EUROPEAN COMMISSION

Brussels, 8.4.2020
C(2020) 2346 final

SENSITIVE[*]: *COMP Operations*

Subject: **State Aid SA.56927 (2020/N) - Republic of Lithuania – State aid measures under the Temporary Framework in form of guarantees to support the economy in the current COVID-19 outbreak**

Excellency,

1. PROCEDURE

(1) By electronic notification of 2 April 2020, the Republic of Lithuania notified aid in the form of a loan guarantee scheme (Order of the Minister of Economy and Innovation of the Republic of Lithuania approving the scheme for the financial incentive measures "Portfolio Guarantee for Loans 2",[1] "the measure") under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak ("the Temporary Framework").[2]

(2) The Lithuanian authorities confirm that the notification does not contain confidential information.

(3) The Republic of Lithuania exceptionally agrees to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958,[3] and to have this Decision adopted and notified in English.

[*] Handling instructions for SENSITIVE information are given at https://europa.eu/!db43PX

[1] Original title: Įsakymas dėl skatinamosios finansinės priemonės „Portfelinės garantijos paskoloms 2" schemos patvirtinimo.

[2] Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1-9, as modified by the Amendment to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, 3 April 2020, OJ C 112I , 4.4.2020, p.1-9.

[3] Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

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2. DESCRIPTION OF THE MEASURE

(4) The Republic of Lithuania considers that the COVID-19 outbreak has started to affect the real economy. To control the spread of the COVID-19, the Government of the Republic of Lithuania declared the state of quarantine on 16 March 2020, leading to restrictions of movement and closures of undertakings in the entire country.

(5) The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the damage inflicted upon undertakings impacted by the outbreak and to preserve the continuity of economic activity during and after the outbreak.

(6) The measure is expressly based on Article 107(3)(b) of the Treaty on the Functioning of the European Union ("TFEU"), as interpreted by Section 2 of the Temporary Framework.

2.1. The nature and form of aid

(7) The measure provides aid in the form of guarantees on loans.

2.2. National legal basis

(8) The legal basis for the measure is Order of the Minister of Economy and Innovation of the Republic of Lithuania approving the scheme for the financial instrument "Portfolio Guarantee for Loans 2".

2.3. Administration of the measure

(9) The Minister of Economy and Innovation of the Republic of Lithuania is responsible for granting the measure, which will be administered by the Lithuanian national promotional institution INVEGA, through the INVEGOS Fund. INVEGA will select, subsequent to an open and transparent tender process, the credit institutions or financial institutions in charge of implementing the measure. Each credit institution or financial institution will manage a portfolio of loans granted to the final beneficiaries according to the terms and conditions of the measure.

(10) The Lithuanian authorities confirm that the mobilisation of the guarantees is contractually linked to specific conditions, which have to be agreed between the parties when the guarantee is initially granted.

2.4. Budget and duration of the measure

(11) The maximum budget announced by the Lithuanian authorities is EUR 110 million.

(12) Aid may be granted under the measure as from its approval until 31 December 2020.

2.5. Beneficiaries

(13) The final beneficiaries of the measure are all companies (small and medium-sized enterprises ("SMEs")[4] and large enterprises) operating in the Republic of Lithuania.[5] The Republic of Lithuania estimates that up to 500 undertakings will benefit from the measure.

(14) Aid may be granted under the measure only to undertakings that were not in difficulty within the meaning of the General Block Exemption Regulation ("GBER"),[6] the Agricultural Block Exemption Regulation ("ABER")[7] and the Fisheries Block Exemption Regulation ("FIBER")[8] on 31 December 2019. It may be granted to undertakings that are not in difficulty and/or to undertakings that were not in difficulty on 31 December 2019, but that faced difficulties or entered into difficulty thereafter because of the COVID-19 outbreak. Aid is granted under the measure through either credit institutions or other financial institutions as financial intermediaries.

2.6. Sectoral and regional scope of the measure

(15) The measure is open to all sectors with the exception of companies (i) carrying out purely financial activities for investment purposes (except for the development of financial technology), (ii) that consider the acquisition or the improvement of residential apartments, (iii) active in the production, processing and marketing of arms and ammunition, tobacco and tobacco products as well as distilled alcoholic beverages, (iv) carrying out gambling activities, or (v) that intend to pay out dividends, repay or grant shareholder loans or pay out part of their equity by reducing the nominal value of the shares or by other methods of share capital reduction. Moreover, financial institutions are excluded as eligible final beneficiaries.

(16) The measure applies to the whole territory of the Republic of Lithuania.

2.7. Basic elements of the measure

(17) The measure concerns a guarantee scheme for new and existing loans.

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4 Within the meaning of Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; OJ L 124, 20.5.2003, p. 36.

5 A company shall be deemed to be active in the Republic of Lithuania if it creates new jobs in the Republic of Lithuania and/or if it pays taxes or contributions to the budget of the Republic of Lithuania by the State Social Insurance Fund Board under the Ministry of Social Security and Labour.

6 As defined in Article 2(18) of the Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1.

7 Article 2(14) of the Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 193 of 1.7.2014, p.1.

8 Article 3(5) of the Commission Regulation (EU) No 1388/2014 of 16 December 2014 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 369 of 24 December 2014, p. 37.

(18) The eligible instruments will meet the following conditions:

(a) Loans can be granted until 31 December 2020.

(b) Loans may relate to both investments and working capital needs. The guarantee covers also finance leasing transactions and credit lines (hereinafter collectively referred to as "loan").

(c) The maximum guarantee coverage of each loan is up to 90%. Losses are sustained proportionally, but the guarantee shall not cover losses higher than 30% of the guaranteed portfolio volume managed by each financial institution. Thus, the total amount of guarantee payments to the financial institution is limited to the following amount: the amount of loans disbursed under the guaranteed loan portfolio multiplied by the guarantee rate (up to 90%) and the cap rate (up to 30%). Furthermore, when the size of a loan decreases over time, the guaranteed amount decreases proportionally.

(d) The amount of the loan per beneficiary shall not exceed EUR 5 million. In any event, the overall amount of loans per beneficiary shall not exceed one of the following:

- double the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the undertaking's site but formally in the payroll of subcontractors) for 2019, or for the last year available. In the case of undertakings created on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or

- 25% of the beneficiary's total turnover in 2019; or

- with appropriate justification and based on self-certification by the beneficiary of its liquidity needs, the amount of the loan may be increased to cover the liquidity needs from the moment of granting for the coming 18 months for SMEs and for the coming 12 months for large enterprises.

(e) Several loans may be granted to one beneficiary but their overall amount per beneficiary shall not exceed any of the thresholds described in point (d) of the present recital.

(f) For loans with a maturity until 31 December 2020, the amount of the loan principal may be higher than specified in point (d) of the present recital, with appropriate justification and provided that proportionality remains assured.

(g) The duration of the guarantee will match that of the loans and is limited to a maximum of six years. In particular, financing in the form of a loan may be provided for a maximum period of six years from the date of conclusion of the initial loan agreement. For existing loans, the duration of the guarantee is calculated from the date of conclusion of the contract amendment extending the payment schedule or postponing the payment of instalments. The maturity of the loan agreements may be extended, but in any event the maturity of the loan may not exceed 72 months from the date of the initial conclusion of the loan agreement or from the date of the conclusion of the amendment to the loan agreement extending the payment schedule or postponing the payment of instalments.

(h) The guarantee payment can be called in case of bankruptcy of the beneficiary or when the beneficiary fails to meet its financial obligations under the loan agreement for at least 180 calendar days (does not repay the principal amount of the loan and (or) does not pay interest).

(i) The Lithuanian authorities envisage two different options for the premiums applied to the guarantee:

- Under option 1, the Lithuanian authorities apply the minimum levels for guarantee premiums set out in point 25(a) of the Temporary Framework to a guarantee covering 90% of the loan.

- Under option 2, the Lithuanian authorities have taken advantage of the flexibility provided by point 25(b) of the Temporary Framework, whereby Member States may notify schemes, considering the table in point 25(a) as basis, but with the possibility to modulate the maturity, pricing and guarantee coverage (e.g. lower guarantee coverage offsetting a longer maturity). Hence, under Option 2, the Lithuanian authorities have notified minimum guarantee premiums that are lower than those set out in point 25(a) of the Temporary Framework in consideration that the guarantee coverage is 80%, which is lower than the maximum allowed under point 25(f) of the Temporary Framework.

(j) In light of the two alternative options notified by the Lithuanian authorities (described in point (i) of the present recital), the annual guarantee premiums will be set at a minimum level as follows:

Option	**Beneficiary**	**1st year**	**2nd and 3rd year**	**4th and 5th year**	**6th year**	**Guarantee coverage**
Option 1	SMEs	25bps	50bps	100bps	100bps	90%
	Large enterprises	50bps	100bps	200bps	200bps	
Option 2	SMEs	20bps	30bps	80bps	90bps	80%
	Large enterprises	40bps	60bps	160bps	180bps	

(k) The guarantee fees are applied either as a one-time payment instalment paid before including the loan in the guaranteed portfolio or as annual payments. The guarantee fee shall be paid to the INVEGOS Fund for each loan included in the portfolio. In the event of an extension of the maturity of the loan, the adjusted guarantee fee shall be paid. The amount of the guarantee fee shall be calculated on the basis of the maximum coverage guaranteed by the INVEGOS Fund (i.e. up to 80% or up to 90% of the loan principal as applicable) using the following formula (where M is the guarantee fee, K the amount of the loan, G the amount of the guarantee (i.e. up to 80% or up to 90% as applicable) and P is the guarantee premium in % as described in point (i) of the present recital):

$$M = K * G * P$$

(l) The guarantee fees shall be transferred to the INVEGOS Fund by each financial institution in charge of the implementation of the measure on a quarterly basis until the end of the month following the reporting period for the loan contracts included and/or modified in the portfolio. Furthermore, for pre-existing loans, the costs applied by the bank to the final beneficiary benefitting from the guarantee will have to be in line with those applied before the COVID-19 outbreak.

(19) The Lithuanian authorities confirm that they will apply a mechanism that ensures that credit institutions or financial institutions pass on the advantages of the public guarantee to the final beneficiaries to the largest extent possible. To that aim, the competent granting authority shall:

(a) give access to the measure to all credit institutions or financial institutions, thus enabling competition between them;

(b) set up a mechanism ensuring that the advantage of the guarantee is passed on to the largest extent possible to the final beneficiaries. In particular, for existing loans, the schemes approved under the national framework agreement shall require that the credit institutions or financial institutions provide to the granting authority the reporting of all transactions with the final beneficiaries, with indication of the interest rate that the financial institution would have applied without the guarantee and the interest rate applied.

2.8. Cumulation

(20) The aid ceilings and cumulation maxima fixed under the measure shall apply regardless of whether the support for the aided project is financed entirely from State resources or partly financed by the Union.

(21) The Lithuanian authorities confirmed that aid granted under section 3.2 of the Temporary Framework will be not to cumulated with other aid granted for the same underlying loan principal under section 3.3 of the Temporary Framework, and vice versa.

(22) Aid under this measure may be cumulated with other compatible aid, *de minimis* aid, provided the cumulation rules under the different *de minimis* Regulations are respected, or with other forms of Union financing provided that the maximum aid

intensities indicated in the relevant Guidelines or Block Exemptions Regulations are respected.

(23) In case aid under this measure is cumulated with other aid granted under this measure or under another measure authorised under the Temporary Framework by the same competent granting authority or by another one, the maximum aid amounts established in the Temporary Framework will be respected.

2.9. Monitoring and reporting

(24) The Lithuanian authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (*e.g.*, by 31 December 2020, a list of measures put in place on the basis of schemes approved under the Temporary Framework must be provided to the Commission; detailed records regarding the granting of aid must be maintained for 10 years upon granting of the aid, etc.).

3. ASSESSMENT

3.1. Legality of the measure

(25) By notifying the measure before putting it into effect, the Lithuanian authorities have respected their obligations under Article 108(3) TFEU.

3.2. Existence of State aid

(26) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

(27) The measure is imputable to the State, since it is administered by the Minister of the Economy and Innovation of the Republic of Lithuania. It is financed through State resources, since it is financed by public funds.

(28) The measure confers an advantage on its beneficiaries in the form of guarantees on loans. The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.

(29) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings that do not conduct activities in the excluded sectors listed in recital (15) Furthermore, credit institutions and financial institutions are not eligible borrowers.

(30) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

(31) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Lithuanian authorities do not contest that conclusion.

3.3. Compatibility

(32) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.

(33) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid "*to remedy a serious disturbance in the economy of a Member State*".

(34) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (Section 2) that "*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*". The Commission concluded that "*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*".

(35) The measure aims at facilitating the access of undertakings to external finance at a time when the normal functioning of credit markets is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States.

(36) The measure is one of a series of measures conceived at national level by the Lithuanian authorities to remedy a serious disturbance in their economy. The importance of the measure to stimulate lending by private banks to undertakings during the COVID-19 outbreak is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire Lithuanian economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid ("*Aid in the form of guarantees on loans*") described in Section 3.2 of the Temporary Framework.

(37) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular:

- The measure provides two alternative sets of minimum levels for guarantee premiums. The price structure of the measure consists of fees, calculated on an annual basis, as displayed in recital (18)(j). Under option 1, the minimum levels for the guarantee premiums comply with point 25(a) of the Temporary Framework (recital (18)(i)). Under option 2, the Republic of Lithuania - pursuant to point 25(b) of the Temporary Framework - modulated the guarantee premiums set out in point 25(a) of the Temporary Framework, in consideration that the maximum guarantee coverage from the State is lower than 90% (i.e. 80%), which is the maximum allowed under point 25(f). The Commission notes that the increased degree of risk-sharing ensures a sufficient incentive for intermediary financial institutions to assess adequately the risk of providing a loan and to determine whether the viability outlook of the final beneficiary ensures the likely repayment of the loan. Therefore, the Commission concludes that the remuneration of the guarantees envisaged by the Republic of Lithuania under option 2 complies with point 25(b) of the Temporary Framework.

- Guarantees can be granted under the measure by 31 December 2020 at the latest (recital (18)(a)). The measure therefore complies with point 25(c) of the Temporary Framework.

- For loans with a maturity beyond 31 December 2020, the maximum loan amount per beneficiary covered by guarantees granted under the measure is limited in line with point 25(d) of the Temporary Framework (recital (18)(d)). For loans with a maturity until 31 December 2020, the higher amount of the loan principal is justified appropriately and the proportionality of the aid remains assured (recital (18)(f)) in line with point 25(e) of the Temporary Framework.

- The measure limits the duration of the guarantees to maximum six years (recital (18)(g)). Those guarantees cover 90% of the loan principal and losses stemming from the loans are sustained proportionally and under the same conditions by the credit institutions and the State (recital (18)(c)). Furthermore, when the size of the loan decreases over time, the guaranteed amount decreases proportionally (recital ((18)(c)). The measure therefore complies with point 25(f) of the Temporary Framework.

- Guarantees granted under the measure relate to both investment and working capital loans (recital(18)(b)). The measure therefore complies with point 25(g) of the Temporary Framework.

- Undertakings in difficulty (situation as of 31 December 2019) within the meaning of the GBER, ABER and FIBER are excluded from benefitting from the measure (recital (14)). The measure therefore complies with point 25(h) of the Temporary Framework.

- The measure introduces safeguards in relation to the possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that these institutions, to the largest extent possible, pass on the advantages of the measure to the final beneficiaries (recital ((19)). In particular, the Commission takes into account that all commercial banks have access to the scheme, creating competition among banks. The Commission assesses positively the obligation that costs applied by the credit institutions will have to be in line with those applied before the beginning of the COVID-19 outbreak. Finally, as regards existing loans, the granting authorities will ensure the obligation for the financial intermediaries to report the amount of the interest rate that the financial institution would have applied without the guarantee and the interest rate actually applied to the final beneficiary. The measure therefore complies with points 21 to 31 of the Temporary Framework

- The Lithuanian authorities have confirmed that they will respect the monitoring and reporting rules laid down in Section 4 of the Temporary Framework (recital (24)).

- The applicable cumulation rules are respected (recitals (21)-(23)).

- Lastly, the mobilisation of the guarantees is contractually linked to specific conditions which have to be agreed between the parties when the guarantee is initially granted (recital (9)).

4. COMPLIANCE WITH INTRINSICALLY LINKED PROVISIONS OF DIRECTIVE 2014/59/EU AND REGULATION (EU) 806/2014

(38) Without prejudice to the possible application of Directive 2014/59/EU on bank recovery and resolution ("**BRRD**")[9] and of Regulation (EU) 806/2014 on the Single Resolution Mechanism ("**SRMR**"),[10] in the event that an institution benefiting from the measures meets the conditions for the application of that Directive or of that Regulation, the Commission notes that the notified measures do not appear to violate intrinsically linked provisions of BRRD and of SRMR.

(39) In particular, aid granted by Member States to non-financial undertakings as final beneficiaries under Article 107(3)(b) TFEU in line with the Temporary Framework, which is channeled through credit institutions or other financial institutions as financial intermediaries, may also constitute an indirect advantage to those institutions.[11] Nevertheless, any such indirect aid granted under the measure does not have the objective of preserving or restoring the viability, liquidity or solvency of those institutions. The objective of the measure is to remedy the liquidity shortage faced by undertakings that are not financial institutions and to ensure that the disruptions caused by the COVID-19 outbreak do not undermine the viability of such undertakings, especially of SMEs. As a result, aid granted under the measure does not qualify as extraordinary public financial support under Art. 2(1) No 28 BRRD and Art. 3(1) No 29 SRMR.

(40) Moreover, as indicated in recital (37) above, the measure introduces safeguards in relation to any possible indirect aid in favour of the credit institutions or other financial institutions to limit undue distortions to competition. Such safeguards ensure that those institutions, to the largest extent possible, pass on the advantages provided by the measure to the final beneficiaries.

(41) The Commission therefore concludes that the measure does not violate any intrinsically linked provisions of the BRRD and of SRMR.

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[9] OJ L 173, 12.6.2014, p. 190-348.

[10] OJ L 225, 30.7.2014, p. 1-90.

[11] Points 6 and 29 of the Temporary Framework.

5. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION