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C(2016) 5943 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p style="text-align: center;">PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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**Subject: State Aid SA.41539 (2016/N) – Lithuania
Investment aid for high-efficiency cogeneration power plant in
Vilnius, UAB Vilniaus kogeneracinė jėgainė**

Sir,

The European Commission wishes to inform you that, having examined the information supplied by your authorities on the matter referred above, it has decided to raise no objections to the notified aid measure.

1. PROCEDURE

- (1) Following pre-notification contacts pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), Lithuania notified the Commission its intention to support a cogeneration power plant in Vilnius on 25 July 2016 and updated the information on 8 and 25 August 2016.
- (2) On 26 February 2016, the Commission received a joined complaint from Danpower GmbH and Danpower Baltic UAB about the envisaged aid to the Vilnius CHP project. On the 30 March, the Commission forwarded this complaint to the Lithuanian authorities which replied on 5 May after having requested for a delay extension. Additional comments to this complaint have been submitted by Lithuania on 22 June.

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LIETUVOS RESPUBLIKA

- (3) On 28 July 2016, Lithuania waived its right under Article 342 of the TFEU in conjunction with Article 3 of the EC Regulation No 1/1958 to have the decision adopted in Lithuanian and agreed that the decision be adopted in English.

2. DESCRIPTION OF THE AID MEASURE

2.1 Objective

- (4) The main objective of the aid is to improve heat and energy efficiency and make more efficient use of local and renewable sources in heat energy production facilities. Based on the formula enshrined in Annex II of Directive 2012/27/EC¹, energy savings per unit shall be 43.6% for the waste-to-energy unit (around 440 GWh per year) and 38.9% for the biomass unit (around 640 GWh per year).
- (5) As a second objective, the project will also help reduce CO₂ emissions. If the project did not take place, the Vilnius district heating system would continue to be supplied by gas powered plants. In accordance with the methodology for the assessment of greenhouse gas emissions and emission variations of the European Investment Bank (EIB), the waste-to-energy unit is expected to reduce CO₂ emissions by 93 166 tons per year and the biomass unit is expected to reduce CO₂ emissions by 343 328 tons per year.
- (6) A third objective of the measure is reducing municipal waste disposal in landfills. The waste-to-energy CHP unit will incinerate up to 160 000 tons of non-recyclable municipal waste which is currently landfilled.

2.2 Legal basis, budget and duration

- (7) The national legal basis is set out in:
- (a) Republic of Lithuania Operational Programme (OP) for the EU Funds' investments in 2014-2020, approved by the Commission implementing decision C(2014)6397, 8 September 2014².
 - (b) Government of the Republic of Lithuania Resolution No 486, 28 May 2014, on declaring projects of modernisation of Vilnius and Kaunas district heating supply facilities by installing/modernising high-efficiency cogeneration power plants using local and renewable energy sources to be projects of national economic significance.
 - (c) Government of the Republic of Lithuania Resolution No 284, 18 March 2015, on National Heat Sector Development Programme for 2015-2021
 - (d) Government of the Republic of Lithuania Resolution No 519, 12 April 2002, on approval of the National Waste Management Plan for 2014-2020

¹ Energy efficiency directive 2012/27/EU, OJ L 315, 14.11.2012, p. 1-56.

² The Lithuanian Operational Programme for the European Funds' Investments in 2014-2020 currently includes support only for promotion of cogeneration power plants (CHP) using renewable energy sources (i.e., biomass). Investment into waste incineration facilities is not eligible for financing under the OP. However, Lithuania submitted to the Commission a formal request for the necessary amendments to include such facilities in the OP. This decision about the Vilnius CHP project is without prejudice to an amendment of the OP to allow for financing of waste to energy facilities.

and amending resolutions No 888, 19 August 2015, and No 544, 1 June 2016.

- (8) The investment aid amounts up to EUR 150 million stemming from EU Structural funds. The total cost of the project is EUR [...] * million in nominal terms. The financing of the project comes from three sources:
- (a) EUR [...] million private investment and commercial bank loan
 - (b) EUR 190 million EIB³ loan
 - (c) EUR 153 million⁴ State aid (EU funds)
- (9) The planning for the project began in 2015 and the commissioning of the project is expected to be fully closed by the end of 2018. The Lithuanian authorities have confirmed that works and any payments would be suspended until State aid approval has been obtained from the Commission.

2.3 Background

The Vilnius district heating system

- (10) Vilnius is the largest municipality in Lithuania and contains the largest district heating system. At the beginning of 2014, 18.23% of the Lithuanian population lived in Vilnius.
- (11) The annual heat energy demand in Vilnius is 2.4 TWh. Part of this demand is supplied by a city-wide district heating system of the power of approximately 1 976 MW⁵. The district heating system is mostly fuelled by natural gas and the remaining part is supplied from biomass boilers. It supplies heat to 6 606 buildings of which 5 252 are residential containing 90% of the population that lives in Vilnius.
- (12) Heat energy to the Vilnius district heating system is produced from two types of entities: heat suppliers and independent heat producers.
- (13) The Vilnius district supply network and the main heat energy production installations are currently leased to UAB “Vilniaus energija”, a special purpose company set up by Dalkia to implement the concession agreement concluded between Dalkia and the Vilnius City Municipality Council. The agreement is for 15 years and runs from 9 January 2002 until January 2017. Dalkia has informed the Vilnius Council that they will not seek to renew this agreement when it expires in January 2017. At the conclusion of the agreement the operational control of the Vilnius supply network and the main heat energy production installations will return to the Vilnius City Council who will decide who will operate them.

* Confidential information

³ The EIB loan is partly guaranteed by European Fund for Strategic Investments (“EFISI”).

⁴ Corresponding to a discounted amount of EUR 150 million.

⁵ There are also two small district heating systems each of which covers only specifically one street in Vilnius. Both of them represent less than 1% of the Vilnius city heat supply.

- (14) Vilniaus energija operates two CHP units fired by natural gas with a total maximum input of 1 487 MW and two boilers fired by natural gas with total maximum input of 342.4 MW.
- (15) In addition, there are three independent heat producers connected to the main district heating system run by Vilniaus energija in Vilnius. The maximum input to the Vilnius district heating system which can be supplied by the independent heat producers is 89.5 MW (4.5% of the total maximum heat input). The Lithuanian authorities explained that currently independent heat producers are not in a position to take on a project of this magnitude.

The Law on Waste Management

- (16) The Lithuanian Law on waste management 2014 requires for the State or State controlled companies to hold at least 51% of the shares and voting rights in the implementing company of projects of national interest. The remaining 49% of shares can be owned by a private investor. UAB “Lietuvos energija” (Lietuvos energija), a State owned limited liability controlling company, was assigned by the Lithuanian authorities to carry out the Vilnius CHP project, which has been designated as a project of national interest, by establishing a company for the implementation of the CHP.
- (17) In February 2015 UAB Vilniaus “kogeneracine jėgaine” was established to act as the fully owned subsidiary of UAB “Lietuvos energija” dedicated to the development of the project.
- (18) A tender procedure was carried out for the selection of the private investor in the Vilnius CHP project in June 2014. A total of [...] tender proposals were submitted, [...] of which complying with the tender documents. Lietuvos energija assessed the proposals of the [...] qualifying tenderers in respect to the Vilnius project's objectives established in the Resolution No. 486. In particular the appendix of Resolution No. 486 stated a requirement to ensure installation of up to 145 MW of electrical capacity.
- (19) When comparing the results of the proposals for the Vilnius project in the [...] remaining tenders against the results of operating the project without a partner the comparisons showed that operating the project without a partner complied with the Vilnius project's objectives more than with a partner. Indeed the total installed capacity of all power plants which were proposed to be implemented in the qualifying proposals was up to 58 MW (which represents 40% of Vilnius project's goal of 145 MW). This was the best available option from the combination of proposals submitted. Compared to that, Lietuvos energija operating the project alone could reach 88 MW (which represents 61% of Vilnius project's goal). It was therefore decided to discontinue tender procedures in Vilnius at that time.
- (20) The Lithuanian authorities have established a specialised Commission for the supervision of the Vilnius project. In December 2015 this Commission has issued a request to Lietuvos energija that tender procedures for the selection of private partners for the Vilnius project should be renewed within 6 months of the completion of the Vilnius CHP plant construction works.

- (21) The Lithuanian authorities confirmed by letter dated 13 June 2016 that a new tender will be organised within 6 months following the completion of the project.

The beneficiary of the aid measure

- (22) The beneficiary of the aid is UAB Vilniaus kogeneracine jėgaine, a special purpose vehicle that has been established in February 2015 to act as the fully owned subsidiary of UAB Lietuvos energija dedicated to the development of the Vilnius CHP project. Lietuvos energija is a State owned limited liability company controlling a group of entities with more than 5 300 employees, operating in power and heat generation and supply, electricity trade and distribution, gas trade and distribution as well as maintenance and development of the electricity sector. Lietuvos energija is 100% controlled by the State represented by the Ministry of Finance of Lithuania.
- (23) There is no link between Vilniaus energija, the current main supplier of the Vilnius district heating system, and Vilniaus kogeneracine jėgaine, the beneficiary of the aid.

2.4. Scope of the notified measure

The CHP project

- (24) The scope of the Vilnius CHP project includes new fully functionally integrated cogeneration units which are split into two purchase lots:
- a) Municipal waste incineration unit (Lot 1 – “Waste-to-Energy (WtE) Plant”). This plant will be capable of burning up to 160 000 tons of waste per year. It is estimated that the optimal WtE plant capacity power will be 18 MW_{el} and 53 MW_{th}.
 - b) Solid biomass-fired unit – (Lot 2). Analysis indicates that this plant could produce between 380 to 1 440 GWh thermal energy per year and between 130 to 500 GWh electricity energy per year and the annual biomass consumption could reach 400 000-450 000 tons per year. It is estimated that the optimal biomass-fired unit capacity power will be 70 MW_{el} and 174 MW_{th}.
- (25) The new waste incineration and biomass-fired units will be integrated with each other to create a single CHP plant.

Fuel used by the CHP project

- (26) The implementation of the Vilnius CHP project would increase by 400-450 thousand tons the demand for biomass, which represents an additional demand for 0.9 TWh (for a total consumption of biomass about 4.6 TWh in Lithuania in 2013).
- (27) The main biofuel used in Lithuania at the moment is solid wood. Forecasts for the coming years show that this will remain the case, biomass capacity could be expanded due to the high potential for biomass to be produced in Lithuania. According to a study⁶ by the Lithuanian Energy Consultants Association (LECA)

⁶ http://www.lsta.lt/files/studijos/2013%20met%C5%B3/A-80_biokuras%20-%20galutine%20ataskaita3.pdf.

the unused potential of solid biomass (excluding straw) is 5 TWh per year. This corresponds to about 600 MW of the installed capacity of energy generation facilities. The Vilnius CHP project would require an additional 15% of the biomass consumed in 2014 or 18% of the unused potential of wood biofuel in Lithuania. The Lithuanian authorities also carried out an environmental assessment of the impact of increased biomass use (see the LECA report in footnote 6 and also the Strategic Environmental Assessment report of the National Program for Development of Renewable Energy Resources⁷).

- (28) The biomass CHP unit will use mainly wood chips (40-100% of the total fuel required). Additionally, it is possible to co-fire up to 60% of the so called intermediate fuel (bark, forestry residues, energy crops and industrial wood chips) and up to 10% of other low quality dusty biomass (eg. lignin or straw).
- (29) Additionally there is the potential to import biomass from EU neighbouring countries, such as Latvia, Estonia and Poland as well as non EU countries like Belarus and the Ukraine.
- (30) Vilnius CHP will burn approximately 400-450 thousand tons of biomass annually. During the summer time the Vilnius plant should provide heat base load to the Vilnius district heating system substituting biomass burnt in heat only boilers of other heat producers. Therefore, taking into account the biomass consumption reduced elsewhere, the total consumption of biomass would only increase by 350 thousand tons per year instead of 450 thousand tons.
- (31) From 2016 a new Lithuanian law obliges energy producers having a share of more than 30% in district heating systems or who have received any type of support to acquire all their biomass needs through the Lithuanian Energy Exchange (LEE). The LEE operates in Lithuania from 2012. The share of biomass purchased by heat producers through the LEE increased from 2% to 85% in last two years. The operator managing the LEE is UAB Baltpool⁸. The LEE encourages trading efficiency and stimulates competition between market players.

Waste-to-Energy market in Lithuania

- (32) Municipal waste amounts to 25% of all waste generated in Lithuania. In 2013, about 1.28 million tons of municipal waste was collected in Lithuania. Currently, the vast majority of municipal waste is disposed of in landfill (around 60% in 2013 when the first waste-to-energy CHP started its commercial operation in Klaipeda).
- (33) Lithuania invested EUR 189 million from the EU Structural funds (2017-2013 programming period) into its waste management system, including development of biodegradable waste management infrastructures. 10 mechanical and mechanical-biological treatment facilities (MBT facilities) with a total annual capacity of about 1 million tons of municipal waste started operating in 2016. The main objective of the MBT facilities is to separate biodegradable waste from the mixed municipal waste stream and further recover some of the secondary raw

⁷<http://enmin.lrv.lt/uploads/enmin/documents/files/Veikla/Veiklos%20sritys/Atsinaujinantys%20energijos%20C5%A1altiniai/Moksliniai-tiriamieji%20darbai/SPAV-su-priedais.pdf>

⁸ See www.baltpool.lt for more information on Baltpool and the LEE.

materials. MBT facilities produce residual products classified as RDF (“refuse-derived fuel”) that are unfit for recycling but contain energy value. The estimated total amount of RDF produced in 2020 by the 10 MBT facilities would be between [...] and [...] tons with an energy potential about [...] GWh.

- (34) In the Vilnius district heating system, there is currently no installation using municipal waste to produce energy. The Vilnius CHP project will contribute to loop the municipal waste management cycle by firing about 160 000 tons of RDF per year.
- (35) The Lithuanian authorities confirmed that this approach complies with Directive 2008/98/EC⁹ which sets out the waste prevention and management hierarchy (Article 4).

2.5. Form of aid, eligible costs and aid intensity

- (36) The envisaged aid is provided in the form of a direct non-reimbursable grant stemming from EU Structural funds.
- (37) Eligible costs are calculated as the difference between the baseline scenario capital investments and the counterfactual scenario capital investments.
- (38) The capital investments costs of the project are presented per unit in Table 1 and 2 below:

Table 1 – CAPEX for the biomass unit

CAPEX for biomass-fired unit	Amount excl. VAT, EUR million	Percentage of total CHP project CAPEX
Estimated EPC ¹⁰ CAPEX for biomass-fired unit	[...]	[...]%
Auxiliary infrastructure outside LE ¹¹ land plot and project management costs	[...]	[...]%
Insurance cost (during construction period, [...] % of CAPEX)	[...]	[...]%
Financial administration services ([...] %)	[...]	[...]%
Interest during construction period	[...]	[...]%
Total Biomass CHP CAPEX	[...]	[...]%

⁹ Waste Framework Directive OJ L 312 ,22.11.200 P 3-30.

¹⁰ Engineering, procurement and construction works.

¹¹ Lietuvos energija.

Table 2 – CAPEX for the waste unit

CAPEX for WtE unit	Amount excl. VAT, EUR million	Percentage of total CHP project CAPEX
Estimated EPC CAPEX for WtE unit	[...]	[...]%
Auxiliary infrastructure outside LE land plot and project management costs	[...]	[...]%
Insurance cost (during construction period, [...] % of CAPEX)	[...]	[...]%
Financial administration services ([...]%)	[...]	[...]%
Interest during construction period	[...]	[...]%
Total WtE CHP CAPEX	[...]	[...]%

- (39) When discounted to 2016 value, the total CAPEX of the biomass CHP investment (shown in Table 1) amounts to EUR [...] million. Similarly, when discounted to 2016 value, the total CAPEX of the WtE investment (shown in Table 2) amounts to EUR [...] million.
- (40) The counterfactual scenario presented by Lithuania is a conventional installation with the same capacity of heat generation as the Vilnius CHP project. It is combined investments into a biomass-fired heat only boiler (“HOB”) installation (EUR [...] million in real terms) and a waste-fired HOB installation (EUR [...] million in real terms). The total capital investments costs of the counterfactual scenario would amount to EUR [...] million as shown in Table 3 below:

Table 3: Capex of the counterfactual scenario (discounted)

Parameters	Vilnius CHP Project			Counterfactual scenario		
	Waste CHP unit	Biomass CHP unit	Total	Waste HOB unit	Biomass HOB unit	Total
Heating capacity (MW)	53	174	227	53	174	227
Electric capacity (MW)	18	70	88	-	-	-
Investment costs (EUR million)	[...]	[...]	[...]	[...]	[...]	[...]

- (41) The eligible costs amount to EUR 250.6 million.
- (42) The aid intensity of the project complies with the 60% threshold set out in the Commission Guidelines on State aid for environmental protection and energy 2014-2020 (the EEAG) for a CHP project in a NUTS level 2 region. The whole of Lithuania is recognised as being a NUTS level 2 region by EC decision 38510 2014/N. Therefore, the maximum aid amount is calculated as follows:
 $250.6 \times 60\% = \text{EUR } 150.4 \text{ million.}$

2.6 Cumulation and transparency

- (43) The Lithuanian authorities have confirmed that no cumulation with other types of aid will take place.
- (44) The Lithuanian authorities have indicated that they will comply with the transparency requirements set out in section 3.2.7 of the EEAG.

2.7 Complaint on misuse of State aid

- (45) The Commission received a joint complaint from Danpower GmbH and Danpower Baltic UAB, competitors of Lietuvos energija, alleging that Structural funds are misused to foreclose the waste-to-energy market and support the project. The complainants argue that the Lithuanian legal acts favour State-owned companies in the facilitation of EU Structural funds and the utilization of State or municipal resources. This would be the result of the 2014 Law on waste management, and further implementing decisions, which set that only “projects of national interest” can use municipal waste for power generation purposes. For such projects, the law requires for the State to hold at least 51% of the share of the implementing company.
- (46) The Vilnius CHP project has been designated as a project of national interest and therefore is allowed to use municipal waste for power generation purposes. Lithuania allegedly created a framework under which the aid could only be granted to the state controlled undertaking UAB Lietuvos Energija hindering non-governmental market participants from gaining fair and equal access to the waste-to-energy market.
- (47) The complainants allege that the aid does not respect the conditions of Article 107 TFEU, because aid meeting the criteria of Article 107(1) - which allegedly is the case for the measure at hand - is in principle incompatible with the internal market. The complainants argue the absence of compatibility on the basis of Articles 107(2) or 107(3) TFEU, in particular as the measure is unsuitable for the development of the waste-to-energy market (but forecloses it) and the same development could be achieved without State aid¹².

3. ASSESSMENT OF THE AID

3.1 State aid within the meaning of Article 107(1) TFEU

- (48) Article 107(1) TFEU provides that “[s]ave as otherwise provided in th[e] Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market”. The application of these cumulative conditions is examined below.
- (49) The aid stems from Structural Funds that are used by Lithuania to finance the Vilnius cogeneration project. Since these Structural funds¹³ are under control of

¹² The complainant refers to ECJ, Phillip Morris v Commission, C-730/79, paragraph 26.

¹³ It is recalled that all reference to Structural funds for the use of the project are without prejudice to the assessment of an amendment to the Lithuanian OP.

the Lithuanian State, the Commission considers them to be aid granted from State resources within the meaning of Article 107 (1) TFEU.

- (50) The aid is only granted to the Vilnius cogeneration plant and would not be available on the normal market. Other plants do not receive such aid. The Commission therefore concludes that the measure gives an advantage to the Vilnius cogeneration project that is of a selective nature.
- (51) The producers of energy compete with each other in an open market to obtain customers. Energy can be sold and transported from one Member State to another. Therefore it is likely that the implementation of this public support will affect the conditions of trade between Member States.
- (52) Therefore the Commission regards the notified measure as constituting State aid within the meaning of Article 107(1) of the TFEU. It is therefore necessary to consider whether the aid measure is compatible with the internal market.

3.2 Legality of the aid measure

- (53) Lithuania has fulfilled its obligation according to Article 108(3) TFEU by notifying the investment aid before putting it into effect.

3.3 Compatibility

- (54) The Commission has assessed the compatibility of the aid measure with the internal market pursuant to section 3.2 and 3.4 of the EEAG.
- (55) As the investment of public funds is up to EUR 150 million it exceeds the limit of EUR 15 million set in point 20(a) of the EEAG. Therefore the Commission has also assessed the compatibility of the aid measure with the internal market pursuant to additional conditions for individually notifiable aid of section 3.2 of the EEAG.

3.4 Objective of common interest

- (56) According to paragraph (31) of the EEAG, a Member State needs to define the objective of common interest pursued by the measure and explain its contribution towards this objective. As mentioned in paragraph (4) above, Lithuania confirmed that the aid would help achieving the Union target to reduce by 20% its primary energy consumption.
- (57) According to paragraph (139) of the EEAG, aid for CHP will only be considered compatible with the internal market if it is granted to high efficient CHP. Applying the methodology enshrined in Annex II of Directive 2012/27/EU¹⁴, the Lithuanian authorities determined that the Vilnius CHP project would provide more than 40% primary energy savings compared with the references for separate production of heat and electricity. Therefore, it demonstrates that the Vilnius CHP project complies with the high efficient CHP definition provided by paragraph 19(13) of the EEAG.

¹⁴ See footnote 1

- (58) Regarding paragraph (140) of the EEAG, Lithuania explained that the waste-to-energy unit of the Vilnius CHP project would burn waste in compliance with the waste hierarchy principles set out in Directive 2008/98/EC¹⁵. Lithuania also indicated that biomass fired in the other CHP unit meets the definition set out in the EEAG (see recital (6) of the EEAG).

3.5 Need for State intervention and appropriateness of the aid

- (59) Pursuant to paragraph (142) of the EEAG, energy-efficiency measures target negative externalities as referred to in paragraph (35) of the EEAG by creating individual incentives to attain environmental targets for energy-efficiency and for the reduction of greenhouse gas emissions.
- (60) Lithuania demonstrated that private undertakings do not have sufficient incentives to invest into risky projects such as waste and biomass CHP and that without public support they would continue to invest in biomass heat only boilers. In this respect, Lithuania stressed that the market would not generate sufficient incentives to invest into CHP projects as building a heat only boiler would be four times cheaper than building a CHP plant and that without the aid, the Vilnius CHP project would generate a negative NPV (see paragraph 66 below). Therefore there is a need for public support in order to attain environmental objectives.
- (61) Pursuant to paragraph (40) of the EEAG the proposed aid measure must be an appropriate instrument to address the policy objective concerned. Paragraph (145) of the EEAG states that State aid may be considered an appropriate instrument to finance energy efficiency measures independently of the form in which it is granted.
- (62) Therefore, the measure can be considered to be appropriate.

3.6 Incentive effect

- (63) The incentive effect is present if the aid changes the beneficiary's behaviour towards reaching the objective of common interest, a change in behaviour which it would not undertake without the aid.
- (64) Paragraph (60) of the EEAG states that the incentive effect is to be identified through the counterfactual scenario analysis, comparing the levels of intended activity with aid and without aid.
- (65) For the conclusion of financial profitability of an investment, two main financial performance indicators are calculated: i) the net present value of the investments (NPV) and ii) the internal rate of return on investments (IRR).
- (66) In the case the project does not get financial support in the form of a direct grant, Vilnius CHP generates negative NPV (EUR -[150-200] million) and IRR ([<0]%).
- (67) With the aid, Vilnius CHP generates positive NPV (EUR [...] million) and IRR ([...])% which is sufficient to conduct the project.

¹⁵ See footnote 9

- (68) Therefore, the aid brings an incentive to the beneficiary investing in a high-efficiency CHP project so as to reach the objective of common interest.

3.7 Proportionality

- (69) Following section 3.2.5.1 of the EEAG aid is considered to be proportionate if it is limited to the minimum needed to achieve the environmental protection or energy objective. Where the costs of achieving the common interest objective cannot be identified in the total investment costs as a separate investment, the aid is considered to be limited to the minimum necessary if it corresponds to the net extra costs necessary to meet the objective, compared to the counterfactual scenario in the absence of aid.
- (70) Therefore, as mentioned in paragraph (41) above, the eligible costs will amount to EUR 250.6 million. The aid intensity will reach the 60% threshold set out in the EEAG and thus, the aid will amount to EUR 150 million.
- (71) According to the documents provided by the Lithuanian authorities, the required IRR to invest in a project should be the national average IRR for the sector and not less than 9%. The market analysis provided by Lithuania concluded that the market-derived rate of return on equity to be used for the evaluation of high efficiency cogeneration power plant project developed by UAB Vilniaus kogeneracine jėgaine and similar projects in the market should be equal to 17.55%-18.55%, with project specific risk premium of 4.5%.
- (72) The IRR on equity for the Vilnius CHP project equals to [...]%. This shows that the project is in line with market conditions to similar projects. It is also similar to rates previously approved by the Commission for biomass projects in other Member States¹⁶. Therefore, the aid is limited to what is needed for the project.

3.8 Distortion of competition and balancing test

- (73) According to paragraph (88) of the EEAG, the Commission considers that for the aid to be compatible with the internal market, 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. The Commission also focuses on the distortions resulting from the individual aid in line with paragraph (101) of the EEAG.
- (74) In line with paragraph (98) of the EEAG, if the aid is proportionate and limited to the extra investment costs, the negative impact of the aid is in principle softened.
- (75) In this context, the Commission notes that the market for district heating is local since the district heating would only be delivered to the Vilnius district heating system. The Vilnius CHP project to be implemented by UAB Vilniaus kogeneracine jėgaine will compete on equal terms with other independent heat

¹⁶ See for instance the aid for Lynemouth power station biomass conversion – SA.38762 (2015/C), the aid to the Teesside dedicated biomass CHP project – SA.38796 (2014/N), or the German scheme on tax reduction on energy for CHP – SA.33848 (2011/N).

producers using biomass fired plants¹⁷ as the heat supplier will purchase energy on the basis of open and non-discriminatory monthly auctions. In addition, Lithuania demonstrated that no crowding out of the independent producers would take place, even in a worst case scenario of no operating in the non-heating season (May – September). Therefore, none of the independent heat producers are expected to be crowded out of the market further to the implementation of the Vilnius CHP project.

- (76) On the electricity market, the Vilnius CHP project will have no undue negative impact on competition in the electricity generation and wholesale supply market. Lithuania submitted that the total installed electricity production capacity in Lithuania at the end of 2013 was 4 352 MW. The electric capacity of the current project would be 88 MW which is 2% of the installed capacity in Lithuania in 2013.
- (77) Furthermore, since February 2016, "LitPol Link" (500 MW) – a power link between Poland and Lithuania – is operating and "NordBalt" (700 MW) – a power link between Sweden and Lithuania – is intended to be completed and operated in 2016 as well. Those electricity bridges will enable Lithuania to purchase electricity from Northern European countries as well as Poland. Therefore, the aid would have no significant impact on the market.
- (78) Finally, the Commission notes that the project would use only 18% of the unused potential of wood biofuel (see recital 27) in Lithuania and the biomass will have to be purchased on the Energy Resource Exchange as from 2016. The project would also only use 36% of the RDF that is estimated to be produced in 2020 by the 10 MBT facilities that started operation in 2016 (see recital 33).
- (79) The Commission therefore concludes that, in accordance with paragraph (88) of the EEAG, the measure is not expected to lead to undue distortions in any market concerned by the Vilnius CHP Project.

3.9 Transparency of aid

- (80) As mentioned in paragraph (44) above, Lithuania has committed to comply with the transparency requirements set out in section 3.2.7 of the EEAG.

3.10 Assessment of the complaint alleging misuse of State aid

- (81) The Lithuanian authorities have provided information showing that no criteria regarding the private or public nature of companies applying to Structural funds is foreseen in Lithuanian law. Therefore, it appears that projects being designated as “projects of national interest” are not the only ones that can apply to Structural funds.
- (82) The Lithuanian authorities also clarified that it would not provide State aid from any other source than Structural Funds. The Lithuanian law does not contain any specific provision limiting the use of Structural Funds to the Vilnius CHP project or to finance projects of national interest.

¹⁷ Currently, all independent heat producers supplying the Vilnius district heating system are using biomass fired plants.

- (83) The complaint also alleges, with reference to the Philip Morris Court judgment (see footnote 12 above), that the same development would have been achieved without State aid and that therefore Article 107(3)(c) would not provide for a compatibility basis. In this respect, it is recalled that the aid is granted for the development of high efficient CHP installations.
- (84) Article 107(3)(c) of the Treaty does provide for a compatibility ground for State aid in favour of high efficient CHP plants as set out in the EEAG¹⁸. As detailed above, the Commission has assessed whether the aid meets the conditions laid down in the EEAG for granting State aid to CHP plants.
- (85) The Commission in particular found that the Vilnius CHP project would provide more than 40% primary energy savings compared to separate production of heat and electricity and that the aid does not lead to undue market distortions. Lithuania confirmed also that a new tender for a 49% private partner in the project will be organised within 6 months following the completion of the project.
- (86) Lithuania notified the aid in order to support a CHP project and there is no evidence that the aid would be spent for other purposes. Therefore, the Commission has found no misuse of aid.
- (87) On these grounds the allegation made by the complainants that Lithuania is channelling EU funds towards State-owned UAB Lietuvos Energija for misusing the aid can be dismissed.

4. AUTHENTIC LANGUAGE

- (88) As mentioned under Section 1 of this decision, Lithuania has waived its right to have the decision adopted in Lithuanian. The authentic language will therefore be English.

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) of the Treaty on the Functioning of the European Union.

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>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe

¹⁸ See in particular paragraph (10) of the EEAG.

B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission

CERTIFIED COPY
For the Secretary-General,

Jordi AYET PUIGARNAU
Director of the Registry
EUROPEAN COMMISSION