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Her Excellency
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Department of Foreign Affairs and Trade
Iveagh House, 80 St Stephen's Green,
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Subject: **Notification 2025/786/IE**

Ireland's Renewable Heat Obligation Scheme

Delivery of a detailed opinion pursuant to Article 6(2) of Directive (EU) 2015/1535 of 9 September 2015

Madam,

As part of the notification procedure provided for in Directive (EU) 2015/1535 ([1]), on 23 December 2025 the Irish authorities notified to the Commission a national Renewable Heat Obligation ('RHO') scheme in the context of the Renewable Heat Obligation Act 2025 (hereinafter referred to as 'the notified draft' or 'the RHO scheme').

According to the notification message, the proposed measure will require Irish suppliers of fossil fuels used for heating purposes to ensure that a proportion of the energy they supply is from a renewable source. The primary aim would be to ensure the increased use of renewable fuels across the heating sector, thus supporting the achievement of Ireland's heating and cooling targets under Directive (EU) 2018/2001. In addition, a second objective of the measure would be to support the development of Ireland's indigenous biomethane industry which, according to the Irish authorities, will play a crucial role in the decarbonisation of the Irish agricultural sector and support Ireland's security of energy supply. This objective would be achieved using a certificate 'multiplier' that will be applied to each biogas/biomethane ([2]) unit produced domestically and certified under the Irish RHO scheme. According to the notified draft, the Irish RHO scheme is established until 31 December 2045, however the Irish authorities clarified that "*the use*

[1] Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and rules on Information Society services, OJ L 241 dated 17.9.2015, p. 1

[2] In this Detailed Opinion, the terms 'biogas' and 'biomethane' will be used interchangeably.

of this certificate multiplier would be in place for a limited time to support a newly developing industry and not for the duration of the scheme until 2045". ([3])

Before submitting this notification, the Irish authorities first contacted the Commission services in January 2025 with a short paper about their proposal for a national RHO scheme. Subsequently, on 11 February 2025 a first meeting at technical level with representatives of DG GROW and DG ENER took place. ([4]) A second meeting was organised, upon request of the Irish authorities, on 12 March 2025 to discuss this proposal. ([5]) A third (technical) meeting took place (online) on 27 October 2025 with representatives of DG GROW, DG ENER and DG COMP. ([6]) As a follow-up to the latter meeting, the Irish authorities submitted a number of documents on 21 November 2025 providing further details in relation to RHO modelling based on costs and availability and further information about the industry engagement undertaken as part of the design process. ([7])

By way of these meetings and exchanges, the Irish authorities intended to understand whether – in view of the Detailed Opinion delivered pursuant to Article 6(2) of Directive (EU) 2015/1535 to the Netherlands on 12 August 2024 in relation to a similar proposal for a Dutch "green gas" blending obligation ([8]) – the Commission would consider the RHO scheme as compatible with internal market rules, in particular whether the domestic 'multiplier', awarding higher credits to suppliers for purchasing indigenously produced biomethane, would constitute a measure having equivalent effect to a quantitative restriction on the movement of goods, in violation of Article 34 of the Treaty on the Functioning of the European Union (TFEU) and whether such measure could be justified for the reasons set out in Article 36 TFEU or by overriding requirements recognised by the case-law of the Union Courts, such as the protection of the environment.

In this regard, the Commission services indicated to the Irish authorities already at the meeting of 12 March 2025 that preferential treatment for domestic biomethane is potentially discriminatory under EU law unless it is justified by public interest and proven to be necessary and proportionate. The Commission services made similar comments during the following meeting of 27 October 2025 and observed that that there are alternative approaches which would not require a multiplier.

The examination of the relevant provisions of the notified draft as well as the various documents submitted by the Irish authorities in the context of the above-mentioned meetings and contacts has led the Commission to issue the following detailed opinion.

Building on the past useful bilateral exchanges, the Commission remains fully available to pursue the discussions with the Irish authorities about alternative measures which, while allowing the achievement of the objectives pursued at national level, would be compatible with the free movement rules within the Internal Market.

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3 See Clarification Question 2 submitted on 4 February 2026 in response to the Commission services' request for supplementary information.

4 Ref. Ares(2025)1109227.

5 Ref. Ares(2025)2380523.

6 Ref. Ares(2025)9156337.

7 Ref. Ares(2025)10124890.

8 Notification: 2024/0253/NL.

Detailed opinion

1. *The notified draft*

Head 14 of the Renewable Heat Obligation Act 2025, entitled "*Renewable Heat Obligation Certificates*", provides the following:

"*1. For the purposes of the Scheme, the Administrator shall* […] *issue* - […] *b) A partial additional certificate equal to [50%] of a certificate in respect of each unit of biomethane produced in the State, disposed of by the account holder, by sale or otherwise, for the use of heat production, within the State during the reporting period concerned."*

The Explanatory Note in relation to such Head 14 describes the purpose of the RHO scheme and the need for a certificate 'multiplier' as follows: "*This Head allows for the issuing of certificates to RHO account holders in respect of a measure or unit of renewable heating fuel supplied in the State. The purpose of the certificate is to demonstrate and verify compliance with the obligation.* […] *The RHO is considered a key demand side incentive for the indigenous biomethane sector, listed as a long term demand side support for domestic producers. Meeting this objective was a fundamental feature of the RHO design process.* […] *Findings have indicated that due to the higher cost of domestically produced biomethane, once introduced, the RHO would increase demand for imported biomethane but would see no indigenous biomethane used within the scheme. In an effort to equalise the value of Irish biomethane and afford it viability within a scheme featuring open to competitive imports, this Head at paragraph (1)(b) includes a provision whereby a partial certificate value, (or multiplier), of [.5] of a certificate, is applied to every unit of domestically produced biomethane.*"

The same Explanatory Note indicates that "*On-going engagement with the EU Commissions has confirmed that the use of a domestic product multiplier is considered a 'measure of equivalent effect' under Article 34 of the Treaty on the Functioning of the European Union (TFEU), and as such Head 14 of this Act will be subject to notification on the Technical Regulations Information System (TRIS).*"

In addition, the text of the notified measure, entitled "*Renewable heat obligation certificate*", provides the following: "*(1) The scheme administrator shall* […] *issue a certificate* […] *to an account holder in respect of – […] (b) each gigajoule of biomethane produced in the State, disposed of (whether by sale or otherwise) by the account holder for heating purposes in the State during the obligation period concerned.* […] *(3) A renewable heat obligation certificate issued under subsection (1)(b) shall have a value of 0.5 gigajoule for the purposes of discharging the Renewable Heat Obligation* […] ***Notes:*** *1. This draft section, once enacted, will give effect to the policy requirements set out in* [..] *Head 14 (1)* […] *(b)* […] *of the General Scheme* […]".

Moreover, in the context of this notification, the Irish authorities submitted an 11-page document titled "*Renewable Heat Obligation Domestic Multiplier Justification Document for TRIS Notification*" which describes in detail the draft Irish biomethane support scheme in the context of the national biomethane strategy, the indigenous biomethane production and decarbonisation of Ireland's agriculture sector, the national target to produce up to 5.7 TWh of indigenous biomethane by 2030 and the current status of biomethane production in Ireland. The document also describes the different options that the Irish authorities examined to develop the Irish biomethane market.

The document also explains that the RHO qualifies as a support scheme within the meaning of the Renewable Energy Directive ([9]) (Article 2(5) of the RED), being a renewable energy obligation (Article 2(6) of the RED).

Finally, the document concludes analysing the compatibility of the Irish measure with Articles 34-36 TFEU. These latter aspects will be examined in more detail below.

2. Impact on the free movement of goods

Based on consistent case-law, 'goods' within the meaning of the Treaty refer to products that can be valued in money and are capable of forming the subject of commercial transactions. Gas therefore qualifies as a 'good' under Article 34 TFEU; ([10]) consequently, biogas/biomethane likewise falls within the scope of that same article.

Concerning the instruments for the marketing and traceability of renewable energy products, such as renewable heat obligation certificates attesting that the energy is from a renewable source, they must be regarded – by analogy with the case-law on guarantees of origin ('GOs') for "green" electricity – as 'goods' within the meaning of Article 34 TFEU in connection with the respective renewable energy unit(s) which they relate to. ([11]) Consequently, the GOs and the biomethane to which they are linked are to be regarded as 'goods' within the meaning of Article 34 TFEU, since both have to be sold together according to the Renewable Energy Directive.

Article 34 TFEU, as interpreted by the Court of Justice of the European Union ('CJEU'), prohibits any measure which is capable of hindering, directly or indirectly, actually or potentially, intra-Union trade. Article 34 TFEU prohibits, *inter alia*, all discriminatory obstacles to the free movement of goods and thus provides for a specific prohibition of discrimination as against Article 18 TFEU. ([12]) In particular, measures adopted by a Member State the object or effect of which is to treat products coming from other Member States less favourably are to be regarded as measures having an effect equivalent to quantitative restrictions. ([13]) Any other measure which hinders access of products originating in other Member States to the market of a Member State is also covered by that concept. ([14]) Accordingly, an obligation placed on traders in a Member State to obtain a certain percentage of their supplies of a given product from a national supplier limits to that extent the possibility of importing the same product by preventing those traders from obtaining supplies in respect of part of their needs from traders situated in other Member States. ([15])

The Commission understands that the RHO scheme will function via a system of tradeable certificates whereby obliged heating suppliers ([16]) will get higher credits for

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9 Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources (the 'Renewable Energy Directive', OJ L 328, 21/12/2018, p. 82) as amended by Directive (EU) 2023/2413 (the 'revised RED II' Directive, OJ L2023/2413 31.10.2023).

10 See e.g. Case C-159/94, *Commission v France*, and Case C-549/15 *E.ON Biofor Sverige*.

11 For example, in *Essent Belgium* (Joined Cases C-204/12 to C-208/12, point 78-81), the Court found that "*guarantees of origin* […] *may be categorised as 'goods' within the meaning of*" Article 34 TFEU insofar as "*such instruments*" are "*incidental*" to the green energy produced and sold to final consumers (i.e. green electricity in the context of that case).

12 See Case C-296/15, *Medisanus*, para. 65.

13 See Case C-110/05, *Commission v Italy*, para. 35 37.

14 See Case C-110/05, *Commission v Italy*, para. 37.

15 See e.g. Case C-379/98, *PreussenElektra AG*, para. 70 (and case-law quoted therein).

16 The modelling that the Irish authorities have used for the design of the RHO scheme estimated a threshold for obligated parties of 400GWh of fossil fuel for heating purposes and an initial obligation rate of 1.50% for the first year (2026) with a trajectory up to 15% target obligation rate for 2030.

purchasing indigenously produced biomethane. ([17]) Under the notified measure, one unit of biomethane produced in Ireland would count as 1.5 units towards a supplier's obligation.

The Irish authorities underline the absence of applicable harmonised rules at EU level concerning a renewable heat obligation for energy suppliers specifically focussed on biogas/biomethane production, ([18]) by applying an additional certificate value, or multiplier of [.5] certificates to every unit of domestically produced biomethane. In light thereof, the Irish authorities propose legislation that establishes a difference in treatment between domestic trade and import trade in biogas/biomethane units. In view of the case law illustrated in the previous paragraph, that legislation is to be considered as a measure having equivalent effect to a quantitative restriction on imported biogas/biomethane units, contrary to Article 34 TFEU, insofar as such certificate multiplier treats biogas/biomethane units coming from other Member States less favourably than domestic one, thus dis-incentivizing suppliers from importing those units from other Member States as they would be counted, towards a supplier's obligation, [.5] times less than the same units produced domestically.

3. Justification under Article 36 TFEU

According to settled case-law, national origin requirements that are discriminatory on the ground of nationality can be justified only on one of the grounds listed in Article 36 TFEU. ([19]) A Member State wishing to justify a restriction must prove, in a concrete manner and by reference to the circumstances of the case, that those provisions are justified. ([20]) The reasons which may be invoked by a Member State by way of justification must be accompanied by appropriate evidence or by an analysis of the appropriateness and necessity ([21]) of the restrictive measure adopted by that State, and by specific details substantiating its arguments. ([22]) It is for the Member State which claims to have a reason justifying a restriction on the free movement of goods to demonstrate specifically the existence of a reason relating to a legitimate public interest, the need for the restriction, its suitability and its necessity in relation to the objective pursued. ([23]) In

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17 Each obligated party will have to surrender to the administrator of the RHO scheme sufficient certificates to meet their obligation. Their obligation will be calculated each year based on the obligation rate multiplied by the total quantity of fuel they place on the market. Obligated parties will obtain certificates by supplying eligible renewable fuels and generating certificates directly, or buying certificates from others, or both. If obligated parties do not meet all of their obligation by generating their own certificates or purchasing certificates, then they will be required to use a buy-out mechanism in order to meet their obligation. This will involve buying the required number of certificates from the scheme administrator at a buy-out price set by the scheme administrator.

18 According to Article 3 (1) of the Renewable Energy Directive, Member States are required to collectively ensure that the share of energy from renewable sources in the Union's gross final consumption of energy in 2030 is at least 42.5%, with the ambition to reach 45%. Article 25 (1) of that Directive introduces an obligation addressed to Member States to set an obligation on fuel suppliers to ensure a minimum share of renewable energy within the final consumption of energy in the transport. This is considered necessary to mainstream the use of renewable energy in the transport sector. However, no concrete target for biogas/biomethane production is included in the Directive. Similarly, there is no supplier obligation targeting specifically biogas/biomethane and specifically focused on biogas/biomethane production, as the one proposed by the Irish authorities in this case. Therefore, there is no harmonization of rules in this case. Therefore, the measure should be assessed in the light of Article 34 TFEU.

19 Case C-296/15, *Medisanus*, para. 80.

20 Case C-78/18, *Commission v. Hungary*, para. 77.

21 Case C-390/99 *Canal Satélite Digital*, para. 33.

22 Joined Cases C-52/16 and C-113/16, *SEGRO*, para. 85.

23 Case C-14/02 *ATRAL*, para. 69.

particular, a Member State must prove: (a) the pursuit of a legitimate objective compatible with Union law; (b) that the measure is necessary and appropriate to achieve the objective; (c) that it does not go beyond what is necessary; and (d) that there are no measures available with a less restrictive effect on trade. Moreover, the restriction cannot constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States (see the last sentence of Article 36 TFEU).

(a) Pursuit of a legitimate objective compatible with EU law

In the document entitled "*Renewable Heat Obligation Domestic Multiplier - Justification Document for TRIS Notification*", the Irish authorities argue that, given Ireland's economically disadvantageous position within the EU biomethane market due to higher production costs, the RHO once introduced will not provide sufficient incentive to domestic producers to make the necessary investments to deliver the national target of 5.7 TWh by 2030. Therefore, the use of a certificate multiplier was analysed as an option to incentivise domestic biomethane.

In the same document, the Irish authorities indicate that, on the basis of Article 36 TFEU, the provision of Article 34 TFEU shall not preclude prohibitions or restrictions on imports, exports or transit, which have been justified on grounds of the protection of health and the life of humans, animals or plants and argue that the use of a certificate multiplier is considered "*appropriate and necessary for achieving the legitimate aim of reducing Ireland's agricultural emissions through the production of feedstocks resulting in the protection of the environment, improving the resilience of the agricultural sector and increasing Irelands energy security through the production of domestic renewable fuels, resulting in the protection of the life of humans*."

The CJEU has recognised in defined circumstances that increasing the production of sustainable energy may be linked to the protection of health and life of humans, animals and plants, which are among the public interest grounds listed in Article 36 TFEU, as well as the protection of the environment. ([24])

The Commission questions, however, whether, in the context of sustainable energy such as biogas/biomethane, it can be a legitimate objective of EU law to focus solely on increasing domestic production of biogas/biomethane to the exclusion of other factors.

First, it should be recalled that an important part of the EU's ambition in this area is for EU-level cooperation and coordination between Member States. This is clearly stated in Article 3(1), first subparagraph of the revised RED II Directive according to which Member States are required to collectively ensure the Union target of 42.5% renewables in 2030. Similarly, this objective was clearly highlighted in the REPowerEU Action Plan ([25]) and the biogas/biomethane action plan included therein. In the relevant staff working document, in particular, it is stated that the relevant actions also target the facilitation of biomethane integration into the EU internal gas market and not merely integration at national level. Furthermore, the need for coordination of support to biogas and biomethane at EU, national and regional level was highlighted as necessary to collectively reach 35 billion cubic metres (bcm) per year by 2030.

[24] Case C-57312, *Ålands Vindkraft*, paras. 77-82.

[25] Document SWD/2022/230 final.

Second, the Commission notes that under the Renewable Energy Directive, the focus is put on the consumption of renewable energy. This is evident and stems from the design of that Directive in accordance with Article 1, [emphasis added] *"It [the Directive] sets a binding Union target for the overall share of energy from renewable sources in the **Union's gross final consumption of energy** in 2030",* in conjunction with Article 3 (1) first subparagraph that provides that [emphasis added] "*Member States shall **collectively** ensure that the share of energy from renewable sources in the Union's **gross final consumption of energy** in 2030 is at least 42,5 %*". Therefore, based on the above explanations, the Commission notes that, under the Renewable Energy Directive the objective is to meet the 42.5% target of renewable energy *consumed* in the EU collectively for 2030.

The Irish authorities have not proven why biogas/biomethane produced in other Member States and consumed in Ireland would not contribute to this objective; on the contrary, their analysis is focused solely on showing that "*imported biomethane will be available more cheaply than indigenously produced biomethane, in turn creating significantly cheaper certificate prices for imported biomethane. Biomethane transported to Ireland by pipeline, via the interconnector with the UK and via the UK from Europe, would be available in sufficient quantities to meet the obligations of natural gas suppliers, and therefore in the absence of additional measures, the RHO scheme would show no use of indigenously produced biomethane*". Therefore, according to the Irish authorities "*despite the rollout of two Government capital grant programmes of €40m* […] *and up to* €200m […] *Ireland is still placed at an economically disadvantageous position within the EU biomethane market*". ([26])

By setting the additional certificate value at the level of [.5], the Irish authorities seem to justify their objective of increasing the use of fuels of renewable origin, including biogas/biomethane for heat production, at national level based on purely economic reasons. However, it is settled case-law that purely economic reasons do not embody legitimate public interests. ([27]) Albeit the CJEU has not excluded that certain derogations in Article 36 TFEU may relate to economic interests in limited cases, those interests are linked to the viability of the whole system, which has not been proved to be endangered in the present case. ([28])

Third, the Irish authorities claim that the use of a certificate multiplier is "*considered appropriate and necessary for achieving the legitimate aim of reducing Ireland's agricultural emissions through the production of feedstocks resulting in the protection of the environment, improving the resilience of the agricultural sector and increasing Ireland's energy security*". However, the existing case-law ([29]), whereby the CJEU accepted in substance the justification of territorial restrictions based on the public

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[26] See page 5 of Ireland's response to the Commission services' request for supplementary information (Clarification Question 1), submitted on 4 February 2026 as well as the further material on costs and availability (material taken from 2 phases of analysis carried out since 2021) submitted by the Irish authorities on 21 November 2025.

[27] See e.g. Case C-120/95, Decker, para. 39: "*It must be recalled that aims of a purely economic nature cannot justify a barrier to the fundamental principle of the free movement of goods."*

[28] See e.g. Case C-120/95, Decker, para. 39: *"However, it cannot be excluded that the risk of seriously undermining the financial balance of the social security system may constitute an overriding reason in the general interest capable of justifying a barrier of that kind."* In the present case, the Irish authorities should demonstrate, for example, that the absence in the RHO scheme of an additional certificate value at the level of [.5] would seriously undermine the overall financial balance and very existence of a biogas/biomethane market in Ireland.

[29] See notably Cases C-573/12, *Ålands Vindkraft* and Joined Cases C-204/12 to C-208/12, *Essent Belgium*.

interest objective of promoting renewable energy sources in order to protect the environment and combat climate change, concerned the interpretation of a previous version of the Renewable Energy Directive, which contrary to the current version provided for binding targets *at national level*. In that case law, the Court justified the proportionality of national support mechanisms for electricity producers on the ground that (as provided for by that directive) Member States counted renewable electricity produced on their territory in their targets and were entitled to focus their efforts on supporting only renewable electricity produced at national level in order to achieve those targets. However, for the reasons explained above, a legitimate public interest is not present where a Member State focusses solely on increasing the use of fuels of renewable origin by stimulating *domestic* production of biogas/biomethane for heating purposes, to the exclusion of other factors.

The Commission is therefore of the view that the notified draft does not pursue a legitimate objective of the EU law as it fails (a) to take into account the EU objective of promoting *EU-wide* cooperation on renewable energy and (b) is not focusing on the actual EU objective which is to achieve a 42.5% consumption of renewables *in the Union* by 2030.

(b) Appropriate to meet the aim pursued

Even assuming (quod non) that the measure at issue would be considered to correspond to a legitimate public interest, the fact would remain that it is disproportionate.

Since the Irish authorities argue that the primary aim of their notified draft is to increase the use of fuels of renewable origin, including biogas/biomethane for heat production, it is necessary to test this for compliance with the first limb of the proportionality test, namely whether the measure proposed is appropriate to achieve the desired aim. On this point, the burden of proof lies with the Irish authorities to show that the requirement (within the RHO scheme) to count one unit of biogas/biomethane produced in Ireland as 1.5 units towards a supplier's obligation in fact pursues the aim of increasing domestic production. More specifically, the Irish authorities argue that, to enable Ireland to achieve a RES-H trajectory target of 16.1% in 2030, the RHO will serve as a critical policy measure to drive the use of renewables into the heating sector. Given the early stage of biomethane development in Ireland, the scheme will be heavily reliant on imported fuels. In this context, various options were evaluated:

1. Not allowing imported biomethane to be an eligible fuel under the RHO scheme;

2. Restricting eligibility to imported biomethane which has been physically injected into the gas grid in Ireland;

3. Placing a multiplier of 1.2 on indigenously produced biomethane to bring its certificate price in 2030 below the certificate price for imported biomethane;

4. Placing a multiplier of 1.5 on indigenously produced biomethane to bring its certificate price in 2030 below the certificate price for imported biomethane.

Considering the evaluation results of these options, the Irish authorities considered options 1 and 2 above as "*restrictive to single market trade under Article 34 TFEU*" and ultimately concluded that only the inclusion of an additional certificate multiplier of [.5]

is the most appropriate mechanism to "*ensure a more levilised* [sic] *cost between Irish and EU biomethane*". ([30])

However, in this regard the Irish authorities fail to put forward the necessary evidence to show that such an additional certificate multiplier is necessary to lead to an increase in the use of fuels of renewable origin, including biogas/biomethane for heat production, in Ireland (for example, figure 3 at page 6 or Table 1 at page 8 of Ireland's response to the Commission's request for supplementary information - Clarification Questions 1 and 3, respectively, are insufficient in this respect).

Although the material submitted by the Irish authorities provides some evidence about the price difference between imported and domestic biogas/biomethane and about the insufficiency of the Government grants' programs for the upscaling of Ireland's position within the EU biomethane market, the Commission cannot identify a clear argument or evidence proving that applying an additional certificate value of [.5] certificates to every unit of biogas/biomethane produced domestically is a necessary means to promote consumption of renewable fuels, including biogas/biomethane, across the heating sector in Ireland. Furthermore, the modelling presented as supporting evidence[31] refer to imported biomethane by pipeline. However, as long as UK legislation does not adhere to the conditions in the Union Data Base (see Art. 31a of RED III) or the related sustainability requirements, no pipeline-based biomethane from the UK or continental Europe can be imported to Ireland nor it can eligibly count towards the Irish contribution to the RED target. This appears as a significant omission in the modelling. In this regard, the Commission is of the view that the Irish authorities have not discharged the burden of proof to show that limiting the additional certificate 'multiplier' to domestic producers, to the detriment of foreign producers, is appropriate to meet the aim of increasing the production of biogas/biomethane in Ireland.

(c) It goes beyond what is necessary

The second limb of the proportionality test consists of verifying whether the measure goes beyond what is necessary to attain the objective.

The aim of the notified draft is, primarily, to increase the use of fuels of renewable origin across the heating sector, including biogas/biomethane for heat production, in Ireland. That can be achieved by also allowing biogas/biomethane produced in other Member States. That is also coherent with the legal regime established by the relevant EU directives (see above). The Irish authorities have failed to prove why the limitation of the additional certificate 'multiplier' to domestic producers is within the limits of what is necessary to attain the aim of increasing the use of fuels of renewable origin, including biogas/biomethane for heat production, in Ireland.

The Commission takes note of the indication that the use of this multiplier is intended as a temporary measure only and not intended to be in place for the duration of the scheme out to 2045. However, the Irish authorities have not specified until when the multiplier will be limited but vaguely refer to their intention to "*periodically review the RHO scheme*" starting "*in year three following introduction*" and merely "*should the costs of domestic biomethane production be reduced in line with EU production costs; it is at this*

[30] See Ireland's response to the Commission services' request for supplementary information (Clarification Question 1), submitted on 4 February 2026.

[31] See figure 1 at page 4 of Ireland's response to the Commission's request for supplementary information - Clarification Question 1.

point that the multiplier would be reconsidered and a phase out of its use initiated". ([32]) In this regard, the Irish authorities have failed to substantiate their claim that this measure is of temporary nature. In any event, if the measure were of temporary nature, it would still be a restriction to the free movement of goods and the same analysis as above would apply.

(d) Availability of alternative measures with a less restrictive effect on trade

The third limb of the proportionality test requires a Member State to show that the means chosen cannot be replaced by less restrictive alternatives, the Irish authorities are under a duty to examine carefully the possibility of using measures less restrictive of free movement of goods, and to discount them only if their inadequacy, in relation to the objective pursued, is clearly established. ([33])

The Commission is of the view that the Irish authorities have not discharged the burden of proof in this regard. In particular, the Irish authorities have failed to explain why other incentives or support schemes targeting national biogas/biomethane producers would not be an appropriate and sufficient measure to meet their stated aim. For example, among the "*several monetary support options*" examined, ([34]) it appears that for biogas/biomethane the Irish authorities have not considered the option of requiring that a volume of biogas/biomethane that is imported from another EU Member State under the RHO scheme has not received any production subsidy. The Commission would invite the Irish authorities to consider the feasibility of this option.

Moreover, the Irish authorities have not explained why the adoption of an RHO scheme which in itself would stimulate demand but without restricting imports would not by itself meet the desired objective. The only explanations given related to the three options analysed in the document entitled "*Renewable Heat Obligation Domestic Multiplier - Justification Document for TRIS Notification*", ([35]) namely:

1. Restriction on imported renewable fuels under the scheme *- The restriction of imports would ensure that obligated parties under the RHO could only source biomethane from domestic producers, however this was deemed contrary to the EU objective of promoting EU-wide cooperation on renewable energy, namely Article 34 (ex-Article 28 TEC) which prevents a 'Quantitative restriction on imports and all measures having equivalent effect shall be prohibited between Member States';*

2. No restriction on imported renewable fuel, but only direct injection of biomethane into the National Grid allowed – *Direct injection would ensure domestic biomethane would improve domestic costs with lower costs across the EU, however modelling of this option indicated that domestic costs would still be at a disadvantage and suppliers may again chose cheaper EU suppliers.*

3. Use of a certificate multiplier – *The RHO will operate on the basis of tradeable certificates. Each unit of renewable fuel supplied by an RHO account holder will receive 1 RHO certificate. Applying an additional value to certificate for each unit of*

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[32] See Clarification Question 2 submitted on 4 February 2026 in response to the Commission services' request for supplementary information.

[33] See Case C-320/03, *Commission v. Austria*, para. 87.

[34] See Clarification Question 4 submitted on 4 February 2026 in response to the Commission services' request for supplementary information.

[35] See page 10.

domestically produced biomethane to bring the domestic product in line with more competitive EU market rates.

Regardless of their substantive convincingness or not, the fact remains that none of these options considers a less restrictive means that would require a national support measure not excluding biogas/biomethane imported from other Member States.

In light of the content of the present detailed opinion, the Commission would like to underline its full availability to pursue the discussions with the Irish authorities to identify less restrictive alternatives, in compliance with Articles 34-36 TFEU.

(e) Absence of a disguised restriction on trade between Member States

In view of the fact that the Irish authorities seek to impose via the notified act a difference in treatment between domestic trade and import trade in biogas/biomethane units, they must also satisfy the final sentence of Article 36 TFEU, namely show that the restriction does not "*constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States*". Member States may not rely on Article 36 TFEU to prevent restrictions on trade based on the grounds mentioned in the first sentence from being diverted from their proper purpose and used in such a way as to create discrimination in respect of goods originating in other Member States or indirectly to protect certain national products. protect their national production ([36]). The Commission invites the Irish authorities to submit their arguments as to why this final sentence does not apply in respect of the notified draft, which apparently seeks to shield domestic biogas/biomethane production from imported biogas/biomethane.

For the reasons set out above, the Commission hereby issues a detailed opinion pursuant to Article 6(2) of Directive (EU) 2015/1535.

The Commission reminds the Irish authorities that, in accordance with this Article, the issuing of a detailed opinion entails that the Member State which is the author of the draft technical regulation concerned is required to postpone its adoption for 6 months from the date of its notification. This deadline therefore ends on 29 June 2026.

Furthermore, the Commission draws the attention of the Irish authorities to the fact that, under this provision, the Member State to which a detailed opinion is addressed is required to inform the Commission of the action it intends to take on such an opinion.

The Commission furthermore recalls that once the definitive text has been adopted, it must be communicated to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

If the Irish authorities fail to comply with the obligations laid down in Directive (EU) 2015/1535 or if the text of the draft technical regulation under consideration is adopted without taking account of the objections raised, or is otherwise contrary to Union law, the Commission is ready to initiate proceedings against Ireland in accordance with Article 258 of the TFEU.

Yours faithfully,

For the Commission

[36] ()See Case 34/79 *Henn & Darby*, para. 21.

Stéphane Séjourné
Executive Vice-President

CERTIFIED COPY
For the Secretary-General

Martine DEPREZ
Director
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