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*S. Velička*

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**Dėl: KOMISIJOS SPRENDIMAS (2016.2.18)**

Generalinis sekretoriatas maloniai Jūsų prašo perduoti Užsienio reikalų ministrui prie šio rašto pridedamą sprendimą.

Generalinio sekretoriaus vardu

P.O.

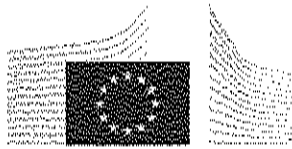
Robert ANDRECS

Priedai : **C(2016) 913 final**

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## EUROPEAN COMMISSION

Brussels, 18.02.2016  
C(2016) 913 final

**Subject: State Aid SA.42225 (2015/N) – Lithuania.**

**Regional aid scheme for the promotion of the development of strategic information and communication technology (ICT) projects on strategic ICT sites**

Sir,

### **1. PROCEDURE**

- (1) By electronic notification registered on 19 June 2015 at the Commission (SANI 2015/058436), the Lithuanian authorities notified, pursuant to Article 108(3) TFEU, the re-introduction until 31 December 2020 of a regional investment aid scheme, in the form of an exemption from payment of the electricity fee by undertakings investing on the development of technology infrastructure projects (data centres) on information and communication technology (ICT) sites. The scheme was notified for assessment under the Regional aid guidelines for the period 2014-2020 ("RAG")<sup>1</sup>. The original scheme had been approved by the Commission decision State aid No SA. 38488 of 25 June 2014<sup>2</sup>.
- (2) Additional explanation on the case was provided by the Republic of Lithuania during a telephone conference held on 29 July 2015.

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<sup>1</sup> OJ C 209, 23.7.2013, p.1.

<sup>2</sup> Commission Decision C(2014) 4096 final (OJ C 348, 3.10.2014, p.19). The Lithuanian authorities informed that the original scheme was not implemented due to the changed rules for regional aid, i.e. the adoption and enter into force on 1.7.2014 of the RAG.

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LIETUVOS RESPUBLIKA

- (3) By letters of 6 August 2015 (2015/077204), 21 October 2015 (2015/102260), 21 December 2015 (2015/142223) and 5 February 2016 (2016/014002) the Commission asked for supplementary information. Lithuania submitted the requested information by letters of 28 August 2015 (2015/084832), 16 December 2015 (2015/139846), 7 January 2016 (2016/001304) and 9 February 2016 (2016/014002).

## **2. DETAILED DESCRIPTION OF THE MEASURE**

### **2.1. Objective of the aid scheme**

- (4) The measure aims at promoting regional development and employment by facilitating the establishment of data centres providing high-value data processing and hosting services which would result in job creation.
- (5) The Lithuanian authorities informed that the measure is sectoral as the aid will be granted for initial investment in the ICT/data processing and hosting technologies sector only (NACE Code 63.11- data processing, web servers (hosting) and related activities )<sup>3</sup>.
- (6) Lithuania is an assisted area under Article 107(3)(a) TFEU in accordance with the Regional Aid Map for the period 2014-2020<sup>4</sup>. The maximum aid intensity for large undertakings is 25% gross grant equivalent (GGE).

### **2.2. Legal basis**

- (7) The national legal basis for the scheme is the following:
- a) Law on Investment of the Republic of Lithuania (1999, Official Gazette No 66-2127), hereinafter the "Law on Investment", Articles 2 and 13 as amended by the Law on Supplementing Articles 2 and 13 of the Law on Investment (2013, Official Gazette No 54-2688);
  - b) Resolution No 1216 of the Government of the Republic of Lithuania on Amendment of Resolution No 916 of 18 July 2012: "On the Approval of the Description of the Procedure for the Provision of Services in the Electric Power Industry" (2013, Official Gazette No 133-6789) supplemented with the Article 21 of the Resolution 916 (2012, Official Gazette No 88-4609).
  - c) Resolution No 986 of the Government of the Republic of Lithuania of 17 September 2014: "On the Approval of a Programme Concerning the Promotion of Investment and Development of Industry in 2014-2020", hereinafter the "Programme".
  - d) The draft version of the Order of the Ministry of Economy of the Republic of Lithuania "On the Approval of the Description of the Procedure for Granting

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<sup>3</sup> Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community, OJ L 293, 24.10.1990, p.1 as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p.1) and by Regulation (EC) No 1893/2006 of the European Parliament and of the Council (OJ L 393, 30.12.2006, p.1).

<sup>4</sup> State aid No. SA. 38510 (2014/N), Commission Decision C(2014) 3155 final (OJ C 280, 22.8.2014, p. 25).

State Aid in Strategic Technology Development Sites", hereinafter the "Draft Order".

### 2.3. The nature and form of the aid

- (8) According to the Lithuanian authorities, the aid is to promote initial investment in data processing, provision of Internet server services (hosting), or related activities carried out at strategic ICT sites in the region concerned<sup>5</sup>.
- (9) The aid is granted in the form of an exemption from payment of part of the electricity bill (the "public interest service fee")<sup>6</sup>, i.e. the fee intended for public services for the portion of electric power consumed by investors that carry out data processing, provide Internet server services (hosting), or engage in related activities on strategic ICT sites<sup>7</sup>, and with which the Government of the Republic of Lithuania has concluded an investment agreement. In general, the "public interest service fee" is collected<sup>8</sup> from electric energy consumers and producers which use electricity for themselves, subject to the actually consumed quantity of electricity<sup>9</sup>.

### 2.4. Beneficiaries

- (10) The beneficiaries of the scheme are both large undertakings and small and medium-sized enterprises ("SMEs") as defined in the Commission Recommendation of 6 May 2003<sup>10</sup> who carry out data processing, web server

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<sup>5</sup> Paragraph 11 of the Draft Order.

<sup>6</sup> The amount of the public interest service fee is determined for every calendar year by Order of the State Control Commission for Price and Energy (hereinafter "the CPE") in accordance to Item 1 of Part 1 of Article 5 of the Law on Energy No IX-884 of 16 May 2002 (as further amended) and Article 74 of the Law on Electricity No VIII-1881 of 20 July 2000 (as further amended). The model developed by Lithuanian authorities uses the public interest service fee equal to 0.0181 EUR/kWh, which is the average fee for 2010-2015. The same calculations use the price of electricity in Lithuania equal to 0.0986 EUR/kWh (source Eurostat, 2014 S1 data). Thus, the public interest service fee amounts to 18% of the electricity price. The percentage remains the same for the whole period of duration of the measure.

<sup>7</sup> Pursuant to Article 2(18) of Law on Investment of the Republic of Lithuania (1999), a "strategic ICT site" means a territory where the electric power supply has especially reliability, which by resolution of the Government of the Republic of Lithuania is recognised to be a strategic object of technological development on the basis of the following criteria: (1) the reliability of the electric energy supply is ensured by the supply of electricity from not less than three independent power sources in the 110-kV power transmission network, and (2) within the territory the potential data processing, provision of the Internet server services (hosting), and related activities can be realised.

<sup>8</sup> The collection of the public interest service fee is regulated by Resolution of the Government No. 1157 of 18 September 2012 (as further amended) "Regarding approval of the description of the procedure for the administration of the levy of public interest services in the sector of electric energy". These regulatory provisions determine that the public interest service fee is paid directly to the operator of electricity networks. The public interest service fee is collected by electricity network operators, which then transfer it to the public service interest administrator. The collection of the public interest service fee may be performed either directly by electricity network operators invoicing the end buyer or through electricity suppliers (either independent suppliers, if they provide collection services, or public suppliers).

<sup>9</sup> Clause 19 of the Resolution of the Government of the Republic of Lithuania No 916 of 18 July 2012 (as further amended) "Regarding approval of the description of the procedure for the provision of public interest services in the sector of electricity energy".

<sup>10</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, OJ L 124, 20.05.2003, p. 36.

services (hosting) and related activities on strategic technology development sites, and who have signed an investment agreement with the Government of the Republic of Lithuania in accordance with the procedure laid down by the Civil Code and whose investment project meets all the requirements set in the RAG.

- (11) Lithuania expects that the number of beneficiaries would be in the range between 1 and 10.
- (12) The scheme will not apply to undertakings that are in difficulty in the meaning of the 2014 Guidelines on rescuing and restructuring aid<sup>11</sup>. The Lithuania authorities committed to suspend the payment of any aid under the notified aid scheme to any undertaking that has benefited from earlier unlawful aid declared incompatible with the internal market by a previous Commission decision.

## **2.5. Eligible projects**

- (13) Under the scheme the only projects eligible are those which qualify as initial investment in the meaning of recital 20(h) of the RAG taking the form of setting-up a new establishment (i.e. data centres located at strategic ICT sites).
- (14) Under the scheme the acquired tangible and intangible assets forming part of the initial investment must be new, except for cases where the assets are acquired by small or medium-sized enterprises<sup>12</sup>.

## **2.6. Eligible expenditure**

- (15) Where the eligible expenditure relates to tangible assets, the value of the investment is established as a percentage of the total costs on the basis of land, buildings and plant, machinery (cooling system, water supply system) and equipment (such as diesel generator set, servers, electronic components and electric cables)<sup>13</sup>.
- (16) Costs of preparatory studies or consultancy costs linked to the investment are not considered as eligible costs. In case of SMEs, up to 50% of eligible investment project costs related to preparatory studies and consultancy may also be deemed eligible expenditure<sup>14</sup>.
- (17) In case of leasing of machinery or plant/equipment, the lease must take the form of financial leasing and must contain an obligation for the beneficiary of the aid to purchase the asset at the expiry of the term of the lease<sup>15</sup>.
- (18) Lithuania has confirmed that in cases involving the lease of tangible assets concerning land and buildings, the lease must continue for at least three years for

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<sup>11</sup> Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, OJ C 249, 31.7.2014, p.1.

<sup>12</sup> Sub-paragraph 17.4 of the Draft Order.

<sup>13</sup> Paragraph 14 of the Draft Order.

<sup>14</sup> Sub-paragraph 17.4 *in fine* of the Draft Order.

<sup>15</sup> Sub-paragraph 17.1.2 of the Draft Order.

SMEs and for at least five years for large undertakings following the completion of the investment<sup>16</sup>.

- (19) Where the eligible expenditure under the scheme relates to intangible assets, the value of the investment shall be established on the basis of expenditure entailed by the transfer of technology through the acquisition of patent rights, licenses, know-how or unpatented technical knowledge<sup>17</sup>.
- (20) Under the scheme, for large undertakings, the costs of intangible assets forming part of an initial investment shall not exceed 50% of the total eligible costs for the project. In the case of SMEs, all costs related to intangible assets are taken into consideration<sup>18</sup>.
- (21) Intangible assets are eligible for the calculation of investment costs if they fulfil the following conditions<sup>19</sup>:
  - (a) they must be used exclusively in the establishment receiving the aid;
  - (b) they must be amortisable;
  - (c) they must be purchased under market conditions from third parties unrelated to the buyer; and
  - (d) they must be included in the assets of the undertaking receiving the aid and must remain associated with the project for which the aid is granted for at least three years for SMEs and five years for large undertakings.

## **2.7. Administration of the scheme**

- (22) The scheme will be operated by the Lithuanian Ministry of Economy. The Lithuanian Investment Promotion Agency ("Invest Lithuania")<sup>20</sup> will evaluate aid applications<sup>21</sup>, verify that all conditions set out in the description of the procedure for providing regional investment state aid for data centres are respected<sup>22</sup> and issue aid granting acts.

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<sup>16</sup> Sub-paragraph 17.1.1 of the Draft Order.

<sup>17</sup> Paragraph 14 of the Draft Order.

<sup>18</sup> Sub-paragraph 17.3 of the Draft Order.

<sup>19</sup> Sub-paragraph 17.2 of the Draft Order.

<sup>20</sup> The Invest Lithuania is an investment promotion agency whose main objective is to attract foreign investment: <http://www.investlithuania.com/>.

<sup>21</sup> In accordance with paragraph 26 of the Draft Order, the investment project shall be recognised as eligible for financing where the criteria of conformity is assessed positively in line with the goals set out in the regional development strategy for investment promotion and industrial development approved by the "Programme" and where the investment project scores at least 52 points during the expertise assessment ('formal scoring approach'). The criteria for assessment of the benefit and quality of the investment project are listed in Annex 3 of the Draft Order.

<sup>22</sup> In line with recital 39 of the RAG, the check compliance carry out by the granting authority verifies the existence of an environmental impact assessment (when required) and ensure all relevant permits (cf. Annex 2, section 10 of the Draft Order).

## **2.8. Budget and duration of the notified scheme**

- (23) The aid scheme is exclusively financed from national public resources. The overall maximum budget foreseen under the scheme in the period until 2020 is EUR 220.51 million.
- (24) The scheme enters into effect after its approval by the European Commission. The notification covers only the period until 31 December 2016.
- (25) The Lithuanian authorities confirmed that the aid under the scheme shall be awarded to potential beneficiaries not later than the expiration of the RAG, i.e. investment agreements will be concluded by 31 December 2020.

## **2.9. Mechanism of granting aid under the scheme**

- (26) The aid under the notified scheme will be granted on a discretionary basis, following a decision of the national authorities.

## **2.10. Own contribution**

- (27) The beneficiary is obliged to participate with an own contribution of at least 25% of the eligible costs in accordance with recital 38 of the RAG.

## **2.11. Incentive effect**

- (28) In order for the incentive effect to be fulfilled, the beneficiary will have to submit a written application for aid before starting the works. Following a confirmation that the aid has incentive effect<sup>23</sup> as per recital 61 of the RAG, that the aid does not lead to the manifest negative effects laid down in recital 121 of the RAG, and that all other compatibility conditions listed in the Draft Order are respected, Invest Lithuania and the Ministry of Economy will coordinate the draft agreement on the investment which shall then be submitted for approval to the Government of the Republic of Lithuania<sup>24</sup>.
- (29) Furthermore, the Lithuanian authorities committed to ensure that individual aid granted to large undertakings under the notified scheme will be limited to the minimum on the basis of a net extra cost approach, with regards to the implementation of such investments in Lithuania due the higher prices of electricity.

## **2.12. Maintenance of the investment for a minimum period after its completion**

- (30) According to the legal basis of the aid scheme, the aid beneficiary will have to maintain the investment in the Republic of Lithuania for a minimum period of three years for SMEs and of five years for large undertakings after its completion<sup>25</sup>.

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<sup>23</sup> In accordance with paragraphs 21 and 22 of the Draft Order, large undertakings are subject to the presentation of a 'business plan' supporting the counterfactual described in the application form.

<sup>24</sup> Paragraph 27 of the Draft Order.

<sup>25</sup> Paragraph 20 of the Draft Order.



### 2.13. Aid intensity ceiling and cumulation

- (31) The aid is calculated as a percentage of the investment's eligible costs and will not exceed the applicable regional aid ceiling.
- (32) The maximum allowed aid intensity established by the scheme is 25% GGE in the meaning of recital 20(m) of the RAG. Therefore, the exemption from payment of the public interest fee must not exceed 25% of the present value of the tangible and intangible assets forming part of the initial investment, determined at the time of award of the aid on the basis of the reference rate set by the European Commission and applicable on that date. In case of aid awarded to SMEs, the aid ceilings may be increased as provided for in recital 177 of the RAG, with exception of aid to be awarded for large investment projects.
- (33) The scheme does not exclude the possibility of cumulating the aid awarded under this scheme with aid from other sources to cover the same eligible costs. Lithuania has confirmed that cumulation of aid is subject to the condition that the allowable aid intensities are in line with those foreseen in the Lithuanian Regional Aid Map for 2014-2020, taking into account all sources of public support. The aid application will require the applicant to provide the information needed to ensure that the aid granting authority will be able to enforce the cumulation rules effectively<sup>26</sup>. Lithuania confirmed that mechanisms will be put in place in order to ensure that the cumulation rules are respected.
- (34) The Lithuanian authorities further confirmed that the beneficiary shall provide to the granting authority all necessary data regarding the aid already received for the project in the last 3 years in the same NUTS 3 area and where the investment will be located, as well as declaration specifying regional aid and the *de minimis* aid received or to be received for the same project by other granting authorities<sup>27</sup>. As from 1 August 2015, a State aid Registry for granted aid and *de minimis* aid have been put into place gathering detailed information on the amounts received by the beneficiary<sup>28</sup>.
- (35) In case the notification obligation does not apply (i.e. for investments projects with eligible costs above EUR 50 million but below EUR 100 million), the exemption from payment of the public interest service fee may be granted to a beneficiary under the scheme only if the adjusted regional aid ceiling for a large investment project is complied with as laid down in the Decision of the European Commission approving the Lithuanian regional aid map for 2014-2020<sup>29</sup>.
- (36) Lithuania confirmed that where the aid is awarded to a beneficiary for an investment that is considered to be part of a single investment project at group level (as per recital 20(t) of the RAG), the aid must be scaled down for the eligible costs exceeding EUR 50 million.

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<sup>26</sup> Sub-section 7 of the Annex 1 of the Draft Order.

<sup>27</sup> The information to be provided by the beneficiaries to the Ministry of the Economy covers the following data: (a) Status of the undertaking (SME or large undertaking), (b) State aid amount and (c) State aid intensity.

<sup>28</sup> Resolution of the Government of the Republic of Lithuania No 592 of 9 June 2015 "On the Establishment of the Registry for Granted State Aid and *de minimis* Aid".

<sup>29</sup> Recital 12 (c) of Commission decision of 21.5.2014 (State aid No. SA.38510 (2014/N)).

#### **2.14. Definition of large investment project and individual notification requirement**

- (37) In accordance with recital 20(1) of the RAG under the scheme a 'large investment project' is defined as initial investment with an eligible expenditure above EUR 50 million.
- (38) According to paragraph 14 of the Draft Order, in the cases where the exemption from the payment of the public interest service fee is granted for a large investment project which has received aid (at group level<sup>30</sup>) exceeding EUR 18.75 million for an initial investment carried out in Lithuania, the aid may be granted for the relevant year only if a decision authorising it by the European Commission has been received following a notification procedure provided for in Article 108(3) TFEU.

#### **2.15. Monitoring**

- (39) The Lithuanian authorities agreed to submit a yearly report to the Commission on the application of the notified scheme.
- (40) In addition, the Lithuanian authorities agreed to send to the Commission information on each individual aid exceeding EUR 3 million granted under the scheme, in the format laid down in Annex VI of the RAG, within twenty working days from the day on which the aid is granted.
- (41) Finally, the Lithuanian authorities agreed to maintain, for at least 10 years from the date of award of any aid under the scheme, detailed records containing the information and supporting documentation necessary to establish that all compatibility conditions are met, and that these records will be provided to the Commission upon request.

#### **2.16. Evaluation**

- (42) Lithuania committed to carry out an ex post evaluation of the aid scheme as set out in recital 144 of the RAG. The evaluation will be submitted to the Commission in sufficient time to allow the Commission to adopt a decision before 1 January 2017 approving the prolongation of the notified aid scheme until 31 December 2020.

#### **2.17. Contribution of the sectoral aid scheme to regional development**

- (43) The Lithuanian authorities explained that the promotion of ICT projects is in line with the Government's strategic aim, in particular:
- (a) The National Progress Programme (NPP) for the period 2014-2020 adopted by the Government Resolution No 1482 of 28 November 2012, which establishes an objective to create an advanced and secure information and communication technology (ICT) infrastructure and solutions available for all

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<sup>30</sup> Activities carried out at a group level are defined in relation to the notion of 'control'.

inhabitants of Lithuania as well as to promote development and usage of such infrastructure by business<sup>31</sup>.

- (b) The Investment Promotion and Industry Development Programme for 2014-2020 approved by the Government Resolution No. 986 of 17 September 2014 'On the Approval of a Programme Concerning the Promotion of Investment and Development Industry in 2014-2020' which establishes the goal to attract investments with particular focus on the data centres.
  - (c) The Lithuania's Digital Agenda adopted by the Government Resolution No 244 of 12 March 2014<sup>32</sup>.
- (44) The aid scheme will complement and contribute to the achievement of the broader development strategy agreed with the European Commission for the 2014-2020 programming period in the context of the Partnership Agreement for Lithuania<sup>33</sup> and with the Operational Programme for the European Union Fund's Investments in 2014-2020<sup>34</sup>, as attracting initial high value added investments under the measure would result in job creation, increase the demand for employees with an education in IT and related technical specialities and would allow the retention of such specialists in Lithuania.
- (45) Moreover, investments into ICT/data processing and hosting technologies would accelerate the establishment of supporting companies in the region which would enhance sustainable economic development and contribute to a long term competitiveness of the Lithuanian economy and a further reduction in regional disparities. At the same time the relevant investors would most likely bring the newest technologies, which would facilitate a move by local companies and partners to become more effective, to modernise their products and to improve their services.
- (46) Investments and development of data processing and hosting technologies would foster the elimination of regional differences between Lithuania and other regions, due in particular to the relative absence of good optic fibre networks connecting Lithuania with neighbouring countries, latency issues and the lack of a tradition of investing into the ICT sector and especially into data processing and hosting technologies in Lithuania<sup>35</sup>.
- (47) Increased investments into ICT / data processing and hosting technologies would improve these indicators: new optic networks and connection to the main hubs are expected (e.g. Frankfurt). This would allow users of data transfer services to

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<sup>31</sup> The NPP reflects the main provisions of the Europe 2020 strategy – Communication from the Commission of 3 October 2010 – Europe 2020 – A Strategy for smart, sustainable and inclusive growth [COM (210) 2020 final – Not published in the Official Journal of the European Union (OJEU).

<sup>32</sup> The Lithuania Agenda's objectives largely reflect the the EU's Digital Agenda targets, namely complete 30 Mbps coverage and 50% 100 Mbps coverage by 2020.

<sup>33</sup> [http://ec.europa.eu/contracts\\_grants/pa/partnership-agreement-lithuania-summary\\_en.pdf](http://ec.europa.eu/contracts_grants/pa/partnership-agreement-lithuania-summary_en.pdf)

<sup>34</sup> Operational programme for the European Union Funds' Investments in 2014-2020 (CCI number: 2014LT16MAOP001).

<sup>35</sup> Comparing to other EU countries, Lithuania is lagging behind with investment into data processing, hosting and related activities sector. Investment per person employed in information and communication sector and specifically in data processing, hosting and related activities sector is equal to EUR 5.0 thousand and EUR 2.2 thousand respectively.

choose routes, ensure a higher speed of data transfer and considerably improve Lithuania's connectivity to the European fibre optic infrastructure, and these fibre infrastructure improvements would attract other potential investors to consider the region for investments into the same and similar fields.

- (48) Potential investments into ICT / data processing and hosting technologies are deterred by the high price for electricity in Lithuania<sup>36</sup>, which makes initial investments into ICT / data processing and hosting technologies less attractive than compared with the same investments in many other European regions<sup>37</sup>.
- (49) The Lithuanian authorities indicated that the aid will be limited to the minimum amount needed to achieve the aim of the notified scheme, and that the aid intensity might therefore be much lower than 25% of the gross grant equivalent. The scheme operates such that only the difference between the net present value of the investment in Lithuania with the net present value in an alternative location will be authorised as aid.
- (50) According to the Lithuanian authorities, the notified scheme will result in job creation (it is estimated that the measure would create an average of 305 direct jobs and 243 additional indirect jobs per year over a period of 12 years), increasing the demand for employees who have an education in IT and related technical specialities, and allowing for the retention of such specialists in Lithuania, which would contribute greatly to the development of that sector.

### **3. ASSESSMENT OF THE MEASURE**

#### **3.1. Legality of the measure**

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

#### **3.2. Existence of State aid**

- (52) According to the proposed aid measure, the aid in the form of an exemption from payment of a part of the electricity bill (the public interest service fee) will be awarded to undertakings carrying out investment projects on data processing, web servers (hosting) and related activities in technological development sites and who have signed investment agreements with the Government of the Republic of Lithuania.
- (53) The aid will be provided by public authorities through State resources (revenue foregone for the State) within the meaning of Article 107(1) TFEU as the public service interest fee is collected by electricity network operators (from electric energy consumers and producers which use the electricity for themselves, subject

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<sup>36</sup> The price of electricity in Lithuania is one of the highest in Europe. In the first semester of 2014 the price of electricity in Lithuania was equal to 0.986 EUR/kWh, whereas the average price of the electricity in the 28 European Union Member States was only 0.0754 EUR/KWh (source: Eurostat, 2014 S1: <http://epn.eurostat.ec.europa.eu/>). In addition, energy consumption accounts for over 80% of the total operating expenditure of the data centres.

<sup>37</sup> Nordic countries, United Kingdom, Germany, Iceland and Ireland (source: Data Centre Risk Index, 2013 - <http://www.cushmanwakefield.com/~media/global-reports/data-centre-risk-index-2013.pdf>).

to the actually consumed quantity of electricity) which then transfer the fee to the State.

- (54) The aid foreseen under this scheme constitutes an economic advantage because it allows the beneficiaries to reduce the investment costs that they should normally bear in order to develop this type of projects. It may therefore distort or threaten to distort competition by favouring certain undertakings which receive aid under the scheme over the ones which are not its beneficiaries. As this aid scheme supports investments in one particular sector of the economy, there is also a risk of distortion of competition on a sectoral level, as sectors excluded from the scheme are disadvantaged compared to the sector targeted by the scheme.
- (55) The measure is selective because it applies only to specific categories of undertakings<sup>38</sup> carrying out initial investments in Lithuania in the ICT/data processing and hosting technologies sector. Furthermore, the State has a discretionary power in selecting projects and awarding aid under the scheme.
- (56) In view of the fact that the scheme concerns a sector and undertakings involved in trade between Member States, there is a risk that the aid could affect that trade.
- (57) In light of the foregoing, the Commission considers that the notified measure constitutes State aid within the meaning of Article 107(1) TFEU. The Lithuanian authorities do not contest that conclusion.

### **3.3. Compatibility of the scheme**

- (58) The Lithuanian authorities have indicated that the primary objective of the scheme is to promote regional development and have therefore notified the scheme under the RAG. Having established that the measure involves State aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether it can be found compatible with the internal market. The Commission has examined the measure in the light of Article 107(3) (a) TFEU and in the light of the RAG.
- (59) To assess whether a notified aid measure can be considered compatible with the internal market, the Commission generally analyses whether the design of the aid measure ensures that the positive impact of the aid towards an objective of common interest exceeds its potential negative effects on trade and competition. To that end, the Commission assesses the scheme on the basis of the common assessment principles set out in sections 3.2 to 3.8 of the RAG:

#### ***a) Contribution to regional objective and need for State intervention***

- (60) According to recitals 31 and 33 of the RAG, regional aid schemes should form an integral part of a regional development strategy with clearly defined objectives and should be consistent with and contribute towards those objectives. For aid measures outside an operational programme financed from the cohesion policy funds, Member States can demonstrate that the measure contributes to the objectives of a regional development strategy based on evaluations of past State aid schemes, impact assessments made by the granting authorities or expert opinions.

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<sup>38</sup> Cf. section 2.4 above.

- (61) The notified aid scheme is confined to one area of activity, i.e. the beneficiaries of the aid are investors who carry out data processing, web servers (hosting) and related activities in technological development sites. As regards the need for these investment projects and their contribution to regional development, the Commission notes that the aid scheme contributes to the achievement of the strategic aim of the Investment Promotion and Industry Development Programme for 2014-2020 approved by the Government Resolution No 986, which is a policy initiative addressed mainly to attract investments and increase competitiveness with particular focus on data centres, shared services, manufacturing etc., improving connectivity to the European optic fibre infrastructure and attracting other potential investors.
- (62) The aid scheme also contributes to the achievement of the goals of the Digital Agenda for Europe<sup>39</sup>, in the framework of the Europe 2020 strategy, notably for Pillar I Digital Single Market and Pillar IV Fast and ultra-fast internet access.
- (63) The Commission notes that the European Structural Investment Funds (ESIF) normally do not cofinance fiscal or para-fiscal aid measures, such as the exemption of the public interest service fee. Furthermore, the notified measure is targeting all sizes of undertakings, whereas ESIF operations target SMEs only. Therefore, the notified scheme could not be co-financed under one of the ESIF operational programmes for the period 2014-2020, and this in spite of the fact that the aid scheme positively contributes to one of the pivotal objectives of the broader development strategy agreed with the Commission for the 2014-2020 programming period<sup>40</sup> (i.e. more rapid smart growth, sustainable economic development and to enhance long-term competitiveness of the Lithuanian economy and a further reduction in regional disparities).
- (64) The Lithuanian authorities provided a study demonstrating that the measure aims to boost the overall economic activity and social development in Lithuania, and in particular to stimulate additional data centre investments, to reduce unemployment and to improve business climate in the most disadvantaged territory in which a data centre would be located. In order to demonstrate the aid scheme's advantages to regional development, the Lithuanian authorities developed an analytical grid which measures the data centre's impact in terms of six factors: (a) capital investment, (b) employment, (c) emergence of IT ecosystem, (d) infrastructure development, (e) publicity for the region, and (f) knowledge base (raising ICT-trained workforce).
- (65) Based on the experience of the Lithuanian authorities dealing with companies looking for the location of a data centre, the main factors that may affect the data-centre's site location are: (1) availability, reliability, and cost of electricity, (2) telecommunication infrastructure, geographic location for a data centre in terms of (3) security and (4) climate and (5) logistics infrastructure. Lithuania scores well on all of the above listed criterion, except on the cost of electricity which is among the highest in Europe<sup>41</sup>. This makes initial investment into ICT/data

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<sup>39</sup> Communication from the Commission of 19 May 2010 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A Digital Agenda for Europe [COM (2010) 245 final – not published in the Official Journal of the European Union]

<sup>40</sup> Operational programme for the European Union Funds' Investments in 2014-2020.

<sup>41</sup> See recital 49 and footnote 40 above.

processing and hosting technologies less attractive than compared with the same investments in many other European regions.

- (66) The aid scheme includes a system in which the granting authority prioritises and selects the investment projects according to the objectives of the scheme on the basis of a formal scoring approach<sup>42</sup>.
- (67) In view of above, the Commission considers that this is consistent and contributes towards the development strategy of Lithuania as an assisted area.
- (68) Pursuant to recital 35 of the RAG, when awarding aid to individual investment projects on the basis of a scheme, the granting authority must confirm that the selected project will contribute towards the objective of the scheme and thus towards the development strategy of the area concerned.
- (69) In that context, the Lithuanian authorities confirmed that they will request applicants to provide relevant information in the application proceeding allowing the granting authority to select the projects whose will contribute mostly towards the objective of the scheme and thus towards the development strategy of the region concerned. In this regard the aid application that each applicant has to submit through an application form will facilitate the verification from the granting authority of the positive effects of the investment for the economic development of Lithuania, otherwise the investment agreement with the Government of the Republic of the Lithuania would not be concluded.
- (70) To ensure that the investment makes a real and sustained contribution to the development of the area concerned, the investment must be maintained in the area concerned for at least five years, or three years for SMEs after its completion<sup>43</sup>.
- (71) To ensure that the investment is viable, the Member State must ensure that the beneficiary provides a financial contribution of at least 25% of the eligible costs through its own resources or by external financing, in a form that is exempt of any public financial support<sup>44</sup>.
- (72) To avoid that State aid measures would lead to environmental harm, Lithuania committed to ensure compliance with Union environmental legislation, including the need to carry out an environmental impact assessment and to obtain all relevant permits<sup>45</sup>.

#### ***b) Appropriateness of the scheme***

- (73) According to section 3.4 of the RAG, the notified aid measure must be an appropriate policy instrument to address the policy objective concerned. When introducing a scheme outside an operational programme financed from the cohesion policy funds, Member States must indicate why regional aid is an appropriate instrument to tackle the common objective of equity or cohesion.

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<sup>42</sup> Cf. section 2.7 above.

<sup>43</sup> The assets that are part of the assisted investment must remain in the area concerned for at least five years after completion of the investment project, unless they are replaced by items of equal or higher value. The replaced assets are not again eligible for aid.

<sup>44</sup> The notified scheme complies with this requirement (see Section 2.10 above).

<sup>45</sup> See section 2.7 above, in particular, footnote 22.

- (74) As mentioned in recital 67 above, the main handicap of Lithuania as a location for data centres is the relatively high price of electricity, which is an important location factor for investment in this sector. The measure will directly remedy the competition distortion as the aid takes the form of an exemption from payment of the public interest service fee.
- (75) In view of above, the Commission accepts that the measure is an appropriate instrument to achieve the regional development objective in the region concerned.

*c) Incentive effect*

- (76) According to section 3.5 of the RAG, regional aid can only be found compatible with the internal market if it has an incentive effect. An incentive effect is present when the aid changes the behaviour of an undertaking in a way that it engages in additional activity contributing to the development of an area which it would not have engaged in without the aid or would only have engaged in such activity in a restricted or different manner or in another location. The aid must not subsidise the costs of an activity that an undertaking would have incurred in any event and must not compensate for the normal business risk of an economic activity.
- (77) Works on an individual investment can start only after submitting the application form for aid.
- (78) Member States must introduce a standard application form for aid annexed to the RAG. In the application form, SMEs and large undertakings must explain counterfactually what would have happened had they not received the aid, indicating which of the scenarios described in recital 61 of the RAG applies. Large undertakings must submit documentary evidence in support of the counterfactual described in the application form, whereas SMEs are not subject to such obligation.
- (79) The Lithuanian authorities committed to carry out a credibility check of the counterfactual and confirm that regional aid has the required incentive effect. A counterfactual is credible if it is genuine and relates to the decision-making factors prevalent at the time of the decision by the beneficiary regarding the investment.

*d) Proportionality of the scheme*

- (80) According to section 3.6 of the RAG the aid amount must be limited to the minimum needed to induce the additional investment or activity in the area concerned.
- (81) Pursuant to recital 82 of the RAG, in case of schemes applicable to SMEs the maximum aid intensities from the regional aid map serve as safe harbours. As long as they are not exceeded the criterion "aid limited to the minimum" is deemed to be fulfilled and therefore the aid is proportional.
- (82) The Lithuanian authorities committed that, for aid to SMEs, increased intensities will be applied, except for aid awarded to large investment projects in line with the Lithuanian Regional Aid Map for the period of 2014-2020<sup>46</sup>.

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<sup>46</sup> Recitals 10 and 11 (State aid No SA. 38510(2014/N))



- (83) The aid granted to large undertakings under the scheme will be awarded on the basis of the "net-extra cost approach", calculated in accordance with recitals 79-80 of the RAG. The maximum aid intensities allowed as per the applicable regional aid map are used as a cap to the net-extra cost approach.
- (84) Lithuania further confirmed that it would respect the applicable regional aid ceiling, where appropriate taking into account any combination with other regional investment aid, as established in the regional aid map for the period 2014-2020.
- (85) The Commission notes that the aid granted under the measure complies with the requirements on eligible costs as defined in recitals 94 to 102 of the RAG<sup>47</sup>.
- (86) In view of above, the aid is considered to be limited to the minimum.

*e) Avoidance of undue negative effects*

- (87) For the aid to be compatible, according to section 3.7 of the RAG, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States must be limited and outweighed by the positive effects in terms of contribution to the objective of common interest.
- (88) Pursuant to recital 115 of the RAG, aid may also have distortive effects in terms of increasing or maintaining substantial market power on the part of the beneficiary, and even where aid does not strengthen substantial market power directly, it may do so indirectly, by discouraging the expansion of existing competitors or inducing their exit or discouraging the entry of new competitors.
- (89) In line with the requirement set out in recital 120 of the RAG, the Commission notes, according to a study provided by the Lithuanian authorities, that the measure is addressed at undertakings operating in a global market (i.e. the data-centre market), which will continue to increase, with more than 60 new large data centres expected to be established in Western Europe by 2020<sup>48</sup>.
- (90) The Commission notes that the aid granted under the measure is designed to remedy a very specific handicap of the Lithuanian economy, which undermines its attractiveness for investments in data-centres, i.e. its electricity price, which is significantly higher than the average of the 28 EU Member States. The nature and size of the aid is therefore designed to address a specific competitive disadvantage of the country for this specific sector. The measure is limited to the amount necessary to compensate for the additional cost of investing in Lithuania as compared to a counter-factual investment elsewhere. Moreover, data submitted by Lithuania show that the measure will have only a marginal impact on the geographical distribution of activities in the sector in the EU, as the Lithuania's market share in terms of ICT/data processing and hosting technologies sector is

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<sup>47</sup> See recitals 15 to 21 above.

<sup>48</sup> Digital infrastructure and Economic development – an impact assessment of facebook's data center in Norther Sweden, The Boston Consulting Group, June 2014, p. 24 and 25. The Lithuanian authorities estimate to attract with the measure 9 new data centres (1x25 MW capacity data center and 8x12,5 MW capacity data centres).

insignificant. In 2013, Lithuanian market share was equal to 0.2% of the EU 28 market in terms of turnover under the NACE Code 63.11 Data processing, hosting and related activities<sup>49</sup>. In addition, the Lithuanian authorities estimate that, as a result of the measure, Lithuania will attract only a relatively small share of the expected increase in the capacity of the sector, which would result in a relatively small increase in Lithuania's market share in the sector (namely from 0.2% in 2012 to some 0.8% by 2020).

- (91) Pursuant to recital 116 of the RAG, where one area attracts an investment due to the aid, another area loses out on that opportunity. These negative effects in the areas adversely affected by aid may be felt through lost economy activity and lost jobs including those at the level of subcontractors.
- (92) In line with the requirement from recitals 121 and 126 of the RAG, the Commission notes that the aid scheme is applicable in Lithuania, which whole territory qualifies as an assisted region on the basis of the derogation in Article 107(3)(a) of the TFEU. Furthermore, the Commission notes that when awarding aid under the scheme to individual projects, the granting authority will verify and confirm that without aid the investment would not have been located in a region with a regional aid intensity which is higher or the same as the target region.
- (93) As required by recital 122 of the RAG, the Commission notes that when awarding aid under the scheme to individual projects, the granting authority will notify individual aid grants in cases where the beneficiary has closed down the same or similar activity in another area in the EEA two years preceding the date of applying for aid or at the moment of the aid application has the intention to close down such an activity within a period of two years after the investment to be subsidised is completed. This requirement also refers to activities carried out at group level<sup>50</sup>.
- (94) In line with recital 123 of the RAG, the Lithuanian authorities have provided all necessary information to conclude that the aid will not encourage relocation of data centres from other Member States to Lithuania as the lower electricity price due to the exemption from payment of the public interest service fee will still be higher than in other countries (e.g. Nordic countries) and it will only put Lithuania to a similar market position with other countries and it will grant to Lithuania a mere possibility together with other countries to be considered in a short list of potential investment locations for data centres.
- (95) In the light of the foregoing, the Commission notes that Lithuania has demonstrated that the negative effects will be limited to the minimum and that the measure yields significant positive effects, while potential distortions of competition and trade remain limited.

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<sup>49</sup> Eurostat data and article "Take-up of cloud storage in Europe affected by privacy issues" (<http://www.computerweekly.com/feature/Take-up-of-cloud-storage-in-Europe-affected-by-privacy-issues>).

<sup>50</sup> Paragraph 8 of the Draft Order.

#### *f) Transparency*

- (96) In view of recital II.2 of the Transparency Communication from the Commission<sup>51</sup>, Member States must ensure the publication on a comprehensive State aid website, at national or regional level, of a full text of the approved aid scheme or the individual aid granting decision and its implementing provisions, or a link to it; the identity of the granting authority or authorities; the identity of the individual beneficiaries, the form and amount of aid granted to each beneficiary, the date of granting, the type of undertaking (SME/large undertaking), the region in which the beneficiary is located (at NUTS level II) and the principal economic sector in which the beneficiary has its activities (at NACE group level). Such a requirement can be waived with respect to individual aid awards below EUR 500,000. Such information must be published after the decision to grant the aid has been taken, must be kept for at least ten years and must be available to the general public without restrictions. Member States are not required to publish the abovementioned information before 1 July 2016.
- (97) The Commission takes note of the fact that Lithuania confirmed that all requirements concerning transparency set out in recital II.2 of the Transparency Communication will be respected.
- (98) The Commission reminds Lithuania that of the fact that current approval decision covers only the period from the date of the decision until 31 December 2016. It notes that Lithuania indicated that it intends to notify a prolongation of the duration of the scheme beyond 31 December 2016 and that it will submit an evaluation plan together with the notification of the prolongation. It reminds the Lithuanian authorities to submit the draft evaluation plan in sufficient time to allow the Commission to adopt a decision before 1 January 2017 approving the prolongation of the notified aid scheme until 31 December 2020.

#### **3.4. Conclusion of the compatibility of the scheme**

- (99) The assessment carried out above shows that the notified scheme can be expected to contribute positively to the economic development of Lithuania by creating a significant number of high quality direct and indirect jobs in the data processing, Internet servers services and related activities sector and by promoting the development of a data-centre industry in a growing market. As the whole of Lithuania qualifies as an Article 107(3)(a) regions, the measure contributes to the objective of economic and social cohesion. At the same time, the assessment shows that the measure is appropriate, well targeted and proportionate and that the negative effects of the measure in terms of distortion of competition will remain limited. The Commission is therefore of the view that the positive effects of the measure can be expected to outweigh the negative effects.
- (100) The Commission concludes that the notified measure meets all the compatibility criteria of the RAG, and can therefore be declared compatible with the internal market pursuant to Art. 107(3)(a) TFEU.

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<sup>51</sup> Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audiovisual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines, OJ C 198, 27.6.2014, p. 30.

#### 4. CONCLUSION

(101) 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)(a) of the Treaty on the Functioning of the European Union.

(102) The Commission notes that Lithuania agreed to have the present decision adopted in the English language.

(103) The Commission reminds the Lithuanian authorities of their commitment to fulfil the reporting and monitoring obligations and that all plans to modify that aid scheme must be notified to the Commission.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

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For the Commission

Margrethe VESTAGER  
Member of the Commission

