**Question:**

Republic of Bulgaria has developed a draft State aid scheme “Reduced excise duty on gas oil used in primary agricultural production" based on Article 44 of Commission Regulation (EU) No 651/2014 of 17 June 2014 on declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Regulation (EU) No 651/2014).

The draft State aid scheme provides for a reduced excise duty on gas oil used in primary agricultural production. The difference between the standard excise duty rate on gas oil and the reduced excise duty rate on gas oil used in primary agricultural production will be reimbursed to the aid beneficiaries based on transparent and objective criteria. The reduced excise duty rate on gas oil will be consistent with the minimum levels of taxation provided for in Article 8 of Directive 2003/96/EC.

 The expenditure for excise duty on fuel (gas oil with CN codes from 2710 1941 to 2710 1949) used for the purpose of primary agricultural production shall be deemed eligible under the scheme.

Article 47 of the Energy from Renewable Sources Law sets a requirement for minimum content of biofuels in mineral fuels that are released for consumption. The provisions of the Law transpose the requirements of 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.

The gas oil used in primary agricultural production contains a minimum biocomponent (e.g. biodiesel minimum 4 per cent by volume).

In the light of the above, Bulgaria requests an answer to the following questions:

1. Is it allowed to support agricultural producers in the form of reduced excise duty on gas oil used in primary agricultural production under the conditions specified above on the grounds of Article 44 of GBER?

2. Is the aid compatible for gas oil containing a biocomponent as per the minimum requirements for minimum content of biofuels in mineral fuels?

3. In the event the answer to question 2 is POSITIVE, please clarify whether for the purposes of calculating the reduced rate we have to exclude from the aid the volume content of the biofuel in the gas oil?

4. In the event the answer to question 2 is NEGATIVE, please clarify in which cases and for what type of fuel the aid would be compatible?

**Answer:**

**On 1.:** According to Article 1 paragraph 3 lit. b of the GBER, aid granted in the primary agricultural production sector is in principle not covered by the GBER, unless it is environmental aid.

Aid in the form of reductions in environmental taxes fulfilling the conditions of Directive 2003/96/EC (ETD) is considered as aid for environmental protection (Article 44 of the GBER).

An environmental tax is defined in Article 2 no. 119 of the GBER as “a tax with a specific tax base that has a clear negative effect on the environment or which seeks to tax certain activities, goods or services so that the environmental costs may be included in their price and/or so that producers and consumers are oriented towards activities which better respect the environment”.

It is for the Member State to determine whether its excise duty on gas oil constitutes such an environmental tax and whether it fulfils the conditions of the ETD. If that is the case, aid in the form of a reduced excise duty on gas oil used in primary agricultural production could in principle be covered by Article 44 of the GBER.

**On 2.:** According to Article 3 of the GBER, the aid shall be compatible provided that it fulfils all the conditions laid down in Chapter I of the GBER, as well as the specific conditions for the relevant category of aid laid down in Chapter III of the GBER, and notably the conditions in Article 44.

In particular, the aid must fulfil the conditions of the ETD (Article 44 paragraph 1 GBER), and the beneficiaries must pay the respective minimum levels of taxation set by that Directive (Article 44 paragraph 2 GBER). Article 2 paragraph 120 GBER further specifies that for energy products the relevant minimum levels are set out in Annex I (in this case table B) to the ETD.

According to Article 44 paragraph 4, aid shall not be granted for biofuels which are subject to a supply or blending obligation. The purpose of this provision is to avoid that biofuels already benefitting from a supply/blending obligation receive additional support through a tax measure. However, in the case at hand the excise duty on diesel is equally reduced for fossil diesel and biodiesel, including diesel blends, used in the agricultural sector. In this situation, the reduced rate for all diesel used for agricultural use does not favour the biofuel producer over the fossil fuel producer. Therefore, the same reduction for all diesel for agricultural use complies with Article 44 paragraph 4.

**On 3.:** The reduced rate should be calculated on the basis of the total fuel volume, including the biofuel component.

**On 4.:** n/a

Disclaimer: This reply does not represent a formal and definite position of the European Commission but is only an informal guidance provided by the services of DG Competition to facilitate the application of the GBER. It is therefore not binding and cannot create legal certainty or legitimate expectations.