁽¹⁾ Biofuels are included in the definition of renewable energy sources of Directive 2001/77/EC of the European Parliament and of the Council of 27.9.2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market (OJ L 283, 27.10.2001, p. 33).

⁽²⁾ 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(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).

⁽³⁾ OJ L 123, 17.5.2003.

⁽⁴⁾ OJ C 37, 3.2.2001, p. 3.

(38) According to section E.3.3 of the Environmental Guidelines, operating aid in favour of the production of renewable energy can 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 energy sources.

(39) Point 56 of the Environmental Guidelines allows for the aid to cover the difference between the costs of

producing energy from renewable source and the market price of that energy. This is further developed in points 59 and 60 of the Community Guidelines. From the tables below, which are based on the information supplied by Italy, it is clear that the aid enables producers to sell the blended fuel at a price that is just sufficient to compete with the fossil fuel. It is ensured that this will remain to be the case during the entire period of the scheme because Italy confirmed that the changes in fossil fuel price and biofuels production costs will be monitored every six months and if necessary the aid level will be adjusted.

Production costs for 1 000 litres	Bioethanol			Bio-ETBE
	Sugar b./molasses	Cereal	Wine	
A) Raw materials	270,00	380,00	650,00	Bioethanol: 334,10 Refined (1): 400,00
B) Labour	30,00	30,00	30,00	21,50
C) Capital repayments	30,00	30,00	30,00	9,70
D) Intermediate processing	205,00	215,00	195,00	37,10
E) Transport costs	22,00	22,00	22,00	
F) By-product selling price		- 130,00		- 149,00
G) Production costs (A + B + C + D + E + F)	557,00	530,00	910,00	653,40
H) Profit margin 5 %	27,85	27,35	46,35	32,67
I) Energy content adjustment factor (*)	270,36	265,50	449,94	110,46
J) Total, excluding taxes (G + H + I)	855,21	839,85	1 428,29	796,53
K) Biofuels detaxation	274,78	274,78	274,78	265,08
L) Price for biofuels (J - K)	580,42	565,07	1 148,51	531,45
M) Reference price of fossil fuels excl. taxes	453,00	453,00	453,00	453,00
Difference (L - M) (**)	127,43	112,07	695,51	78,45

(*) The energy adjustment factor has been calculated in the following way: for bioethanol $(31/21,2 - 1) \times 100\%$, for bio-ETBE $(31/26,7 - 1) \times 100\%$. The sum of lines G and H has to be multiplied with these factors.

(**) If the difference is positive than the level of aid is allowable. If the difference is negative then the level of aid is too high and results with overcompensation.

- (40) Apart from bioethanol and bio-ETBE the notified measure also foresees that additives and reformulates derived from biomass can benefit from the tax reduction. The only potential biomass-derived additive and reformulate known so far is diethyl carbonate. As this product is however not in the market yet, no information on production costs is available. The same holds for further potential biomass-derived additives and reformulates, which are not known yet but which might be introduced under the scheme in the future. European Commission notes that Italy committed itself under the scheme approved under the decision N 717/2002 ⁽¹⁾ to carry out an analysis, as soon as a new product will benefit from the tax reduction, to ensure that the reduction will not lead to overcompensation. This information will also be submitted to the Commission in the annual monitoring reports.
- (41) Cereals, sugar beet and molasses and wine used to produce biofuels in the scheme at hand fall within Chapter 10, Chapter 17.03 and Chapter 22.05 of the list in Annex I of the Treaty respectively, which is the list of products covered by Title II on Agriculture. The aid for these products falls within the scope of the Community Guidelines for State aid in the agriculture sector and is excluded from the scope of the Environmental Guidelines in conformity with point 7 of the latter. According to point 194 of the Community Guidelines for State aid in the agriculture and forestry sector 2007 to 2013 ⁽²⁾, for notifications pending on 1 January 2007 the Guidelines of year 2000 ⁽³⁾ will remain applicable. Section 5.5.3 of the Agricultural Aid Guidelines stipulates that in duly justified cases, such as aid 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 aid component should be limited to neutralising the effects of the additional costs and should be subject to a periodic review at least every five years. Since the aid under scrutiny in the present case only concerns biofuels which without aid would not be competitive in the market, and since the aid level will be revised and adjusted annually to avoid overcompensation of the biofuel production, the notified aid scheme complies with these conditions.
- (42) As the measure concerns an excise tax rebate for an energy product, the Commission will also assess it with respect to the Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ('Energy Tax Directive') ⁽⁴⁾.
- (43) Article 16(1) of this Directive allows Member States to apply an exemption or a reduced rate of taxation on biofuels. However, Article 16(2) of the same Directive limits the exemption or reduction in taxation to the part of the product that actually derives from biomass. While bioethanol is completely derived from biomass, only 47 % of one litre of ETBE is derived from biomass. The excise reduction for bio-ETBE introduced by Italy (EUR 0,26508) equals 47 % of the normal excise rate (EUR 0,564). It is a complete tax exemption of the biomass part of ETBE and it respects provisions of Article 16(2).
- (44) The excise duty reduction applies to pure and blended biofuels. Concerning biofuels blended with fossil fuel, the reduction of excise duty 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.
- (45) The notified scheme respects also Article 16(3) of the Energy Tax Directive which requires that the reduction in taxation shall be adjusted to take account of changes in raw material prices to avoid overcompensating for the extra costs involved in the manufacture of biofuels.
- (46) The measure is open to all EU undertakings producing the respective biofuels and complying with the conditions set out in the decree on tender procedure. It is therefore not discriminating.
- (47) The Commission notes that Italy ensured that the measure is not currently in force and will be applied only after the Commission has authorised it.
- (48) The Commission also notes that the original measure has been prolonged and the new measure is limited in time until the 31 December 2007.

⁽¹⁾ OJ C 16, 22.1.2004, p. 23.

⁽²⁾ OJ C 319, 27.12.2006, p. 1.

⁽³⁾ OJ C 28, 1.2.2000, p. 2.

⁽⁴⁾ OJ L 283, 31.10.2003, p. 51.

(49) Further, the Commission pointed out the problem of potential cumulation of the distortion arising from the aid under the excise reduction scheme and other distortions deriving from other illegal and incompatible aid, in particular under the schemes mentioned in paragraph 22, which has not yet been reimbursed. According to the Deggendorf jurisprudence, the compatibility of new aid could depend on the existence of any previous unlawful aid that has not been repaid, since the cumulative effect of the aid could distort competition in the common market to a significant extent.

(50) The Commission notes that, as regards the application of the Deggendorf jurisprudence, the Italian authorities undertook, in the context of this measure, committed themselves to insert in the tender for bio-fuels a clause that subordinates the right to participate in the selection process to the absence of cumulus with precedent illegal aids. Furthermore, the Italian authorities commit themselves to suspend the payment of new aids whereas the beneficiary still has to repay incompatible aids mentioned by the Commission in its decision initiating the procedure.

(51) The Commission further notes that during the procedure under Article 88(2) of the EC Treaty it did not receive any comments from third parties that the proposed aid may affect trading conditions and distort competition to an extent contrary to the common interest.

VII. CONCLUSIONS

(52) On the basis of the foregoing, the Commission concludes that the measure complies with the relevant provisions of the Environmental Aid Guidelines, the Agricultural Aid

Guidelines and the relevant provisions of the Energy Tax Directive. Furthermore, Italy has undertaken to suspend the granting of new aid under the current scheme to firms which have not reimbursed the incompatible aid in compliance with the relevant previous recovery decision. The measure can therefore be deemed compatible with the common market pursuant to Article 87(3)(c) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The measure which Italy is planning to implement on the basis of Article 1, paragraph 520 of Law No 311 of 30 December 2004, with an annual budget of EUR 73 million, and consisting in the amendment and prolongation of an existing scheme for excise duty reduction for biofuels until 31 December 2007 is compatible with the common market.

Implementation of the measure is accordingly authorised.

Article 2

This Decision is addressed to the Republic of Italy.

Done in Brussels, 23 October 2007.

For the Commission
Neelie KROES
Member of the Commission