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Subject: State Aid SA.104926 (2022/N) – Lithuania
TCF: Tax aid measures for taxpayers affected by the energy crisis
following Russia’s aggression against Ukraine

Excellency,

1. PROCEDURE

- (1) By electronic notification registered on 18 November 2022, Lithuania notified aid in the form of limited amounts of aid (*Tax aid measures for taxpayers affected by the energy crisis following Russia’s aggression against Ukraine*, the “measure”) under the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (the “Temporary Crisis Framework”)¹.

¹ Communication from the Commission on the Temporary Crisis Framework for State aid measures to support the economy following the aggression against Ukraine by Russia (OJ C 426, 9.11.2022, p. 1). This Temporary Crisis Framework (‘Temporary Crisis Framework’) replaces the Temporary Crisis Framework adopted on 23 March 2022 (OJ 131 I, 24.3.2022, p. 1) as amended on 20 July 2022 (OJ C 280, 21.7.2022, p. 1) (‘previous Temporary Crisis Framework’). The previous Temporary Crisis Framework was withdrawn with effect from 27 October 2022.

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- (2) On 29 November and 8 December 2022, the Commission services requested additional information, which was submitted by Lithuania on 1 and 13 December 2022, respectively.
- (3) Lithuania exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958² and to have this Decision adopted and notified in English.

2. DESCRIPTION OF THE MEASURE

- (4) Lithuania considers that the Russian aggression against Ukraine, the sanctions imposed by the European Union (EU) and its international partners and the counter-measures taken by Russia (“the current crisis”) so far affects the real economy. The current crisis created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods, including in the agri-food sector.
- (5) The impact of the current crisis on the Lithuanian economy is manifold and has caused a serious disturbance. In September 2022, the annual inflation rate reached 22.5%. Moreover, the massive increase in energy prices (+ 73% in September 2022 compared to September 2021)³ imposes a high burden on Lithuanian undertakings, in particular to those active in the energy-intensive industries. As a result, Lithuanian undertakings are forced to reduce production volumes, shorten working hours, reduce investments or even stop activities. In general, the current crisis bears a high risk of Lithuanian undertakings losing competitiveness and may endanger the labour market. As a result, Lithuania has notified the measure in order to mitigate the impact of the current crisis on Lithuanian undertakings.
- (6) The measure aims to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy. In the long term, the measure further aims to preserve viability of taxpayers affected by the energy crisis and ensure sustainability of the country’s financial system.
- (7) Lithuania confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.
- (8) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 1 and 2.1 of the Temporary Crisis Framework.

² Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

³ <https://www.lb.lt/lt/naujienos/duomenu-komentaras-2022-m-rugsejo-men-infliacija>

2.1. The nature and form of aid

- (9) The measure provides aid in the form of tax deferrals and interest exemptions⁴.

2.2. Legal basis

- (10) The legal basis for the measure is the Order of the Head of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania of 31 October 2022 No. VA-83 “On the approval of the description of the procedure for establishing and administering the criteria for taxpayers with financial difficulties and affected by the energy crisis who are subject to tax aid measures” (“the Order VA-83”). The legal basis contains a standstill obligation⁵.

2.3. Administration of the measure

- (11) The State Tax Inspectorate under the Ministry of Finance of Lithuania is responsible for administering the measure.

2.4. Budget and duration of the measure

- (12) The estimated budget of the measure is EUR 200 million, financed by the State budget of Lithuania.
- (13) Aid may be granted under the measure as from the notification of the Commission’s decision approving the measure until no later than 31 August 2023. The tax liability in relation to which the aid is granted must have arisen no later than 30 April 2023.

2.5. Beneficiaries

- (14) The final beneficiaries of the measure are micro, small, medium-sized⁶ and large enterprises active in Lithuania that are affected by the current crisis. The impact of the current crisis on those enterprises is assessed on the basis of the share of energy expenses in relation to the total operating expenses. To that effect, eligible beneficiaries have to prove that their energy expenses for the year 2021 amounted at least to 10% of their total operating expenses, and that such ratio has not decreased in 2022.
- (15) Credit and financial institutions are excluded from the scope of this measure and cannot benefit from the aid. In addition, legal entities operating in the following main economic activities⁷ are also excluded from the measure:
- (a) electricity, gas, steam and air conditioning supply;
 - (b) water supply, sewerage, waste management and remediation;

⁴ See recital (21).

⁵ See Article 32 of the Order VA-83.

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

⁷ According to the sections of the classification of economic activities.

- (c) financial and insurance activities;
 - (d) real estate activities;
 - (e) public administration and defence; compulsory social security.
- (16) The Lithuanian authorities estimate that the number of beneficiaries will be more than 1000.
- (17) Lithuania confirms that the aid under the measure is not granted to undertakings under sanctions adopted by the EU, including but not limited to: (i) persons, entities or bodies specifically named in the legal acts imposing those sanctions; (ii) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or (iii) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions.
- (18) Lithuania confirms that the measure may not in any way be used to undermine the intended effects of sanctions imposed by the EU or its international partners and will be in full compliance with the anti-circumvention rules of the applicable regulations⁸. In particular, natural persons or entities subject to the sanctions will not benefit directly or indirectly from the measure.

2.6. Sectoral and regional scope of the measure

- (19) The measure is open to all sectors, except the sectors listed in recital (15). It applies to the whole territory of Lithuania.

2.7. Basic elements of the measure

- (20) The aim of the notified measure is to mitigate the financial burden of the current crisis.
- (21) The measure referred in recital (9) takes the following specific forms⁹:
- (a) deferral in the payment of tax arrears (entailing a one-off postponement of the entire amount of arrears due by a taxpayer undertaking) or spread of the tax arrears (entailing a re-scheduling or fragmentation of the arrears over several instalments). These deferrals or spreads are concluded on the basis of a tax instalment agreement between the taxpayer and the tax administration subject to the requirements set out in the relevant Lithuanian act¹⁰;

⁸ For example, Article 12 of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1).

⁹ In accordance with Articles 88 and 100 of the Law on Tax Administration of the Republic of Lithuania, 13 April 2004 No. IX-2112 Vilnius, Official Gazette 2004, No. 63-2243, ID code 1041010ISTA0IX-2112.

¹⁰ Description of the Requirements for the Request for Deferral or Scheduling of the Payment of a Tax Arrears by Concluding a Tax Loan Agreement, as approved by the Order of the Head of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania of 3 October 2001, No. 236.

- (b) exemption from the interest due on tax arrears. The exemption concerns only the interest, meaning that the taxpayer would still need to pay the principal amount of the related tax arrears.
- (22) Under the measure, the related tax arrears must have arisen in the period between 7 October 2022 and 30 April 2023.
- (23) Applications for the tax measure will be submitted to the Lithuanian State Tax Inspectorate by 28 February 2023. Applications for the tax instalment agreement shall be submitted by 30 April 2023. The tax instalment agreement, referred in recital (21)(a), will be concluded by 31 August 2023 at the latest.
- (24) The total nominal value of the measure will not exceed EUR 2 million per undertaking. This amount is expressed as a gross amount, i.e. before deduction of tax or other charges. The total nominal value of the measure will not exceed EUR 250 000 per undertaking active in the primary production of agricultural products¹¹ and EUR 300 000 per undertaking active in the fishery and aquaculture sectors¹².
- (25) The Lithuanian authorities confirm that the aid is conditional on not being partly or entirely passed on to primary producers and is not fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned.
- (26) For the agricultural, fisheries and aquaculture sector, Lithuania confirms that:
- (a) aid to undertakings active in the primary production of agricultural products¹³ will not be fixed on the basis of the price or quantity of products put on the market;
- (b) aid to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in points (a) to (k) of Article 1(1) Commission Regulation (EU) No 717/2014;
- (c) where an undertaking is active in several sectors to which different maximum amounts apply in accordance with points 55(a) and 56(a) of the Temporary Crisis Framework, it will be ensured, by appropriate means such as separation of accounts, that for each of those activities the relevant ceiling is respected and that the overall maximum amount of EUR 2 million is not exceeded per undertaking. Where an undertaking is active exclusively in the sectors covered by point 56(a) of the Temporary

¹¹ As defined in Article 2(44) of Commission Regulation (EU) 2022/2472 of 14 December 2022 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 327, 21.12.2022, p. 1).

¹² As defined in Article 2(1) of Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).

¹³ As defined in Article 2(44) of Commission Regulation (EU) 2022/2472 of 14 December 2022.

Crisis Framework, the overall maximum amount of EUR 300 000 is not exceeded per undertaking.

2.8. Cumulation

- (27) The Lithuanian authorities confirm that aid granted under the measure may be cumulated with aid under de minimis Regulations¹⁴ or under the General Block Exemption Regulation (“GBER”)¹⁵, the Agricultural Block Exemption Regulation (“ABER”)¹⁶ or the Fisheries Block Exemption Regulation (“FIBER”)¹⁷. The provisions and cumulation rules the relevant Regulations will be respected.
- (28) The Lithuanian authorities confirm that aid under the measure may be cumulated with other forms of Union financing, provided that the maximum aid intensities indicated in the relevant Guidelines or Regulations are respected.
- (29) The Lithuanian authorities confirm that aid under the measure may be cumulated with aid under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak¹⁸ (“COVID-19 Temporary Framework”) and the aid under the notified measure may be cumulated with those measures provided the respective cumulation rules are respected.
- (30) The Lithuanian authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Crisis Framework provided the provisions in those specific sections are respected.
- (31) The Lithuanian authorities confirm that if the beneficiary receives aid on several occasions or in several forms under the measure or aid under other measures approved by the Commission under section 2.1 of the Temporary Crisis Framework, the overall maximum cap per undertaking, as set out in points 55(a) and 56(a) of that framework, will be respected.

¹⁴ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p. 1), Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9), Commission Regulation (EU) No 717/2014 of 27 June 2014, and Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ L 114, 26.4.2012, p. 8).

¹⁵ Commission Regulation (EU) No 651/2014 of 17 June 2014.

¹⁶ Commission Regulation (EU) 2022/2472 of 14 December 2022.

¹⁷ Commission Regulation (EU) 2022/2473 of 14 December 2022 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 327, 21.12.2022, p. 82).

¹⁸ Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91I, 20.3.2020, p. 1), as amended by Commission Communications C(2020) 2215 (OJ C 112I, 4.4.2020, p. 1), C(2020) 3156 (OJ C 164, 13.5.2020, p. 3), C(2020) 4509 (OJ C 218, 2.7.2020, p. 3), C(2020) 7127 (OJ C 340I, 13.10.2020, p. 1), C(2021) 564 (OJ C 34, 1.2.2021, p. 6), and C(2021) 8442 (OJ C 473, 24.11.2021, p. 1).

2.9. Monitoring and reporting

- (32) The Lithuanian authorities confirm that they will respect the monitoring and reporting obligations laid down in section 3 of the Temporary Crisis Framework (including the obligation to publish relevant information on each individual aid above EUR 100 000 granted under the measure and EUR 10 000 in the primary agriculture and in the fisheries sectors on the comprehensive national State aid website or Commission's IT tool within 12 months from the moment of granting¹⁹).

3. ASSESSMENT

3.1. Lawfulness of the measure

- (33) By notifying the measure before putting it into effect, the Lithuanian authorities have respected their obligations under Article 108(3) TFEU. The order indicated in recital (10) contains a stand-still clause (see also footnote 5).

3.2. Existence of State aid

- (34) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.
- (35) The measure is imputable to the State, since it is administered by the State Tax Inspectorate under the Ministry of Finance of Lithuania and it is based on the Order VA-83, indicated in recital (10). It is financed through State resources, since it is financed by public funds as a result of the income foregone from the interest due on tax arrears (recital (12)).
- (36) The measure confers an advantage on its beneficiaries in the form of either a postponement in the payment of tax arrears (see recital (21)(a)) or an exemption from the interest due on those tax arrears (see recital (21)(b)). Under the normal tax rules, the beneficiaries would have to pay the (applicable) tax arrears in due time. Postponing the payments of tax arrears to a later date corresponds to the granting of a loan in the amounts of the tax arrears deferred or re-scheduled. Moreover, the exemption from the interest corresponds to the granting of a subsidy in the amount of that interest. Those two aspects therefore imply an economic advantage. The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.
- (37) The advantage granted by the measure is selective, since the notified tax measure is available only to certain undertakings that prove they are affected by the increase in the energy costs, excluding undertakings active in some sectors (see

¹⁹ Referring to information required in Annex III to Commission Regulation (EU) No 651/2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III to Commission Regulation (EU) No 1388/2014. For tax and payment advantages, the aid amount of the individual aid may be indicated in ranges.

recitals (14) and (15)). In light of the general rule according to which taxpayers must pay their tax arrears in due time, the notified measure introduces a derogation only for certain undertakings that are allowed either to defer or spread their payments, or to be exempted from the payment of interest normally due on those arrears²⁰. That derogation differentiates between economic operators who are in a comparable factual and legal situation, in light of the objective of the system (i.e. to pay tax arrears in due time or to pay interest due on tax arrears). The Lithuanian authorities have not provided any justification for that discrimination based on the nature or the general scheme of the tax system. Accordingly, the advantage is selective.

- (38) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.
- (39) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Lithuanian authorities do not contest that conclusion.

3.3. Compatibility

- (40) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.
- (41) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid “*to remedy a serious disturbance in the economy of a Member State*”.
- (42) By adopting the Temporary Crisis Framework on 28 October 2022, the Commission acknowledged (in section 1) that the military aggression against Ukraine by Russia, the sanctions imposed the EU or its international partners and the counter measures taken, for example by Russia have created significant economic uncertainties, disrupted trade flows and supply chains and led to exceptionally large and unexpected price increases, especially in natural gas and electricity, but also in numerous other input and raw materials and primary goods, including in the agri-food sector. Those effects taken together have caused a serious disturbance of the economy in all Member States, including in the economy of Lithuania. The Commission concluded that State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU for a limited period if it serves to remedy the liquidity shortage faced by undertakings that are directly or indirectly affected by the serious disturbance of the economy.
- (43) The measure aims at supporting undertakings experiencing financial difficulties and affected by the current crisis at a time when a wide range of economic sectors are affected, the normal functioning of markets is severely disturbed leading to severe disturbances of the real economy of Member States, including in the economy of Lithuania (see recitals (5), (6) and (20)).

²⁰ See Articles 88 and 100 of the Law on Tax Administration, footnote 9.

- (44) The measure is conceived at national level by the Lithuania's authorities to remedy a serious disturbance in their economy. The importance of the measure to support undertakings facing liquidity shortages because of the current crisis is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across a significant part of Lithuania's economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid ("*Limited amounts of aid*") described in section 2.1 of the Temporary Crisis Framework.
- (45) The Commission considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the relevant conditions of the Temporary Crisis Framework. In particular:
- the aid takes the form of tax advantages (recital (9)). The overall nominal value of the tax advantages will not exceed EUR 2 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recital (24)). The measure therefore complies with point 55(a) of the Temporary Crisis Framework;
 - aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (12). The measure therefore complies with point 55(b) of the Temporary Crisis Framework;
 - the aid is granted no later than 31 August 2023 and the tax liability in relation to which that advantage is granted must have arisen no later than 30 April 2023 (recital (13)). The measure therefore complies with point 55(c) and footnote 61 of the Temporary Crisis Framework, according to which the tax liability in relation to which the advantage is granted must have arisen no later than 31 December 2023;
 - aid will be granted only to undertakings affected by the crisis (recital (14)). The measure therefore complies with point 55(d) of the Temporary Crisis Framework;
 - aid granted to undertakings active in the processing and marketing of agricultural products is excluded when the aid is conditional on being partly or entirely passed on to primary producers, fixed on the basis of the price or quantity of products put on the market by the undertakings concerned or purchased from primary producers, unless, in the latter case, the products were either not put on the market or were used for non-food purposes such as distillation, methanization or composting by the undertakings concerned (recital (25)). The measure therefore complies with point 55(e) of the Temporary Framework;
 - the overall nominal value of grants does not exceed EUR 250 000 per undertaking active in the primary production of agricultural products and EUR 300 000 per undertaking active in the fishery and aquaculture sectors (recital (24)). The measure therefore complies with point 56(a) of the Temporary Crisis Framework;
 - aid granted to undertakings active in the primary production of agricultural products must not be fixed on the basis of the price or quantity of products

put on the market (recital (25)). The measure therefore complies with point 56(b) of the Temporary Crisis Framework;

- aid granted to undertakings active in the fishery and aquaculture sector does not concern any of the categories of aid referred to in points (a) to (k) of Article 1(1) Commission Regulation (EU) No 717/2014 (recital (26)). The measure therefore complies with point 56(c) of the Temporary Crisis Framework;
- where an undertaking is active in several sectors to which different maximum aid amounts apply in accordance with points 55(a) and 56(a) of the Temporary Crisis Framework, Lithuania will ensure, by appropriate means such as separation of accounts, that the relevant ceiling is respected for each of those activities and that the overall maximum amount of EUR 2 million is not exceeded per undertaking (recital (24)). Where an undertaking is active exclusively in the sectors covered by point 56(a) of the Temporary Crisis Framework, the overall maximum amount of EUR 300 000 is not exceeded per undertaking (recital (26)(c)). The measure therefore complies with point 57 of the Temporary Crisis Framework.

- (46) The Lithuanian authorities confirm that, pursuant to point 46 of the Temporary Crisis Framework, the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (7)).
- (47) The Lithuanian authorities confirm that, pursuant to point 47 of the Temporary Crisis Framework, the aid under the measure will not be granted to undertakings under sanctions adopted by the EU, including but not limited to: a) persons, entities or bodies specifically named in the legal acts imposing those sanctions; b) undertakings owned or controlled by persons, entities or bodies targeted by sanctions adopted by the EU; or c) undertakings active in industries targeted by sanctions adopted by the EU, insofar as the aid would undermine the objectives of the relevant sanctions (recital (17)).
- (48) The Lithuanian authorities confirm that the monitoring and reporting rules laid down in section 3 of the Temporary Crisis Framework will be respected (recital (32)). The Lithuanian authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Crisis Framework, the COVID-19 Temporary Framework and the cumulation rules of the relevant Regulations are respected (recitals (27) to (31)).
- (49) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Crisis Framework.

4. CONCLUSION

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

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President